

INTERNATIONAL FORUM FOR JUSTICE/HUMAN RIGHTS FORUM J&K

Head Off; Barbarshah Opposite Old Income Tax Office Srinagar, Kashmir

Contact: +91-9622458416, +91-9469668724 (SGR), +91-9910133917 (DELHI)

E-mail address, ifj_hrfjk@hotmail.com, ifj_hrfjk@rediffmail.com,
ahsanuntoo@gmail.com, asfmn07@gmail.com

UPR submission

Country India

Session 13th to be held from 21of May 2012 to 1st June 2012.

Submission by International Forum for Justice / Human Rights Forum J&K

International Forum for justice / Human Rights Forum J&K is a non government, non partisan and non profit organization, which has been working for the human rights education and highlighting human rights violation in Indian, administered Jammu and Kashmir. This organization uses all local remedies available to redress the human rights violations locally but unfortunately due to some of the legislations this has become impossible for the human rights defenders to pursue the cause because their always a threat to life. Chairman of this organization Mr. Muhammad Ashan Untoo was put behind bars for championing the cause of victims. his family and colleagues are been harassed by the local police and intelligence agencies.

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International forum for justice/ Human rights forum Jammu and Kashmir wants to draw the attention of the council and other stakeholders of the 13th session of Universal periodic review to be held from 21st of May, 2012 to 1st June, 2012, towards the following information regarding the human rights record of India.

When India came to review for the first time in 2008 during the 3rd session of UPR, it came under sever criticism from civil society actors, while some Member states also raise their concerned about the human rights record of the India.

Some 18 recommendations were suggested by the different countries, which were adopted at the out come, but till date India has responded to only five and has not responded to other thirteen. Progress on the five recommendations accepted is not satisfactory.

During its election for the council membership for 2011, 2014 India made 27 pledges to improve its human rights record but failed to address the basic issues raised during the first cycle of UPR.

India continues to display an unwillingness to cooperate with the United Nations human rights procedures and its mandate holders. India shies to extend the invitation to special Rapporteur on extra-judicial and summary execution despite the requests by the special Rapporteur dating back to 2000.

The special Rapporteur on torture and other inhuman and degrading treatment or punishment is also waiting for the invitation since 1993.

The working group on arbitrary detention and working group on enforced and involuntary disappearances are also out standing.

India failed to respect the observation made by the Special Rapporteur on freedom religion and belief during her visit to Indian in 2007.

United Nations High commissioner during her visit to India in 2009 also made some observation on some the laws that do not conform with the United Nations human rights standards and are the basic cause of human rights violations.

India has yet to ratify two of the main human rights treaties. UN convention against torture, other cruel and inhuman or degrading treatment or punishment and UN convention of the rights of all migrant workers and their families and the two optional protocols to international

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convention on civil and political rights and India has also yet to sign the Rome statute on international criminal court.

India has signed the convention on involuntary or enforced disappearances but has yet to ratify it. India must implement the UN Convention for the Protection of All Persons from Enforced Disappearance without reservation, including the declarations pursuant to Articles 31 and 32, to recognise the competence of the Committee on Enforced Disappearances. Disappearances in India, especially in the Indian administered Kashmir are of grave concern to the human rights defenders and the families of the disappeared persons. Human rights groups in Indian administered Kashmir and international human rights group estimated; around 10,000 people have disappeared in during the last twenty one years. The Indian National Human rights commission does not have its jurisdiction on Jammu and Kashmir and state human rights commission of Indian administered Kashmir can not prosecute any police or army personnel not can start investigation into any allegations of human rights violations without the prior orders by the state government. Already state human rights commission of Indian administered Kashmir has recommended the government to start investigation and DNA profiling of the bodies buried in mass and unmarked graves in India administered Kashmir.

During the interactive dialogue in the first cycle of UPR India the following recommendations were made, A, expedite the work to ratify the convention on torture and other forms of inhuman or degrading treatment or punishment but instead of ratify the convention without any reservation, India has introduced its own bill of torture which is in contravention to the Convention on torture and further protocols.

India's Prevention of Torture Bill, PTB, 2010 was introduced and passed without a debate and consultation with the stakeholders. Considering that the bill fails to comply even with the existing Indian Penal Code and the Criminal Procedure Code, necessary interventions have been recommended by human rights groups to the Indian government to ensure that the PTB complies with national and international laws.

Bill blatantly violates the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment that India sought to ratify through enactment of the PTB, 2010.

The current definition does not comply with the UN Convention against Torture and the amended/recommended text reproduces the text of the UN Convention against Torture.

By restricting the definition of torture to "(i) grievous hurt to any person; or (ii) danger to life, limb or health (whether mental or physical) of any Person", the PTB excludes a number of offences recognized under the Indian Penal Code (IPC). The IPC also provides sentences for voluntarily causing hurt (Section 323), voluntarily causing hurt by dangerous weapons or means (Section 325), voluntarily causing hurt to extort property, or to constrain to an illegal act (Section 327), causing hurt by means of poison etc with an intent to commit an offence (328).

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However, by restricting definition of torture strictly to "grievous hurt", the Prevention of Torture Bill, 2010 has excluded other forms of hurt recognized under Indian Penal Code.

By lessening the punishment to 10 years under the PTB, 2010 the Government of India has effectively kept the menace of custodial death out of the purview of the Prevention of Torture Bill, 2010 and grievous hurt with dangerous weapons. Under Section 5 of the PTB, 2010 "no court shall take cognizance of an offence under this Act unless the complaint is made within six months from the date on which the offence is alleged to have been committed".

Section 6 of the PTB, 2010 states that "no court shall take cognizance of an offence punishable under this Act, alleged to have been committed by a public servant during the course of his employment, except with the previous sanction" of the government.

The long standing request by the special Rapporteur has not been taken into consideration by the Indian government. Although while seeking its election for the human rights council India made a voluntary pledge that it will speed up of the process to engage with the special procedures and will extend the invitation to the long pending requests made by the special procedures from time to time.

India has not repealed any of the legislation which provides total impunity to its armed forces and Police in North eastern states and Jammu and Kashmir. The Armed forces special powers act described as draconian law by the international human rights monitors and United Nations procedures.

The armed forces special powers act violates the very basic right , right to life of a person, because it gives powers to a commission, non commission officer , warrant officer the authority to shoot to kill any person whom he thinks is going to break the law.

The Jammu and kashmir Public safety act of 1978 is yet an other law , which has been described by the supreme court of India and also by Amnesty international as Lawless law as this law gives powers to police and military personnel's to arrest and detain people arbitrarily , which in turn perpetuates torture and other forms of human rights violations.

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In conclusion International Forum for Justice/ Human Rights Forum Jammu and Kashmir would like government of India to take the following steps as soon as possible.

- Ratify UN convention against torture, other cruel and inhuman or degrading treatment or punishment.
- Ratify UN Convention on the Protection of All Persons from Involuntary or Enforced Disappearance without reservation.
- Sign the Rome statute on international criminal court.
- Invite UN special Rapporteur on torture or other forms of inhuman or degrading treatment or punishment.
- Invite working group on arbitrary detention.
- Invite working group on involuntary or enforced disappearances.
- Invite Special Rapporteur on extra judicial, summary or arbitrary execution.
- Invite Special Rapporteur violence against women.
- Repeal Armed Forces Special Powers Act.
- Repeal Jammu Kashmir Public Safety Act.
- Allow international Investigation and DNA profiling of the bodies buried in mass and unmarked graves in Jammu and Kashmir.
- Free access to all human rights monitors to the area's like Indian administered Kashmir.

Thank you

Submitted By

Altaf Hussain Wani

General Sectary

The international forum for justice/ Human rights forum Jammu and Kashmir