

**COMPLAINT BY
SYED IHTESHAM QADIR SHAH
SENIOR ADVOCATE, SUPREME COURT OF PAKISTAN
RETD. JUDGE OF LAHORE HIGH COURT
EX PROSECUTOR GENERAL PUNJAB
STRATEGIC ADVISER, JSSP UK
SENIOR CONSULTANT, ZAOO LAW FIRM**

TO THE UNITED NATIONS HUMAN RIGHTS COUNCIL, GENEVA

To

**The Hon'ble President and Members,
United Nations Human Rights Council,**

Complaint Procedure Unit,

Human Rights Council Branch,

Office of the United Nations High Commissioner for Human Rights

United Nations Office at Geneva

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**I. Information concerning the author (s) of the communication or the alleged victim (s)
if other than the author**

Individual

Group of individuals

NGO

Other

Last name: SHAH

First name(s): SYED IHTESHAM QADIR

Nationality: PAKISTAN

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Submitting the complaint: On the author's own behalf: (ZOOO Law Firm)

II. Information on the State concerned

1. Republic of India, New Delhi
2. Indian Armed Forces, through Chief of Army Staff General Manoj Mukund Naravane
3. Incharge Border Security Force of Republic of India

III. Facts of the complaint and nature of the alleged violation(s)

The instant complaint is being filed on account of Gross Violation of civil, political, cultural, social, economical, religious rights of Muslims in occupied Kashmir by India.

The first complainant is Syed Ihtesham Qadir Shah, Senior Advocate of Supreme Court of Pakistan who is presently working with JSSP, UK as Senior Adviser for Judiciary and Prosecution in Pakistan. He worked as a Judge of Lahore High Court and rendered services for 5 years as Prosecutor General Punjab. From 2014 - 2019 he has attended various International meetings held by International Prosecution Association and at Dublin he was a guest speaker on the subject of Terrorism for the session of International Prosecution Association. He was requested by Govt of Pakistan to be a part of Prime Minister Committee for Law Reforms and has participated in many conferences and seminars on wide range of subjects concerning domestic and international issues in the matter of Human Rights and constitutional responsibilities.

On August 5, 2019 through Presidential Decree, the article 370 of Indian Constitution that guaranteed special rights to Muslim majority state has been unconstitutionally revoked. Through this move Indian Government sent thousands of additional troops to the disputed region, imposed a crippling curfew, shut down the telecommunications and internet, and arrested political leaders including women. Since August 5, no foreign journalists have been granted permission to report in Kashmir. At present situation is heading towards a looming humanitarian crisis owing to prolonged lockdown and restrictions in the valley. It has really become difficult for Kashmiris to make both ends meet. There are not adequate education, civic and health facilities in volatile valley of Kashmir. It is now incumbent upon the civilized world to intervene to rescue millions of Kashmiris who have been forced to live in "The world's largest prison".

Unfortunately, Systematic and serious human rights violation are taking place lasting for over 9 months in India. Although at present, affected by the COVID-19 pandemic, many countries are fighting against Corona virus, India is using COVID-19 as an excuse against Kashmiris to further carry out human rights violations. The Growing Hindu extremism in India endangers lives of millions of Muslims. The treatment of minorities in India, in particular the victimization of the Muslims in India and denial of human rights in held Kashmir, is a matter of serious concern not only for the India minorities and the neighbouring countries but also for the international community.

1. “Gross Violation” of Human Rights

Below are the facts and events indicating the serious violation of Human Rights in India:

Admittedly Jammu and Kashmir is a disputed territory administrated by India, there are certain on going gross violation of human rights of Muslims. The range from mass killings, force disappearances, torture, rape and sexual abuse to political repression and suppression of freedom of speech. In September 1990, the armed forces act was enacted in Jammu and Kahmir to handle the rise of independence. Human rights group Amnesty claim that the special powers under (AFSPA) gives the security force immunity from violations committed and condemn it. United Nations High Commissioner for Human Rights Mr. Navanethem Pillay has once urged India to repeal AFSPA and to investigate the unlawful disappearance in Kashmir. Human Rights Watch has also accused the Indian security forces of using children as spies and messengers, Indian army have targeted reporters and human right activist, admittedly respondents No. 1 and 2, law enforcing persons are accused of committing over thousands raped in an attempt to intimidate the local population. Wiki leaks cables are reported to contain material stating that the International Committee of Red Cross briefed US officials in India, that India “condoned” torture and that “sexual penetration” formed part of the maltreatment of victims.

Respondents are breaching and violating the rules of United Nation and imposes curfew, communication and media blackout in the Kashmir before and during the COVID-19 epidemic and all Kashmiri People have to face this hard time. These massive and systemic violation of human rights affect at least 2.5 million people in Kashmir.

Brief Summary

- a) The lockdown imposed in occupied Kashmir on August 5, 2019 by the India government has hit more than 9 months, with the security and communication clampdown. The lockdown imposed in occupied Kashmir is still continuing. India has also been maintaining a media and communication blackout in the valley ever since. Mobile and broadband internet services have yet not been fully restored. It is, not doubt, both unprecedented and the longest internet blackout imposed by a democracy in the world.
- b) According to a September 6 report of the Indian government, nearly 4,000 people have been arrested in the disputed region. Among those arrested were more than 200 politicians, including two former chief ministers of Jammu and Kashmir (J&K), along with more than 100 leaders and activists from All Parties Hurriyat Conference.
- c) On October 1, 2019, a three- judge bench consisting of Justices N. V. Ramana, Ramayyagari Subhash Reddy and Bhushan Ramkrishna Gavai of the Supreme Court of India, heard seven petitions on the lockdown and on January 10, 2020 declared that the total internet blackout in Kashmir valley is illegal.

- d) Unfortunately, additional security forces were deployed across Kashmir on the pretext of strict restrictions the COVID-19 after the Supreme Court Order ruled.

2. Indian Social Media Reporting

The Indian Social Media reported as follows:

- i. Cowering in grass, a young Muslim man begs for his life. He was shaking. His hands and face were bloody. His attackers beat and threaten to douse him with fuel and set him on fire. They accuse him of intentionally trying to spread the corona virus. Mehboob Ali, 22 years old young boy was on his way home from a Muslim missioner conference in central India when he came under attack.
- ii. April 5 in his village of Herwali, on the North West edge of India's capital. Ali managed to escape and was treated at a local hospital. The assault, of which has been shared widely in India on social media, is part of a wave of violence against Indian Muslims in recent week. The country's biggest religious minority, Muslim numbers about 200 million in Hindu Majority in India. They have long face abuse and violence particularly under the Hindu Nationalist Government of Prime Minister Narindra Modi. This itself speaks volume of increased discrimination, harassment and attacks on Muslim minority. False news targeting Muslims began to circulate, including video clips purportedly showing congregation members spitting on authorities. The clips were quickly proven to be fake.
- iii. In Uttarakhand, Hindu youths forced Muslim fruit vendors to stop selling. Shots were fired at a mosque in Gurugram, a suburb of New Delhi, and a Muslim family in in the neighboring state of Haryana was Attacked by neighbors who accused them of not turning off their lights on April 9, the night Modi had asked the country to extinguish household lights for 15 minutes in show a national unity.

Reports

Muslims were already at a disadvantage when the corona virus entered India. India's 200 million Muslims account for 14% of the population and are the largest minority group in the Hindu minority nation and also the poorest, surviving on an average of 32.6 rupees (\$ 0.43) per day, a 2013 government survey found.

Muslims also have less access to health care. About 40% of villages with large Muslim populations don't have medical facilities, a government report in 2006 said. The government in Maharashtra—the state with the biggest concentration of corona virus cases—said Muslim-majority areas had a “paucity of health facility” in a 2013 report. It said the “threat of communal riots” forced Muslims to “live together in slums and ghettos” where social distancing is often impossible.

The Organization of Islamic Cooperation's human rights body has strongly condemned the “unrelenting vicious Islamophobic campaign in India maligning Muslims for spread of COVID-19.”

Muslim population in whole India is afraid. They see the intensifying attacks against Muslims and remember what happened in February 2020, when Hindu mobs rampaged in all working-class neighborhood in Delhi killing dozens of Muslim.

3. Serious Concern of International Media

- a) The plight of minor babies who suffered eyes injuries hit by pellet guns fire by the Security Forces of India Law Enforce Agencies in occupied Kashmir. The widespread use of pellet guns against protesters in recent years has led to an estimated 3,000 people in the region sustaining eye injuries - locals call it a "dead eye epidemic", dozens of teenagers are blinded by the pellets, serious concern in Kashmir over police pellets gun firing (reported by BBC).
- b) At a time when the entire world is battling the corona virus pandemic, extremists in India have proved that the country is promoting Hindutva and saffron terrorism. India is using the name of corona virus as a tool of propaganda against Muslim Population. Muslim population living in India is targeted as reason of corona virus.
- c) The situation of the minorities has been serious especially during the COVID-19 pandemic. According to the New York Times, Indian officials are blaming an Islamic group for spreading the virus, and Muslims have been targeted in a wave of violence.
- d) According to report by Business Recorder published on April 19, 2020, Indian government was exploiting COVID-19 to ramp up its suppression of Muslim which can be regarded as genocidal. The Muslim population is suffering not just from COVID-19, but from a crisis of hatred, from a crisis hunger. The situation of the minorities has been serious especially during the COVID-19 pandemic.
- e) The treatment of minorities, particularly Muslim population, is also reflected by the India's law. Indian Government passed an amendment to India's constitution – the Citizenship Amendment Act 2019 (CAB) – which changed the criteria determining who can be a citizen of India. The three-page document is entirely detrimental to India's founding secular democracy: it establishes religion as a key component of citizenship.
- f) Newly promulgated law in India clearly lays down that any person belonging to the Hindu, Sikh, Buddhist, Jain, Parsi or Christian communities who comes from Afghanistan, Bangladesh or Pakistan can apply for India citizenship. Muslims from these countries are excluded. This Act of India Government cause a huge loss to the Muslim Community and other minorities in this country. And this act also caused too much violence on the Muslim Community. This show the aggressive, unconstitutional and inhumane attitude of India which is a gross violation of human Right Charter.
- g) It was reported by the Express Tribune on April 24, 2020 that India was using heavy artillery while targeting the innocent civilians along the LoC. The Indian military is using civilians as human shield to fulfil its nefarious desire

- h) Under the cover of COVID-19, the India government was moving to arrest young students, to fight cases against lawyers, against senior editors, against activists and intellectuals. Some of them have been recently been put in jail.
- i) Amulya Leona, a woman who raised Pro- Pakistan Slogans at the Anti- Citizenship Amendment Act has been booked for sedition and remanded to judicial custody.

Unfortunately, the global community except Pakistan has yet not adequately responded to this inhuman lockdown imposed in the Kashmir as well as the systematic attack against Muslim.

People has already exhausted the remedies available in India against which the complaint is directed, and it appears that the Supreme Court Order proved to be ineffective.

4: Indian Opposition reaction on Revocation and Protest

Protesting over the manner in which Union Home Minister Amit Shah introduced the resolution to amend Article 370 in the Lok Sabha, Congress members Hibi Eden and Ramya Haridas tore up a copy of the resolution on the floor of the House. Opposition MPs from the Congress including Sonia Gandhi and Rahul Gandhi, the Trinamool Congress and the Dravida Munnetra Kazhagam (DMK) walked out of the Lok Sabha since the government only placed the resolution nullifying Article 370 that provides for special status to Jammu and Kashmir (J&K). Even opposition parties in India opposed the revocation of Article 370 and this is not a fare decision.

In light to the above facts and circumstances, it becomes imperative to point out several grounds, which has led to the instant complaint to be filed herein on the following;

1. Gross Violation of Human Rights

Violation of Article 25 (1) of the Universal Declaration of Human Rights (UDHR)

Article 25 (1) of the UDHR states the following:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”.

- ◆ This obligates the India Government to ensure that it does not interfere directly or indirectly with the right to access food and medical care of the people. States should refrain from denying or limiting access to food and health-care services; from imposing discriminatory practices; from limiting, withholding, censoring health information; and from infringing on the Basic Human Rights of people recognized under UDHR.

- ◆ The Indian government is under an obligation to provide fundamental rights and appropriate treatment to the minorities during the lockdown in Kashmir. The Indian government has deliberately hidden and censored information relating to the corona virus.

2. Violation of international covenant on economic, social and cultural rights (ICESCR):

“Every State to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Similarly, “Every State to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

“Every State to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

“The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

.....(c) the prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) the creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

- ◆ The consistent maltreatment, physical assault and killings of innocent Kashmiris by India Government and its Anti-Muslim policy can be easily regarded as serious discrimination due to the religion of Muslim minority.
- ◆ The Muslim population and people in the occupied Kashmir also have faced risks in relation to their living conditions as well as the right of health care during the COVID-19 pandemic.

3. Violation of International covenant on Civil and Political Rights:

Article 2.1 states the following point:

“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Article 4.1 states the following point:

“In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measure derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measure are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.”

Article 7 states the following point:

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.....”

Article 18.1 states the following point:

“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”

Article 20.2 states the following point:

“Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”

Article 26 states the following point:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Article 27 states the following point:

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”

- ◆ The above mentioned acts and treatment towards minorities, particularly Muslim population by the India Government have constituted discrimination against religious minorities.
- ◆ Although in time of public emergency, States to the Covenant may take measure derogating from their obligations but this cannot involve discrimination solely on the

ground of religion. Thus, India Government has violated the requirement of Human Rights Covenant.

- ◆ Linking spread of corona virus (pandemic) with the Muslim population can be regarded as clandestine move to conceal the significant violence upon innocent Kashmiris and the Human Rights.
- ◆ The patent failure of Indian Government not to prohibit religious hatred that constitutes incitement to discrimination and promulgated of new citizenship law to discriminate Muslim speaks volume of serious violation of several key requirement under the Human Rights Covenant.

4. Violation of the International Convention on the Elimination of all forms of Radical Discrimination:

Article 2 states the following points:

“States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

- (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
- (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;
- (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;
- (d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;
- (e) Each State Party undertakes to encourage, where appropriate, integrationist multi- racial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

“States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.”

Article 3 states the following points:

“States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.”

Article 4 states the following points:

“States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

- (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
- (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;
- (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.”

- ◆ The current situation in Kashmir and treatment of Muslim in India is a kind of genocidal. Although the India has obligations under the present Convention to eliminate all forms of racial discrimination, the India Government running to the opposite direction. It raises hatred and discrimination. During the COVID-19 pandemic, the India government even denied the human rights of the minorities and labels them with the virus.
- ◆ The atrocious actions of respondents No. 2 and 3 and their gross failure to protect the rights of the minority group clearly trigger out a patent discrimination among public at large against Muslims in India.
- ◆ The lockdown imposed in occupied Kashmir by the India government has lasted more than 9 months. This can be regarded as racial segregation. The basic human rights of people in Kashmir have been denied even in the COVID-19 pandemic. Their rights to access health services, to food etc. are non- guaranteed. The living and health conditions of Kashmiris is worsening rapidly day by day, the India Government and respondent no 2 and 3 are miserably failed to adopt positive measures designed to eradicate all incitement to discrimination of Muslim population. The newly amendment to Citizenship Act is a tool to promote discrimination against minorities. This August forum has an ample power to interfere to protect the fundamental rights of minorities in India.

PRAYER

In the light of the above, it is humbly prayed that the Honorable United Nation Human Rights Council maybe pleased to declare Indian government guilty of violation of following International Human Rights;

- I. The International Convention on the Elimination of all forms of Radical Discrimination**
- II. The Convention against torture and other cruel, Inhuman or Degrading Treatment or Punishment**
- III. The Convention on the Elimination of All Forms of Discrimination against women**
- IV. The International Convention for the Protection of all Persons from Enforced Disappearance**
- V. The International Covenant on Economics, Social and Cultural Rights**
- VI. The Convention on the Rights of the Child and its optional Protocols**
- VII. The International Convention on Civil and Political Rights**

It is further prayed that the Honorable council may be please to inquire and direct the government of India to stop gross violation of International Human Rights and serious violation of international humanitarian laws (adopted and proclaimed by the general assembly resolution) and pass any such order as maybe fit in the light of facts and circumstances as presented.

IV. Request for confidentiality

The right of confidentiality is waived by the Complainant

Request for confidentiality: No

As this is a developing scenario, the complainant reserves the right to place on record further information, documents, press statements with visuals and other evidence in due course which may come to the knowledge of the Complainant to aid the Council in dispensation of justice. It is humbly submitted that personal hearing may also be granted to the complainant.

Date: May 18, 2020


(Syed Ihtesham Qadir Shah)
Signature