**Comments of NHRC, India**

**Sub : Contribution to Preparation of Report to the Human Rights Council in pursuance of Resolution No.38/11 on the promotion and protection of human rights in the context of peaceful protests.**

The comments on a Questionnaire i.e. inputs for preparation of a report to the Human Rights Council in pursuance of Resolution No.38/11 on the promotion and protection of human rights in the context of peaceful protests, are given as under:

Article 19 (1) (b) of Constitution of India guarantees all citizens the right to peaceful assembly. The article is in the following terms:

19. Protection of certain rights regarding freedom of speech etc.

 [(1)](https://indiankanoon.org/doc/1142233/)  All citizens shall have the right:

 [(a)](https://indiankanoon.org/doc/1378441/)  to freedom of speech and expression;

 [**(b)**](https://indiankanoon.org/doc/1248826/)**to assemble peaceably and without arms;**

 [(c)](https://indiankanoon.org/doc/445304/)  to form associations or unions;

 [(d)](https://indiankanoon.org/doc/1024002/)  to move freely throughout the territory of India;

 [(e)](https://indiankanoon.org/doc/844404/)  to reside and settle in any part of the territory of India; and

 [(f)](https://indiankanoon.org/doc/258019/)  omitted

 [(g)](https://indiankanoon.org/doc/935769/)  to practise any profession, or to carry on any occupation, trade or business

The Hon’ble Supreme Court of India has time and again dealt with this important aspect.  In the case of Anita Thakur v. Government of Jammu and Kashmir, where the Court noticed that more often than not, such protesters take to hooliganism, vandism and even destroy public/private property 5 (2018) SCC Online SC 233 6 (2016) 15 SCC 525.

The following discussion in the said judgment is relevant:

“Before adverting to the issue at hand, we would like to make some general remarks about the manner in which these demonstrations are taking shape. Recent happenings show an unfortunate trend where such demonstrations and protests are on increase. There are all kinds of protests: on social issues, on political issues and on demands of various sections of the society of varied kinds. It is also becoming a common ground that religious, ethnic, regional language, caste and class divisions are frequently exploited to foment violence whenever mass demonstrations or dharnas, etc. take place. It is unfortunate that more often than not, such protesters take to hooliganism, vandalism and even destroy public/private property. In the process, when police tries to control, the protesters/mob violently target policemen as well. Unruly groups and violent demonstrations are so common that people have come to see them as an appendage of Indian democracy. All these situations frequently result in police using force. This in turn exacerbates public anger against the police. In Kashmir itself there have been numerous instances where separatist groups have provoked violence. In this scenario, task of the police and law-enforcing agencies becomes more difficult and delicate. In curbing such violence or dispersing unlawful assemblies, police has to accomplish its task with utmost care, deftness and precision. Thus, on the one hand, law and order needs to be restored and at the same time, it is also to be ensured that unnecessary force or the force beyond what is absolutely essential is not used. Policemen are required to undergo special training to deal with these situations. Many times the situations turn ugly or go out of control because of lack of sufficient training to the police personnel to deal with violence and challenges to their authority. There are various documents in the form of police manual and even international covenants proscribing use of unnecessary force and mandating that force should only be used when it is absolutely necessary. Even when used, it should be minimum and proportional to the situation and its use to be discontinued as soon as the danger to life and property subsides.

37. From the above, it is clear that [Article 19(1)(a)](https://indiankanoon.org/doc/1378441/) and [(b)](https://indiankanoon.org/doc/237570/) gives Constitutional right to all citizens freedom of speech and expression which includes carrying out public demonstration also but public demonstration also but public demonstration when becomes violent and damages the public and private properties and harm lives of people it goes beyond fundamental rights guaranteed under [Article 19(1)](https://indiankanoon.org/doc/1142233/) and becomes an offence punishable under law.”

Following observations of the Supreme Court of India in the case of Mazdoor Kisan Shakti Sanghatan vs Union Of India in judgment dated 23 July, 2018 are very relevant in the context of right to peaceful assembly.

“Undoubtedly, holding peaceful demonstrations by the citizenry in order to air its grievances and to ensure that these grievances are heard in the relevant quarters, is its fundamental right. This right is specifically enshrined under [Article 19(1)(a)](https://indiankanoon.org/doc/1378441/) and [19(1)(b)](https://indiankanoon.org/doc/1248826/) of the Constitution of India. [Article 19(1)(a)](https://indiankanoon.org/doc/1378441/) confers a vary valuable right  on the citizens, namely, right of free speech. Likewise, [Article 19(1)(b)](https://indiankanoon.org/doc/1248826/) gives right to assemble peacefully and without arms. Together, both these rights ensure that the people of this country have right to assemble peacefully and protest against any of the actions or the decisions taken by the Government or other governmental authorities which are not to the liking. Legitimate dissent is a distinguishable feature of any democracy. Question is not as to whether the issue raised by the protestors is right or wrong or it is justified or unjustified. The fundamental aspect is the right which is conferred upon the affected people in a democracy to voice their grievances. Dissenters may be in minority. They have a right to express their views. A particular cause which, in the first instance, may appear to be insignificant or irrelevant may gain momentum and acceptability when it is duly voiced and debated. That is the reason that this Court has always protected the valuable right of peaceful and orderly demonstrations and protests.”

The Commission has received complaint (**106/9/0/2019)** alleging human rights violations in Jammu and Kashmir due the lock down of the State including internet services ever since the Government of India abrogated Article 370 of the Constitution. Taking cognizance of the matter, the Commission has, on 5.9.2019 called for a report from the Secretary, Ministry of Home Affairs, Government of India as well as the Chief Secretary, Government of Jammu and Kashmir.

Hon’ble Supreme Court is also seized of this issue and has issued notices to the Government of India on 30th September, 2019.

Right to assemble peacefully is always subject to reasonable restrictions. Right of the Government to restrict such an assembly is within the domain of executive action of the Government. Our judiciary is looking into the matter in the absence of any specific case of torture etc. role of NHRC, India is very limited, nevertheless NHRC India has issued notice to the Union Government which is awaited for report.

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