

India: Police Used Excessive Force Against Protesters

The Indian government must investigate the use of excessive and unlawful force by Uttar Pradesh police against demonstrators protesting the imposition of a discriminatory new law, the International Commission of Jurists said today in a briefing paper.

The [briefing paper](#), based in part on firsthand interviews with witnesses and victims, documents the unnecessary, excessive and indiscriminate use of force in the state of Uttar Pradesh that have led to more than 19 deaths and several more critical injuries since 11 December 2019 as a result of use of firearms as well as teargas, water cannons, and baton charging by the police in response the ongoing protests against the Citizenship (Amendment) Act, 2020.

Section 144 of the Code of Criminal Procedure, which restricts right to assembly of more than 4 persons, has been imposed in Uttar Pradesh since December 19, 2019, thereby effectively preventing people from protesting. However, protests broke out in several cities in Uttar Pradesh despite the ban. While police authorities claim that the protestors initiated the violence, firsthand interviews with victims and witnesses and numerous other credible reports indicate that the police used force on peaceful protestors including lathis, teargas, bullets.

“The high death toll of peaceful protestors in Uttar Pradesh highlights the use of excessive force by the police, in contravention of international standards of policing and human rights. The state and federal governments must investigate any death or injury that occurs during protests by law enforcement officials and to ensure access to justice to victims and their families,” Sam Zarifi, ICJ Secretary General said.

Individuals reported that they had not been able to get their medico-legal certificates and victims’ families reported inability to access postmortem reports.

The right to life and freedom from ill treatment is protected under international law including the International Covenant on Civil and Political Rights to which India is a party and requires that when arbitrary deprivation of life occurs, there is accountability and reparation for victims.

The Allahabad High Court is hearing Shree Ajay Kumar v. State of Uttar Pradesh starting 16 January 2020, wherein it has taken suo moto cognizance of a letter sent by Ajay Kumar a lawyer in Bombay and has treated it as a basis for the commencement of a public interest litigation. The letter alleges that “the situation in the State of Uttar Pradesh is antithetical to core constitutional values and warrants interference of this Court.”

“A ruling that the Uttar Pradesh police violated protestors right to life by use

of firearms and indiscriminate use of batons, teargas will serve as an important reminder to the police and the Indian State to respect the rights to life, freedom from ill-treatment and freedom of assembly and expression of protestors and that the use of such force against peaceful protestors will not be condoned by the State” said Sam Zarifi.

Background

According to Principle 9 of the Basic Principles on Use of Force and Firearms, 1990, law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent their escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

Even use of less lethal weapons like teargas, water cannons and batons need to follow the principles of necessity and proportionality. Principle 3 of the 1990 Basic Principles states: “The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled”. However, the Uttar Pradesh police has indiscriminately used these weapons against protestors and those who were not part of the protests.

Where individuals have been injured due to conduct of the police, including that involving the alleged use of unlawful force, investigation must be done to affix responsibility and it is the doctor’s legal responsibility to label these cases as medico legal cases and to inform the police. Similarly, if individuals have been killed, the dying declaration must be intimated to magistrate. Finally, it is the duty of the medical officer to conduct postmortems when nothing is known about the cause of death.

Where allegations of unnecessary or excessive use of force are made, there must be a prompt, impartial and thorough investigation. In particular, law enforcement officials who are implicated in or found to be responsible for arbitrary deprivation of life during protests must be brought to justice.

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