

Briefing Paper on the Unlawful Use of Force by Uttar Pradesh Police to Quell Anti-Citizenship Amendment Act Protests

This briefing paper considers the lawfulness of the response by the police in Uttar Pradesh during the ongoing series of protests that broke out after the Citizenship (Amendment) Act, 2019 was passed by the Parliament on 11 December 2019. It concludes that many aspects of the response contravened international law and standards.

Background

The Indian Parliament passed the Citizenship (Amendment) Act, 2019 (hereinafter CAA) on 11 December 2019. The President assented to it on 12 December 2019 and the law came into force on 10 January 2020.¹

The Citizenship (Amendment) Act, 2019 amends the Citizenship Act, 1955, so as to give protected status to Hindu, Sikh, Jain, Parsi, Buddhist and Christian migrants from Pakistan, Afghanistan and Bangladesh, all Muslim-majority countries, who entered India on or before 31 December 2014. The CAA provides to such persons an expedited route to citizenship, but controversially excludes from its ambit Muslims and persons from other ethnic and religious groups, in violation of international law and standards protecting against discrimination and providing for equal protection of the law.²

In response to the passage of the Citizenship (Amendment) Act, 2019 protests have erupted throughout the country from 4 December 2019 and are ongoing.³ Overall, the protests have resulted in more than 31 deaths nationwide⁴ and several hundred instances of injuries, due to use of lethal

¹ See ICJ Press Release: India: Discriminatory citizenship law passed by Parliament violates international and constitutional law, December 11, 2019, at <https://www.icj.org/india-discriminatory-citizenship-law-passed-by-parliament-violates-international-and-constitutional-law/>

² The Citizenship Amendment Act 2019 at <http://egazette.nic.in/WriteReadData/2019/214646.pdf>

³ See ICJ Press Release: India: Authorities must cease the excessive use of force and ill-treatment of Citizenship (Amendment) Act 2019 protestors, December 16, 2019 at <https://www.icj.org/india-authorities-must-cease-the-excessive-use-of-force-and-ill-treatment-of-citizenship-amendment-act-2019-protestors/>

⁴ S. Sen, "Data: How many people died during anti-CAA protests?", January 6, 2020, The Hindu, at <https://www.thehindu.com/data/data-how-many-people-died-during-anti-cao-protests/article30494183.ece>

weapons such as firearms and less-lethal weapons such as teargas, indiscriminate baton charging, water cannons among others.

The state of Uttar Pradesh has seen the largest number of deaths, reported by the Uttar Pradesh Police at 19, although reports from the ground place it at 24 or more with many more critically injured. Firozabad has recorded the greatest number of deaths (seven).⁵

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 the 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”. It refers, among other sources, to a New York Times publication noting “that Mr. Sanjeev Tyagi, the Superintendent of Police in the Bijnor district has published an audio recording requesting police officers to inflict violence on protestors and demonstrators as a means of reprisal.” The letter further says, “[t]he two reports coming from newspapers appear to show that the law enforcement machinery in Uttar Pradesh is acting in callous disregard for the law. In particular without reference to any of the fundamental rights of UP residents guaranteed under Articles 14, 19, 21, and 22 of the Constitution of India”.⁶ The Court is also hearing several petitions related to the protests which have been tagged to this petition.⁷

The incidents engage a range of international human rights concerns, including freedom of expression and assembly, not to mention the underlying issue of discrimination of the citizenship law that is the subject of the ongoing demonstrations. The present briefing paper is confined to the human rights concerns arising from the unlawful use of force, particularly regarding dispersal of protestors through the use of firearms and less-lethal weapons in

⁵ Uttar Pradesh is the most populous state in the country with more than 75 districts. Based on preliminary information received by the ICJ and domestic human rights organizations, there have been at least 24 deaths, including seven in Firozabad, six in Meerut, three in Kanpur, two in Bijnore, one in Muzzafarnagar, one in Lucknow, one in Varanasi, two in Sambhal, and one in Rampur. Most of these have been caused by firearms, although the death in Varanasi of a minor boy was a result of being crushed in a stampede following the police actions to disperse crowds.

⁶ The Leaflet, Allahabad High Court takes cognizance of a letter from a lawyer alleging situation in UP antithetical to core constitutional values, notice issued to UP Govt, <https://theleaflet.in/allahabad-high-court-takes-cognizance-of-a-letter-from-a-lawyer-alleging-situation-in-up-antithetical-to-core-constitutional-values-notice-issued-to-up-govt/>

⁷ These include petitions such as *Vishnu Shukla v. State of UP and 4 Others* (Kanpur), *Aftab Alam v. State of UP and 6 Others* (Muzzafarnagar), *Syed Najmussaib v. State of UP and 6 Others* (Kanpur) which will also be heard on 16th January 2020.

The High Court had started hearing a public interest litigation on violence in Aligarh Muslim University commencing January 7, 2019, *Mohd Aman Khan v. UOI* wherein it has directed the National Human Rights Commission to conduct an enquiry into the violence committed in the Aligarh Muslim University and to provide its report in four weeks. The next hearing is scheduled on February 17, 2019.

the context of the actions of the Uttar Pradesh police against CAA protestors. These engage the rights to life and freedom from ill-treatment, both protected under international law and guaranteed by India pursuant to its international obligations and domestic law. This includes the International Covenant on Civil and Political Rights (ICCPR), articles 6 and 7 and article 21 of the Indian Constitution.

The paper concludes that through the conduct of the police and the Uttar Pradesh government, the Indian State is in violation of its international legal obligations to protect the right to life and freedom from torture and cruel, inhuman degrading treatment. Indian authorities have engaged in arbitrary deprivation of life and acts of proscribed ill-treatment.

Use of Firearms to Disperse Protests

At present there have been 14 deaths reported in Uttar Pradesh as a result of firearms.⁸

The testimonies of two deaths due to firearms that have been received by the ICJ, described below, may be taken as emblematic:

Rani, Firozabad, Uttar Pradesh lost her husband Shafiq in the violence that broke out after the protests. She says: *"My husband has died. He was coming back from work from the bangle factory. In the protests, he got hit in the head with a bullet from a gunshot. Everyone saw it. He fell and there was nobody to pick him up. The hospital in Firozabad refused to admit him. People from my community took him to Agra – they took him to 10-12 hospitals, they all refused. Finally, one hospital admitted him, but they kept telling me to take him to Delhi. He died in Delhi."*

Qamarjahaan, mother of Mohammed Saif urf Nakil, Kanpur says *"My son had taken a bath and took money from me to buy food. He saw a protest was happening and stood to observe it and got hit by live ammunition. He told us that the police fired two bullets which hit him in the stomach and in the hand, near Eidgah, around 3 pm. The police were also abusing him verbally. We took him to the hospital around 5 pm. He was conscious until 5:30 pm until he went to the operation theatre. We were told by hospital authorities the next morning at 9 am that he has died although the news cycle reported his death the previous night. The doctors have not provided any documentation including the postmortem report. The police only came to deliver the body to make sure that the funeral was conducted without unrest."*

⁸ Scroll, Citizenship Act protests: 14 of 17 deaths in Uttar Pradesh were due to 'firearm injuries' Scroll, December 23, 2019, <https://scroll.in/latest/947639/citizenship-act-protests-14-of-17-deaths-in-uttar-pradesh-because-of-firearm-injuries>

As indicated above, the right to life is protected under article 6 of the ICCPR.⁹ The nature and scope of the obligation of the Indian State to respect and protect the right to life is set out by the UN Human Rights Committee, the ICCPR's supervisory authority, in its General Comment 36. The Committee stresses that "[d]eprivation of life is, as a rule, arbitrary if it is inconsistent with international law or domestic law." In addition, it says "all operations of law enforcement officials should comply with relevant international standards, including the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169) (1979) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)."¹⁰

Pursuant to these standards, there are three main elements that govern the law for law enforcement officials: necessity, proportionality and precaution.

i) **Necessity**: The principle of necessity holds that a) law enforcement officials may use force only when strictly necessary for a legitimate purpose and that any use of force should be exceptional and non-violent means should be attempted to ensure compliance; b) such a legitimate purpose in the context of law enforcement must be a law enforcement objective, ie, to prevent crime or to effect or assist in the lawful arrest of criminals or suspected criminals; c) no more than the minimum force that is reasonably necessary in the circumstances is to be used and the force must be in keeping with the level of resistance offered.

ii) **Proportionality** in the use of force of means that "whenever the lawful use of force and firearms is unavoidable, law enforcement officers shall ... act in proportion to the seriousness of the offence and legitimate objective to be achieved."

iii) **Precaution** - The authorities have a duty to plan law enforcement operations in a manner that minimizes the risk that its law enforcement agencies and officials may kill or injure a member of the public (or another law enforcement official). According to 1990 Basic Principle 5(b), whenever lawful use of force and firearms is unavoidable, law enforcement officials must "minimize damage and injury" and "respect and preserve human life".

In separate resolutions in 2014 and 2016 that addressed the use of force in the context of law enforcement, the Human Rights Council called on States to ensure that their domestic legislation and procedures are "consistent with their international obligations and commitments" and "effectively implemented by officials exercising law enforcement duties, in particular applicable principles of law enforcement, such as the principles of necessity and proportionality." This echoes the Human Rights Committee's affirmation of the States' obligations under the ICCPR to "take all necessary measures intended to prevent arbitrary deprivations of life by their law enforcement officials,... includ[ing] appropriate legislation controlling the use of lethal force by law enforcement officials, procedures designed to ensure that law enforcement actions are adequately planned in a manner consistent with the

⁹ Article 6(1), ICCPR: 1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

¹⁰ Human Rights Committee, General Comment 36: Article 6: right to life, UN Doc CCPR/C/GC/36, paras 11 and 14.

need to minimize the risk they pose to human life, mandatory reporting, review, and investigation of lethal incidents and other life-threatening incidents, and the supplying of forces responsible for crowd control with effective “less-lethal” means and adequate protective equipment in order to obviate their need to resort to lethal force.”¹¹

With specific regard to the use of lethal force, the Human Rights Committee has stressed that and “the intentional taking of life by any means is permissible only if it is strictly necessary in order to protect life from an imminent threat.”¹² This echoes Principle 9 of the 1990 Basic Principles: 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 his or her 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.

In the cases reported to the ICJ and other organizations, the law enforcement officials used firearms in violation of Principle 9 of the 1990 Basic Principles and it was not necessary, proportionate or exercised with precaution.

Use of “Less-Lethal Weapons” (baton charge, tear gas, water cannon etc) to Disperse Protests

There have been several critical injuries caused due to the apparently indiscriminate, excessive and unnecessary use of force by the police. Among the several testimonies received by the ICJ, an emblematic testimony is reproduced here:

A (name withheld on request), Firozabad told the ICJ “On December 20th, around 2 PM when the namazis came out of the Aгаа Sahib mosque after the Juma prayer, the police started lathicharging (baton charging). There was no reason to start the lathicharging as the namazis were simply coming out of the mosque after the prayers, there was no protest or sign of any tension there. In a very short period of time, the police force gathered outside the mosque. As soon as the lathicharging started, some people started running away ..But the police caught hold of people and detained them. The mosque representative also came to speak to the police, but he was

¹¹ Human Rights Committee, General Comment 36: Article 6: right to life, UN Doc CCPR/C/GC/36, para 13.

¹² Human Rights Committee, General Comment 36: Article 6: right to life, UN Doc CCPR/C/GC/36, para 12.

also beaten up badly by the police and has head injuries in 3 places. They also pulled his beard and called him 'aatankvadi'...Some people are still so scared that they have not opened up their shops in 5-6 days."

Under international law, force must not be used vindictively as punishment or applied in a discriminatory manner or as a form of extrajudicial punishment and in all circumstances, force must cease to be applied when the need for further violent action has passed. Discriminatory practices, for example against minorities, are "in principle arbitrary" and therefore a violation of international law. Self-evidently, unlawful forms of arrest or detention are not legitimate law enforcement purposes. The rationale for less-lethal weaponry is to reduce the number of injuries that law enforcement officials inflict when they use force in other instances.

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".

In this connection, the Human Rights Committee has stressed that States parties should ensure that less-lethal weapons are "subject to strict independent testing and evaluate and monitor the impact on the right to life of weapons ... which are designed for use or are actually used by law enforcement officials, including soldiers charged with law enforcement missions. The use of such weapons must be restricted to law enforcement officials who have undergone appropriate training and must be strictly regulated in accordance with applicable international standards, including the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Furthermore, less-lethal weapons must be employed only subject to strict requirements of necessity and proportionality, in situations in which other less harmful measures have proven to be or clearly are ineffective to address the threat. States parties should not resort to less-lethal weapons in situations of crowd control that can be addressed through less harmful means, especially situations involving the exercise of the right to peaceful assembly."¹³

In the cases reported to the ICJ and other organizations, the law enforcement officials used less lethal weapons in violation of Principle 3 of the 1990 Basic Principles and it was not necessary, proportionate or exercised with precaution.

¹³ Human Rights Committee, General Comment 36: Article 6: right to life, UN Doc CCPR/C/GC/36, para 14.

Conclusion

In accordance with ICCPR article 2, the consequences for human rights violations arising under ICCPR articles 6 and 7 are that persons responsible must be accountable and that victims and their families are entitled to an effective remedy and reparation for the injuries.

The Indian state has a duty to thoroughly, promptly and impartially investigate any death or injury that occurs during protests, including those resulting from the discharge of firearms or the use of 'less-lethal' weapons by law enforcement officials. Any person who considers that their rights have been violated has the right to pursue justice through the courts. Where allegations of excessive or otherwise unlawful 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. To that end, India should ensure that victims of the use of force or firearms have access to an independent complaints process, including a judicial process. Victims must also be entitled to full reparation within a reasonable period of time.