



# HUMAN RIGHTS DEFENDERS'ALERT - INDIA

NATIONAL SECRETARIAT

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**Ref No: HRDA/North/DL/12/09/2019**

**September 21, 2019**

**To**

**Mr. Khaleel Ahmad**

National Focal Point - Human Rights Defenders & Deputy Registrar  
National Human Rights Commission  
Manav Adhikar Bhawan,  
Block-C, GPO Complex, INA,  
New Delhi – 110 023  
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**Respected Sir,**

***Sub: HRD Alert - India - Urgent Appeal for Action - New Delhi - Harassment and intimidation of activist and human rights defender Ms. Shehla Rashid by foisting false case of sedition – Regarding***

**Greetings from Human Rights Defenders Alert - India!**

HRD Alert - India is a forum of Human Rights Defenders for Human Rights Defenders. It endeavours to initiate actions on behalf of Human Rights Defenders under threat or with security concerns.

We are writing to express our grave concern on registration of an FIR against Ms. Shehla Rashid under Section 124A and 153A of IPC, amongst other provisions of the Indian Penal Code (IPC). It was alleged that she has tried to create unrest in Jammu and Kashmir and also other parts of the country, and also tried to cause disharmony among different groups of people. It is submitted that the said criminal complaint and the subsequent FIR are in violation of the fundamental right to freedom of speech and expression.

**About the Human Rights Defender:**

Ms. Shehla Rashid is a Ph.D. student at the Jawaharlal Nehru University, New Delhi and was the Vice-President of the Jawaharlal Nehru University Students Union (JNUSU) in 2015-16. In February 2016, she had led a students' agitation against the arrest of her fellow-students Kanhaiya Kumar, Umar Khalid and Anirban Bhattacharya

on charges of sedition. She has been vocal on several social issues. She is also associated with the Jammu and Kashmir People's Movement.

**Source of Information on the Incident:**

- The Coordinator of HRDA for the North of India
- Other HRDs
- Media Reports

**The Perpetrators:**

Special Cell of Delhi Police

**Date and Place of incident:**

September 3, 2019  
New Delhi

**Background of the Incident:**

On August 4, 2019, the erstwhile State of Jammu and Kashmir came under a complete communication lockdown. There was a shutdown of mobile, internet and landline services, and strict restrictions were imposed upon the freedom of movement of journalists and media persons in Kashmir and some districts of Jammu. This rendered Kashmir Valley and some districts of Jammu completely isolated and cut off from any form of communication and information. The situation continues to this day, even over a month later. This has led to a lot of anxiety and fear amongst the locals as also their relatives outside, who have been unable to reach each other for over a month now. The same day, orders under Section 144 Cr.P.C. were imposed, putting an entire population of 8 million under a de facto curfew, placing severe restrictions on movement.

Pursuant to the communication lockdown, there have been news reports of civilian protestors being shot with pellet guns, resulting in injuries to bystanders as well.<sup>1</sup> Residents are reported to have been tortured by the police for trying to buy necessities.<sup>2</sup> Witnesses have stated that tens of thousands of peaceful demonstrators were moving through the streets of Srinagar, when Indian forces opened fire.<sup>3</sup> The

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<sup>1</sup> <https://theprint.in/india/kashmir-authorities-say-no-pellet-injuries-but-here-are-5-victims/276023/>, <http://www.kashmirtimes.com/newsdet.aspx?q=93523>.

<sup>2</sup> <https://www.nytimes.com/2019/08/10/world/asia/kashmir-india-pakistan.html>

<sup>3</sup> <https://www.nytimes.com/2019/08/10/world/asia/kashmir-india-pakistan.html>

curfew restrictions have made it impossible for people to procure food and medicines.<sup>4</sup> People have been unable to make calls to ambulance services. There are also reports of people dying due to medical emergencies.<sup>5</sup>

#### **Details of the Incident:**

On August 18, 2019, Ms. Rashid, had alleged human rights violations in Kashmir by personnel of the Indian Army. In a series of tweets on the current situation in Kashmir, following the communication lockdown and the subsequent abrogation of Article 370, Ms. Rashid also mentioned about a certain incident involving the Indian Army. She posted the following messages regarding the same:

*“9) Armed forces are entering houses at night, picking up boys, ransacking houses, deliberately spilling rations on the floor, mixing oil with rice, etc.*

*10) In Shopian, 4 men were called into the Army camp and "interrogated" (tortured). A mic was kept close to them so that the entire area could hear them scream, and be terrorised. This created an environment of fear in the entire area.”*

Following this, on August 19, 2019, a criminal complaint was filed against Ms. Rashid by one Adv Alok Srivastava, alleging that she is *“deliberately and intentionally spreading the aforesaid FAKE NEWS with the intention to incite violence in the country, to malign the image of our revered Indian Army nationally as well as Internationally, and to create unrest in the Union Territory of Jammu and Kashmir, and in other parts of the country; to promote disharmony, enmity, hatred, ill-will between different groups and also to provoke breach of peace in our country.”*

The complaint further stated that the aforesaid tweet by Ms. Rashid was being shared by many Twitter users on international platforms, causing irreparable injury to the reputation of India. It also stated that vide her tweet, Ms. Rashid had intended to excite disaffection towards the Government of India, and which was prima facie an offence of sedition under Section 124A of IPC. It stated that she has further committed offences of promoting enmity under Sections 153, 153A, 504 and 505 of IPC, Information Technology Act, amongst others.

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<sup>4</sup> <https://www.telegraph.co.uk/news/2019/08/07/kashmir-residents-say-starving-first-accounts-surface-lock-down/>

<sup>5</sup> <https://www.telegraph.co.uk/news/2019/08/07/kashmir-residents-say-starving-first-accounts-surface-lock-down/>

On September 3, 2019 an FIR was registered by the Delhi Police Special Cell against Ms. Rashid for offences under IPC Sections 124A, 153A, 153, 504 and 505.

Ms. Rashid is known for being vocal in her criticism of the Central Government for human rights abuses. Human rights violations by the security forces in Kashmir are well documented by international<sup>6</sup> as well as national organisations.<sup>7</sup> Therefore, filing of such a criminal complaint and the subsequent registration of FIR is nothing but an attempt at stifling the voices of dissent and creating a chilling effect against those people who speak out against the illegalities and human rights violations committed by the State.

### **Violation of Domestic and International Laws:**

**Article 19(1)(a) of the Indian Constitution** provides the freedom of speech and expression to all citizens of India. Thus, it is submitted that the FIR filed over posting of certain messages on the internet, making out an offence of sedition, is in violation of constitutionally guaranteed rights.

In **Kedar Nath Singh v. State of Bihar**,<sup>8</sup> Section 124A of the Indian Penal Code was upheld by construing it narrowly and stating that the offence would only be complete if the words complained of have a tendency of creating public disorder by violence. It is also to be considered whether the application of Section 124A in this case serves as a reasonable restriction on the freedom of expression as contemplated by Article 19(2). It is submitted that given the communication lockdown in Kashmir, exchange of information has become extremely difficult and nearly impossible for the reporters from Kashmir. It is under these circumstances that the information under contention was received by Ms. Rashid. She, in her tweets, also reported on essential commodities running out of supply. Thus, to state that the said messages were posted with an intent to cause disharmony amongst different groups of people and cause unrest in the nation, cannot be a reasonable presumption. Therefore, it is submitted that the application of Section 124A in this case is misconceived, unwarranted and reeks of

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<sup>6</sup> <https://www.hrw.org/report/2006/09/11/everyone-lives-fear/patterns-impunity-jammu-and-kashmir>

<sup>7</sup> <https://kashmirilife.net/year-2018-was-deadliest-in-human-losses-jkccs-report-196713/>

<sup>8</sup> MANU/SC/0074/1962 : 1962 Supp. (2) S.C.R. 769

mala fides. It is important to note that several national and international media in their reports have also mentioned about human rights abuses by the Indian Army personnel in Kashmir.

It is further submitted that the application of Sections 153 and 153A is misconceived, unwarranted and unfounded in law. The Supreme Court has held that mens rea is a necessary ingredient for an offence under Section 153A.<sup>9</sup> The apex court while dealing with a case<sup>10</sup> wherein the accused was charged with offences under Sections 153 and 153A for publication of a book, made the following observation:

*“Section 153A of IPC, as extracted hereinabove, covers a case where a person by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities or acts prejudicial to the maintenance of harmony or is likely to disturb the public tranquillity. The gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the sine qua non of the offence under Section 153A of IPC and the prosecution has to prove prima facie the existence of mens rea on the part of the accused. The intention has to be judged primarily by the language of the book and the circumstances in which the book was written and published. The matter complained of within the ambit of Section 153A must be read as a whole...”*

It is submitted that given the lockdown situation in Kashmir, making of the contended statements does not warrant the application of Sections 153 or 153A. It is further submitted that on the above grounds application of Sections 504 and 505 is also misconceived, unwarranted and unfounded in law.

Article 19 of the UDHR provides that everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Article 19 of ICCPR also makes a similar provision. The FIR against Ms. Rashid is in direct contravention of the same.

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<sup>9</sup> Bilal Ahmed Kaloo vs. State of Andhra Pradesh (06.08.1997 - SC) : MANU/SC/0861/1997

<sup>10</sup> Manzar Sayeed Khan vs. State of Maharashtra and another, MANU/SC/7279/2007 : 2007(2) RCR (Criminal) 883

Soon after the filing of FIR, in an address at a lawyers' workshop, Justice Deepak Gupta spoke at length on the importance of dissent vis a vis the law of sedition, while also throwing light on the colonial roots of the law. He said that *"the constitutional validity of Section 124A has to be read in the context of Article 19 of the Constitution of India. Thus, it is clear that advocating any new cause however unpopular or uncomfortable it may be to the powers that be, it must be permitted."*

Right to dissent, which often involves criticism of the State, is an integral part of the right to freedom of speech and expression as laid down by the Supreme Court in **Subramanian Swamy v. Union of India (UOI) and Ors.**<sup>11</sup> In this case it was observed that:

*Freedom of speech and expression in a spirited democracy is a highly treasured value. Authors, philosophers and thinkers have considered it as a prized asset to the individuality and overall progression of a thinking society, as it permits argument, allows dissent to have a respectable place, and honours contrary stances.*

In **Government of Andhra Pradesh and Ors. v. P. Laxmi Devi**,<sup>12</sup> it has been ruled that *freedom and liberty is essential for progress, both economic and social and without freedom to speak, freedom to write, freedom to think, freedom to experiment, freedom to criticize (including criticism of the Government) and freedom to dissent there can be no progress.*

In **S. Khushboo v. Kanniammal and Anr.**,<sup>13</sup> it has been laid down that even though the constitutional freedom of speech and expression is not absolute and can be subjected to reasonable restrictions on grounds such as 'decency and morality' among others, *stress must be laid on the need to tolerate unpopular views in the socio-cultural space. The framers of our Constitution recognised the importance of safeguarding this right since the free flow of opinions and ideas is essential to sustain the collective life of the citizenry. While an informed citizenry is a pre-condition for meaningful governance in the political sense, it is the duty of everyone to promote a culture of open dialogue when it comes to societal attitudes.*

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<sup>11</sup> MANU/SC/0621/2016.

<sup>12</sup> MANU/SC/1017/2008 : (2008) 4 SCC 720

<sup>13</sup> MANU/SC/0310/2010 : (2010) 5 SCC 600

## **Appeal:**

The filing of FIR against Ms. Shehla Rashid for speaking out against the human rights violations is nothing but an act of reprisal. Referring to **Section 2 (d)** of the Protection of Human Rights Act 1993, as amended from time to time, whereby it states ***“human rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India”***. Section 12 (a)(i) of the Act on the Functions of the Commission where it states ***“inquire, suo motu or on a petition presented to it by a victim or any person on his behalf [or on a direction or order of any court], into complaint of – violation of human rights or abetment thereof.”***

We appeal to the Hon’ble Commission to –

- Order an immediate, independent, thorough, transparent, effective and impartial investigation into the above-mentioned police case filed against Ms. Shehla Rashid;
- Direct the state government that FIR No. 0152 of 2019 filed by the Special Cell of the Delhi Police be withdrawn with immediate effect;
- Ensure provision of reparation, compensation, apology to the defender for the psychological sufferings she had to undergo because of the fabricated case against her and provide a re-assurance of not engaging in such acts against her.

Looking forward to your immediate action in this regard.

Yours sincerely



Henri Tiphagne  
National Working Secretary