

Preservation of Human Rights in Jammu and Kashmir: Need of the Hour

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Abstract

Human Rights then are the inherent expressions of human dignity as human beings recognized by international laws. We are of course aware that the Universal Declaration of Human Rights is a declaration. It is apparitional document as a common standard of achievement .Human Rights then are the inherent expressions of human dignity as human beings recognized by international laws. We are of course aware that the Universal Declaration of Human Rights is a declaration. It is apparitional document as a common standard of achievement. Thus it has not legal binding. Nonetheless, the Universal Declaration of Human Rights has set common standards for the development of human potentialities. It has also set the stage for the establishment of stage obligations. This article is about Human rights abuses in Indian-administered portion of Kashmir. Indian administered portion of Kashmir is suffering with every moment death of human rights. Mass killings, forced disappearances, torture, rape & sexual abuse to political repression & suppression of freedom of speech have become an integral part of their day to day life. The Indian central reserve police force, border security personnel and various militant groups have been accused & held accountable for committing severe human rights abuses against Kashmiri civilians. This chaos has put innumerable questions before us demanding serious attention and immediate solution.

Keywords: International law, Human Rights, UDHR, Militancy, International Organization, Disappeared Persons, Judicial Commission, State Human Rights Commission, Armed Forces Special Powers Act, National Human Rights Commission, abuses, rape and sexual abuse, fake encounter, extrajudicial killings, Mass graves, half-widows. Etc,

Introduction

The Universal Declaration of Human Rights (UDHR) has drawn its validity from the historical sources of peoples- their faiths, beliefs and cultures as well as their struggles - to affirm a common human dignity as basis for the human rights of everyone, everywhere. Human Rights then are the inherent expressions of human dignity as human beings recognized by international laws. We are of course aware that the Universal Declaration of Human Rights is a declaration. It is apparitional document as a common standard of achievement. Thus it has not legal binding. Nonetheless, the Universal Declaration of Human Rights has set common standards for the development of human potentialities. It has also set the stage for the establishment of stage obligations. The two important characteristics of human rights are: Universality and indivisibility. They are universal in that all human rights are for everyone, everywhere and are non - discriminatory. Indivisibility means that human rights cannot be divided nor fragmented among a countries constituent. The origins of the conflict in Kashmir lie in the subcontinent's partition in 1947 which created the independent states of India and Pakistan. As a result of the partition, hundreds of nominally independent "princely states were absorbed into the two new nations. However, Kashmir's ruler, Maharaja Hari Singh, refused to accede to either nation, apparently in the hope that the state might be permitted to remain independent. An invasion by Pakistani tribesmen in August and September 1947 and an uprising among Kashmiri Muslims in the state's western regions ultimately compelled the maharaja to seek the assistance of Prime Minister Nehru of India, who agreed to send troops only if Kashmir formally acceded to India. On October 27, 1947, the maharaja agreed to Kashmir's accession to India, on the condition that Kashmir is permitted to retain its own constitution. Indian troops succeeded in halting the Pakistani forces, driving them back to the western third of the state, which then acceded to Pakistan as "Azad" (free) Kashmir.

Since early 1990, the valley of Kashmir in the north Indian state of Jammu and Kashmir has been the site of a vicious conflict between Indian security forces and Muslim insurgents demanding independence or accession to Pakistan. In their efforts to crush the insurgency, Indian forces in Kashmir have engaged in massive human rights violations, including extrajudicial executions, rape, torture and deliberate assaults on health care workers. Armed insurgent groups have murdered Hindu and Muslim civilians, summarily executed persons in their custody and have committed rape, assault, kidnapping and indiscriminate attacks which have injured and killed civilians. In late 1992 and early 1993, human rights conditions further deteriorated as Indian troops embarked on a "catch and kill" campaign against suspected militants. Since then, summary executions of detainees by security forces have sharply increased. In October 1992, Asia Watch and Physicians for Human Rights (PHR) sent a delegation to Kashmir to document human rights abuses and violations of the laws of war by Indian security forces and by militant forces. Following the upsurge in violent reprisals against civilians and attacks on human rights activists in late 1992 and early 1993, Asia Watch sent a second mission to Kashmir in April and May 1993, in cooperation with Physicians for Human Rights- Denmark. The conflict in Kashmir, which has its origins in the state's disputed accession to India in 1947, erupted in December 1989 when Indian government troops launched a brutal crackdown on rising violence by armed militant groups in the predominantly Muslim Kashmir valley. From the outset, that crackdown was marked by brutality against civilians, including the shooting of unarmed demonstrators, civilian massacres and summary executions of detainees. At the same time, militant groups -- who received arms and training from Pakistan -- stepped up their attacks, murdering and threatening Hindu residents, carrying out kidnappings and assassinations of government officials, civil servants and suspected informers and engaging in sabotage and bombings? In the three and a half years since the conflict began, at least 6,000, and possibly twice that number, have been killed by all sides and well over 100,000, mainly Hindus, have fled the valley. In 1992 alone, at least 2,000 were reported to have been killed -- most of them civilians. Despite the escalation of violence, militant groups continue to command popular support throughout the valley, not necessarily for ideological reasons but because they are seen to represent the only alternative to the government's repressive policies and widespread abuses by the security forces.

How do Kashmiries in comparison to countries other constituents perceive their present life? Rooted in the past, striving for the good of posterity in future, they are caught in up and what hopes they cherish for future in view of egregious rights violations they face. Incidents of humiliation and suffering are reported on a daily basis, epitomizing the political landscape. Notwithstanding the hand grenade attacks, sniper Killings surprise military attacks and violence from all sides, people subsist on a tenuous thread of twilight existence in the hope of a better future. A glimpse into human Rights in Kashmir in the

eyes of a affected person is indicative of the magnitude of human suffering in the time that the United Nations has been instilling precepts of Rights into the realm of international politics. And celebrating the progress made in the sixty years from Universal Declaration of Human Rights convention, Kashmir has been experienced a consistent erosion of human rights from the autocratic rule to oligarchy and ongoing harsh treatment of innocent citizens.

Massacre in cold blood of innocent families who mind their own business in their own time challenges rationality. How do we reconcile with banality of evil as exhibited in pogroms of chitisingpora and Amarnath or the Hindu Pilgrims traveling to Amarnath cave in Kashmir an a sacred mission. On February 23, 1991, Indian army searched and interrogated people at the Kunan Poshpora village, which is an isolated hamlet in Jammu and Kashmir, at 11:00 PM soldiers of the Rajputana Rifles cordoned off the village. Males were interrogated overnight. The soldiers are accused to have gang-raped a large number of village women that night till 9:00 AM as well as the next day. According to the locals up to 100 women "were gang-raped without any consideration of their age, married, unmarried, pregnancy etc.," Victims of this incident range in age from 13 to 80.

In stark contrast of the purported allegations of abuses, Indian investigations concluded the allegations themselves are "grossly exaggerated or invented".

"The Kunan rape story on close investigation turns out to be a massive hoax orchestrated by militant groups and their sympathizers and mentors in Kashmir and abroad as a part of sustained and cleverly contrived strategy of psychological warfare and as an entry point for rein scribing Kashmir on the International Agenda as a Human rights issue. The loose-ends and the contradictions in the story expose a tissue of lies by many persons at many levels". — Investigation Committee. Government investigations rejected the accusations as "baseless", but international human rights organizations have doubt the integrity of these investigations seriously including the manner of their conduct, saying Indian government had launched a "campaign to acquit the army of charges of human rights violations and discredit those who brought the charges." Although the Indian Government's Investigations into the incident rejected the allegations as "baseless" international organizations have expressed serious doubts about the investigations and the manner in which they are conducted. Hundreds of unidentified graves believed to contain victims of unlawful killings, enforced disappearances, torture and other abuses - have been found in Kashmir. Amnesty international has urged the Govt of India to launch urgent investigations into the mass graves which are thought to contain the victims of human rights abuses in the context of the armed conflict that has raged in the region since 1989. The association of the parents of Disappeared Persons (APDP) details that since 2006, the graves of at least 940 people are reported to have been discovered in 18 villages in Uri district alone. In 2006, a state police report confirmed the deaths in custody of 331 persons and also enforced disappearances

following detention since 1989. While the violence which began in 1989 has abated slightly since talks were initiated between India and Pakistan and some separatist groups in 2005, abuses by all parties continue. With a due credit, Indian Govt has been focusing on development measures in Kashmir for the past couple of years and this has influenced the drop in insurgency for the first time in the valley. The number of insurgency related deaths in the state has fallen to an average two to three daily, from a staggering ten in 2001, with the rest elections, an above 60% voter turnout, a peaceful voting day; Kashmir has gone a long way from its bloody past.

In Shopian two more women have fell victim to the political turmoil prevailing in the paradise. The incident cannot be brushed under the carpet as a simple criminal act as the roots lie in the turmoil prevalent in the valley. Under the circumstances it is natural to have divergent political entities to portray the incident in the shades and colours that meet the broader political canvass they represent. On the legal front divorced from the political affiliations the moot question for consideration before any lawman is how the process of law can bring the culprits to book and thereby heal the wounds of the affected family coupled with Pride and Honor of the people. The edifice of the judicial trial is based on the matrix of evidence produced and proved in accordance with principles of the Law of Evidence.

The first step in the judicial process is to prove the commission of a particular act. The alleged rape and murder can be established from the expert medical evidence through the medical report and statement of the doctors who conducted the medical examination. Now, the authenticity of the report has come under serious doubt and some people have claimed that the initial medical report was changed and replaced by a new one. If the report is that it is a case of rape and murder then commission of rape and murder can at least be proved from the medical report and the examination of the doctor as a witness. If report is not clear or the postmortem has not been carried out keeping in view this possibility in mind then there is a need to exhume the body and conduct the fresh medical examination by some credible and renowned medical expert in the field before it gets too late to carry out such investigation due to the decay of the body. Otherwise judicial process would fail for the reason that it cannot be proved that it is a case of rape and murder, In the last few days the press has however reported that Forensic Science Laboratory has confirmed that it was a case of rape and murder. If it is true then first step in the ladder of justice through judicial system would stand accomplished, the second step is to find out who committed the act. The police have to investigate and interrogate any such person who falls within the domain of suspicion. It is here that the bone of contention arises. The people in general suspect that persons from the security camp located near the site of the incident have committed the dastardly act. Now, the police can either rule out there involvement on the basis of their investigation or else if the investigations points a finger in the direction of the security camp arrest then it should arrest such security persons. The general perception is that police cannot arrest a security

person but the position of the law is totally opposite. Since it is criminal act pure and plain, thus the law which insulates the security persons from arrest like Armed Forces Special Powers Act will not prevent the police from arresting any such security persons. The immunity is available only for acts done in the course of their official duty. The act of rape of a teenager and a pregnant woman and the consequent murder cannot be a part of the discharge of the official duty. So the arrest can be made in this case of any person be it with or without uniform. The appointment of the Commission marks an admission on the part of the administration that it is a gruesome incident of the violations the basic human rights and barbaric criminal act. In any case it needs to be understood that the inquiry commission is not the end it is the means to reach the truth. The scope of the Inquiry Commission is limited. At best the Inquiry Commission can make a recommendation to the government in the light of the fact emerging before it. The commission's report however will not be binding upon the Govt. So it is not a question of Judicial Commission, Commission or No Commission. It is basically the question of reaching to the true facts of the criminal and barbaric act irrespective what effect or political fallout such facts can have on anyone. India's immediate response to the upsurge in Kashmiri militancy after 1989 was to deploy and use force. By 1994 there were in excess of 500,000 security personnel in Jammu and Kashmir, drawn from the army and paramilitary units such as the Border Security Forces. Initially, crude and ineffective counter-insurgency measures were applied that resulted in massive human rights violations, dislocating life in and around Srinagar and producing a groundswell of anti-Indian sentiment. Such measures included security cordons that separated men from women for long periods, the arbitrary arrest of Kashmiri Muslim males and a high incidence of custodial deaths associated with detentions without trial or judicial review. By 1994-1995, India's response had become somewhat more nuanced. The Terrorism and Disruptive Activities Prevention Act (TADA) was scrapped in 1995 due to national and international pressure and the appreciation that it had not worked. Between 1987 and 1995, over 76,000 people had been arrested under TADA throughout India with less than 2 per cent of detainees being convicted. Despite some shift from military to political means to counter Kashmiri militancy, however, New Delhi continued to believe that coercion would restore order. For instance, in March 2002, the Indian parliament, at a special joint sitting, passed a draconian anti-terrorism bill that was denounced by its own Human Rights Commission. Beginning in 1995-1996, India also sought to regain Kashmiri trust by holding elections to restore elected government. During this period, however, the crisis in Kashmir shifted from insurrection to full insurgency, with numerous foreign militant groups fighting both each other and the Indian security forces and often resorting to extortion to control the local population. India's shoot-to-kill policy also encouraged, in the opinion of independent observers, faked "encounter" killings insurgency operations on behalf of the Indian state. As deaths of civilians, militants, and security forces continue to rise,

so does Kashmiri alienation. Since the mid-1990s, more than 50 militant groups have been active in Kashmir, including militants who have switched sides and are involved in counter- Here; the politics comes to occupy the dominant stage. But, one must understand whatever the circumstances it is in the best interest of the all to get to the bottom of the truth and lay it bare before the public. The Separatists may have a point to prove but conversely the government has an opportunity to prove its credibility in the eyes of the people. It is an opportunity to restore the sense of security and justice in the people and to assuage the hurt pride and dignity. The circumstances have thrown a challenge for the government to prove its commitment and sense of duty towards its people. If it fails today it will do a great injustice to the people and thereby create a greater mistrust in the hearts and minds of the people of the valley.

But our Govt has been evasive when questioned about the glaring human rights violations, when women and children are dragged in the streets, when young men are missing in staggering numbers after police interrogation. Human rights violation towards its own citizens is something a democracy can't afford. After taking his oath the newly sworn youngest Chief Minister of Jammu and Kashmir State on 5th Jan, 2009, in one of the formal meetings that Abdullah attended was the Chief Minister's conference convened in New Delhi In this meeting Abdullah emphasized the importance of respecting the human rights of the people, particularly by the security forces and the lawful enforcement agencies. For this to realize the newly Chief Minister also stressed that it is important for the security forces to be "sensitized" about human's rights, However sensitization of the security forces does not happen by more theory sessions or lectures. Sensitization is a process that also includes practical aspects of respecting human and fundamental rights. This requires offering a safe and reliable opportunity for the people to register their complaints about rights abuses that ensures an important investigations followed by prosecution. As of now in the state such mechanisms do not exist. So it is time not only for change and rethink but time for action. Let there be a cohesive plan of action, backed by a unanimous public opinion and followed by a positive political will to sensitive all parties concerned to preserve the human rights violations hi the state. The question of human rights violations should cover problem and need not wait till militancy ends or Kashmir problem is finally resolved.

Conclusion

Since centuries our ears have been listening to the deep sounds and the deep message of the word "Vasudhev Kutumbakam" which means "This world is a family and we all are its member". Unfortunately we all have turned a deaf ear to its deep inherent message which is resulting into various misfortunes. One of those misfortunes is the violation of human rights in Jammu & Kashmir. There is a famous proverb 'United we stand, divided we fall'. Why some are mad after separation? The higher authorities should not serve their selfish ends. Keeping their selfishness aside, they should try to set negotiation with the separatists. Foremost among the reasons behind the human rights crisis in Kashmir has

been the government's unwillingness to take effective steps to curb abuses by its security personnel. Government officials have admitted that "excesses" have been committed and that action has been taken against those responsible. But such action, when it has occurred, has happened rarely and has seldom included criminal prosecutions. Moreover, such measures have not been publicized in a way that would communicate to the civilian population of Kashmir that these abuses are not tolerated, and that would act to deter other security forces from committing similar abuses. In the vast majority of cases, members of the security forces have not been held criminally liable for abuses that include torture, rape and murder. When confronted with the evidence of abuse, time and again the authorities have attempted to impugn the integrity of the witnesses, discredit the testimony of physicians, lawyers and other advocates or simply deny the charges – everything except order a full, independent inquiry and prosecute and punish those responsible. When punishments have been given, they have been limited to administrative disciplinary measures. The government of India should support swift investigations of extrajudicial executions, deaths in custody, torture and rape by security forces and paramilitary forces in Kashmir. Security personnel, including police, army and paramilitary, responsible for these abuses should be prosecuted in civilian courts. Only with such trials and appropriate punishments will these forces receive the clear, unequivocal message that human rights violations are not condoned by their superiors. Those found guilty of abuse should be punished regardless of rank. The punishments should be at least as severe as those specified under civilian law. The results of these investigations and the punishments should be made public as a means of giving the people of Kashmir a reason to believe in the government's commitment to justice and the rule of law. The peace making parties should try their best to bring the separatists into the main-stream. Until they are taught, they all are the part of this nation; as a whole, these human rights abuses will keep on happening every now and then not only in Kashmir but in other parts of this nation also. Murders, assassination, massacres will keep on taking place till the political parties and the higher authorities won't convince them about their oneness with the common being, about their safety at all levels, about their rights in every sphere, About their existences in this world.

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