

## Empirical study

# Human Rights Violation in Kashmir

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### Abstract:

*From Magna Carta to the bill of rights, from an authoritarian regime to democratic set up, no one has declined the value of human rights. Human rights are indispensable for democratic life and realization of their best selves by human beings. They are the product of increasing levels of enlightenment and peoples; quest for equality and dignity. This paper will present the human rights violation in Kashmir through the lens of rape, crackdowns, and tortures of detainees in Kashmir. The conflict in Kashmir, which has its origin in the states disputed accession to India in 1947, sees a great violation of human rights from both countries alongside the border and stepped up their attacks, murdering, kidnapping and soon. The paper will present the current scenario in Kashmir and the work done by human rights organization like Amnesty international and Human rights watch, and also highlight the work done by Ngos and measures taken by government of India.*

**Key words:** Human Rights, Definition of Human Rights, Origin of Human Rights Torture, Rape and Arson.

### Introduction

Human beings are born equal in dignity and rights. Human rights are moral claims which are inalienable and inherent in

all individuals by virtue of their humanity alone irrespective of caste, color, creed, and birth of place, cultural difference or any other consideration. These claims are articulated and formulated in what is today known as human rights. Human rights are sometimes referred to as fundamental rights, basic rights or natural rights. The most important question is what are human rights? According to the United Nations, human rights as those rights which are inherent in our nature and without which we cannot live as human beings (human rights and laws). Human rights allow a human being to develop and make use of human qualities, intelligence, and talent to satisfy our basic needs.

### **Definition of Human Rights**

Human rights are those minimal rights which every individual must have against the state or other authority, by virtue of his being a member of human family irrespective of any consideration. The universal declaration of human rights in 1948, defines human rights as rights derived from the inherent dignity of the human person. Human rights are guaranteed by a written constitution are known as fundamental rights, because a written constitution is the fundamental law of state (Human rights- nature and constituents).

### **Nature and Characteristics of Human Rights**

1. **Human rights are inalienable:** Nature conferred human rights on an individual right from his birth. These are the inherent in all individuals irrespective of their caste, creed, religion, sex and nationality.
2. **Human rights are necessary and essential:** The moral, physical, social and spiritual welfare of an individual is impossible in the absence of human rights. They provide suitable conditions for material and upliftment of the people. Human rights are both necessary as well as essential.

3. **Human rights are connected with human dignity:** To treat all human beings with dignity whether he is a male or female, rich or poor is concerned with human dignity. e.g. law of employment of manual scavengers and dry latrines prohibition act 1993 which forbids the practice of carrying human excreta.
4. **Human rights are universal:** Human rights are not prescribed to any privileged class of people. These laws are universal in nature without exception and without consideration. The values such as dignity and equality which are the basis of the right are inherent in nature.
5. **Human rights are dynamic:** Human rights are dynamic and generic. They go on expanding with socio-economic, cultural and political developments within the state (ibid).

## **Theories of Human Rights**

The origin of human rights is as old as human being. An individual having certain basic, inalienable rights as against a sovereign state had its origin in the doctrines of natural law and natural rights.

Thomas Hobbes advocated that no individual could ever be deprived of the rights to life which he enjoyed in the state of nature. He advocated that all human beings are equal without any consideration (Leviathan 1588-1679). John Locke has further developed the idea. He was one of the staunch defender of natural rights. He argued that every human being has a natural right to life, liberty and property. No governmental has any authority to deprive these rights, because they had enjoyed them even before the creation of the civil or political society (Two Treatises of Government 1632-1704). Rousseau states that all men are born free but everywhere, he is in chains. Rousseau proclaimed that men are bestowed with alienable rights of liberty, equality and fraternity. This concept became the slogan of French revolution (Social contract 1712-1778).

## **Origin of Human Rights**

The Magna Carta 1215 is one of the most important constitutional documents of human history. The aim of it was protection against the arbitrary acts of the king. The 63 clauses of charter guaranteed basic civic and legal rights to citizens. King John of England granted the Magna Carta on 15<sup>th</sup> June 1215. It guaranteed the citizens the freedom from imprisonment or from dispossession of property. This was followed by the bill of rights 1689, which is considered the next source of the philosophy of human rights. The bill of rights enacted on 16 December 1689 by the British parliament. The parliament shows supremacy over crown and declared that king has no overriding authority. The bill of rights codified the customary laws and clarified the rights and liberties of the Bill of Rights citizens and lays foundation of supremacy of the law and sovereignty of the nation (Maer and Gay, The bill of rights 1689).

The American Constitution has incorporated some basic rights, which included right to life, liberty and pursuit of happiness. Jeffery Thomson was influenced by John Locks idea of natural rights. This idea was forwarded and imbibed in the League of Nations in 1920 was entrusted with the protection of rights of minorities but it failed in its basic aim of preventing Second World War. The Second World War 1939-45 proved most destructive war. The desire of all nations to make the world free from war and ushering an era of international peace led to the establishment of the UNO in 1945. Its charter contained a number of articles relating to human rights. The United Nations commission on human rights was established in 1946. Eleanor Roosevelt, the then wife of USA President F.D. Roosevelt, argued that we could not achieve peace, or an atmosphere in which peace can grow, unless we recognized the rights of an individual, their importance, their dignity and agreed that was the basic thing that had to be accepted throughout the world. The human rights commission had now

53 members who meet annually in Geneva to review human rights issues, develop and codify new international norms and make recommendations to governments, non-governmental organizations play an active role. The general assembly of the UN passed the universal declaration of human rights on 10 December 1948.

### **Immediate Cause Leading to the Declaration of Human Rights**

For a long period, philosophers, politicians, statesman and thinkers had been pleading for giving due recognition to the dignity and equality of human beings. Nazism of Hitler and Fascism of Mussolini had shown utter disregard for the human rights. Hitler has done most inhuman atrocities, especially against Jews. The Second World War provided an opportunity and realized that massive violation of human rights within the country lead to the breach of international peace. The horror of war confirmed the belief that recognition of the inherent dignity and of equal and inalienable rights of members of the human kind is the foundation of freedom, justice and peace in the world. Franklin D Roosevelt president of USA declared in 1941, four freedoms (freedom of speech, freedom of worship, freedom of want and freedom from fear).Were the necessary in the world for attaining peace. The UN charter reaffirmed its faith in fundamental human rights is the dignity and worth of human persons (ibid).

### **Violation of Human Rights in Kashmir**

Jammu and Kashmir have been struggling for their self-determination for more than six decades. In 1947, the issue of Jammu and Kashmir started just after India's independence and the birth of Pakistan. At that there were around 562 princely states under British and Jammu and Kashmir was one of them. The last king of independent Kashmir maharaja Hari

Singh delayed in deciding the Kashmiri's future after British left was the root cause of Kashmir conflict. The tribal invasion caused by raiders from Pakistan made maharaja unfelt and he decided to seek help from India. Lord Mountbatten India's viceroy promised him military help and in return maharaja signed the letter of instrument of accession, the Kashmir dispute has stared into the faces of the two nuclear neighbors' for more than six decades. India's first prime minister Pundit Jawaharlal Nehru announced on 2 November 1947 on all India radio that "Kashmir future will be decided by the means of plebiscite." After that he repeated this pledge in various conferences, international fora. However the promise of plebiscite is still pending (Sehgal, 2011).

*India's View:*

- India claims that as Maharaja Hari Singh signed the instrument of accession in oct, 1947 handing control of the Jammu and Kashmir over to India , the region is theirs, have been validated by the Indian independence act and the departing British empire.
- India claims peoples participation in elections shows that people are happy and there is no demand for any plebiscite.
- India claims that Pakistan has not removed its military forces, which India's views are one of the first steps in implementing a resolution.
- India accused Pakistan in funding militant groups in the region to create instability and accuses Pakistan of waging proxy- war.
- India accused Pakistan of spreading anti-India sentiments among the people of Kashmir, through media, to alter Kashmiri opinion.

*Pakistani View:*

- Pakistan claims that according to the two nation theory Kashmir should have been with Pakistan, because it has a Muslim majority.

- Pakistan opposing the view point saying that the elections have never been free and fair in Kashmir, the people have voted for governance issues like roads, electricity and other immunities and not sorting out the Kashmir dispute.
- Pakistan argues that India has shown disregard to the resolution of the United Nation Security Council and the United Nations commission and Pakistan, failing to hold a plebiscite.
- Pakistan claims that India violated standstill agreement and that Indian troops were already in Kashmir before the instrument of accession was signed.
- There are around seven lakh troops in Kashmir and aspersions have not often been casted on the freeness and fairness of elections conducted under such heavy military presence. On the other hand, the Indian army has often been accused of grave human rights violation like torture, custodial deaths, disappearance, rape and molestation in the state. In 2006 the ratio of deployment in Jammu and Kashmir is one Indian soldier for every eighteen person. However the number increased in 2008, 2009 and 2010 due to continuous strike in Kashmir and India deployed more troops there(Amnesty international)

It is true that Kashmiri's are trapped in an armed conflict between Indian government forces and armed militant groups. Most Kashmiri families have lost relatives, friends, neighbors or their own blood in the violence that prevailed from independence. Not only Muslims fell prey, the Kashmiri pandits, Sikhs have also suffered in Kashmir and they migrated to the different parts in India and leave their native homeland, property, culture and much more due to the suspicion and fear continues in the valley of Kashmir. A knock on the door late at night sends spams of anxiety through households afraid that a family member will be asked by security forces or militants to

step outside for a minute and then never returned. The bombs of militants go off in the crowded markets without any warning. Indian security forces claim that they are fighting to protect Kashmiri people from militants and Islamic extremists, while militants claim that they are fighting for Kashmiri independence and to defend Muslims from murderous Indian army. In reality, both sides have committed widespread and numerous human rights abuses and violations of international humanitarian law creating among the civilian population a pervasive climate of fear, distrust and sadness.

In fact, Indian army and paramilitary forces have been responsible for innumerable and serious violations of human rights in Kashmir. Human rights watch officials stated that militants taken into custody are often executed instead of being brought to trial, believing that keep such militants in jail is a security risk. Bahaddin Farooqi, former Chief Justice of Jammu and Kashmir High Court said that “the abuse of human rights here is unprecedented. We have dealt only the tip of iceberg, it is difficult to imagine the scale of what is going on in the theory we are governed by methods unknown to law, unknown to a civilized society.” There are continuous to be significant human rights abuses despite extensive safeguards provided by the UN and the Indian constitution. These problems are active in Kashmir. Serious human rights abuses include extra judicial executions and other political killings and excessive use of force by security forces, torture, rape, deaths of suspects in police custody, detention and soon. The gross human rights violations by the Indian forces inside the Kashmir (Human rights watch, 2006, vol.18).

1. *Extra-Judicial Killings*: Since 1990 the numbers of such incidents have increased. The killings include all like firing on peaceful processions, funeral processions, and encounter killings. The facts of the matter is that the Indian forces takes full advantage of the special powers given to them under the Indian law and engage in massive human rights violation without any fear



2. Forms of torture: The most favorite tool and basic policy of the Indian security forces in Jammu and Kashmir seems torture. The methods applied during torture are extremely cruel and humiliating. The torture includes both physical as well as psychological. The techniques employed are:

- Severe and prolonged beatings and electric shocks to sensitive parts of the body.
- Burning with hot iron and cigarettes, pouring hot oil over body and hot wax in the ears.
- The roller treatment in which several men roll a heavy metal or wooden log across the body of a victim, crushing the bones and joints down to feet.
- Hanging upside down, putting chilli powder into the eyes.

Psychological torture and degradation in:

- Forcing victims to eat human excretion and drink urine.
- Forcing family members to witness the torture inflicted on their women and children.
- Compelling family members or non-members to watch chopping of limbs, crushing fingers, removing nails.
- Using abusive language.( Mohiuddin 1997)

All such methods are excessively brutal which physically impair the victims, sometime rendering them invalid for the rest of their lives. There are thousands of persons who are missing and their families do not know their whereabouts. Indian forces and militant groups took up young men and declare them as having disappeared.

3. Looting and Arson: The Indian forces seem to consider loot and arson as an official policy. They engaged in acts of arson including burning of crops, markets, houses and entire localities and villages. Arsons and looting of valuables have become a part of crackdowns. “The security forces steal from the houses they search not only are their homes subject to sudden, violent and arbitrary invasion, their persons to physical treat and

torture but their property too, is subject to theft and rapacious removal. This has made for rich, and easy, pickings for the rampaging, dishonest personnel of the security forces; it must be described armed robbery.”(International federation of human rights, Paris).

4. *Excesses against women*: Rape, molestation and other forms of sexual abuse have been widely practiced by the Indian security forces on women in Kashmir. “In Jammu and Kashmir rape is practiced as part of systematic attempt to humiliate and intimidate the local population during counter –insurgency operations” (Amnesty international report). Kashmiri women also become target of the bullets of Indian soliders.this also became a cause for the rising of militancy in Kashmir. Most people do not bear atrocities against women folk and they took arms against Indian forces. Apart these violations there is a big violation that is in religion, although India projects itself as a secular state and say that government does not support any religious group, but governmental forces sometimes did not allow to offer prayers and Muslims are prevented from celebrating their religious festivals. The Indian security forces turned the valley, to whom Mughals call this as heaven on earth and Europeans call it as Switzerland of India. Unfortunately the valley turned into hell were people lived a life of misery and are always in fear as there is no value to human beings, they had no identity, no freedom of speech and expression which is a basic democratic and fundamental right in both Indians law as well as international human rights law. Although there is no state of emergency. Kashmir is practically sealed off from the rest of the world. The state government has imposed restrictions on print as well as electronic media and suppresses any news regarding atrocities committed by the security forces. The incident

that has happened in kunan, poshpora are still alive in the minds of people. The worst tragedy of mass rape in the history of Jammu and Kashmir by the security forces on 23- 24 February 1991. The Varghese report that was prepared however widely disseminated that all charges of human rights violation are false. It was Zahir- ud- din who prepared a new report which signifies that the government had failed to dispense justice and Hurriyat conference also added salt to their wounds by giving hundred rupees to each of them. The victims of Kunan, poshpora do not narrate their horrifying tales as destiny had sealed their fate. In Kunan village thirty two women were raped in a single night. The communities of the world raised hue and cry for several months, ultimately the case was closed and victims were forgotten. The children's of the victims leave their education as they could not bear humiliation by fellow students saying them you were born out of rape. If it would be an invention the village would have known for it, as it was a violation so it was forgotten (Noorani, 2002).

## **Conclusion**

The state of Jammu and Kashmir has the most track records of violating of human rights through Indian security forces or armed militants of Pakistan. Among the contemporary global disputes, Kashmir is the longest unresolved dispute on agenda of United Nations Security Council. There are twenty three United Nations resolution of dispute, on the basis of right of self- determination from the successive Indian government. When people of the Kashmir demanded their Rights, the authorities of state are creating terror on innocent people to suppress their voices.

The most horrific phase of human rights in Jammu and Kashmir has been in the decade of 1990s as Indian security forces killed over ninety three thousands Kashmiri struggle for their rights of self-determination. Various human rights group especially the Amnesty international and Asia watch has identified the Indian brutalities on innocent Kashmiri people. Amnesty international has pointed out discriminatory laws which gave Indian security forces free hands to kill torture and exploit the people. These laws were imposed in the state in 1990s which include Jammu and Kashmir public safety act and Jammu and Kashmir armed force special power act. Indeed these laws, Indian security forces were given sweeping power of arrest and detentions. As per Amnesty international AFSPA violates legal obligations and several fundamental rights including the rights to life, liberty, security and right to remedy. The human rights violations committed by Indian security forces in Jammu and Kashmir have no parallel in the contemporary world. The human rights violation in Jammu and Kashmir could not attract the global attention as given to other international disputes mainly because of neutral observers and international media has no access in the state, and violation is still going on. The recent report of china daily (Jan 2, 2014), there has been 38% increase in the human rights violations in Kashmir during year 2013. The death tolls due to violence during 2012 were 148 and in 2013 it has reached up to 204(collation of civil society and human rights review- 2013).

The solution of long lasting issue is that India should stop human rights violation in Kashmir. For this purpose, the prerequisites would repeal the discriminatory laws especially AFSPA and PSA. Amnesty international and civilized world community considers that, today Kashmir's has become a humanitarian issue, rather a political or religious one.

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