



Human Rights Act 1997 and Human Rights in Jammu and Kashmir

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Abstract:

As a matter of fact, the special status accorded to the state of Jammu & Kashmir in the Indian federal system, has its bearing & effect on the passage of laws. To make the development regarding the establishment of Human Rights Commission & courts at national level as well as similar provisions in the states, as provided by The Protection of Human Rights Act, 1993, workable in the state, it was inevitable to pass a State Act in this regard. As such, the Bill passed by the State legislature after receiving the governor's assent on 30th May, 1997, became a law & was reduced into the Act namely, The Jammu & Kashmir Protection of Human Rights Act, 1997, hereinafter referred to as the Act. The present paper attempts to find out as to why the Act has turned out to be an ineffective instrument to check Human Rights violations in the state of Jammu & Kashmir & failed to deliver on the expected lines.

Keywords: J&K State, The Act (J&K Protection of Human Rights Act, 1997), The Commission, Human Rights, Human Rights violations,

I. INTRODUCTION

The concept of human right began the start of the civilization on this earth. The human being in order to live happily, needs the rights to smooth his/her life. From the beginning of human history man struggled for his existence against nature and for liberty and freedom though these struggles for achieving basic freedom. This struggle paved the way to the concept of human rights. The most unique feature of human rights is that it is difficult to define but impossible to ignore. Human rights denotes all those rights which are inherent in our nature and without which humans can't live. These rights are indispensable for the human dignity which they can enjoy from birth to death.

II. MEANING

Human rights are commonly understood as "inalienable fundamental rights to which a person is inherently entitled simple because she or he is a human being". Human rights in the words of A.A. said, "are concerned with the dignity of the individual, the level of self-esteem that secures personal identity & promote human community". Human Rights have been defined as the right to live, liberty, equality and dignity of individual guaranteed by the constitution and embodied in the International covenants. Definitions of the Human Rights itself is a vast subject especially right to live and with dignity, and right to equality covers almost every sphere of Human Beings whether that may be right to speak, right to medical care, right to equality before law etc. violation of these human rights if prevented makes Human beings unable to live with dignity. Certain provision of civil and criminal procedure codes have been made applicable to the commission by virtue of which the commission is empowered with all the powers by virtue of civil procedure code for summoning and enforcing the attendance of witnesses and examining them on oath. The Commission can order for any officer whosoever and seek report from him, but at

the same time commission is recommendatory body and its recommendations are not binding on the Government. The commission is constantly facing some impediments and difficulties in its aim of preaching, preventing and upholding Human Rights.

The Jammu and Kashmir Perspective on Human Rights

J&K State Human Rights Commission has come into existence in the year 1997 by virtue of an Act called J&K Protection of Human Rights Act, 1997 passed by the J&K Legislature in the same year. The Act governs the powers, jurisdiction, working and whole functioning of the Commission. The Act provides to staff the Commission with a Chairperson, four Members, Secretary/Chief Executive Officer, Administrative Officer, Private Secretary and other posts with an independent Police Investigating Wing comprised of various ranks of the Police Department to be headed by Inspector General of Police. The blueprint of the Act has, by and large, been taken from the scheme and pattern of National Human Rights Act, 1993. The Act, therefore, barring one or two features, keeps pace with the provisions of the Central Act on all material issues. The J&K State Human Rights Commission is supposed to be an independent and autonomous body provided with the responsibility of upholding and protecting Human Rights of one and all in the State. The working and functioning of the Commission, be it judicial proceedings or administrative matters, have never been or are under the influence or control of the Centre and State governments in any manner. The Commission has been working and carrying out its incumbent duties fairly and judiciously, without any interference of indulgence by any of the Centre and State agencies. Like all other Commissions in the State, the J&K State Human Rights Commission is the recommendatory body in nature and belief. When a complaint is filed by any individual, group of individuals, any organization projecting grievances involving any violations of "Human Rights" including Right to life,

liberty, equality or any other rights as guaranteed in the Constitution, the same is placed before the Chairperson, who, after considering the merits of the complaint under the legal provisions and concepts of Human Rights, assign the case to any Bench of the Commission for holding a judicial proceedings in the matter. Whenever and wherever any violations of Human Rights are noticed in the State in any form or at any level, the Commission takes Suo Motto cognizance in such cases and the Commission does not need any complaint(s) to be filed by anyone to carry out its incumbent duties and look into the violations of Human Rights. In case the Commission finds that the State functionaries do not cooperate with the judicial proceedings of the Commission, or notices any contradiction or subjugation in the material evidence or apprehends any manipulations, taking resort to section 18 (i) (a) of the J&K Protection of Human Rights Act, 1997 such matters are being referred to Police Investigating Wing for independent and impartial investigations where professional and expert investigating officers conduct a full-fledged procedure of investigation, visit the scene of occurrence, unearth the factual aspects of the case and come up with their exhaustive findings so as to enable the Commission to reach a just, fair and impartial conclusion. From its inception in the year 1997, the Commission remained headquartered in Dawn Building, Dalgate, Srinagar with its Sub-Office stationed at 5-Rehari, behind Shakuntala Cinema, Jammu, but, now, the Commission has shifted its headquarter from Dawn Building, Dalgate to Old Assembly Complex, Srinagar where it started its functioning from 04.11.2013 onwards. Anyone, who has been or is a victim of any violations of Human Rights by any of the State agencies, non-government and semi-government organizations, institutions -- private or government undertaken, can freely project and bring his/her grievances in the notice of the Commission through the medium of complaints by Registered Post or e-mail or through this website and dare to take a step towards us, so that we are able to reach you and protect and safeguard your rights under the relevant provisions. We are here to help you.

Violations of Human Rights in Jammu & Kashmir

Human rights are rights inherent to all human beings, whatever be the nationality, place of residence, sex national and ethnic origin, colour, religion, language, or any other status. All are equally entitled to human rights without discrimination. These rights are all interrelated, interdependent and indivisible. Universal human rights are often expressed and guaranteed by law, in the form of treaties, customary international law, general principles and other sources of international law. Human rights are universal since they are said to belong to all human in every society. Human rights are also supposed to be inalienable; because they flow from and protect human existence, they cannot be taken away without endangering the values of their existence. However, these universal and inalienable qualities of human rights are disputable in both their conception and operation.¹ The Indian army, Special Task Force, Border Security Force, and state-sponsored paramilitary groups and village defence committees-the principal government forces operating in Jammu and Kashmir are alleged that they have systematically violated these fundamental norms of international human rights law.² “The security forces are being used by the state (this includes the central and the government of Jammu and Kashmir) as a part of a deliberate policy to terrorize the

Kashmiri people into submission. It began with a crackdown on the militants and is fast becoming a policy of brutal suppression of the entire Kashmir people. The people of the valley are now living under virtual military rule. There seems to be a deliberate attempt to make women the primary target of attack by the security forces. The manner in which searches and interrogations are conducted smacks of planned strategy to break the morale of the people “as described by noted Kashmiri author Muttu Abdul Majid³. Indian security forces claim they are fighting to protect Kashmir from militants and Islamist extremists, while militants claim they are fighting for Kashmiri independence and to defend Muslims in Kashmir from a 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.⁴ “The people of Kashmir have experienced the atrocities of the Indian Security forces in the form of nerve-shattering crackdown, insulting identification parades, and killing of innocents that has approximately risen to 40,000 which includes massacres at various places like Lal Chowk, Gaukadal, Chotta Bazaar, Daribal, Kangan, Sopore, Handwara, Bijbehara, etc...”⁵ Throughout the conflict, militant groups have targeted civilians, including women and children, whom they consider to be “traitors to the cause” or for expressing views contrary to those of one or another armed group. Alleged militants have murdered nearly six hundred Kashmiri politicians since the conflict began, usually as retribution for joining in the electoral process.⁶ From 1989 to July 31, 2013, the tensions between-India and Pakistan two south Asian countries have taken the life of civilians of Kashmir in abundance. Kashmir Media Service in their recent report gives the figure as, total killings 93,910 Custodial Killings 7,003 Civilians Arrested 121,738 Structures destroyed 105,982 Women Widowed 22,770 Children Orphaned 107,457 and Women gang-raped 10,062 by Indian security forces.⁷ The conflict has also exacted a heavy toll on the state’s infrastructure and exchequer. Over 1,100 government buildings, 640 educational buildings, eleven hospitals, 337 bridges, and more than 10 thousand private houses and shops have been destroyed in violent incidents since the conflict began.⁸

List of total number of killings from 1989 to 31 July 2013

Table 2.6

Total Killings *	95, 283
Custodial Killings	7,120
Civilians Arrested	145,597
Structures Arsoned/Destroyed	109,205
Women Widowed	22,898
Children Orphaned	107,756
Women gang-raped / Molested	11,111

Source:* Human Rights violations, Kashmir Media Service, Srinagar, 31 January 2019

Effects of Armed conflict on Children

Armed conflict intrudes into the lives of children both directly & indirectly. Armed conflict affects all aspects of child development- physical, mental and emotional. Such effects

accumulate and interact with each other. The impact of armed conflict cannot be fully understood without looking at the related effects on women, families and the community support systems that provide protection and a secure environment for development. The disruption of food supplies, destruction of crops and agricultural infrastructure, the disintegration of families and communities, displacement of population, destruction of educational and health services and of water and sanitation system, all take a heavy toll on children⁹. The result of studies presented in this section provides substantial evidence for this statement.

Arson and Violence

“In the last five years, Rs 265 crores worth of property was damaged, and 148 persons burnt alive, in 6931 incidents of fire¹⁰.” Terrorist violence is also violation of Human Right and crime against humanity which invites action under all laws, national and international. Kashmir’s have been subjected to human rights abuses and humanitarian law violations by secessionist armed groups, commonly referred to as militants. Often internationally ignored by supporters of Kashmir independence or its accession to Pakistan is the numerous massacres, bombings, killings and attack on schools attributed to militants¹¹. According to the then governor of Jammu and Kashmir, K. V. Krishna Rao said Pakistan sponsored proxy war, which is essentially responsible for Human Rights violations. “The Pakistan sponsored terrorism had not only brought down the democratic government but forced almost the entire Hindu (Minority) population in the valley and sizeable number of Muslims to flee”.¹² Militant violence led by Jammu Kashmir Liberation front has caused ethnic cleansing of several hundred thousand Kashmiri Hindu Pandits, who comprises an estimated 3% of the Kashmir valley's population.¹³

Violations of Human Rights by Security Forces:

Thousands of Kashmir’s have reported to be killed by Indian security forces in custody, extrajudicial executions and enforced disappearances and these human right violations are said to be carried out by Indian security forces under total impunity.¹⁴ Civilians including women and children have been killed in "reprisal" attacks by Indian security forces and as a "collective punishment" villages and neighborhoods have been burnt down and women raped.¹⁵ Under the scenario of Kashmir insurgency the gross violation of human rights are going on. The incidents to acts like kidnapping, rape, custodial deaths and killings are increasing daily. According to human rights activists many of their news are unreported, which directly raises questions relating to dignity and sovereignty of any country. It is the alleged gross violation of human rights in Kashmir which has brought it into world view. As a result Indian Government received condemnation from abroad.¹⁶ Security legislation by authorizing the security forces to shoot, to kill and to destroy civilian property has increased the likelihood of abuses. There is an array of laws in Kashmir to shield the armed forces against the legal action for their violation of human rights. The Armed Forces (Special powers) Act and the Disturbed Areas Act enable them to use force and to kill under various pretexts. The armed forces are given immunity from prosecution for anything done or purported to be done in the exercise of the powers under such laws. The Public Safety Act, enacted in 1987 and amended 1987 and 1990, empowers the state government to detain persons

without trail for up to one year for a broad range of activities and has been widely used to suppress peaceful dissent.¹⁷

Custodial Deaths and Fake encounters:

The various forms of torture lead to death. Perhaps more commonly deaths in custody happen by the deliberate design described by the Kashmiri Human Rights activists as a policy of “Catch and Kill”. In the first seven months of 1995, 2,230 people were killed, among them 1,785 by the security forces and 44 by the militants. The human rights activists in Kashmir estimated that every month more than 25 custodial deaths are occurring.¹⁸ According to the Srinagar-based Association of parents of displaced persons (APDP), a minimum of 8,000 people have disappeared since the insurgency began. In February 2003, the government of India-administered Kashmir, led by Mufti Mohammad Syeed, told the state legislative assembly that 3,744 people were missing and that many of those reported missing since 1990 were actually in Pakistan, where they had signed up to be trained as militants.¹⁹ Hundreds of civilians including women and children have been reported to be extra judicially executed by Indian security forces and killings concealed as fake encounters²⁰. Despite governmental denial, Indian security officials have reportedly confessed to human right watch of widespread occurrence of fake encounters and its encouragements for awards and promotions.²¹

Rape by Security Forces

Indian security forces have raped women in Kashmir during search operations, particularly in remote areas outside of major cities and towns. The difficulties inherent in documenting such attacks on women are many. The victims are unlikely to seek medical attention unless their injuries are severe and are reluctant to report their assaults because of the shame and stigma that they may bear with as a result.²² Normally rape is used by the security forces to attack women suspected of sympathizing with militants. Through rape, the security forces are aiming to punish and humiliate the entire community.²³ Civilians including children and women have been killed in “reprisal” attacks by Indian security forces and as a “collective punishment” villages and neighborhoods have been burn down and women raped.²⁴ The soldiers of the 4th Rajputana Rifles of the Indian Army on 23 February 1991 launched a search operation in a village Kunan Poshpora, in the Kupwara district of Jammu and Kashmir and allegedly gang raped 53 women of all ages.²⁵

Disappearances:

Indian security forces have been implicated in many reports for enforced disappearances of thousands of Kashmir’s where the security forces deny having their information and/or custody. This is often in association with torture or extrajudicial killing. The number of men disappeared have been so many to have a new term "half-widows" for their wives who end up impoverished. Human right activists estimate the number of disappeared over eight thousand, last seen in government detention²⁶. These are believed to be dumped in thousands of mass graves across Kashmir.²⁷ Since 1990, some 700 to 800 people have ‘disappeared’ after being arrested by police or armed or paramilitary forces. The victims have included boys and men of all ages and all professions, including businessmen, lawyers, laborers and many teachers. Almost all of them appear

to be ordinary citizens picked up at random, without any connection to the armed struggle.²⁸

Mass graves:

Mass graves have been identified all over Kashmir by human right activists believed to contain bodies of thousands of Kashmir's of enforced disappearances.²⁹

III. CONCLUSION

the Jammu and Kashmir Human Rights Commission is regular functions like proactively or reactively inquire into violations of human rights, review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation, review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures.

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