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PROTECTION OF HUMAN RIGHTS AND **KASHMIR – A MYTH** **(Role of Social-media in protecting human rights)**

AUTHORED BY - MAITRA BADAGI

Abstract:

Human rights are standards that recognise and protect the dignity of all human beings. Human rights govern how individual human beings live in society and with each other, as well as their relationship with the State and the obligations that the State have towards them. Human rights law obliges governments to do some things, and prevents them from doing some other things. There is a responsibility on the individuals, they have to respect others rights as well while enjoying their rights. No person or Government have the right to do anything that violates the rights of others.

In the present paper the author tries to explain how the Militants violate the human rights of other individuals and talks about the two distinct subsets of militancy in Kashmir. Before that the author briefly explains the human rights in India, the law relating to that, and how the rights are being protected. And also International law applicable in India.

At the later point the author talks about the Militant actions. That has allegedly violated the human rights from the year 1996 and even before till today. The paper also brings to the notice of the readers about the attacks that were made on human rights activists, the press, medical workers. Then the author tries to explain the role of Government of India and the violations made by it.

Before concluding the paper the author will be explaining about the role of social media, its impact both in a positive and in a negative way. The positive would be how it has helped in protection of human rights. And has any change has occurred in bringing to the light about the activities of the militancy. The negative impact of social media would be how it has helped the militants and they have got support.

In the conclusion the author would talk about the impact of social media on growth of militancy in the other parts of India.

Key words: Social-media, Human Rights, Kashmir, Militancy, Government

1. INTRODUCTION:

Human rights belong to each and every one of us equally.

What are human rights?

Human rights are standards that recognise and protect the dignity of all human beings. Human rights govern how individual human beings live in society and with each other, as well as their relationship with the State and the obligations that the State have towards them. Human rights law obliges governments to do some things, and prevents them from doing some other things. There is a responsibility on the individuals, they have to respect others rights as well while enjoying their rights. No person or Government have the right to do anything that violates the rights of others.¹

Human rights are inalienable and universal. All people from any corner of the world are entitled to these rights. No one can waive the rights nor can they take away the rights from any person.²

Human rights are of the nature of social, political, cultural, economic and civil rights. They are indivisible, inherent in the dignity of every human being. Human rights are inter-dependent. Realization of one human right depends on realization of another human right. Like right to health depends on realization of right to information.³

All human beings are equal before the law. They are entitled to human rights without any discrimination. Discrimination such as race, religion, colour, place of birth, origin, property.⁴

State and other authorities should comply with the legal norms standards as provided by the human

¹ <https://www.unicef.org/child-rights-convention/what-are-human-rights>

² ibid

³ ibid

⁴ ibid

rights laws. If the authorities fail to do so and any person is aggrieved of his human rights, the person has remedy. Aggrieved party can institute proceedings against the State or the authority before the competent court or other adjudicator in accordance with the procedure established by law.⁵

Who are militants?

A militant is a person who is engaged in a war or who acts aggressively for their cause.⁶

Militant is a term used to describe people who believe in something very strongly and are active in trying to bring about political or social change, often in extreme ways that other people find unacceptable.⁷

Militancy is aggressive activism or combativeness in supporting or agitating for a cause. It is the act of engaging or readiness to engage in war or armed aggression.⁸

2. STATUTORY FRAMEWORK OF HUMAN RIGHTS LAWS:

2.1. International Framework:

The international human rights movement was strengthened when the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR) in the year 1948 on 10th of December. Drafted as 'a common standard of achievement for all peoples and nations', the Declaration for the first time spelled out basic civil, political, economic, social and cultural rights that can be enjoyed by all human beings. Over a period of time it has been widely accepted as the fundamental norms of human rights that everyone should respect and protect. The UDHR, together with the International Covenant on Civil and Political Rights and its two Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights, form the [International Bill of Human Rights](#).⁹

A series of international human rights treaties and other instruments adopted since 1945 have conferred human rights and developed the body of international human rights. Other instruments have

⁵ ibid

⁶ <https://www.vocabulary.com/dictionary/militant>

⁷ <https://www.collinsdictionary.com/dictionary/english/militant>

⁸ <https://www.dictionary.com/browse/militancy>

⁹ <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law>

been adopted at the regional level reflecting the particular human rights concerns of that particular region and providing for mechanisms to protect human rights. Most States including India have adopted in Constitutions and other laws which formally protect basic human rights. And international treaties and customary law form the backbone of international human rights law. The other instruments, such as declarations, guidelines and principles adopted at the international level contribute to the understanding, implementation and development of human rights.¹⁰

International human rights law lays down obligations on the States which they are bound to respect. By becoming parties to international treaties, States have to abide the obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must not interfere with or curtail the enjoyment of human rights. The obligation to protect requires that the States should protect individuals and groups against human rights abuses or violations. The obligation to fulfil means that States have to provide for facilities for the enjoyment of basic human rights.¹¹

Through ratification of [international human rights treaties](#), Governments agree to adopt domestic measures and legislation compatible with their treaty obligations and duties. If domestic legal proceedings fail to address human rights abuses, mechanisms and procedures for individual complaints at the regional level and international levels to help ensure that international human rights standards are respected, implemented, and enforced at the local level.¹²

The below mentioned are the list of international human rights treaties and conventions:

1. 1948 Universal Declaration of Human Rights (Universal Declaration)
2. International Covenant on Civil and Political Rights and its Optional Protocols
3. International Covenant on Economic, Social and Cultural Rights and its Optional Protocol
4. International Convention on the elimination of all forms of Racial Discrimination
5. Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol
6. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and its

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

Optional Protocol

7. Convention on the Rights of the Child and its Optional Protocols
8. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
9. International Convention on the Rights of Persons with Disabilities and its Optional Protocol
- 10. 1948 Genocide Convention**
- 11. 1951 Refugee Convention**
- 12. 1960 Discrimination in Employment Convention**
- 13. 1966 Racial Discrimination Convention**
- 14. 1966 Economic, Social and Cultural Rights Covenant**
- 15. 1966 Civil and Political Rights Covenant**
- 16. 1979 Discrimination against Women Convention**
- 17. 1984 Convention against Torture**
- 18. 1989 Children's Convention**
- 19. 1989 Indigenous Peoples Convention**
- 20. 1990 Convention on Migrant Workers**
- 21. 2006 Convention on Persons with Disabilities**
- 22. 2007 Declaration on the Rights of Indigenous Peoples¹³**

2.2.Indian Framework:

The Constitution of India makes provisions for basic rights which are the Fundamental Rights for the citizens as well as for aliens. In India we have adopted the "Protection of Human Rights Act, 1993" which provides for constitution of commissions for protection of human rights.

The table below shows the Civil and Political Rights under Universal Declaration of Human Rights and under Indian Constitution

Article	Declaration	Constitution
Equality before law	Article 7	Article 14
Prohibition of discrimination	Article 7	Article 15(1)
Equality of opportunity	Article 21(2)	Article 16(1)

¹³ <https://www.humanrightscommission.ky/human-rights-treaties>

Freedom of speech and expression	Article 19	Article 19(1)(a)
Freedom of peaceful assembly	Article 20(1)	Article 19(1)(b)
Freedom to form associations or unions	Article 23(4)	Article 19(1)(c)
Freedom of movement within border	Article 13(1)	Article 19(1)(d)
Protection in respect of conviction for offences	Article 11(2)	Article 20
Protection of life and personal liberty	Article 3	Article 21
Protection of slavery and forced labour	Article 4	Article 23
Freedom of conscience and religion	Article 18	Article 25(1)
Remedy for enforcement of rights	Article 8	Article 32
Right against arbitrary arrest and detention	Article 9	Article 22

The table below shows Economic, Social and Cultural Rights under Universal Declaration of Human Rights and under Indian Constitution

Article	Declaration	Constitution
Right to work, to just and favourable condition of work	Article 23(1)	Article 41
Right to equal pay for equal work	Article 23(2)	Article 39(d)
Right to education	Article 26(1)	Article 21(a),41,45,51A(k)
Right to just and favourable remuneration	Article 23(3)	Article 43
Right to rest and leisure	Article 24	Article 43
Right of everyone to a standard of living adequate for him and family	Article 25(1)	Article 39(a), 47
Right to proper social order	Article 28	Article 38

In the famous case of *Keshavnanda Bharati v. State of Kerala*, the Supreme Court has observed, “The Universal Declaration of Human Rights may not be a legally binding instrument but it shows how India has understood the nature of human rights at the time of adopting the Constitution.”¹⁴

¹⁴ Prasoona Shekhar, ‘Human Rights and Constitution of India’, October 4, 2020 available at <http://blog.ipleaders.in/human-rights-constitution-india/> accessed on 22.08.2023 at 05:58pm.

3. ROLE OF MILITANTS AND GOVERNMENT IN VIOLATION OF HUMAN RIGHTS: TRACING BACK TO THE HISTORY OF KASHMIR

The conflict in Kashmir erupted into near civil war in the year 1990, which emerged out of a fifty-year political struggle for control over the territory. Both India and Pakistan claimed control over Kashmir. Although Kashmir has a majority Muslim population, it has had a long history of religious tolerance and a unique culture, referred to as Kashmiriyat, which combines elements of the three major religions which have flourished there: Buddhism, Hinduism and Islam. However, since the early 1950s, India's attempts to control the state through rigged elections and other political machinations fueled resentment among the state's Muslim political leaders, and ultimately led to the emergence of Muslim militant groups committed to fighting for independence. Such groups found ready support and arms in Pakistan. By 1990, popular resentment toward India's policies in the state had grown into a mass movement for azadi-independence. The militant groups which have been fighting for independence from India are divided between those who believe the territory should become part of Pakistan and those who believe that Kashmir should become an independent state. Some of the groups openly espouse an Islamist ideology; others advocate a secular Kashmiri state that would include Kashmiri Buddhists, Hindus and others. The Indian government has sought to hold Pakistan entirely responsible for the escalation in fighting that has taken place since 1989 and has blamed Pakistan for "exporting" Islamic fundamentalism to the state. Although Pakistan has taken advantage of the situation by providing arms and other support to the militants, in fact, the roots of the Kashmir crisis are indigenous and originate in India's central government's attempts to exert political control over the state.

The conflict has its origins in the state's disputed accession to India in 1947, when colonial British India was partitioned to create the nations of India and Pakistan. Kashmir's then ruler, Maharaja Hari Singh, refused to accede to either nation, apparently in a bid to preserve Kashmir's independence. However, 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. Nehru 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 be 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 came under Pakistan's control as "Azad" (free) Kashmir.

The question of Kashmir's final status was never resolved, however. British authorities had urged that the question of Kashmir's accession be settled by a plebiscite as soon as law and order was reinstated and the invading forces had left. But the plebiscite was never held. The Indian government argued first that the essential precondition to a plebiscite, the exit of Pakistani troops from "Azad Kashmir," had not been met, and later that the Kashmiri people had effectively ratified accession by voting in local elections and adopting a state constitution. United Nations intervention achieved a cease-fire on January 1, 1949.

Through the 1950s and 1960s, political discontent with the central government's attempts to manipulate politics in the state grew, as successive state governments controlled by the central government eroded Kashmir's autonomy. Pro-independence and pro-plebiscite activists were repeatedly jailed. In 1964 the first militant group, the Jammu and Kashmir Liberation Front (JKLF), was formed to fight for independence. On July 2, 1972, India and Pakistan signed the Simla Accord, under which both countries agreed to respect the cease-fire line and to resolve differences over Kashmir "by peaceful means" through negotiation. The Simla Accord left the "final settlement" of the Kashmir question to be resolved at an unspecified future date. Since then, the Simla Accord has been the touchstone of all bilateral discussions of the Kashmir issue, even though the accord itself left the issue unresolved.

After the elections, militants of the JKLF and other groups stepped up their attacks on the government, detonating bombs at government buildings, buses and the houses of present and former state officials, and enforcing a state-wide boycott of the November 1989 national parliamentary elections. One month later, JKLF militants abducted the daughter of Home Minister Mufti Mohammad Sayeed, then freed her when the government gave in to demands for the release of five detained militants. That event, together with a surge in popular protest against the state and central governments, led New Delhi to launch a massive crackdown on the militants. In response, the state government resigned in protest and governor's rule was declared on January 19, 1990. From the outset, that Indian government's campaign against the militants was marked by widespread human rights violations,

including the shooting of unarmed demonstrators, civilian massacres and summary executions of detainees. Militant groups-which received arms and training from Pakistan-stepped up their attacks, murdering and threatening Hindu residents, carrying out kidnapings and assassinations of government officials, civil servants and suspected informers and engaging in sabotage and bombings. Some 100,000 Hindu Kashmiris, known as "Pandits," and thousands of Kashmiri Muslims fled the valley. By May 1990, rising tension between Pakistan and India following the escalation of the conflict in Kashmir raised fears of another war between the two countries.

In mid-1992, the government launched a "catch-and-kill" policy to execute captured militants. That policy, together with the January 1993 massacre of at least forty civilians by BSF troops in Sopore, focused international attention on human rights violations in Kashmir. In late 1993, the All Parties Huriyat Conference, an umbrella organization of the leaders of all the political and militant organizations fighting for independence, was founded to act as the political voice of the independence movement. In October 1993, a militant siege at the Hazratbal shrine in Srinagar ended peacefully; however, forty demonstrators were shot dead by BSF troops in Bij Behara. In 1994, the government released several prominent political leaders, apparently as part of a government effort to pave the way for elections in the state.

In 1996, the conflict in Kashmir entered its seventh year, with little indication that parliamentary elections scheduled for May 23 and 30 would either lead to peace or end the widespread human rights abuses that have characterized the war. All of the militant organizations fighting for independence of the disputed territory have vowed to boycott the polls. In the months preceding the elections, Indian security forces have intensified their efforts against militant groups, stepping up cordon-and-search operations and summarily executing captured militant leaders. Alongside them, operating as a secret, illegal army, have been state-sponsored paramilitary groups, composed of captured or surrendered former militants described as "renegades" by the Indian government. Many of these groups have been responsible for grave human rights abuses, including summary executions, torture, and illegal detention as well as election-related intimidation of voters.

At the same time, some armed militant groups have become more ruthless. To enforce their boycott of the polls, the militant groups have attacked and killed candidates and campaign workers. Some militant groups have also continued to kidnap and execute civilians. Over the past year, militants have

also stepped up indiscriminate attacks on civilians through bomb blasts and the use of landmines.

The election has intensified the conflict, but the deterioration in the human rights situation can be traced to early 1995 when the security forces began making systematic use of these irregular militias. While attempting to reassure the international community that they have taken steps to curb human rights abuses in Kashmir, Indian forces have in effect subcontracted some of their abusive tactics to groups with no official accountability. The extrajudicial killings, abductions and assaults committed by these groups against suspected militants are instead described as resulting from "intergroup rivalries." But civilians have also been their victims, and the militia groups have singled out journalists, human rights activists and medical workers for attack. They have been given free rein to patrol major hospitals in Srinagar, particularly the Soura Institute, the Sri Maharaja Hari Singh (SMHS) hospital and the Bone and Joint Hospital. They have murdered, threatened, beaten and detained hospital staff; in some cases these abuses have occurred in full view of security force bunkers or in the presence of security force officers. They have also removed patients from hospitals. These abuses constitute clear violations of medical neutrality.

In some cases, attacks by these paramilitary groups appear to have been carried out on orders from security officers; in other cases, the groups appear to operate on their own, within broadly defined limits to their discretionary powers and the full expectation on the part of the security forces that they will use their discretion to take initiatives within the overall counterinsurgency strategy of fighting terror with terror. Their actions are taken with the knowledge and complicity of official security forces. When arrested by local police, members of these groups have been released on orders of the security forces. Not one has been prosecuted for human rights abuses. In this report, Human Rights Watch/Asia provides evidence of the culpability of state-sponsored irregular paramilitary forces in three cases of extrajudicial executions and two attempted assassinations. We also describe a range of other abuses committed by these groups.

Violations of human rights and humanitarian law by the regular security forces - the army, the Border Security Force (BSF) and the Central Reserve Police Force (CRPF) - have also continued. These violations include the deliberate killing of detainees in the custody of the security forces in Kashmir and reprisal killings of civilians. Human rights groups and press accounts have registered reports of such killings every month, but there is no sign that security personnel have been prosecuted in a single

case of summary execution. In the few high-profile cases in which courts-martial have taken place, soldiers have been prosecuted for abuses, such as the excessive use of force, which fall short of murder.

Regular forces have also been responsible for disappearances and reprisal attacks against civilians. More than one hundred cases of detainees disappearing in the custody of the security forces have been documented by human rights groups since the conflict began; to Human Rights Watch's knowledge, not one has resulted in the prosecution of any member of the security forces. Security legislation has increased the likelihood of such abuses by authorizing the security forces to shoot to kill and to destroy civilian property while at the same time protecting them from prosecution for human rights violations. In the case of reprisal attacks or assaults by soldiers on civilians during search operations, the government has ordered a handful of investigations, but many reported instances of abuse have been ignored by the authorities.

Indian security forces in Kashmir continue to administer torture systematically to coerce detainees to reveal information about suspected militants or to confess to militant activity. Torture is also used to punish detainees who are believed to support or sympathize with the militants and to create a climate of political repression. The practice of torture is facilitated by the fact that detainees are generally held in temporary detention centers, controlled by the various security forces, without access to the courts, relatives or medical care.

Methods of torture include severe beatings, electric shock, crushing the leg muscles with a wooden roller, and burning with heated objects. The Indian government has not made public any investigations into any of the many documented cases of torture, nor has it ever announced that a member of the security forces was prosecuted or punished for torture. Although the government denies that torture is practiced systematically and as a matter of policy in Kashmir, government officials have admitted that torture takes place.

Security personnel in Kashmir have also been responsible for rape as a counterinsurgency tactic. In response to international attention to the problem, the Indian government has made public a number of prosecutions of members of security forces for rape. However, reports of rape and other sexual assaults in Kashmir persist. In many cases, these incidents are never investigated by judicial and

medical authorities competent to determine culpability.

The Indian authorities have done little to curb human rights violations by their army and security forces. In the rare cases in which investigations of abuses have taken place, the most severe punishments have generally been limited to dismissals or suspensions from duty. Security officers have also offered bribes and have threatened individuals and families in an attempt to prevent them from pressing charges. The Indian government's failure to account for these abuses and take rigorous action against those members of its forces responsible for murder, rape and torture amounts to a policy of condoning human rights violations.

Armed militant organizations in Kashmir have also committed many grave violations of international human rights and humanitarian law. Armed with sophisticated weaponry mostly procured in Pakistan, militant groups have launched indiscriminate attacks that have killed and injured hundreds of civilians. The militant groups have increasingly made use of car bombs and other explosive devices in crowded areas. The groups have also deployed landmines on public roads and in other areas used by civilians. Militants have thrown grenades at buses and government buildings, killing and wounding civilians. These attacks have occurred in the Kashmir valley and have also been reported in Jammu.

Militant groups have kidnaped civilians, including foreigners, and held them as hostages in order to demand the release of imprisoned militants. They have threatened, assaulted and in some cases murdered Hindu residents of the Kashmir Valley. In mid-1996 some 100,000 Hindu refugees were still living in refugee camps in Jammu and Delhi where they had fled after a series of such attacks.

Various armed militant groups in Kashmir have also committed rape and have launched other violent attacks on women, creating a climate of fear for women in Kashmir in which violent abuses are committed with impunity. As the elections neared, militant groups also assassinated candidates and party workers, particularly those from the Congress party. The militants also kidnaped and summarily executed suspected informers and collaborators. They also kidnaped and murdered civilians and issued bans and other threats against the press.

Many examples of these violations are contained in this report, based on a visit by a researcher for Human Rights Watch/Asia to Kashmir in January 1996. He interviewed local human rights activists,

lawyers, health professionals, journalists, teachers and political figures, and reviewed *habeas corpus* petitions, High Court judgments, and medical documents on incidents of abuse by the security forces and irregular paramilitary groups. Human Rights Watch/Asia also interviewed witnesses about incidents of abuse by militant groups. In all, Human Rights Watch/Asia conducted more than sixty interviews with witnesses and other informed sources, including army, police and other government officials. Wherever possible, Human Rights Watch/Asia inspected the sites of reported incidents.¹⁵

4. SOCIAL MEDIA: A BOON OR CURSE IN PROTECTION OF HUMAN RIGHTS

The internet has played an important role in the rise of the new militant movement popularising militants and their ideologies and glorifying violence.

Social media has proven to be the most effective weapon of the new militancy. Militants no longer need to use coercive means to get some column space in the press, as they did in the 1990s. Today, hundreds and thousands of militancy pictures and videos are on social media sites every single day. New content is published frequently through encrypted platforms such as Telegram and WhatsApp, e.g. dying declarations of militants trapped in an encounter; their last phone call conversations with friends, family or even security officials; videos of training in the jungles of South Kashmir; selfies showing bonhomie amongst the cadre; pictures of militants playing cricket in the open fields of the Valley. Such content consumed mostly by young Kashmiris has flooded the popular culture of J&K. The new militants use this content to spread the call of jihad and inspire the youth to join their ranks.¹⁶

The targeted killings of civilians in October 2021 have given way to the use of a new term, “hybrid militancy.” A hybrid militant is an unlisted member of a militant group who receives training in small weapons with the objective of carrying out targeted killings. After carrying out the targeted killing, the militant resumes his day-to-day activity instead of returning underground like his full-time

¹⁵ ‘The Human Rights Crisis in Kashmir’, A report by Asia Watch, A division of Human Rights Watch, Physicians for Human Rights available at <https://www.hrw.org/sites/default/files/reports/INDIA937.PDF>.

¹⁶ Khalid Shah, Ideological shift, public support and social media: The ‘New’ in Kashmir’s ‘New Militancy’, ORF Occasional Paper, January 2020.

counterparts. This type of militancy poses challenges for security forces, as hybrid militants are especially difficult to identify. The series of killings in October 2021 brought back haunting memories of the violence of the 1990s and compelled around half a dozen Kashmiri Pandit families to flee.

Some experts contend that similar to the 1990s where Kashmiri Pandits were told to either convert to Islam or flee by radical Islamists, the recent spate of killings was meant to deter the community from returning to the valley and to prompt those who have resettled to leave. When the attacks persisted in November 2021, the government was compelled to increase security in the region, including by installing more checkpoints and bunkers, deploying more Central Armed Police Forces (CRPF) personnel, and conducting more raids and arrests. Despite these measures, the security forces have not been able to prevent militants from carrying out attacks.¹⁷

Social media is not just a tool of communication; it is a weapon of war for the Militants.

5. CONCLUSION:

India is facing violations of human rights from the pre-independence period itself. The history of Kashmir looks nothing less than a movie. The cruel acts of Militants has not stopped even today. The internet has played an important role in the rise of the new militant movement popularising militants and their ideologies and glorifying violence. And social media is acting like a boon to them. It is not just a tool to communicate but is a weapon of for them. The Government is facing challenges due to this. The action of the Government of removing Article 370 of the Indian Constitution has not reduced or stopped the militants from acting in a cruel manner. The 2021 act brought back the haunting memories of violence of the 1990s. Though there are stringent laws to punish such activities, the Government is unable to curb such violence. India is currently facing insurgency in North East States where the militants are in direct conflict with the Government. And the author would like to say that the internet, and the social media will influence the militants to grow stronger. Hence, complete protection of Human Rights in India is a myth.

¹⁷ Roshni Kapur, 'A New Phase of Militancy in Kashmir: Challenges for India', Middle East Institute, Washington D.C., February 17, 2022.