

Rehabilitation of the Victims of Conflict in the State of Jammu and Kashmir: A Socio-legal Analysis

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Abstract

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Background

In Kashmir like situation is prevailing from past more than two decades. Security Council in 1948, passed a resolution, while considering the complaint of the Government of India concerning the dispute over the state of Jammu and Kashmir. It was recommended that the question of the accession of J and K to India or Pakistan should be decided through the democratic method of a free and impartial plebiscite considering that the continuation of the dispute is likely to endanger international peace and security. Similar resolutions were passed from time to time but with no solution [1].

The failure by the Indian State to hold plebiscite became a source of freedom struggle among Kashmir's. [2] While taking into consideration the increasing the risk of violence and fundamental failures in establishing a viable peace building process, Bose's argument is acceptable that Kashmir will remain a zone of intractable and recurrent conflict [3]. The insurgency in Kashmir is of low intensity. International Humanitarian law is not applicable to Kashmir situation, though Kashmir has been internationally recognized as issue/dispute under resolutions adopted by UN Security Council. Reason for the present Kashmir unrest seems associated with the people striving for the exercise of the right of self-determination. Article 1, of UN Charter, reinstates that 'the Purposes of the United Nations are To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.' Human rights laws are applicable even if the Kashmir has been declared as disturbed area by Indian State, and not recognized as insurgency.

For the purpose of this research, "conflict" is defined as an armed conflict between two groups, of which one is the state, in which violence has been used by either or both parties resulting in human rights violations and material casualties. According to a study there are more than 700,000 people affected directly by conflict and most of them are inhabitants of border areas, while as population of conflict hit state is indirectly affected [3]. According to UNICEF there are over 100,000 orphans, a vulnerable group in need of care and protection in Kashmir [4]. As per reports, death of more than 61,000 people in disturbed area, has resulted in increasing number of widows and orphans [5,6]. In the Kashmir Division alone there are about 32,000 widows [7] living pathetic life characterized with extreme poverty, economic

dependence, exploitation, harassment. While as the government data claims only 25000 widows and 6000 orphans [7]. A study revealed that the majority of persons subjected to enforced disappearance (72.72%) were innocent civilians and only 22.42% had militant links. Further more than 80% of disappeared persons were in the age group of 21 to 35 years while as 37.14% were unmarried [8]. According to a report, the State has witnessed 68,708 militancy related incidents from 1990 to July 2012 [9]. In 1996 a decline in incidents was reported with the number of incidents being 2900-3400 between 1997-2000. Again rise was noticed in the year 2001 and 2002 recording 4,522 and 4038 such incidents. According to details, 2003, 2004, 2005, 2006 and 2007 respectively recorded 3401, 2565, 1990, 1667 and 1092 incidents of violence. In 2008 the number of incidents reported is 708 and in the following three years, 499, 488 and 340 incidents were reported [10].

According to a survey [11] the widows and orphans in Kashmir compose of four main sub-groups:

- Wives and children of civilians/common people killed by the security forces or by militants or were killed in armed encounters between militants and security forces,
- Wives and children of ex-local militants,
- Wives and children of ex-officials-personnel of Indian security forces which include regular army, B.S.F., C.R.P.F., R.R. and I.T.B.P., and
- Wives and children of ex-officials-personnel of J.K.A.P. and S.T.F.

Victim refers to individuals who have individually or collectively suffered harm including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, through acts or omissions that constitute serious violations of

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international human rights and humanitarian law. Victims are those persons whose basic human rights are violated as a result of conflict. Victim also includes the immediate family, or the dependents of the direct victim. There are victims who are directly affected by prevailing situation and the persons indirectly affected. Directly affected victims include e.g. people (civilians) who are killed, injured, disappeared, tortured, imprisoned etc. Indirectly affected people may include; widows, orphans; wives and children of disappeared persons (called half widows and half orphans); parents and relatives of disappeared persons; parents and relatives of persons killed and unmarried daughters (major) of disappeared persons, or of persons killed in conflict.

Indirectly affected people category may also include family members of handicapped persons incapable of earning their livelihood.

Violation of human rights is not new and Kashmir is not differently situated in this regard [12-19] (Table 1 and Figure 1).

In such situation State is bound to provide reparations to the victims of human rights violations. Reparation has many meanings- judicial and political but common principles include rule of law,

In 2004 (May 21) only in 2% of cases Armed Forces were punished for human rights violations and rest of 98% cases were not proved.

From 1990-1995, 478 complaints relating Human Rights violations committed by Indian Army in the State of J and K were received, out of which only 22 were found true and 52 Army Personnel were punished.

There has been a steady increase in the number of complaints received by Human Rights Commission during the period of conflict.

Nature of Human Rights violations committed in the state of J and K are mainly; Custodial killings, forced labor, torture, destruction of property, disabled due to injury, molestation, rape, custodial disappearance, innocent killings, and disappearances.

Natures of recommendation often made by J and K State Human Rights Commission as relief or as a step towards rehabilitation measure for the victims of conflict are:

- a. To sanction and pay ex-gratia relief (ranging from 1-2 lacs) to the next of kin of the deceased.
- b. Benefit in terms of SRO-43 to eligible family members. In case

Under Rehabilitation scheme by National Foundation for Communal Harmony, implemented by Social Welfare Department in the State of J and K, from the year 2003-2013, amount of 8238650 lacs were disbursed to the child victims of conflict in district Srinagar, as financial assistance for their education.

Poor implementation of centrally sponsored schemes can be observed, as the amount allotted by the central Government remains undisbursed by the social welfare Department. For the year 2005-06, only 44% was disbursed from the total amount allotted. Similarly in 2006-07, 46%; 2007-08, 41%; and for the year 2008-09, 45% amount was disbursed respectively.

The judiciary has taken appropriate proceedings, and reparation orders and programs in favor of victims, and guaranteed the development of respect for human rights and fundamental freedoms. It is only under the special laws that the judiciary is helpless as they are not having jurisdiction over such cases, and such cases are tried by Court Martial proceedings. Conviction and the sentencing of the court are examples of reparation; therefore such part needs to be respected by lifting the impunity given under special laws, as it is likely to have significance for the victims, their families and communities.

It is not always monetary compensation which can render justice to the victims of conflict, bringing perpetrators to justice is one of the most important aspect of reparation, as satisfaction can be achieved only when there is total accountability.

The Department of Social Welfare has failed to maintain a transparent working system, so far as the data concerning the beneficiaries under various schemes or programs concerning the said

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