

DOES SECURITY PERCEPTION OF THE STATE PUT HUMAN RIGHTS IN CRISES IN THE GLOBAL ERA?

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Ensuring a state of peace has traditionally been one of the main problems of states— normal development of every state and society is only possible in peacetime. But the manner in which states have been ravaged by various forms of threats of or the use of violence, which has targeted not only government apparatus, but innocent civilians, targeting intra as well as inter regional peace, the security perception of states have been in a flux, of how vigilant it can be while providing as much freedom to its citizens, protecting all the rights that they are mandated to enjoy.

But the all States have a duty and an obligation to protect individuals within their jurisdiction from terrorists under the International Covenant on Civil and Political Rights (ICCPR), stemming from the right to life. While counter-terrorist measures are essential for States to maintain national security and ensure safety for all individuals, these measures must not circumvent international law or violate human rights. Now the thin red line that gets violated for apprehending or pre-emptively detaining such perpetrator of violence remains a challenge for the state.

Human rights are implicated in the lack of a universal definition of terrorism. Without a universal definition of terrorism, States may create broad, overreaching definitions and inadvertently criminalize activity outside the realm of terrorism. States may also intentionally create a broad definition and use this broad power to suppress oppositional movements or unpopular groups under

the guise of combating terrorism. People may be prosecuted for the legitimate exercise of protected human rights due to vague and unclear domestic definitions of terrorism.¹ Without an internationally agreed upon definition, States are free to create various and unclear definitions with no guidance from the U.N. regarding the proper scope of the definition. Apart from these in the global era with the advent of technology and communication revolution terrorism has become more challenging and having adverse impact over different nations.

Two very important developments are associated with globalization challenge the way we think about rights and sovereignty. The first is the increasingly influential discourse of international human rights. This discourse has led theorists to argue that the legitimacy of governments should be contingent on their being both non-aggressive and minimally just. A radical idea is at stake: that the 'international community' may compose moral principles and enforce legal rules regulating the conduct of governments toward their own citizens and residents. It is also argued that the international community has the default obligation to protect and enforce basic human rights. Indeed, some construe 'minimal' democracy as a basic human right, partly because it as a requirement of justice, partly because democracy is deemed to be conducive to peace and respect for other human rights.²

The two nations that have been accused of grossly violating human rights on the pretext of

security perceptions have been China and India, which will be discussed in the paper.

China has been alleged to violate political as well as social freedom of people living in Tibet, aspiring to air their grievance against the Communist regime in Beijing. This has led to self-immolations, protests, hunger strikes and various other forms of dissent by Tibetans living in Tibet as well as outside, discussions in regional and international platforms, reprimand by multilateral, organizations as well as larger national powers, which however has not changed much of the ground reality in Tibet. It needs to be understood that the manner in which Tibet was taken over by China in 1950, leading to various political, religious and social interventions, which has been seen by Tibetans as violations of their basic rights, has not been accepted by the Chinese leadership in the last seven decades. The security perception of the state of China has been different with the religious head, the Dalai Lama fleeing Tibet during the Tibetan uprising and settling down in neighboring India in 1959, organizing a government in exile, and supporting such activities that promotes for the social, religious and political liberties of Tibetans in Tibet. For the Chinese leadership, it has been more of taming an entire populace to adapt to the norms and principles dictated by the Communist government, which has led to the allegations of human rights violations.

As per reports, "Rather than embrace lawyers, writers, and whistleblowers as allies in an effort to deal effectively with rising social unrest, the government remains hostile to criticism. The government targets activists and their family members for harassment, arbitrary detention, legally baseless imprisonment, torture, and denial of access to adequate medical treatment. It has also significantly narrowed space for the press and the Internet, further limiting opportunities for citizens to press for much-needed reforms."³

China had to address the Tibetan rebellion by mass rehousing and relocation policy which has radically changed the social demography of Tibet, impacting on the way of life and livelihood, in some cases impoverishing them or making them fully

dependent on state subsidies. It has been reported that since 2006, over 2 million Tibetans, both farmers and herders, have been involuntarily "rehoused"—through government-ordered renovation or construction of new houses in the autonomous region.⁴ It has also been reported that ethnic Han Chinese Communist Party members hold almost all top government, police, and military positions in the Tibet Autonomous Region (TAR) and other areas of Tibet. It has also been reported that Reporters without Borders ranked China 176 out of the 180 countries on its Press Freedom Index 2015. Professor Carole McGranahan has also stated that there are more foreign journalists in North Korea than Tibet.⁵ The situation in Tibet does not seem to have any immediate solution, as neither international institutions will have much role to play in pushing the Chinese administration to provide autonomy to Tibet, nor the Beijing leadership will have any intention to loosen its grip on TAR.

However, the situation in India has been grossly different. India has been facing home grown challenges that threaten to destabilize internal peace and security as well as have external actors who have sponsored, trained and sent terrorist and insurgent groups with dissent to destabilize regions. To maintain law and order the central administration has employed central law enforcement personnel to maintain peace and security of these regions, which they have identified as disturbed and legalized such actions through Parliamentary laws like that of the Armed Forces (Special Powers) Acts (AFSPA), Terrorist and Disruptive Activities (TADA) and Prevention of Terrorism Act (POTA). Which grossly undermines all sort of civil and political liberties that has been enshrined in the constitution. It needs to be understood that local law enforcement agencies that functions in the rest of the regions in India for the maintenance of law and order, are recruits who hail from the region itself, and are trained to function within a strict legal framework, where even firing a bullet needs to be authorized by the local district administrator. Whereas, in the regions where the armed forces are being used for enforcing law and order, due to the

nature of recruitment, training and the power that is vested in them, they have a strange detachment with the civilian populace. They are more impassionate while carrying out orders, suffering from superiority syndrome as they cannot be charged with civilian laws, if they did make mistakes or violate laws, while carrying out such orders. It can also be noted that as they function in areas which is already going through political disturbance, crimes committed are not reported, as they are in peaceful regions. This leads to violations of human rights. The paper is trying to briefly analyze such disputed region in India, which is the state of Jammu and Kashmir.

Since early 1990, the valley of Kashmir has been the site of a vicious conflict between Indian security forces and Muslim insurgents as well as terrorists demanding independence or accession to Pakistan. In their efforts to crush the insurgency, Indian forces in Kashmir have been alleged to be involved in massive human rights violations, including extrajudicial executions, rape and torture. It also needs to be stated that armed insurgent groups have also 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.

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 crackdown on terrorist groups who started inciting violence and spreading terror in the valley. Indian armed personnel were authorized to conduct such crackdowns by bringing J&K within the ambit of AFSPA from 1990. These terrorist groups were successful in gaining local support by giving monetary and other perks. That challenged the basic problem of identifying such terrorist elements that triggered a massive crackdown. 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.⁶

Though one cannot support such violations from taking place, but separatist groups involved in inciting violence in the first place, as well as Pakistani administration, who does not recognize the state of Jammu and Kashmir to be a part of India, started alleging the role of Indian defense personnel, raising the issue of human rights violation in all regional and international podium to discredit India and giving the dispute of Kashmir a different connotation. This later on gained support from various other human rights organization internationally as well as within India.

When terrorists attack a civilian institution, like a school, or a deluxe hotel, or a crowded market or religious institution, or a train station, those who harp about human rights abuse by security personnel strangely remain silent about the lives of those defense personnel lost in action, rather accusing the lack of professionalism and coordination of security personnel in preventing such attacks being carried out, failing to provide security to the nation. But when such security personnel go ahead with crackdowns to apprehend people behind such attacks, or to prevent future attacks from happening, then all the voices of protecting the rights of those apprehended resurfaces.

As per Table 1, lives lost by civilians and terrorists in South Asia has been significant, along with the lives of those defense personnel lost in protecting them. If this year itself is observed till now, civilian deaths have come down considerably in India, in all the disputed regions, a credit that is shared by the preparedness of the civilians in these regions as well as the professionalism of the defense personnel functioning in these regions.

IMPUNITY

Members of India's security forces continue to enjoy impunity for serious human rights violations. In a rare case in November 2014, the army reported that a military court had sentenced five soldiers, including two officers, to life in prison for a 2010 extrajudicial execution of three innocent villagers. The army ordered a military trial after using the draconian Armed Forces Special Powers Act (AFSPA) to block prosecution by civilian courts. The army also chose a military trial for the alleged March 2000 extrajudicial killing of five civilians in Pathribal in northern Jammu and Kashmir State. However, in January, the army court of inquiry dismissed charges against five officers. AFSPA, which has been in force

for decades in Jammu and Kashmir and India's northeastern states, has provided effective immunity to members of the armed forces for killings of civilians and other serious human rights violations. Numerous independent commissions in India have recommended repealing or amending the law but the government has failed to do so in the face of stiff opposition from the army.⁷

Proposed police reforms have also languished even as police continue to commit human rights violations with impunity. These include arbitrary arrest and detention, torture, and extrajudicial killings. In several states, police are poorly trained and face huge caseloads.

Table 1. South Asia Fatalities 2005-2016 (March 27, 2016)⁸

Year	Civilians	Security Forces	Terrorists	Total
2005	2063	920	3311	6294
2006	2803	1725	4504	9032
2007	3128	1504	6145	10777
2008	3630	2344	14630	20604
2009	14196	2738	12703	29637
2010	2571	844	6016	9431
2011	3173	962	3284	7419
2012	3270	871	2902	7043
2013	3536	887	2244	6667
2014	2217	703	3631	6551
2015	1144	496	2837	4477
2016	250	117	542	909
Total*	41981	14111	62749	118841
INDIA (March 27, 2016)				
Jammu and Kashmir	1	7	28	36
Left Wing	35	19	71	125
North East	10	0	25	35
India Rest	1	7	13	21
India (Total)	47	33	137	217

It also needs to be stated here that the regions that are in dispute have been constantly holding democratic elections, conducted in a free and fair manner, which has witnessed major portions of the adult population of the regions exercising their voting rights. All these regions also have the presence of national and international human rights watch group, who keep a constant tab of day to day happenings unlike that in Pakistan occupied Kashmir or in Tibetan Autonomous Region in China.

Recommendations to avoid such violations and improving the track record, it can be suggested to improve coordination between intelligence and law enforcement personnel; deepening the socioeconomic components and reducing the coercive elements of counterinsurgency; modernizing the armed forces; and working to reduce misunderstandings with key stakeholders in the community that they function.

There is a need of the hour to understand that while it is the primary responsibility to secure the rights of the people of the land, similarly it should be noted that it is the primary responsibility of the citizens to abide by the constitution. Protesting against government policy and actions is a constitutional right of the people, but when the armed forces are in action, altercating with terrorist groups, if the people starts attacking the armed forces through stone pelting, strangely the nature of rights alters.

It is very difficult to generalize the security perceptions of nations and the understanding of human rights that each nations political leadership has. As the notion of human rights remain to be universal, the right to life should be provided and has been provided primary importance by states adapting to democratic governance. However, in a fast changing global order, where states face challenges from within as well as without, perimeters of human rights will be redefined as well as restructured that will balance the demand of the citizens from the state as well as vice versa.

It should be noted here that the basic nature of human rights in India remain protected as

citizens are able to exercise their social, political and economic rights without restrictions by the State. There are regions where the nature of enjoying rights might differ, especially with regard to states in the north eastern region, or in naxal infested regions in Jharkhand or in Jammu and Kashmir. But while taking India's geographical size into question, the rest of India does not witness any restrictions with regard to freely enjoying such rights. There is a need to understand the need for the protection of rights and the pathways which would secure preserving them.

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¹ Ms. Navanethem Pillay to the Counter-Terrorism Committee of the Security Council, New York, p. 7(29 Oct. 2009)

²Jean L. Cohen, Rethinking Human Rights, Democracy, and Sovereignty in the Age of Globalization, Political Theory, Vol. 36, No. 4 (Aug., 2008), p. 578

³ World Report 2015: China - Events of 2014, *Human Rights Watch*, <https://www.hrw.org/world-report/2015/country-chapters/china-and-tibet>

⁴World Report 2015: China - Events of 2014, Human Rights Watch, <https://www.hrw.org/world-report/2015/country-chapters/china-and-tibet>

⁵ Social and Economic Discrimination, Free Tibet Online Home Page, <http://www.freetibet.org/about/human-rights>

⁶The Human Rights Crisis in Kashmir: A Pattern of Immunity, Asia Watch, Human Rights Watch, Boston, 1992, p. 1

⁷World Report, 2015: India

⁸ South Asia Terrorism Portal, www.satp.org