

## The Status of Human Rights in India: A Sociological Perspective

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### Abstract

All human beings are identical irrespective of caste, color, creed, region, gender and cultural difference. The Universal Declaration of Human Rights (UDHR), 1948, defines human rights as “rights derived from the inherent dignity of the human person”. In the absence of human rights, the moral, physical, social and spiritual welfare of an individual is unfeasible. Human rights are requisite as they provide appropriate conditions for material and moral upliftment of the people. India, the world’s most populous democratic state, continues to have significant human rights problems despite making commitments to tackle some of the most ubiquitous abuses. The country has a thriving civil society, free media, and an independent judiciary. But longstanding abusive practices, corruption, and lack of accountability for perpetrators foster human rights violations. The present study undertaken to rationalize the trend of stern abridgement of human rights problem in Indian perspective, as the primary victims of human rights violations are women, marginalized section of society, children, victims of terrorism and populace of disturbed vicinity. The quandary of human rights abuse in India requires a holistic approach from the government as well as the civil society to look the prime causes and suggest appropriate measure to triumph over this problem for the furtherance of society.

### Keywords

Caste, inherent, color, rights, creed, region, gender, cultural, human, welfare, society, judiciary, material.

### The Evolution of Human Rights

The evolutions of human rights have taken place over centuries. Man had to struggle hard in order to achieve the ultimate goal - living with dignity - which still has to be realized in various societies. India itself is an example where women, children, dalits, bonded labourers, etc, is trying hard to be a part of mainstream. In spite of all these, the world recognized the U.N. Charter of 1945 which states that human rights are inalienable aspect of mankind. The origin of human rights may be traced to the theory of Natural Rights derived from the concept of Natural Law, as propounded by ancient Greek Stoic Philosophers and further developed by Thomas Hobbes and John Locke. The American and French Revolution gave further impetus to the struggle of human rights. The evolution and development of human rights in the international context can be traced to the Magna Carta and the English Bill of Rights followed by the French Declaration and the American Bill of Rights.

The twentieth century witnessed the crystallization of the philosophy of Human Rights when the United Nations adopted the UN Charter, 1945, The Universal Declaration of Human Rights, 1948 and the International Covenants on Human Rights with further emphasis to protection of rights of Women, Abolition of Slavery, Racial Discrimination, Civil and Political Rights, Economic, Social and Cultural Rights and most importantly the Rights of children.

The Universal Declaration of Human Rights (UDHR) is a historically memorable and significant document of human liberty. Its preamble frames the document, proclaiming that “disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed the highest aspiration of the common people”. The smooth and effective maintenance of public law and order is the cornerstone for shaping and regulating the multi-ethnic, multi-religious and multi-lingual diversified society in India as a harmonious, democratic, secular and social welfare oriented civil society gravitating towards the concepts of “Unity in diversity”, “truth” and “transparency”. Why human rights? It is essential if humanity “is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law”.

Civil society has broken down in numerous areas. There is a widespread belief that society is disintegrating as are traditional, moral and social codes resulting in routine abuse of human beings and their rights. Against this background, the concept of human rights has acquired new importance and resonance. The idea that people possess certain basic human rights, and that these should be safe from violation by the State or by other groups or individuals, seems today an important bulwark against the breakdown of law and order and degradation of moral norms.

### **Status of Human Rights in India**

Due to historical and political reasons, there are insurgency movements in the Northeast of India including Nagaland, Manipur, Assam, Meghalaya, Arunachal Pradesh and Jammu and Kashmir. The most significant human rights problems were police and security force abuses, including extrajudicial killings, torture, and rape; widespread corruption at all levels of government, leading to denial of justice; and separatist, insurgent, and societal violence.

Other human rights problems included disappearances, poor prison conditions that were frequently life-threatening, arbitrary arrest and detention, and lengthy pretrial detention. The judiciary was overburdened, and court backlogs led to lengthy delays or the denial of justice. Authorities continued to infringe on citizens’ privacy rights. The law in some states restricted religious conversion, and there were reports of arrests, but no reports of convictions under these laws. There were some limits on freedom of movement. Rape, domestic violence, dowry-related deaths, honor killings, sexual harassment, and discrimination against women remained serious problems. Child abuse and child marriage were problems. Trafficking in persons, including widespread bonded and forced labor of children and adults, child prostitution, and forced adult prostitution, was serious problems. Caste-based discrimination and violence continued, as did discrimination against persons with disabilities and indigenous persons. Discrimination against persons with HIV and discrimination and violence based on gender identity continued. Religiously based societal violence remained a concern. Forced labor and bonded labor were widespread. Child labor also was a serious problem.

Widespread impunity at all levels of government remained a serious problem. Investigations into individual cases and legal punishment for perpetrators occurred, but in many cases a lack of accountability due to weak law enforcement, a lack of trained police, and the overburdened and under resourced court system created an atmosphere of impunity.

### **Arbitrary or Unlawful Deprivation of Life**

There were reports that the government and its representatives committed arbitrary or unlawful killings, including extrajudicial killings of suspected criminals and insurgents, especially in areas of conflict such as Jammu and Kashmir, the Northeastern States, and the Naxalite belt. According to the South Asian Terrorism Portal (SATP), run by the nonprofit Institute for Conflict

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Management, during the year there were 805 fatalities in the country- including members of the security forces, individuals classified by the government as terrorists, and civilians. This represented a decrease from 1,073 fatalities in 2011.

Most encounter killings, in which security forces and police killed alleged criminals or insurgents, occurred in conflict areas, but the practice reportedly occurred elsewhere in the country as well. However there were persistent reports of the continuance of these practices. The security forces continued to be responsible for grave human rights violations including extrajudicial killings and torture in the Jammu and Kashmir. In addition, a large number of civilians have also been killed in firing by security forces on unarmed demonstrators. Women and children remained extremely vulnerable to violence, mostly sexual violence by security forces.

The State government of Jammu and Kashmir claimed that it had successfully prosecuted as many as 223 security personnel, including members of the army, para-military personnel and policemen who were found guilty of human rights violations during the last five years. These included 90 army personnel, 82 para-military personnel and 51 policemen. The State provided little other details. Asian Centre for Human Rights (ACHR) cannot assess the credibility of the action given the paucity of information. However the failure to provide the information in a transparent or accountable manner does not appear to contribute to ending the suffering of the victims and their families nor does it appear to serve the interests of the rule of law.

Government initiatives, including police reform and improved access to health care and education, languish due to poor implementation. Many women, children, Dalits (so-called untouchables), tribal communities, religious minorities, people with disabilities, and sexual and gender minorities remain marginalized and continue to suffer discrimination because of government failure to train public officials in stopping discriminatory behavior. Impunity remains a serious problem, particularly for abuses committed by security forces in Jammu and Kashmir, the northeast, and areas in central and eastern

### **Maoist Insurgency**

Maoists operations extend to nine states in central and eastern India, finding support in regions with weak governance, infrastructure and basic public services, such as health care and education. Maoist insurgents known as Naxalites continued to target government schools and hospitals. Paramilitary forces continued to occupy and use schools as bases, despite a Supreme Court order to vacate all schools by May 2011. In September, government officials in Chhattisgarh, central India, stated they would remove forces from 36 schools and hostels because of their impact on children's education.

At this writing, Maoist-related violence in 2012 had resulted in 257 deaths, including 98 civilians. In June, security forces killed 19 villagers in Chhattisgarh state in a night operation, prompting widespread condemnation. Civil society activists in Maoist areas remain increasingly at risk from both Maoists and state security forces. Many activists have been arbitrarily arrested, tortured, and charged with politically motivated offenses that include murder, conspiracy, and sedition. The Maoists have threatened or attacked activists they believe are linked to the government.

### **Jammu and Kashmir**

While violence in the northern state of Jammu and Kashmir has been on a decline, security forces responsible for serious rights abuses remain effectively immune from prosecution under the AFSPA. The state government rejected calls for DNA testing of 2,730 corpses that a police investigative team found in unmarked graves at 38 sites in north Kashmir in July 2011. Some of the gravesites are believed to hold victims of enforced disappearance and extrajudicial execution by government security forces dating back to the 1990s. A number of elected village council leaders

resigned in September following threats and attacks from armed separatist militants who oppose any election in Jammu and Kashmir.

### **Violence in Assam**

In July, violence between indigenous Bodo tribes and Muslim migrant settlers started in Kokrajhar and spread to several districts in Assam, resulting in the deaths of at least 97 people and displacing over 450,000. Authorities in Assam failed to prevent the violence, despite information about increasing tensions between the communities, which have clashed in the past over access to land and resources.

### **Protection of Children's Rights**

Children remained at risk of abuse, with a large number forced into dangerous forms of labor, and without proper access to health care and education. India has one of the largest populations of malnourished children in the world. According to government estimates, at least 40 percent of children are vulnerable to sex trafficking, homelessness, forced labor, drug abuse, and crime-and need protection.

The government took some significant steps in 2012 to improve children's rights. In April, the Supreme Court upheld the government decision to provide universal access to primary education, requiring that private schools reserve 25 percent of seats for underprivileged children. In May, parliament passed a new law to protect children from sexual abuse. In August, the government issued a blanket ban on employing children under 14, reversing a former law that only prohibited employment in hazardous jobs.

### **Women's Rights**

Violence against women and girls continued in 2012, with increased reports of sexual assault, including against those with disabilities. The government had yet to properly investigate and prosecute sexual abuse in police custody. In June 2012, Pinki Pramanik, a renowned woman athlete, was arrested on allegations of rape. Male police officers mistreated her while taking her into custody and authorities conducted "gender determination" tests in violation of her rights to consent, privacy, and dignity. A video of her undergoing some part of the abusive examination was made public. India has yet to enact amendments to reform its penal laws to recognize a wide range of sexual offenses. While the central government modified its protocols for handling rape investigations, the changes still fall short of World Health Organization (WHO) guidelines on sexual assault, especially regarding medical treatment for victims. India has a strong law to curb child marriages but the government also pursues discriminatory policies. In central India's Madhya Pradesh state, for example, adult candidates are barred from taking state civil service exams if they were forced to marry as children. The government continued to limit its nutrition programs for pregnant mothers in many states to women ages 19 and older, and up to two live births only, excluding many young mothers from benefits.

### **Case Studies of Human Rights Violation**

#### **Manipur:**

On the night of 11 August 2010, Naorem Modhu Singh (26 years), son of Mangoljao, died due to alleged torture in the custody of the combined team of 12th Madras Regiment and Manipur Police Commandos at Khoijumantabi village under Kumbi police station in Bishnupur district of Manipur. He and his cousin were picked-up from his residence by the combined team on suspicion of links with a banned militant group. On 12 August 2010, the personnel of 12th Madras Regiment handed-over his dead body to the Kumbi police station. In its report to the police, the 12th Madras Regiment claimed that the deceased had collapsed while in their custody and that he was taken to

an army hospital where doctors declared him brought dead. However, the family members of the deceased allege that Naorem Modhu Singh was tortured to death in custody, which is supported by the facts and circumstances of the case.

**Assam:**

On 6 March 2009, Asian Centre for Human Rights (ACHR) filed a complaint in the NHRC alleging that personnel belonging to 871st Field Regiment of the Indian Army, picked up Bhadrakanta Baruah, son of late Yogaram Baruah on the night of 31 January 2009 and tortured him in their custody at the Maibela base Army camp in Sivsagar district of Assam on suspicion of having links with the banned United Liberation Front of Asom (ULFA). In his reply to the NHRC, the Superintendent of Police of Sivsagar informed that immediately after the army handed-over Bhadrakanta Baruah and Ghana Neog to the police, they were medically examined and the doctor opined that both of them had “received simple injuries caused by blunt object”. Detailed investigation by the police did not reveal any link of the victims with ULFA and they were released on the same day. Both victims were farmers. The Ministry of Defence denied that the victims were tortured and claimed that they have confessed to having provided shelter to the ULFA. In its order delivered on 4 March 2010, the NHRC rejected this claim of the Ministry of Defence and directed them to pay compensation of INR 50,000 (USD 950) to each of the victims.

**Indo-Bangladesh Border:**

Border Security Force (BSF) soldiers have often been accused of torture and extrajudicial killings near India’s border with Bangladesh. Recently, eight soldiers belonging to the BSF’s 150<sup>th</sup> Battalion were found brutally beating up a Bangladeshi national, later identified as Habibur Rahman, on a video reportedly filmed by one of them. The victim is alleged to have been attempting to smuggle cattle from Bangladesh into India as a part of a group. The video shows the victim being pushed to the ground, with initially his hands and feet being tied with a rope. A soldier is seen putting his foot on his chest, while attempting to tie his hands together. While abusing, jeeringly laughing and making a conscious effort to film the victim, they are seen stripping him naked. They then make him stand up and slide a bamboo stick across his arms tied behind his back, with a portion of his lungi, which they had torn into two. They are then seen violently beating him all over his bare body using bamboo sticks, with full force. One of the soldiers is then seen sitting on his back and holding his legs together for the other one to hit him with a stick on the soles of his feet. The victim can be heard to be in seething pain and pleading to be spared. Instead of handing the victim to the police, the BSF soldiers not only illegally detained the victim, but also tortured him as described above. Reportedly, they then left him to make his way back into Bangladesh. A local organisation released the video to local news channels, after which BSF suspended the soldiers and ordered an inquiry. However, despite clear evidence of abuse, no criminal charges have been filed against any soldiers to date.

**Jammu and Kashmir:**

There has been a phenomenon of detention and torture of youth as young as 10 years old, particularly after the protests of 2008 and 2010 in Kashmir. Sameer Khan (name changed), one such youth was detained by the armed forces when he was in his late teens. According to his account, he was thrown into a dark room, where he was beaten with gun butts, causing his nose and head to bleed. While still in pain, an hour later, the security personnel tortured his genitals by administering electric shocks, using cigarette butts and inserting a copper wire into his penis. After his release, he had to be put on medication for the injuries as well as for displaying signs of depression. Khan said: “I recovered after almost a year... but I still get nightmares about it almost every week”.

Another torture survivor, Danish Malik (name changed), now 23 years old, was detained for 3 months and 10 days prior to being produced before the court. Malik described his deplorable

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treatment during his detention as follows: “They had rollers, and other implements to administer electric shocks. They hung me upside down naked, with my hands tied at the back. I was sweating and had passed out. When they finally asked me to put my clothes back on, I couldn’t even lift my hand. There was a small window in the lock-up to which I was shifted, which they kept shut at all times. I could see only very little light coming into the lock-up through cracks in the window. I was let out of the lock-up only to wash my face every morning. I had to urinate in the lock-up and sleep with rats”.

### **Enforced Disappearances**

The UN Convention for the Protection of all Persons from Enforced Disappearances (CED) defines ‘enforced disappearance’ as: “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law”. Enforced disappearances and extrajudicial killings remain widespread in conflict areas, reinforced by extraordinary powers of arrest, detention and immunity available to the security forces.

The NHRC received 341 complaints of disappearance in 2010 and 338 by November 2011 and highlighted that these numbers were not comprehensive. As per UPR I Recommendation 12 and India’s 2011 pledge, Government of India (GOI) committed to ratify CED, stating that ratification was ‘underway’. Further, GoI mentioned in its UPR II national report that it was “actively considering its ratification”. However, there are still no visible steps towards the process of ratification. In Kashmir, justice evades well-known cases of extrajudicial killings and enforced disappearance. For instance: Javed, son of the chairperson of the Association of Parents of Disappeared Persons, Parveena Ahanger, was 16 years old when he was picked up by soldiers in 1990 and is since disappeared. Police investigation and judicial enquiry accused three army officers for the disappearance, following which sanction was sought for prosecution in 1997. The sanction was denied by the central government on the ground of ‘improper investigation’.

### **Mass Graves in Kashmir**

The International People’s Tribunal on Human Rights and Justice in Kashmir (IPTK) documented and established the presence of 2,700 mass unmarked graves in three districts in north Kashmir in 2009. The investigations conducted by the IPTK also revealed the presence of multiple cadavers in some graves. Following widespread condemnation by international human rights organisations, the J&K State Human Rights Commission (JKSHRC) conducted a suo-moto investigation on the unmarked graves and confirmed their presence. Its investigation team visited 38 sites in the three districts and found 2,730 bodies in various unmarked graves. The Commission recommended: (a) investigation of identities of the dead bodies by employing forensic techniques; (b) local police stations to cooperate in investigations; (c) prosecution of perpetrators in due course; and (d) constitution of an independent body which will be empowered to intervene in all questions of dead bodies/ mass unmarked graves/disappeared persons, including on questions of implementation of the Commission’s recommendations.

The IPTK report claims on the basis of “community, collective testimony and archival evidence” that in many instances, the bodies are those of victims of ‘fake encounters’ carried out by the armed forces. The J&K police had then helped them carry dead bodies to the graves that locals were asked to prepare. The issue of mass/unmarked graves has also been discussed in the J&K State Legislative Assembly. Atta Mohammad, 68 years old, a gravedigger in Chehal Bimyar, Baramulla district, in his testimony to the IPTK stated to have buried 203 bodies between 2002 and 2006. The bodies were delivered to him by the police, primarily after dark: “I have been terrorized by this task that was forced upon me. My nights are tormented and I cannot sleep, the bodies and

graves appear and reappear in my dreams. My heart is weak from this labour. I have tried to remember all this... the sound of the earth as I covered the graves... bodies and faces that were mutilated... mothers who would never find their sons. My memory is an obligation. My memory is my contribution. I am tired, I am so very tired.”

### **Extrajudicial Killings**

The National Crime Records Bureau (NCRB) Report 2010 reveals higher incidence of police firing and resultant civilian casualties and injuries for all conflict zones, with Jammu & Kashmir ranking the highest under each category followed by Uttar Pradesh and Chhattisgarh. The data reflected in the NCRB report, however, does not indicate the actual number of extrajudicial executions, as the executions by the armed forces and the army are excluded from this enumeration.

In Chhattisgarh, the police, the paramilitary and Salwa Judum have all been responsible for extrajudicial killings. Government forces have been reported to extrajudicially execute persons suspected of being Naxalites and to label the extrajudicial executions as ‘encounter killings’ or ‘encounters’, thereby falsely implying that the deaths had occurred during armed skirmishes with the alleged Naxalites. Salwa Judum forces have been accused of extrajudicial killings during raids and evacuation of villages while looking for Naxalite supporters and also during reprisal attacks on villagers who have been forcibly evacuated by them. In addition, Naxalites have been accused of killing villagers whom they believed were Salwa Judum supporters or their family members, in addition to those, who either refuse to cooperate with them or who they suspect to be police informers.

Likewise, in Manipur, 789 extrajudicial executions were documented between 2007 and 2010. In January 2010, the NHRC had directed the state government of Manipur to open 111 cases of fake encounters, however no further action has been taken so far. Most reports of encounters in Manipur are increasingly being attributed to the state police officials, more particularly, a special unit believed to be a part of the state police department, known as ‘Manipur Police Commandos’ (CDOs). Officially, however, there are no such special units in the Manipur police organisational hierarchy or structure. The official website of the Manipur police department gives no narrative or numerical information regarding any such unit or branch acknowledged widely as Manipur Police Commandos. It has been also alleged that the CDOs have committed many summary or arbitrary executions for the mere motivation of robbery. Cash, mobile phones and jewellery believed to have been on the person of deceased victims have been found missing, while they have failed to report such items in their official seizure reports.

The Assam Police claimed on its website to have killed 129 persons in encounters between January and July 2010. In West Bengal, the Border Security Force (BSF) has been responsible for extrajudicial killings at the Indo-Bangladesh border. 227 Number of alleged killings by the BSF are as follows: 23 killings in 2008, 20 in 2009, 12 in 2010 and 9 in 2011. Because of the near-absent effective accountability mechanisms for abuses carried out by BSF troops, even the most serious abuses committed by those deployed at the border go unpunished.

### **Conclusion**

Human rights are essential for societies as providing an environment of protection and development; these rights have been entitled to an individual for their general rearing and opulence. We should divulge this fact that human rights violation is practiced and observed in many regions of India and the most effected section of this abuse are women, marginalized section of society, children, victims of terrorism and populace of disturbed vicinity. Impunity remains a serious problem, particularly for abuses committed by security forces in Assam, Manipur, Chhattisgarh and Jammu and Kashmir. Custodial torture and violence remain an entrenched and routine law-enforcement strategy across India. Enforced disappearances and extrajudicial killings

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remain entrenched in conflict areas, reinforced by extraordinary powers of arrest, detention and immunity available to the security forces. In this regard the government has to ensure that enforced disappearances and extrajudicial killings are codified as offences under criminal law, also the legal process of investigation, accountability and justice is austerely pursued.

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