

## **PERVERSION OF AUTHORITY BY THE DEFENDERS OF LAW**

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*"ANY SOCIETY THAT WOULD GIVE UP A LITTLE LIBERTY TO GAIN A LITTLE SECURITY WILL DESERVE  
NEITHER AND LOSE BOTH." - BENJAMIN FRANKLIN*

### **I. ABSTRACT**

*Security Forces are entrusted with the task of securing the ends of peace and order in a society. The exercise of the power has to be a legitimate reaction towards the apparent public disorder. This article emphasizes the grey domains of the discretion granted to the police forces while securing peace and harmony. There have been innumerable instances of violation of inherent human rights of the hoi polloi by the security forces, even when there is no actual apprehension of disruption of public peace. In addition to this, the central problem originates from the public as they themselves are unaware of redressal mechanisms if any, and consider the exercise of unfettered discretion by security forces in consonance with legitimacy. It is high time that a proper balance is adopted between competing interests i.e. preservation of human rights and maintenance of law and order within a permissible limit. The article concludes with the suggestions as to how to strike a balance between national security and human rights. To ensure peace in a society, there must be an efficient touchstone in place to allow the government to distinguish preservation of human rights from the maintenance of security and that too, before the line of security breaches into the line of human rights and legitimate freedom provided to them by our own Constitution.*

**Keywords-** *Peace and Harmony, Legitimate Reaction, Security Forces, Hoi Polloi, Redressal Mechanisms.*

## **II. INTRODUCTION**

Upendra Baxi has described human rights as “an inscription in the hearts of the people, which were existing, even before the lawmakers drafted their first proclamation.”<sup>1</sup>

Rights are considered vital for the essential development of human awareness, behavior and mental faculties. According to general jurisprudence, rights can be divided into two categories- negative and positive. The former is the protection of human liberty and dignity from the arbitrary actions of another person, including the state machinery, whereas, the latter is in the form of a duty upon that other person or state to protect the human civil liberties. There are certain inherent needs of a human being, which are satisfied only by these inalienable natural rights. Therefore, the authors have tried to highlight, through this paper, the need to protect and preserve Human Rights.

## **III. CONCEPT OF HUMAN RIGHTS**

Human Rights are responsible for the exalted and free existence of human beings. They are necessary to be preserved in order to allow human beings to develop fully and use their human qualities, intelligence, talents and conscience and to satisfy their spiritual and other needs.

Human Rights are regarded as ideals that reflect human desires and aspirations. Throughout the course of history, these rights have been defined and enshrined with reference to the values of the dignity and self-esteem of each individual and of freedom, equality, and justice.

The legal proclamations throughout the globe, keep on suggesting the idea that each individual's rights are to be protected irrespective of their cultural, social and economic background. In simpler words, the sense of self-respect is inherent in all the human beings in the same manner and therefore, this self-respect must be recognized and respected by all, irrespective of the caste, creed, race, sex, etc.

*“The recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the World.”- The preamble to the Universal Declaration of Human Rights*

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<sup>1</sup>Upendra Baxi, *Inhuman Wrongs and Human Rights* (Har Anand Publications, New Delhi, 1994) page1.

*“The denial of human rights and fundamental freedoms not only is an individual and personal tragedy but also creates conditions of social and political unrest, sowing the seeds of violence and conflict within and between societies and nations.”<sup>2</sup>*

The two world wars left huge scars over the historical evolution of Human Rights and largely impacted on the course of Human Rights and liberties. These wars resulted in a blood bath and to avoid such a holocaust again, the International Community combined and drafted a charter to make this World, a liveable one again. This charter was called the UN Charter, which was globally ratified. In 1948, the International Community, through a common platform provided by UN, recognized the importance of Human Rights. The UDHR was perhaps the first step taken in the path of preserving human rights and it formed the basis for many national constitutions to draft their own fundamental rights. Further, the International Covenant on Civil and Political Rights, 1966 and the International Covenant on Economic, Social and Cultural Rights, 1966, provide a framework and policy of the International players towards securing Human Rights over anything including even National Security.

Another noteworthy development in this field is a growing realization that a definition of human duties to be observed should also be added to the existing human rights perception and it would not be out of place if in the near future; a charter of human duties might also come into being to complement the principle of the indivisibility of all human rights.<sup>3</sup>

Now, if we talk about the Indian Context, the Constitution is considered to be the Supreme Law and it envisages an idea of equality of treatment. A philosophy is reflected out that no one is too high and no one is too low.<sup>4</sup> Moreover, Article 32 provides a guarantee to these rights, therefore, the human rights incorporated in Part III are not merely paper tag and are justiciable in a court of law.

#### **IV. THE NECESSITY OF SECURING HUMAN RIGHTS- MORAL AND LEGAL NECESSITY:**

*“THE RIGHTS OF EVERY MAN ARE DIMINISHED WHEN THE RIGHTS OF ONE MAN ARE THREATENED.” - JOHN F. KENNEDY*

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<sup>2</sup>P C Sinha, *India's Human Rights Regime* (Kanishka Publishers, New Delhi, 2003) page 12.

<sup>3</sup>B S Waghmare, *Human Rights: Problems and Prospects* (Kalinga Publications, New Delhi, 2001) page 36.

<sup>4</sup>Renu Mahajan, ‘Violation of Human Rights by The Security Forces in India - A Remedial Study’ (DPhil thesis, Guru Nanak Dev University, Amritsar 2013).

Considering the necessity of human rights in any form i.e. moral or legal, the Universal Declaration of Human Rights of 1948 has been looked upon as a beacon for all the communities. It was formed mainly for the defense and promulgation of human rights. Despite the wide show of Human rights protection and necessity by the institutions, the violation of Human rights does not seem to stop. “There is, therefore, some sting, but more than a grain of truth in the cynic’s lament that the only thing universal about human rights is their universal violation.”<sup>5</sup>

The key to judge effective governance is through guaranteeing the legal and moral rights by the institutions set up by the government for the protection of rights such as the right to food, health, and housing, justice, and education, conjointly to ensure safety in the country. In India, most of the problems of human rights that come in the focus for the consideration and intervention of the NHRC are related to the nefarious acts performed by the security forces and the police, which include extrajudicial killings, rape, torture, and corruption at all levels of government.<sup>6</sup>

Mindset of superiority and privilege plays a major role in the occurrence of the Human rights violations acts and events. Across the world, NHRIs have been set up to constantly inspect and provide the available safeguards for human rights protection. The NHRC is given the responsibility to keep a check on these kinds of activities in India. The NHRC is provided with powers of a civil court to look into cases of human rights violations. After the inquiry is completed in a particular case, the NHRC can recommend it to the concerned authority to initiate proceedings against those responsible for human rights violations.<sup>7</sup> Here, the authors are putting forward the exact complaints received by the NHRC,

“The following are some complaints received by the NHRC:

- Deaths in Police and judicial custody
- Fake encounters by Police, Army or Paramilitary forces
- Illegal Extortion, Intimidation or detention by police.
- Non- registrations of cases
- Failure in conducting effective investigations

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<sup>5</sup>K G Balakrishnan, ‘Universal Rights and Universal Violations’ *The Hindu* (New Delhi, 11 December 2014) <<http://www.thehindu.com/opinion/op-ed/universal-rights-and-universal-violations/article6680008.ece>> accessed 16 June 2019.

<sup>6</sup>Ibid.

<sup>7</sup>Ibid.

➤ Beating, Torture or rape in police custody or in judicial custody”<sup>8</sup>

The authors have tried to reflect the view that “The denial of human rights and fundamental freedoms not only is an individual and personal tragedy but also creates conditions of social and political unrest, sowing the seeds of violence and conflict within and between societies and nations.”<sup>9</sup>

The authors also put light on the documentation of the Human rights watch about the allegations of torture in Punjab, Manipur and Jammu and Kashmir by both police and the army to explain abuse of power by these forces and also the necessity of providing human rights to the hoi polloi.<sup>10</sup> In *Keshavananda Bharti v. the State of Kerala*<sup>11</sup>, the Supreme Court observed that “*the Universal Declaration of Human Rights (UDHR) may not be a legally binding instrument but it shows how India understood the nature of human rights at the time the Constitution was adopted.*”<sup>12</sup> The Apex Court in a particular case discussed the issues of injuries in police custody.<sup>13</sup>

**V. CASE STUDY- Kulvir Singh Barapind v. Government of Republic of India<sup>14</sup>**

In this case, the Human Rights Watch investigated into the allegations that the Punjab Police tortured Kulvir Singh Barapind after arresting him on the charges of possession of explosives, sedition, and waging war against the State.<sup>15</sup> Kulvir’s lawyer told Human Rights Watch that he had already complained to the magistrate that the police “applied electric shocks to his ears, beat him, and humiliated him.”<sup>16</sup> Barapind was extradited by the United States to India on June 17, 2006, on murder charges after receiving the assurances from India that Barapind would not be tortured. In April 2008, a court in India subsequently acquitted Barapind of all charges of murder and other offenses and released him. In accordance with the above case “It spotlights the urgency for India to enact the

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<sup>8</sup>National Human Rights Commission, ‘Online Training (Basic Course) on Human Rights Issues on the Police Personnel – Unit 2’ < [http://nhrc.nic.in/nhrc\\_ignou.htm](http://nhrc.nic.in/nhrc_ignou.htm)> accessed 18 June 2019.

<sup>9</sup>P C Sinha, *India’s Human Rights Regime* (Kanishka Publishers, New Delhi, 2003) 12.

<sup>10</sup>‘India: Punjab Case Shows Need for Anti-Torture Law, Torture and III-Treatment Raises Bar to Extraditions’ (*Human Rights Watch*, 27 September 2012) <<https://www.hrw.org/news/2012/09/27/india-punjab-case-shows-need-anti-torture-law>> accessed 18 June 2019.

<sup>11</sup>(1973) 4 SCC 225.

<sup>12</sup>Kritika Mahendra, ‘Policing, Ethics & Human Rights in India’ (*Academike*, 05 September 2014) <<https://www.lawctopus.com/academike/policing-ethics-human-rights-india/>> accessed 19 June 2019.

<sup>13</sup>*State of UP v Ram Sagar Yadav* 1985 SCR (2) 621.

<sup>14</sup>50 F Supp 3d 1388 (2014).

<sup>15</sup>‘India: Punjab Case Shows Need for Anti-Torture Law, Torture and III-Treatment Raises Bar to Extraditions’ (*Human Rights Watch*, 27 September 2012) <<https://www.hrw.org/news/2012/09/27/india-punjab-case-shows-need-anti-torture-law>> accessed 18 June 2019.

<sup>16</sup>Ibid.

Prevention of Torture bill and put its provisions into immediate effect. Barapind's case gives the Indian government a high-profile reminder to take action against the chronic problem of torture in custody."<sup>17</sup>

Therefore, the authors are trying to reflect the view that "While police officers must know the limits and nature of their authority, citizens must also know their rights. A proper balance has to be achieved between individual rights and public interest through the mechanism of the Rule of Law. This is the essence of human rights law. The NHRC guidelines are meant to inform citizens as well as the police about their rights and duties; to enable people to protect them with this knowledge and to guide the police in the performance of their task by indicating that any transgression would be illegal."<sup>18</sup> The police have a primary duty to curb any wrongdoing, apprehend criminals, investigate crime, preparing charge sheets, help the courts in particular proceedings also in summoning witnesses and at last help in the adjudication of following matters or cases. Anyone who violates the law should be punished by the Court of Law as nobody is above the law. The largest democratic country is developing and modernizing rapidly, but the security forces and the police continue to function and misuse their power antediluvian methods such as abuse, threats, and torture.

In India, the procedure followed by the police must be lawful, humane and efficient. It is the Government's responsibility to ensure the proper functioning of police agencies. In addition, continuous monitoring and external supervision by the legal institutions is necessary. It is the need of the hour that the police and security forces must abide by the human right regulations to ensure that the human rights are not violated and also to maintain human dignity and involvement of society in policing. This will help in creating a police-friendly environment and it will also help in strengthening the bond between the society and police.

The overall philosophy of the Human Rights jurisprudence is reflected by the Preamble of our country. It is, therefore, of utmost importance that the Constitution is interpreted in the light of objectives enshrined in the Preamble and the highest court of the land i.e. the Supreme Court of India has always regarded the Preamble as an aid in the interpretation of the Constitution. It will not be an exaggeration to say that justice, liberty, equality, and

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<sup>17</sup>Ibid.

<sup>18</sup>Kritika Mahendra, 'Policing, Ethics & Human Rights in India' (*Academike*, 05 September 2014) <<https://www.lawctopus.com/academike/policing-ethics-human-rights-india/>> accessed 19 June 2019.

fraternity are the four pillars of democracy, on which rests the foundations of human rights jurisprudence.<sup>19</sup>

*“The Directive Principles specify the aims and objectives to be taken up by the State in the governance of the country. They are guidelines for the State in the realization of civil and political rights and providing for social, economic and political justice to the people. They state the idea of economic democracy. These provisions have been laid down in the Constitution to provide economic, social and political human rights to the people.”*<sup>20</sup>

In pursuance of the Constitution of India, a set of just and fair rules for the protection of rights has been provided in other criminal laws. The substantive and procedural criminal law also stresses on the need to observe human rights in the administration of criminal justice.<sup>21</sup> “Human rights are prior to and independent of positive international human rights law. Just because a legal order declares, something to be a human right does not make it so. Conversely, the fact that a human right does not receive international legal protection does not mean that it is not a human right. The existence or non-existence of a human right rests on abstract features of what it means to be human and the obligations to which these features give rise.”<sup>22</sup>

“A terrorist’s right can be curtailed, as human rights do not deny the security forces the right to self-defense. The forces also need the protection of human rights. Human rights do not obstruct the security forces from performing their duties. This country and society depend on security forces. The only point from the human rights perspective is that the use of excessive force should be avoided. All that is required from the security forces is that while discharging their duties, they respect human rights.”<sup>23</sup>

The authors would like to provide examples, where the human rights were gravely violated by the police or the security forces and the Court upheld the necessity of securing human rights.

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<sup>19</sup>Dr B R Sharma & Pratima Sharma, ‘Statutory Mechanism for the Protection of Human Rights in India’ (2002) 38 Civil and Military Law Journal 5.

<sup>20</sup>G S Bajwa, *Human Rights in India: Implementation and Violation* (Anmol Publications, New Delhi, 1995) page 27.

<sup>21</sup>Dr S Subramaniam, *Human Rights and Police: AFAP and Security Sciences* (Hyderabad, 1992) page 188.

<sup>22</sup>Patrick Macklem, ‘What are Human Rights?’ (*OUPBlog*, 10 December 2015) <<https://blog.oup.com/2015/12/what-are-human-rights-moral-political-legal-theory/>> accessed 18 June 2019.

<sup>23</sup>‘Security forces require human rights protection: NHRC’ (*India Today*, 4 November 2015) <<http://indiatoday.intoday.in/story/security-forces-require-human-rights-protection-nhrc/1/516302.html>> accessed 23 May 2019.

The Central Government has defended the functions of the police and the security forces in Jammu and Kashmir and other concerned states regarding human rights violations.

One such instance was seen in Imphal and the Apex Court, subsequent to the violations in Imphal, observed that “it is not the Line of Control (LoC) but the heart of the cities like Imphal, is what we are concerned with. Public order needs to be followed.”<sup>24</sup> In this case, the Apex Court reiterated the notion that Human Rights are a part of the basic structure of the Constitution and are saved by the arbitrary actions of Police and Security Forces. The Apex Court in its verdict followed the view of its previous judgments of *Naga People’s Movement of Human Rights v. Union of India*<sup>25</sup> and *Extra-Judicial Execution Victim Families Association v. Union of India*<sup>26</sup>, where it unanimously held, “an allegation of use of excessive force or retaliatory force by uniformed personnel resulting in the death of any person necessitates a thorough inquiry into the incident.”<sup>27</sup> This principle laid down by the Apex Court clearly shows the fact that there is a legal necessity to secure the Human Rights and in the instant case, Supreme Court expressed its concern for the violations of Human Rights in the State of Manipur<sup>28</sup> and issued directions to the CBI for a proper inquiry and tabled the case for the hearing in January 2018.<sup>29</sup>

The other such case was a Suo-moto cognizance by the Apex Court of the events unfolded in Punjab and Bihar in 2013.

In Punjab, on February 4 2013, “television channels showed two Punjab policemen abusing, slapping and caning a 25-year-old Dalit woman and her ex-serviceman father in Tarn Taran. The woman was complaining to police against some taxi drivers who allegedly molested her. Though Punjab government ordered a magisterial inquiry, state police Chief Sumedh Singh Saini defended non-registration of FIR against the two cops involved in the incident.”<sup>30</sup>

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<sup>24</sup>*Extra-Judicial Execution Victim Families Association v Union of India* (2017) 8 SCC 417.

<sup>25</sup>(1998) 2 SCC 109.

<sup>26</sup>(2016) 14 SCC 536.

<sup>27</sup>*Ibid.*

<sup>28</sup>PTI, ‘Human Rights violations by security forces a ‘matter of concern: SC’ *The Indian Express* (New Delhi, 7 September 2016) <<http://indianexpress.com/article/india/india-news-india/human-rights-violations-by-security-forces-a-matter-of-concern-sc-3018952/>> accessed 24 May 2019

<sup>29</sup>*Extra-Judicial Execution Victim Families Association v Union of India* (2017) 8 SCC 417 [49], [50].

<sup>30</sup>Dhananjay Mahapatra, ‘Police brutality is gross human rights violation: SC’ *The Times of India* (Mumbai, 7

March 2013) < <https://timesofindia.indiatimes.com/india/SC-seeks-explanation-from-Punjab-Bihar-on-police-brutality-on-women/articleshow/18828418.cms>> accessed 22 June 2019.

In Bihar, “the incident was related to lathi-charge and tear gas firing by Bihar police on February 5 against contractual teachers who were demanding wages.”<sup>31</sup>

Taking suo-moto cognizance of both these incidents on the basis of media reports, the bench comprised of Justices GS Singhvi and RP Desai said: “both the incidents have shocked the conscience of the entire nation”<sup>32</sup> and blamed the State governments of respective states for the failure of securing human rights. While holding a need to discuss the ambit of Article 21, appointed the-then Attorney General of India and two other senior advocates as *amicus curiae* to help the Court to decide the matter.<sup>33</sup>

These two incidents and the subsequent stand taken by the Court unambiguously prove the importance being attached to the preservation of Human Rights by the Apex Court of the Country and as discussed previously, the Human Rights, irrespective of their recognition, need to be protected by the State machinery.

The authors put significant importance towards the view of the moral and legal character of human rights as “those claims which are in accordance of with some objective standards, whether those of a code of morality or those of a legal system—are usually and aptly called rights. Depending on the basis of recognition, they may be called moral or legal rights.”<sup>34</sup> Also, that “the rights which are laid down in law are called legal rights. They may be defended in a national court of law. Rights arising out of general principles of fairness and justice are called moral rights. A moral right may or may not be supported by the law of the land. Moral rights are thus claimed by people in particular situations. They are not rights that can be claimed by all people in all situations.”<sup>35</sup>

## **VI. EXERCISE OF UNFETTERED DISCRETION BY THE FORCES**

Today, every nation that claims to possess civilized police accepts the doctrine of human rights as fundamental to all principles of governance, and this alone has exerted an enormous restraining influence on the exercise of power by the state democracies across the world.<sup>36</sup> However, despite the efforts made by the International covenants and our own Constitution to safeguard the fundamental and natural human rights, the law enforcement

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<sup>31</sup>Ibid.

<sup>32</sup>Ibid.

<sup>33</sup>PTI, ‘SC seeks explanation from Punjab, Bihar on Police Brutality’ *The Hindu* (New Delhi, 6 March 2013) <<http://www.thehindu.com/news/national/sc-seeks-explanation-from-punjab-bihar-on-police-brutality/article4481900.ece>> accessed 25 May 2019.

<sup>34</sup>Ibid.

<sup>35</sup>Ibid.

<sup>36</sup>R S Pathak, ‘The Protection of Human Rights’ (1978) 18 *Indian Journal of International Law* 265.

agencies and security forces abuse the human rights under the garb of national security and law and order maintenance, not only in India but in different nations and jurisdictions of the World.

We have been witnessing a surge in the cases of political arrests, without any charge and trial by the Police, custodial torture and deaths, forced disappearances, extra-judicial executions, etc. In fact, even the glorified Armed Forces are committing grave human rights' violations, including killings, torture, and rape with impunity, more often. Apart from these instances, there would be many, which are left unreported and are covered up by the state machinery to hide their bloody hands and later wash it away. Besides all these, hundreds of human rights violation cases may have been taking place, unnoticed by Government or Law Enforcement Agencies.<sup>37</sup>

“There have been repeated cases of violation of the Geneva Convention in Jammu and Kashmir. Indian security forces have consistently violated Humanitarian Law, and do not often comply with its provision regarding the treatment of Prisoners-of-War. There were more than 200 incidents of rape in Doda in January 1994 alone. Rape continues to be a major instrument of Indian repression against the Kashmiri people while the majority of casualties in Kashmir are civilians. The Indian authorities have also steadfastly refused to allow any independent monitoring of the situation.”<sup>38</sup>

This research, after analysing the reasons briefly, would like to hold that one of the primary reasons for such abuses is the grant of arbitrary powers to the security forces, sanctioned by the legislature, such as ‘National Security Act, 1980’, ‘Armed Forces (special powers) Act, 1958’, ‘Public Safety Act, 1978 (promulgated by J&K govt.)’. These Acts empower the security forces to kill people indiscriminately and abuse the human rights without the fear of facing any legal repercussions, as they have been doing this under the “unfettered discretion granted to them by the law itself”. These frequent violations of human rights by the security forces aid the secessionist movements by creating a feeling of hatred for India in the minds of the people. The Operation Blue Star and the suppression of the Khalistan movement in the 1980s provides a great example for my statement. According to several different reports and commissions, the Government forces, including Punjab Police and paramilitary forces like CISF, CRPF and even the

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<sup>37</sup>R S Verma & I B S Thokchom, *Law Relating to Custodial Death and Human Rights* (Verma Publications, New Delhi, 2007) page 17.

<sup>38</sup>Renu Mahajan, ‘Violation of Human Rights by The Security Forces in India - A Remedial Study’ (DPhil thesis, Guru Nanak Dev University, Amritsar 2013).

Indian Army, systematically abused the Humanitarian Law and the International notion of human rights by holding summary executions of large numbers of civilians and suspected militants. A good number of people were disappeared and their fate is unknown to date.

“There have been a number of inhuman activities applied by the police and para-military forces, which are as follows: -

- i) Beating before family members and inside the army camps/ stations by hands, lathis, and rifles butts and whips.
- ii) Punching and kicking in the face, head, chest, and abdomen.
- iii) Hanging from the tree, in upside down position or hanging by hands.
- iv) Immersing the head of a person in a bucket or drum of water till he is nearly drowned.
- v) Pouring water over the mouth and nose of a person after he is bound up and immobilized until he is nearly suffocated.
- vi) Staking-a person is made to lie down on the ground, either face up or face down position, and his hands and feet are tied in a spread-eagled manner to stakes driven to the ground. By this method, a person is totally immobilized. Then the person is beaten, kicked or trampled under boots or tortured in other ways. Sometimes lathi is relied forcibly on over his back causing blood vomiting and evacuation of the bowels in severe pain.
- vii) Frame treatment - A person is bound spread-eagled to a vertical rectangular wooden frame and thus, immobilized and tortured.”<sup>39</sup>

Among others, the most disturbing effects on Humans of these inhuman activities are as follows: -

- a) Persons tortured are losing their mental balance, suffering from severe insomnia and are becoming paranoid.
- b) Those given electric shocks on the head are suffering from an intense headache, memory loss, discoordination of thought and action, visual disturbances.
- c) Those who are physically tortured, especially those who are kicked, trampled upon or beaten with blunt lathis are having severe muscle and joint pains, blood vomiting, passage of black colored stool or melena, passage of blood in urine,

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<sup>39</sup>V M Tarkunde, 'Police and Human Rights' (June 1992, PUCL Bulletin) page 8.

inability to use one or more arms, forearms, fingers, legs, etc. and damage reflexes and other neurological features.

- d) Those who have been sexually assaulted are developing loss of libido, impotence and other sexual abnormalities.<sup>40</sup>

Almost a century ahead of the dreadful Jalliahnwala Massacre and where have we come? This question puts a shameful doubt over the Indian Administration. We have been cursing General Dyer for his inhuman action on 13<sup>th</sup> April 1919, but do we ever think, that what different our very own sovereign nation's government has been doing to us? Is there a difference? Yes, that in the former, the people, who were ruling, were not our own but does the latter incident not really prove that the nationality of people ruling does not really matter? Incidents like these have raised doubts on the actions of the Government and have failed the Constitution in many ways.

There have been many instances of human rights abuses by the security forces in J&K or in the North East or anywhere for that matter. However, due to the paucity of the word limit, all of them are impossible to be discussed and therefore, authors gave a brief introduction of how the security forces exercise unrestricted freedom in the name of security and hence, go on to violate human rights on a large scale.

## **VII. COMPARATIVE ANALYSIS**

As discussed above, India has witnessed a number of human rights violations in the past six decades and mainly due to India's incapability of drawing the line of difference between national security and human rights. However, different jurisdictions across the globe have been accused every now and then, either by the UN or by other International bodies for violating the human rights by their security forces. A very few examples have been provided in the paper.

A recent report by Amnesty International has accused the security forces in Tunisia for the Human Right Abuses. "It alleges that security forces have imposed abusive emergency measures which are often enforced based on appearance, religion and previous criminal

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<sup>40</sup>Ibid.

convictions. The study details 23 cases of torture and other ill-treatment by police, the National Guard and counterterrorism brigades since January 2015.”<sup>41</sup>

“According to a report by Human Rights Watch, Egypt’s president, Abdel Fatah al-Sisi, has given police and national security officers a green light to use torture with impunity. Egypt’s epidemic of torture, with techniques including an “assembly line” of beatings, electric shocks, stress positions and sometimes rape by security forces, could amount to a crime against humanity, it said. Torture is against the Egyptian constitution, as well as international human rights law. However, the executive head of the nation has sanctioned it.”<sup>42</sup>

A report by Amnesty International accuses that “the Nigerian military has caused mass abuse of human rights. In the course of security operations against Boko Haram in north-east Nigeria, Nigerian military forces have extrajudicially executed more than 1,200 people; they have arbitrarily arrested at least 20,000 people, mostly young men, and boys; and have committed countless acts of torture.”<sup>43</sup>

The aforementioned are very few of the collective instances of human rights abuses. The authors have just provided this to give an idea of this epidemic, which has spread across the globe. There are many other examples of such abuses, for example in Kenya, Cameroon, Venezuela, Myanmar, and even the United States. No major jurisdiction in the world is free from this problem of balancing the pendulum aptly between human rights and national security. Every now and then, there are instances of human rights violations in the name of national security and there is a need now to do away with this approach and eradicate the existing fallacies in the system to come up with a new public policy in order to balance the two different approaches of a Nation’s civilization.

### **VIII. THE INSENSITIVE APPROACH TOWARDS THE VICTIM**

A Criminal justice system is one of the chief sectors of public administration, mainly comprising three foremost components, viz., police (the law enforcing body); judiciary

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<sup>41</sup>Zoubeir Souissi, ‘Amnesty Accuses Tunisia Security Forces of Abuses’ (*Aljazeera*, 13 February 2017) <<http://www.aljazeera.com/news/2017/02/amnesty-accuses-tunisia-security-forces-abuses-170213144004574.html>> accessed 26 May 2019.

<sup>42</sup>Karen McVeigh, ‘Egypt’s security forces are enforcing ‘torture assembly line’ *The Guardian* (London, 6 September 2017) <<https://www.theguardian.com/global-development/2017/sep/06/egypt-security-forces-enforcing-torture-assembly-human-rights-watch-al-sisi>> accessed 29 May 2019.

<sup>43</sup>Stars On Their Shoulders Blood On Their Hands War Crimes Committed by The Nigerian Military’ (Amnesty International 2015) <<https://www.amnesty.org/en/documents/afr44/1657/2015/en/>> accessed 29 May 2019.

(the adjudicating body); and correctional institutions (jails, prisons). These distinct bodies operate together in the Criminal justice system under the Rule of Law. Its principal object is not only to enforce the law, but also to ensure equity and justice to all and the success and failure of the system help in determining the fate of societal progress.

In a democratic country, the law enforcing body plays a significant role in the prevention of crime and maintaining law and order. Besides this, police have another role to play that is protecting human rights and the interest of the feeble sections of the society. However, over the years, the situation has changed from head to toe and Police Administration has been named as insensitive populace because of being disrespectful to the Human Rights of the hoi polloi.

The station-based model in India has aided the neglecting behavior of police and abuse of victims. Victims who have been subjected to gender-based violence generally fail to report the crime because they feel being physically tortured or humiliated at the police station. Those who do attempt to report crime are often snubbed or asked for a bribe. The victims who are poor and cannot afford a legal counsel are the ones especially exposed to police intimidation.

“The failure on the part of the police to register and investigate the crime depriving the victims of their basic human rights violates the country’s obligation under International Covenant on Civil and Political Rights (ICCPR). Moreover, the UN Human Rights Committee (UNHRC), which monitors the compliance of state parties to the ICCPR, has stated that governments must ensure that victims have “accessible and effective remedies” to vindicate their rights under the treaty.”<sup>44</sup> Further, “every person is entitled, without discrimination, to the equal protection of the law”<sup>45</sup> and this obligation is violated when victims face refusal to register and investigate crimes. Not just this, by failing to register criminal offenses, the police also violate the domestic law. The Criminal Procedure Code requires mandatory registration of FIR by the police whenever any information is received

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<sup>44</sup>UN Human Rights Committee, ‘General Comment No. 31 on article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant’, (U.N. Doc. CCPR/C/74/CRP.4/Rev.6, 29 March 2004).

<sup>45</sup>International Covenant on Civil and Political Rights 1976, art 26.

at their end.<sup>46</sup> In a catena of cases, the Supreme Court has held the registration of information by the Police to be mandatory and they cannot refuse to register the same.<sup>47</sup>

Notwithstanding the obligations under the Indian and International Law, police throughout the country have left no knots untangled in neglecting the victims of the crime and treating them as “forgotten man”. Justice Krishna Iyer, in his writings, has very rightly said: “Tears shed for the accused are traditional and 'trendy' but has the law none for the victim of crime, the unknown martyr?”<sup>48</sup>.

Moreover, the Apex court noted the unwillingness by the police to register FIRs as:

“In spite of law laid down by this Court, the concerned police authorities do not register FIRs unless some direction is given by the Chief Judicial Magistrate or the High Court or this Court. Further experience shows that even after orders are passed by the concerned courts for registration of the case, the police does not take the necessary steps and when matters are brought to the notice of the Inspecting Judges of the High Court during the course of inspection of Courts and Superintendents of Police are taken to task, then only FIRs are registered.”<sup>49</sup>

One of the recent incidents reported in *The Hindu* that draws the attention of the authors was of the insensitive behavior of the police towards road accident victim. The National Human Rights Commission (NHRC) in this case has taken the suo moto cognizance of reports about a 22-year-old victim who was left to bleed on the road and was writhing in pain by the police.<sup>50</sup>

## **IX. CONCLUSION**

India has been regarded widely as the hallmark of peace and democracy. A country with such a designation and being accused of human right abuses does not seem right. However, if the Government has not learned its lesson until now, then it would have to face such accusations, not only from the international corners but also from within the national boundaries.

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<sup>46</sup>Criminal Procedure Code 1973, s 154.

<sup>47</sup>*Ramesh Kumari v State* 2006 (2) SCC 677; *State of Haryana v Bhajan Lal* AIR 1992 SC 604; *State of WB v Swapan Kumar Guha* 1982 SCR (3) 121; *Lalita Kumari v State of UP* (2008) 7 SCC 164.

<sup>48</sup>Justice Krishna Iyer, ‘The Criminal Process and Legal Aid’, *Indian Journal of Criminality*, 10.

<sup>49</sup>*Lalita Kumari v State of UP* (2008) 7 SCC 164.

<sup>50</sup>Mohd Iqbal, ‘NHRC notice on Police insensitivity towards road accident victim’ *The Hindu* (New Delhi, 5 March 2016) < <http://www.thehindu.com/news/national/other-states/nhrc-notice-on-police-insensitivity-towards-road-accident-victim/article8315852.ece/amp/>> accessed 2 June 2019.

On paper, India has a strong commitment to liberal democratic values, and the Supreme Court has, in the past, displayed its commitment to establishing guidelines regarding the treatment of detainees. Despite these valiant attempts at protecting vulnerable citizens from excesses committed by the security forces, the Supreme Court guidelines are often ignored in practice, and an entertained culture of impunity prevails.<sup>51</sup>

In order to curb this menace, the Government ought to carry out large-scale reforms in the Indian National security laws and anti-terrorism laws. It must revisit the provisions of immunity granted to the security forces and also develop or further, strengthen the law on NHRC to make it an effective body with a considerable amount of autonomy.

To avoid the torture and agony to the under trial or under arrest prisoners, the scientific method for investigation must be encouraged in lieu of third-degree physical torture methods. There is also a need for the Government to curb the political interference from the domain of Police and further, educate the police on the civil liberties and human rights. In the contemporary times, after scrutinising the condition of the State of J&K, and the current imposition of Governor's rule, there seems to be a need to draw a line of distinction and to have in place, a policy not only for Police but also for the Armed Forces, to sensitize them about the need to preserve the Human Rights.

There is a very thin margin of difference between providing national security and securing human rights and drawing a line between the two, is a laborious task, which has to be carried out by the government after proper discussion and deliberations with the local authorities and people's representatives.

Furthermore, problems like these cannot have a panacea and a subjective and flexible guideline is the most desired solution. The authors, throughout the paper, have reflected the view that such cases need specific remedies and setting a general law over this will not help to achieve any cause. To secure human rights and ensure national security simultaneously, there is a need to draft comprehensive and idiosyncratic legislation, which would ensure fewer instances of human right abuses without compromising national security.

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<sup>51</sup>Renu Mahajan, 'Violation of Human Rights by The Security Forces in India - A Remedial Study' (DPhil thesis, Guru Nanak Dev University, Amritsar 2013).

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