

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

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Abstract

In this paper an attempt has been made to analyze the existing provisions for the reparation of victims of human rights violations in the State of Jammu and Kashmir. The existing rehabilitation programs for the people affected by conflict are mostly in the form of compensation, exgratia relief and in special cases providing job. No concrete efforts have been taken by the Government towards psychological rehabilitation. Monetary compensation is not adequate to strictly aim at repairing the damage. All injuries/damages cannot be economically assessed. Satisfaction as reparatory measure is least applied.

Keywords: Conflict; Human rights; Rehabilitation; Reparation; Accountability; Compensation; Human rights Violations; Jammu and Kashmir

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).

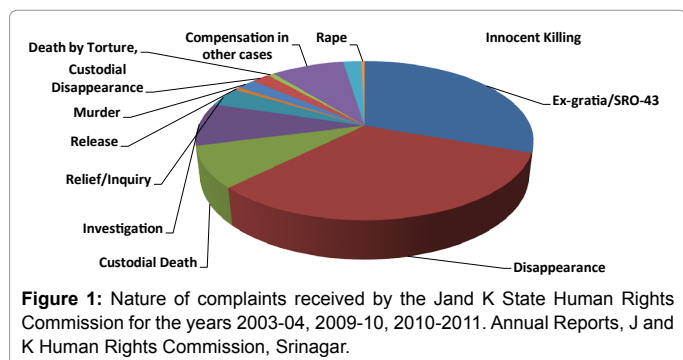
In such situation State is bound of provide reparations to the victims of human rights violations. Reparation has many meanings-judicial and political but common principles include rule of law, imparting justice, dignity and restoration for victims. It is submitted that tests for determining a democratic and civilized State includes; intensity of human rights violations and; existing reparation measures.

By Rehabilitation Process is meant or includes certain measures available or steps taken by the Government, for the victims of conflict. It includes:

- a. Rendering Justice to victims;
- b. By bringing perpetrators to justice;
- c. By obeying the international human rights and humanitarian law;
- d. By respecting the rights of individuals guaranteed under international or regional legal framework;

Year	Complaints Received	Disposed
1998-1999	227	-
1999-2000	326	309
2001-2002	497	169
2002-2003	482	361
2003-2004	572	190
2009-2010	467	249
2010-2011	300	345

Table 1: Complaints of Human Rights Violations in J and K. Reports of SHRC, Kashmir, Srinagar.



- e. By compensating the losses (economic and psychological);
- f. And where ever applicable will also include certain social services.

Objective of the Study

To examine the provisions of law and analyzing the state practice on rehabilitation policies/programmes concerning victims of conflict in the state of Jammu and Kashmir.

Hypothesis

The legal framework and rehabilitation process concerning victims of conflict in the State of Jammu and Kashmir is not in consonance with the international norms.

Research Methodology

In order to acquire the objectives, the literature pertaining to the study was collected and analyzed. The provisions of the law and rehabilitation policies/practices concerning victims of conflict particularly widows and orphans were examined. Study area undertaken is the Kashmir division (J and K). District Srinagar has been taken as 'sample area' for direct interactions. Primary data was collected through field survey to the various institutions concerning widows and orphans in the Kashmir Division. For this purpose various aspects of the study were collected via an interview schedule. The secondary data relevant to the study was collected from various Governmental and non-governmental agencies in the Kashmir Division to study the adequacy of laws dealing with the widows and orphans. The suggestions were framed after careful analysis of the literature and the primary and secondary data collected during the study. Observations were recorded during field surveys to various institutions. The inputs are based mostly on the interaction with victims of conflict, administrators, NGOs, officers and also through the self-appraisal of the situations.

Major Findings

Statistics suggest that human rights abuses have become rampant during conflict. Accountability has remained a serious problem in the State of J and K because of various special laws e.g. the Armed Forces Special Powers Act, 1990 and J and K Public Safety Act, 1978.

While violence/Military related activities has been on a decline in the State of J and K, security forces responsible for serious rights abuses still remain effectively immune from prosecution under AFSPA.

There is no enforceable right to compensation for persons victims of unlawful arrest or detention against the state, as India has made reservation to Article 9, ICCPR, declaring that it 'shall be so applied as to be in consonance with the provisions of clause (3) to (7) of Article 22, so far as the special preventive detention laws are concerned. Such provisions may effectively constitute an offer of impunity to law enforcement agents.

Complaints of human rights violations are to be tried under Court Martial under special laws. Data suggests that during 2001-2009, four (4) cases were under Court Martial proceedings under AFSPA, out of which only two (2) were disposed and in only one case perpetrators were punished. Further data of 2012, shows 24-35 cases were in the list of MOD for the grant of Prosecution under AFSPA; fourteen (14) were denied sanction for prosecution under AFSPA. On June 5, 2009 only one case was under Court Martial Proceedings under AFSPA. According to Government data between 1991- 1996, 272 members of the armed forces had been punished for human rights violations.

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 the Government feels desirable then enhanced relief in terms of SRO-99 to be paid.
- c. Investigation of the cases/complaints by State Crime Branch or police concerned.

The reparation measures available with the Government for the victims of disappearance is provision of ex-gratia (ranging from 1 lac to 2 lacs) or in some cases providing employment to one family member. The Government remedies have failed to alleviate the economic hardship of victims, as the victims are required to wait for 5 years before they can apply for such benefits.

Reparation is the term used for the concrete measures that should be taken to address the suffering of the survivors and the victims and to help them rebuild their lives. The existing Reparation measures available with the government for the victims of victims of Militancy related activities are:

- a. J and K Compassionate Appointment Rules
- b. Payment of cash compensation
- c. Appointment in Government service
- d. Ex-gratia Relief
- e. Rehabilitation Policy for Militants
- f. Rehabilitation Scheme by National Foundation for Communal Harmony
- g. Welfare Measures through Administrative Schemes by Social welfare Department
- h. Pension and Scholarship under rehabilitation Council Scheme (for old age Parents, Widows and Orphans) of Militancy affected Persons.

The categories of victims, who are eligible under Rehabilitation Council Scheme of Militancy affected Persons, are:

- a. Widows and grown up daughters of widows affected by Militancy
- b. Disabled persons due to Militancy
- c. Old age parent who has lost a primary bread earner due to

Militancy.

- d. Orphans due to Militancy
- e. Students belonging to a family whose bread earner has been disabled due to Militancy.
- f. Students whose family has been forced migrate out of Kashmir due to disturbed conditions and have been registered as migrants.

Widows and Orphans of Militancy are eligible under both general category social welfare schemes; and also under special schemes meant for Militancy related activities. But the amount provided under special schemes is more in comparison to general category schemes.

Implementation of Centrally sponsored schemes in J and K is not satisfactory. For the year 2005-07, out of the total amount allotted only 44% was utilized. Similarly in 2006-07, 46%; 2007-08, 41% and in 2008-09, 45% was utilized respectively. Rest of the amount remained undisbursed.

So far as the implementation of schemes of J and K State Rehabilitation Council is concerned, the data reflects that in 2007-08, rupees 290.02 lacs; 2008-09 rupees 327.26; 2009-10 rupees 366.30 lacs; and in the year 2010-2011 rupees 335.04 lacs were utilized as pension for widows of conflict. The number of widow beneficiaries during the year 2008-09 were 4023; in 2009-10, 4275 beneficiaries; and during 2010-2011 there were 3840 widow beneficiaries.

The data given by Government suggests that there are about 23,000 conflict affected widows in J and K, but the beneficiaries under the schemes of J and K State Rehabilitation Council are about 4500. It reflects the non-awareness and weaker implementation of special monetary schemes. Same is the position for the scheme of 'Marriage Assistance to Young Widows and Grown up Daughters', as in 2008-09 there were only 95 beneficiaries under this scheme, respectively, in 2009-10, 49 beneficiaries and in 2010-2011, 178 beneficiaries in the Kashmir Division.

Under the scheme of Scholarship to Orphans of Killed Militants (Without Discrimination) the numbers of beneficiaries in 2008-09, were 541; in the year 2009-10, 1425, and in 2010-11, 1815 orphans were benefited.

Again if we look into the number of orphans in the State of J and K, there are 2,14,000 orphans, out of which 37% are orphaned due to Militancy. It means that there are 79180 orphans affected by militancy related activities, and the Government is providing scholarship to only 1815 orphans due to militancy, rest of 77375 are not receiving any benefit in the form of scholarship.

Three schemes under Rehabilitation of Militancy Affected Victims, namely Scholarship for Professional Studies, Psychological Rehabilitation/Financial Assistance for exceptional cases are non-functional as there were no beneficiaries for the years 2008-09, 2009-10 and 2010-11 respectively, thereby depicting the decimal performance of such schemes.

Under the Scheme of Pension to Handicapped/Disabled Persons due to Militancy related activities, for the years 2008-09, 2009-10 and 2010-11, there were 605,788 and 890 beneficiaries respectively.

For the year total number of beneficiaries in the Kashmir Division, were 1823 under the Militancy Hit Victims Scheme by J and K State Rehabilitation Council, and 275 in Jammu Division.

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/ programs is concerned. The said Department is yet without its official website, as such keeping the public in dark. This could lead to the distortion of the facts by the officials and encourage them to embezzle public money. Without official data and facts, the door for litigation is closed forever. It is submitted that it is a gross violation of people's right to information and also other rights connected with it guaranteed under Indian constitution.

Study survey revealed that there is no rehabilitation program for double orphans or for single orphans who have no or meager economic resources, after leaving the institution/orphanage. Further, only those orphans, who are already studying or, want to continue their studies, can be admitted into the Government institutions/ orphanages. It is submitted that, orphan children who are engaged in child labor and, orphans who don't want to continue their studies, are not eligible for admission to such institutions. There is no law or program for catering the needs of such children. It is submitted that the State, by not bridging such a huge legal gap in such cases, is rather encouraging child labor. The fact which came to light is that orphan hood is one of the reason contributing to child labor.

Majority of the respondents (parents and relatives of disappeared persons) on being asked whether they have applied for compensation, replied in affirmative, with few replying that they don't want to apply for and receive compensation for the losses they suffered.

Respondents (parents and relatives of disappeared persons) who have received compensation responded that they have received one lakh from Government as compensation, after following hectic procedure. With respect to the satisfaction with the compensation the received, parents and relatives of disappeared persons replied that it is meager amount. They expressed that they received such amount under economic compulsions, as no money can recompensate the loss they have suffered, i.e. the life of their loved ones.

In response to a query as to what type of relief the victims (parents and relatives of disappeared persons) want against the disappearance of their loved ones, all replied that they want justice to be done against this continuous offence. Further they want their loved one's back, want to know about their whereabouts, and for those disappeared declared dead, they want their mortals for that will give them mental satisfaction otherwise they will wander continuously in search of the disappeared person. They strongly stressed on this point that those responsible for the disappearance, shall be brought to justice and be held accountable and punished accordingly. They opposed the impunity of armed forces under special laws, as it hinders the process of getting justice against this heinous offence of 'disappearance'. Half widows expressed their sufferings by stating that they are not entitled to any sort of relief/ compensation, till their disappeared husbands are declared dead whatsoever earlier, otherwise they are required to wait for seven years. There is no scheme which provides them a sort of interim relief during such period.

On being asked the questions (to advocates and judiciary) about the lacunae in the existing rehabilitation programs/welfare schemes pertaining to victims of conflict and whether the right to justice of victims of human rights violations is respected; the unanimous response was that there are various hurdles coming into the implementation of right to justice. First protective human rights machinery is toothless as its recommendations are not binding and efficiently implemented. Second is the impunity given to security forces by special laws, whereby victims are rendered helpless to seek remedy. Defence ministry seldom grants permission for the conduct of trials in regular courts; and victims of human rights violations are made to wait for years together even for grant of permission of trials under Court Martial, resulting in loss of interest in seeking justice during this time period. The compensation provided under various rehabilitation programs is really very meager. The government in special cases should provide job instead of monetary compensation to the affected families, whose main bread earner, is killed or rendered incapacitated to earn his livelihood. Judiciary can play really very important role in rebuilding the faith of people on justice system by efficiently exercising judicial activism and awarding adequate compensation to the victims of human rights violations. Judiciary can balance the rights of victims of conflict and governments power to maintain law and order, by enforcing the principle of accountability-as the main pillar of right to justice. Issues of punishing the guilty and rehabilitating the victims should not be confused with each other as these are two different issues on which work needs to be done. Nobody buy out the demands of punishing the guilty by doing out help to the victims. So far as the monetary values of schemes/rehabilitation programs relating victims of militancy are concerned, monthly pension or scholarships are not up to minimum market standard, and it probably seems the reason that less number of victims of militancy hit victims are applying under such schemes. Government should revise the monetary value of monthly pensions or scholarships so as to recompensate the economic losses to some extent.

Conclusion

It appears from the analysis of the various provisions of the laws that the legal framework concerning the rehabilitation of victims of conflict is inadequate. The government should take strong and positive initiative both at national and state level to develop effective reparation programs. In the State of Jammu and Kashmir, the old and out dated administrative schemes and social welfare measures need to be reviewed and revised. Solid rehabilitation programs should be framed keeping in view the increasing numbers of victims because of

conflict situation in this state. Study also revealed that implementation of the existing laws and social welfare legislations are non-satisfactory and insufficient. It is submitted that the simple procedural laws in this direction are also required to be framed so that the social welfare legislations can be implemented without any hurdle. The hypothesis thus postulated could not be nullified and it appears that the provisions of the law and the implementation thereof relating to the victims of conflict in the Kashmir Division are apparently inadequate.

Suggestions

Security laws that provide legal immunity to the armed forces must be repealed and disappearance cases in general must be resolved and families told the where about of their loved ones, dead or alive. Without any delay AFSPA be repealed.

Repeal the PSA and end the system of administrative detention in J and K, charging those suspected of committing criminal acts with recognizably criminal offences and trying them in a court of law with all safeguards for fair trial.

Compensation must equal the financially assessable value of all damage suffered, particularly:

- (a) Physical or mental injury, including pain, suffering and emotional shocks;
- (b) The loss of an opportunity, including educational opportunities;
- (c) Material damage and loss of income, including loss of earnings;
- (d) Attacks on reputation or dignity;
- (e) Costs of legal assistance and valuations.

There is need for establishment of Truth and Conciliation Commission in the State of J and K for addressing the issues related to all communities affected by over two long decade disturbance. Even in March 2011, Chief Minister had suggested setting up of a Truth and Reconciliation Commission to probe the deaths and destructions in militancy related violence in J and K.

The government must immediately pass special legislation on enforced disappearances. The International Convention for the Protection of All Persons from Enforced Disappearances, which the Indian government has signed and must ratify.

When the fate of a disappeared person is elucidated, the victim's family must be notified so that, should the victim have died, the body can be reclaimed after identification whether or not the perpetrators have been identified, prosecuted or tried.

There is need for including armed forces within the ambit of Protection of Human Rights Act, as large number of human rights violations occurs in areas where there is conflict or internal disturbance.

Legal assistance should be provided to victims of conflict. There is need for assertive citizen movements calling for greater Government accountability and demanding more protection of basic rights.

There is need for human rights advocacy, monitoring violations, collection and management of data. Increased support for civil society groups in particular NGO's and independent data.

An awareness program, adult education program, counseling program by the government and nongovernment organizations should be organized for the victims of conflict for a better and purposeful future.

Plans should be formulated by involving field functionaries to derive maximum benefit from various schemes.

Funds should be released to the implementing agencies in time for timely utilization.

Monitoring mechanism should be strengthened at various levels to achieve the objectives of the department. The Government must allocate adequate resources to relevant departments; the reimbursement of such amount should be made available in a transparent manner through websites pertaining to each and every concerned department.

Government is not fulfilling its duties properly and only meager amount is paid under various schemes/programs which had been framed much earlier. Government must revise such amount/allowance keeping in view the minimum demands of present time.

In order to accelerate the pace of welfare of victims, the legislation needs to be examined with a view to removing their lacuna. Their implementation in letter and spirit is also imperative to give justice to victims affected by conflict. Employment training and related services for orphans and other vulnerable children who are of legal working age should be provided.

Support of orphans children through institutionalization be stopped and programs of foster care and kinship care be formulated which will help them to reintegrate them into society effectively. Promotion of Human rights education for awareness of citizens and promote the implementation of human rights.

Government should frame a scheme where under half widows should be entitled to interim relief till the whereabouts of their disappeared husbands are known (dead or alive), immediately after a period of at least one year from the date of disappearance of their husbands. Such scheme can be in the form of monthly pension. It should continue till seven years are passed, or till the whereabouts are known, and after the expiry of seven years she should be given full amount of adequate compensation in addition to monthly pension. There is a dire need for establishing a national fund to support widows and orphans of conflict in the state of Jammu and Kashmir.

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