



ISSUE BRIEF

No. 149

August 2018

Stone-Pelting in Kashmir Valley¹: Violation of Human Rights of Armed Forces Personnel



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"Our citizens in uniform may not be stripped of basic rights simply because they have doffed their civilian clothes."²

INTRODUCTION

"The space for legitimate dissent is the distinguishing feature of any democracy."³ The Constitution of India under Article 19(1)(b) protects freedom of speech, allowing citizens, for one, the right "to assemble peaceably and without arms." These are the natural rights of a free man, not created by a statute. They are inherent in the status of a citizen in a free country.⁴ But, every citizen is entitled to exercise such rights provided conditions to be imposed whenever so required by the State.⁵ Since India is a party to the International Covenant on Civil and Political Rights, the State is obliged to protect the right to freedom of expression and opinion,⁶ but restrictions may be imposed on certain grounds including protection of "public order."⁷

In *A K Gopalan v. State of Madras*,⁸ Justice Patanjali Shastri observed: "Man as a rational being desires to do many things, but in a civil

Key Points

1. Even though the right to dissent is an integral feature of any democracy, however, violent protests, including pelting stones and attacking with petrol bombs does not fall under the ambit of Article 19, Constitution of India.
2. Stone pelting in the Kashmir Valley is a threat to the security, sovereignty and integrity of the State and also to the security of the armed forces personnel.
3. All persons, including armed forces personnel who are carrying out their bonafide duty, have the right to life and the right to self-defence under the law.
4. Use of legitimate force to counter violent mobs(armed with stones, petrol bombs, etc, capable of causing grievous injury and even death), is justified in the interest of the security, sovereignty and integrity of the State and the protection of the life of the armed forces personnel.

The Centre for Land Warfare Studies (CLAWS), New Delhi, is an independent think-tank dealing with national security and conceptual aspects of land warfare, including conventional and sub-conventional conflict and terrorism. CLAWS conducts research that is futuristic in outlook and policy-oriented in approach.

Stone-Pelting in Kashmir Valley ...

society his desires have to be controlled, regulated and reconciled with the exercise of similar desires by other individuals.” Otherwise, the rights and freedoms may become synonymous with anarchy and disorder.⁹ Therefore, it is the duty of the Constitution that a balance be struck between individual liberty and social control as explained by the Supreme Court.¹⁰ Hence, the right conferred under the said article of the Indian Constitution is not absolute and is subject to, in the interests of the sovereignty and integrity of India or public order.¹¹ Such restrictions may also lead to prohibition.¹² But, wherever a “prohibition” is imposed, besides satisfying all the tests of a reasonable “restriction,” it must also satisfy the requirement that any lesser alternative would be inadequate.¹³

Demonstrations whether political, religious or social or other demonstrations which create public disturbances or operate as nuisances, or create or manifestly threaten some tangible public or private mischief, are not covered by protection under Article 19(1). For instance, stone-throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within Article 19(1)(a) or (b).¹⁴ In the above case, the bench consisting of Justices A K Sikri and Ashok Bhushan observed that even though the reason for the demonstration might be genuine, this did not give agitators the licence to resort to violence, destroying property and, at times, lives of citizens. Only the right to peaceful protest is now recognised as a fundamental right in the Constitution.¹⁵

The Court while drawing the distinction between public order and law and order held that public order is said to be affected where the “degree and extent” of the contravention of law is such that it “disturbs the current life of a community and public tranquillity.”¹⁶ However, there must be a reasonable and proper nexus between the restrictions and the achievements of public order¹⁷ and shall be in public interest.¹⁸ Furthermore, the action taken by a public authority which is entrusted with the statutory power has to be within the scope of the authority conferred

by law.¹⁹ Maintenance of public order comes under the jurisdiction of a State as under Entry 1, List 2 of the Seventh Schedule. Even though the Constitution of India has made a distinction between “the members of the “Armed Forces” meaning soldiers,²⁰ and “members of the forces charged with the maintenance of public order,”²¹ meaning police personnel, however, the Union Government, may deploy armed forces in any state in aid of civil power in terms of Entry 2A, List 1 of the Seventh schedule.²²

Moreover, Justice Patanjali Shastri in *State of Madras v. V G Row*²³ held:

“It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard or general pattern of reasonableness, can be laid down as applicable to all cases.” In the above judgment, the Court held that the court has to keep in mind that the restriction should be founded on the principle of least invasiveness, i.e., the restriction should be imposed in a manner and to the extent which is unavoidable in a given situation. The Court would also take into consideration whether the anticipated event would or would not be intrinsically dangerous to public interest.

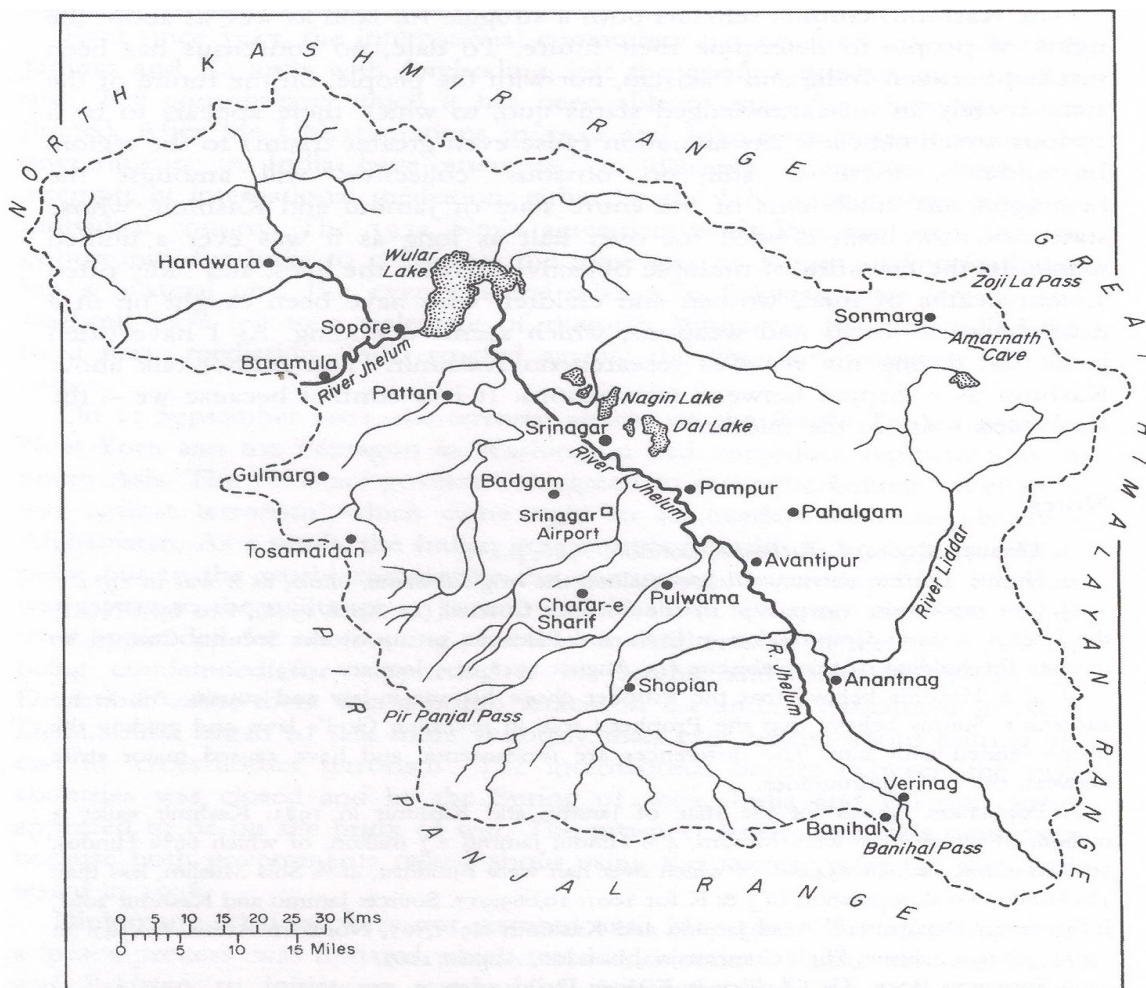
However, reasonable restrictions can be imposed only by a duly enacted law and not by executive action unsupported by law.²⁴ The law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life but only when less extreme means are insufficient to achieve these objectives and sufficient warning has been given. Moreover, under any circumstances, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.²⁵

Furthermore, governments and law enforcement agencies and officials may use force and firearms to disperse violent assemblies, but only when less dangerous means are not practicable and that to the minimum extent necessary.²⁶

If force or violence is used by an unlawful assembly or any member thereof in prosecution of the common objective of such assembly, every member of such assembly is guilty of the offence of rioting under Section 146 and under Section 147, Ranbir Penal Code, 1949²⁷ punishable with two years imprisonment. To constitute the offence of rioting under Section 146, the use of force or violence need not necessarily result in the achievement of the common object.²⁸ In other words, the employment of force or violence need not result in the commission of a crime or the achievement of any one of the five enumerated common objects under Section

constitute an offence under Section 146, the members of the “unlawful assembly” need not carry weapons. But to constitute an offence under Section 148, a person must be a member of an unlawful assembly, such assembly is also guilty of the offence of rioting under Section 146 and the person charged with an offence under Section 148 must also be armed with a deadly weapon.²⁹ In cases where a large number of accused constituting an “unlawful assembly” are alleged to have attacked and killed one or more persons, it is not necessary that each of the accused should inflict fatal injuries or any injury at all.³⁰

The Map of the Kashmir Valley³¹



141. Section 148 declares that rioting armed with deadly weapons is a distinct offence punishable with the longer period of imprisonment (three years). There is a distinction between the offences under 146 and 148. To

Rise in Agitational Politics

Since 2008, Kashmir has witnessed a major shift from terrorist related violence to stone-pelting. Even though the terrorist activities reduced significantly post the peace process initiated by the then Prime Minister

Atal Bihari Vajpayee, the separatist sentiment within the Kashmiri society has witnessed a steep rise over the last few years, especially after the killing of Burhan Wani on 8 July 2016.

In 2016, the stone-pelting incidents were confined to the Kashmir Valley. However, in 2017, even the areas around Jammu witnessed incidents of stone-pelting, though on a smaller scale. However, these incidents have been sporadic in nature, thereby leaving parts of the Valley unaffected or marginally affected.

Nowadays, it is not unusual for middle-aged women to gherao a security post and snatch a security personnel's weapon; or for civilians to obstruct encounters with stones that act as a cover for the militants being shot down.³² Moreover, even terrorists disguised as stone-pelters have attacked the security forces in the Valley, severely injuring the security personnel.³³ Apart from this, in June 2017, a senior police officer was lynched by a mob in Srinagar.

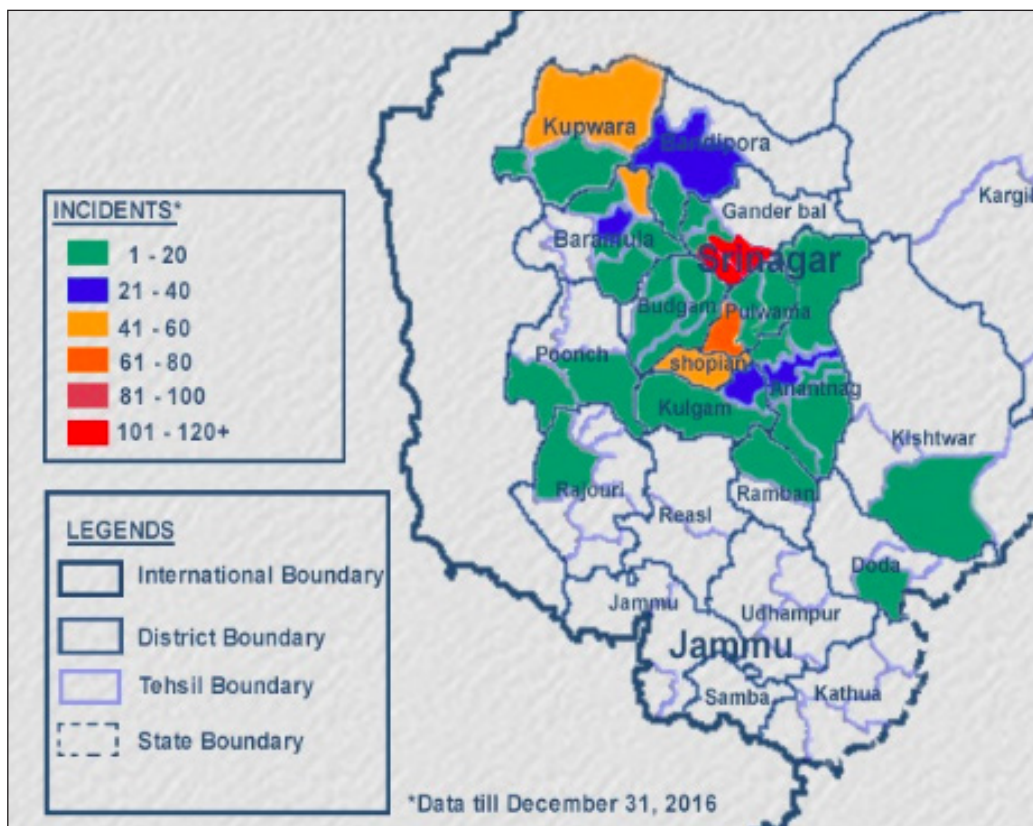
Due to the increase in the mob violence across the valley, the security forces have suffered heavy casualties since 2015, the highest in 2017 (9,235). The following table shows the number of casualties suffered by the security forces in stone-pelting incidents in the Kashmir Valley from 2015-2017.

| Year | No. of Incidents | Casualties Suffered by Security Forces |
|------|------------------|--|
| 2015 | 730 | 641 |
| 2016 | 2808 | 9,235 |
| 2017 | 1261 | 1,690 |

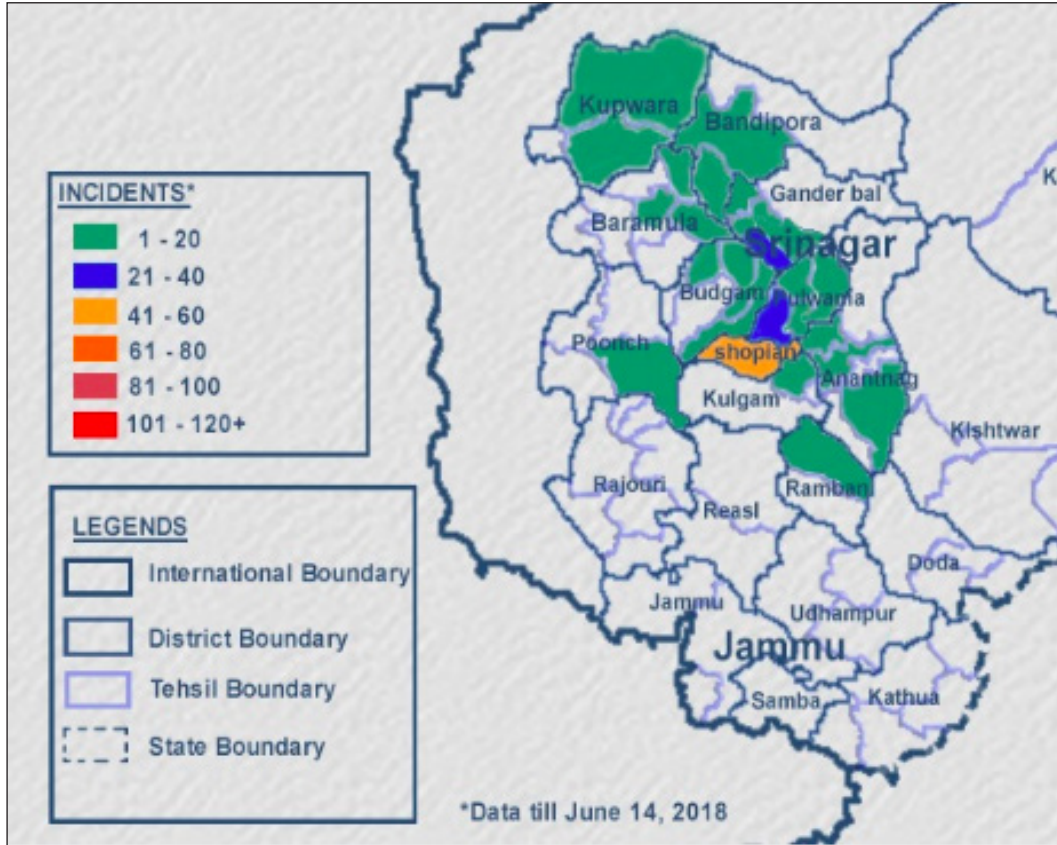
Year-Wise Data on the Number of Casualties Suffered by Security Forces in Stone-Pelting Incidents from 2015 to 2017³⁷

Apart from Kashmir, force had to be used as a self-defence measure to counter a violent assembly in France during the Euro 2016³⁸ and FIFA World Cup this year. In July 2018, in Paris, even though the French people had gathered to celebrate the victory of France, however, the assembly soon turned violent. People were running down the street with flares and were

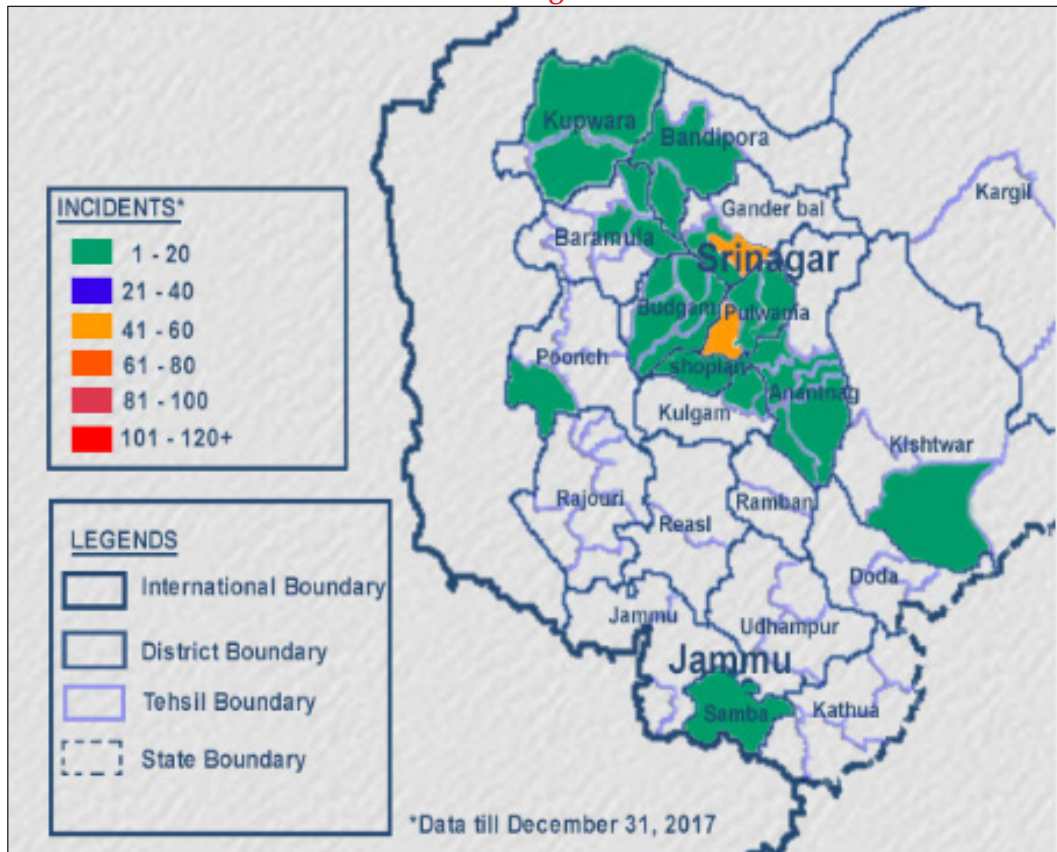
Stone-Pelting in 2016³⁴



Stone-Pelting in 2018³⁶



Stone-Pelting in 2017³⁵



throwing stones, bottles, metal barriers, traffic cones, etc., at the police.³⁹ After all peaceful methods to disperse the crowd proved to be futile, the police had to resort to using teargas to disperse the violent crowd in order to restore normalcy in the area.

However, stone-pelting is not a recent phenomenon. The Israel Defence Forces (IDF) have been tackling violent protests, including stone-pelting and attacks with Molotov cocktail, since the First Intifada in 1987. The IDF had adopted certain non-lethal methods to counter violent, stone-pelting mobs which included, a device called “scream,” skunk spray, painted bullets, tranquiliser bullets and rubber-coated steel bullets, etc. However, the forces resorted to firing only as a means of “self-defence” in extreme circumstances.⁴⁰ In 2015, the Knesset had approved an amendment to the penal law, imposing a minimum statutory penalty for unlawfully attempting to cause serious harm by pelting stones, maximum being imprisonment for twenty years. It has added “stones” to the list of items with which it is unlawful to “attempt to strike a person” with the intention “to disable, disfigure or do grievous harm to another.” Such an act constitutes an offence of “harm with aggravating intent.”⁴¹ Moreover, the Supreme Court of Israel had recognised that a stone, under certain circumstances, may “have the potential of causing injury and may be considered ‘a dangerous or harmful weapon’ as required under the provision.”⁴²

Shopian Firing Case

In January 2018, in Shopian District of Jammu and Kashmir, a “disturbed area” under Armed Forces Special Powers Act (Jammu and Kashmir), 1990, an Indian Army convoy was on bona fide military duty. It was isolated by an unruly and violent mob and came under unprovoked and intense stone-pelting by a group of 100-120 stone-pelters who also attacked with petrol bombs.⁴³ This caused considerable damage to the military vehicles and put the lives of the military personnel in danger. As the violent mob was obstructing the personnel from performance of their bona fide duties, it was directed to disperse. When the situation went out of control, a warning was issued to the unlawful assembly to disperse in strict compliance

with the established rules of engagement in such situations.

However, they refused to disperse and increased their unlawful activities. Furthermore, they got hold of a Junior Commissioned Officer (JCO) and were in the process of lynching him to death. As a preventive measure, warning shots were fired in the air in accordance to the rules of engagement. When the violent mob refused to spare the life of the JCO, the army personnel opened fire with an objective to disperse the violent mob and protect the government servants and property.

The following sections of this brief aim to analyse the above case in the light of Right to Self-Defence of Armed Forces personnel in such situations under the following:

- Constitution of India
- Criminal Law, as applicable to the state of Jammu and Kashmir.

CONSTITUTION OF INDIA

Supremacy of the Constitution of India

The supremacy of the Constitution of India is one of its cardinal features, or, a part of “the basic structure of the Constitution.”⁴⁴ Article 1⁴⁵ of the Constitution of India and Section 3⁴⁶ of the Jammu and Kashmir Constitution clarify that India shall be a Union of States, and that the State of Jammu and Kashmir is and shall be an integral part of the Union of India.⁴⁷ Moreover, unlike in the Preamble of the Indian Constitution,⁴⁸ the word “sovereignty” does not find a mention anywhere in the Preamble of the Constitution of Jammu and Kashmir, neither is there any mention or usage of the expression “citizen” while referring to the people. On the contrary, the people of Jammu and Kashmir are referred to as “permanent residents” under Part III of the Constitution of Jammu and Kashmir. Therefore, the State of Jammu and Kashmir has no vestige of sovereignty outside the Constitution of India and its own Constitution, which is subordinate to the Constitution of India. Also, the residents of Jammu and Kashmir are first and foremost citizens of India.⁴⁹

Preamble of the Constitution of India

The Preamble to the Constitution of India has recognised the security of a living being as the fundamental need of society. It is the obligation of the State, enshrined under Article 38⁵⁰ to secure a social order for the promotion of welfare of the people. Social order includes law and order, public order and the security of the State as well.⁵¹ Moreover, the State is under an obligation to protect the life of every citizen and non-citizen of India.⁵² Even though the Directive Principles of State Policy are not judicially enforceable, but Article 37⁵³ clarifies that this does not take away the duty of the State to apply them while making legislation.

The rights guaranteed under Part III of the Constitution of India are paramount,⁵⁴ inalienable, inviolable⁵⁵ and sacrosanct.⁵⁶ The Directive Principles of State Policy, together with the Fundamental Rights, state the features of constitutionally desired social order.⁵⁷

Article 21 and Right to Self-Defence

Self-preservation is the basic human instinct and is duly recognised by the criminal jurisprudence of all civilised countries. All free, democratic and civilised countries recognise the right of private defence within certain reasonable limits.⁵⁸ Article 21⁵⁹ of the Constitution of India guarantees the right to life to every citizen and non-citizen of India. However, the Constitution of India does not recognise “security of a person” expressly, hence, it is left to one’s interpretation to read it as implied under any of the provisions of either Part III or Part IV.

In *Surjit Singh v. State of Punjab And Ors.*,⁶⁰ the Supreme Court held that self-preservation is linked to the right to life under Article 21 of the Constitution of India. It held: “It is otherwise important to bear in mind that self-preservation of one’s life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of self-defence in criminal law.”⁶¹

Moreover, India is a party to the Universal Declaration of Human Rights (UDHR), 1948 and to the International Convention on Civil and Political Rights (ICCPR), 1976. The UDHR provides for right to life, liberty and security of person to every person.⁶² Also, the ICCPR, apart from providing for right to life,⁶³ also states that everyone has a right to security of person.⁶⁴ Even though an international covenant does not become an enforceable part of the “Corpus Juris” in India,⁶⁵ the applicability of the UDHR and its principles may have to be read, if need be, into the domestic jurisprudence.⁶⁶ The Supreme Court has held that Article 21 of the Constitution of India with respect to human rights has to be interpreted in accordance with international law.⁶⁷

Article 33 and Article 21

The right to life under Article 21 is not absolute in nature. A person can be deprived of his right to life according to procedure established by law. In case of armed forces personnel, the State may, by enacting a law, restrict or revoke their fundamental rights in order to ensure the proper discharge of their duties and the maintenance of discipline.⁶⁸ However, this extends only so far as necessary for maintaining discipline and ensure proper discharge of duties by the armed forces personnel.⁶⁹

In pursuance of the power conferred to the Parliament, it has enacted the Army Act, 1950. Section 21⁷⁰ of the Army Act, 1950, confers additional power to the State to modify the rights conferred by Articles 19(1)(a)⁷¹ and 19(1)(c)⁷² of the Constitution of India. If any provision of the Army Act is in conflict with fundamental rights it shall have to be read subject to Art. 33 as being enacted with a view to either restricting or abrogating the fundamental rights to the extent of inconsistency or repugnancy between Part III and the Army Act.⁷³

However, neither the Army Act, 1950 nor the Armed Forces (Jammu and Kashmir) Special Powers Act (AFSPA), 1990 restricts an armed forces personnel’s right to life and self-preservation as guaranteed under Article 21 of the Constitution of India.

Also, Parliament has not enacted any legislation which restricts an army personnel's right to self-defence under Article 21 of the Indian Constitution. Moreover, in *Lt. Col. Prithi Pal Singh Bedi v. Union of India and Ors.*,⁷⁴ the Court expressed concern in the following manner:

"In the larger interest of national security and military discipline Parliament in its wisdom may restrict or abrogate such rights in their application to the Armed Forces but this process should not be carried so far as to create a class of citizens not entitled to the benefits of the liberal spirit of the Constitution."

CRIMINAL LAW

"Justification does not make a criminal use of force lawful; if the use of force is justified, it cannot be criminal at all."⁷⁵ The rule pertaining to the right of self-defence has been stated by William Oldnall Russell as "... a man is justified in resisting by force anyone who manifestly intends and endeavours by violence or surprise to commit a known felony against either his person, habitation or property. In these cases he is not obliged to retreat, and may not merely resist the attack where he stands but may indeed pursue his adversary until the danger is ended, and if in a conflict between them he happens to kill his attacker, such killing is justifiable."⁷⁶

Michael Gorr, a legal philosopher observed: "Extreme pacifists aside, virtually everyone agrees that it is sometimes morally permissible to engage in what Glanville Williams has termed 'private defence,' i.e., to inflict serious (even lethal) harm upon another person in order to protect oneself or some innocent third party from suffering the same."⁷⁷

In *Ethics, Killing, and War*,⁷⁸ Richard Norman argues that killing another person is an inherently wrong act as it violates the basic elements of moral relations, causing an irreplaceable loss. However, he does not assert that killing is absolutely, always wrong. According to him, there exists one situation in which killing another person is justified by the same moral responses that generally prohibit killing. That situation is one when a person kills in justified

self-defence. However, it is justified only when three conditions are met. Firstly, the attacker must be "forcing a choice" between lives. Secondly, he must be morally responsible for that choice. And, third, the attacker's threat must be so immediate that the victim has no option to save his or her life other than killing the attacker. When these three conditions are met, the victim's killing of her attacker creates a moral outcome that is preferable to her being killed by him.

Under Ranbir Penal Code (RPC), 1949

Nothing is an offence done in the exercise of right to private defence.⁷⁹ This right can be exercised to defend oneself but not to retaliate.⁸⁰ A person can defend his own body, and the body of any other person, against any offence affecting the human body; and also the property, whether movable or immovable, of himself or of any other person.⁸¹

This right is available to a person who is suddenly confronted with immediate necessity of averting an impending danger which is not his own creation. The necessity must be present, real or apparent.⁸² However, due consideration has to be given to what happens on the spur of the moment on the spot, keeping in view normal human reaction and conduct.⁸³ In *Deo Narain v. State of U.P.*,⁸⁴ the Supreme Court held that right to private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence and a mere reasonable apprehension is enough to put the right of self-defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.⁸⁵

This right available under Sec. 96, RPC, extends to causing death under two conditions. First, that there exists an apprehension that death will otherwise be the consequence of such assault. Second, that there is an apprehension that grievous hurt will otherwise be

the consequence of such assault.⁸⁶ However, there is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant⁸⁷ acting in good faith⁸⁸ under colour of his office, though that act, may not be strictly justifiable by law.⁸⁹

CONCLUSION

In light of the facts of the case and the above arguments, it is stated that even though a citizen of India has the right to assemble peacefully, however, in the present case, it was an unlawful assembly which was violent and armed (stones and petrol bombs)⁹⁰, which, by use of criminal force was trying to overawe the armed forces personnel in the exercise of their lawful power as the mob had damaged several army vehicles and was about to lynch a JCO. This disrupted the public order in that area and posed a threat to the sovereignty and integrity of India. Hence, it was outside the ambit of Article 19 as only a peaceful protest is a fundamental right under the Constitution of India.⁹¹

As the assembly was acting in contravention of the law as explained above, the army personnel under the AFSPA (Jammu and Kashmir, 1990,⁹² had the authority to open fire or otherwise use force upon them, after issuing due warning. Moreover, even under the

Ranbir Penal Code, 1949, it was an unlawful assembly, armed with instruments capable of causing grievous injury and even death, which by use of criminal force was trying to overawe the armed forces personnel in exercise of their lawful power. Moreover, rioting⁹³ and assaulting or obstructing a public servant when suppressing a riot,⁹⁴ etc., is also prohibited under the law.

Even if the AFSPA had not been in force in the Shopian District in Jammu and Kashmir, the Constitution of India guarantees the right to life to every citizen and non-citizen of India and right to self-preservation is an integral part of right to life under Article 21 and the State is bound to protect the life and liberty of every person and it cannot permit anybody or group of persons to threaten it.⁹⁵ Furthermore, as an individual citizen, the personnel have the right to self-defence under RPC, 1949 as the threat was imminent, and it would have otherwise led to death of the armed forces personnel.

Thus, from the above it is clear that the even though a citizen has the right to dissent under the Constitution of India, the Army personnel so acting and the manner in which they so acted are within the confines of the protection available under the Armed Forces (Jammu and Kashmir) Special Powers Act 1990, the Constitution of India and the Ranbir Penal Code, 1949.

Notes

1. The Valley of Kashmir or Kashmir is among the three regions of the state of Jammu and Kashmir, the other two being Jammu and Ladakh. Unless indicated otherwise, Kashmir connotes the Kashmir Valley.
2. *Chappell v. Wallace*, United States Supreme Court, June 13, 1983, United States Reports, Vol. 462, 1983, pp. 296, 304 (quoting Earl Warren, "The Bill of Rights and the Military," *New York University Law Review*, Vol. 37, 1962, pp. 181, 188).
3. *Anita Thakur and Ors. v. Govt. of J&K and Ors.* (2016).
4. *State of West Bengal v. Subodh Gopal Bose and Others*, AIR 1954 SC 92.
5. *A K Gopalan v. State of Madras*, AIR 1950 SC 27
6. Article 19, International Covenant on Civil and Political Rights, 1976.
7. Article 19(3), International Covenant on Civil and Political Rights, 1976.
8. AIR 1950 SC 27
9. *State of West Bengal v. Subodh Gopal Bose*, AIR 1954 SC 92. See also *Re-Ramlila Maidan Incident Dt..v. Home Secretary And Ors.* (2012).
10. *K K Kochuni v. State of Madras*, AIR 1960 SC 1080
11. Art. 19(3), Constitution of India, 1950
12. *Narendra Kumar v. Union of India*, AIR 1960 SC 430
13. *Re-Ramlila Maidan Incident Dt .. v. Home Secretary and Ors.* (2012) 5 SCC 1

14. *Bimal Gurung v. Union of India* (2018). See also *Kameshwar Prasad and Ors. v. The State of Bihar and Anr.* (1962 AIR 1166).
15. *Anita Thakur and Ors. v. Govt. of J&K and Ors.* (2016)
16. Basu, Durga Das. *Shorter Constitution of India* (Nagpur: Wadhwa and Company Law Publishers, 2004), p. 1770.
17. *Supdt. Central Prison v. Ram Manohar Lohia*, AIR 1960 SC 633.
18. *K K Kochuni v. State of Madras*, AIR 1960 SC 1080.
19. *Re-Ramlila Maidan Incident Dt .. v. Home Secretary and Ors.* (2012) 5 SCC 1
20. Art. 33(a), Constitution of India, 1950.
21. Art. 33(b), Constitution of India, 1950.
22. *Naga People's Movement, Of Human ... v. Union of India*, AIR 1998 SC 431.
23. AIR 1952 SC 196
24. *Krishnan Kakkant v. State of Kerala*, AIR 1997 SC 128. See also *Kharak Singh v. State of U.P.*, AIR 1963 SC 1295.
25. Special Provisions Nos. 9 and 10, United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990). available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>.
26. Special Provision No. 14 read with Special Provision No. 10, United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990). available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>.
27. The Ranbir Penal Code is the criminal code applicable in the state of Jammu and Kashmir. The Indian Penal Code does not apply in the state as article 370 of the Indian Constitution gives autonomous status to the state of Jammu and Kashmir.
28. *Sundar Singh v. State*, AIR 1955 All 232
29. *Sabir v. Queen Empress*, (1894) ILR 22 Cal 276; In re *Choitano Ranto and Others*, AIR 1916 Mad 788.
30. *Vinubhai Ranchhodhbhai Patel v. Rajivbhai Dudabhai Patel & Ors.* (2009)
31. Source: Raghubir Singh, *Garden of the Himalayas*, London, 1983.
32. "Stone-pelting hampering anti-militancy operations in Kashmir: CRPF," *The New Indian Express*, 6 March 2017. Available at: <http://www.newindianexpress.com/nation/2017/mar/06/stone-pelting-hampering-anti-militancy-operations-in-kashmir-crpf-1578329--1.html>. Accessed on July 19, 2018.
33. "Hizb militants join stone-pelters to attack security forces," *The Times of India*, 22 June 2018. Available at: http://timesofindia.indiatimes.com/articleshow/64703552.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst. Accessed on July 10, 2018.
34. Source: "Jammu and Kashmir Assessments – 2018," South Asian Terrorism Portal (SATP), available at <http://www.satp.org/terrorism-assessment/india-jammukashmir>. Accessed on July 09, 2018.
35. Source: "Jammu and Kashmir Assessments – 2018," South Asian Terrorism Portal (SATP), available at <http://www.satp.org/terrorism-assessment/india-jammukashmir>. Accessed on July 09, 2018.
36. Source: "Jammu and Kashmir Assessments – 2018," South Asian Terrorism Portal (SATP), available at <http://www.satp.org/terrorism-assessment/india-jammukashmir>. Accessed on July 09 2018.
37. Source: <https://mha.gov.in/MHA1/Par2017/pdfs/par2018-pdfs/rs-07022018-ENG/556.pdf>, accessed on 29 June 2018). See also <https://timesofindia.indiatimes.com/india/jk-11566-security-personnel-injured-in-stone-pelting-incidents-in-3-years/articleshow/62806679.cms>. Accessed on July 05, 2018.
38. "Euro 2016 violence: Dozens arrested and 16 taken to hospital after England fans clash with French police," Available at: <https://www.telegraph.co.uk/football/2016/06/15/euro-2016-violence-in-lille-france-england-fans-tear-gassed/>. Accessed on August 15, 2018.
39. "French riot police forced to clear Champs-Elysees with tear gas as World Cup celebrations spill over," 11 July 2018. Available at: <https://www.independent.co.uk/news/world/europe/france-world-cup-riot-champs-elysee-football-fans-police-tear-gas-a8441651.html>. Accessed on July 11, 2018.
40. R Gopakumar, "Lessons from Israeli Experience," *Deccan Herald*, August 27, 2010. Available at: <https://www.deccanherald.com/content/92051/lessons-israeli-experience.html>. Accessed on August 11, 2018.
41. Penal Law, Section 329(a)(2).
42. Section 329(a)(2), Penal Law (Amendment and Temporary Provision) Bill, 5776-2015.
43. "All norms followed: Army," *The Tribune*, January 31, 2018, available at <http://www.tribuneindia.com/news/jammu-kashmir/all-norms-followed-army/536710.html>. Accessed on July 11, 2018.
44. *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225
45. 1. Name and territory of the Union

- (1) India, that is Bharat, shall be a Union of States
(2) The States and the territories thereof shall be as specified in the First Schedule
(3) The territory of India shall comprise
46. (3) The State of Jammu and Kashmir is and shall be an integral part of the Union of India.
47. *State Bank of India v. Santosh Gupta and Anr. Etc.* (2017) 2 SCC 538.
48. WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC, REPUBLIC and to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation; IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November 1949 , do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION
49. *State Bank of India v. Santosh Gupta and Anr. Etc.* (2017) 2 SCC 538.
50. Article 38(1), Constitution of India, 1950. State to secure a social order for the promotion of welfare of the people. The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of national life.
51. *Re-Ramlila Maidan Incident Dt ... v. Home Secretary and Ors* (2012) 5 SCC 1.
52. *Chairman, Railway Board v. Chandrima Das* (AIR 2000 SC 988)
53. Art. 37, Constitution of India, 1950. Application of the principles contained in this Part. The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.
54. *A K Gopalan v. State of Madras*, AIR 1950 SC 27
55. *Smt. Ujjam Bai v. State of U.P.*, AIR 1962 SC 1621
56. *State of Madras v. Champakam Dorairajan*, AIR 1951 SC 226
57. Upendra Baxi and Marc Galanter, *Panchayat Justice: An Indian Experiment in Legal Access*, available at <http://marcgalanter.net/Documents/papers/scannedpdf/panchayatjustice.pdf>
58. *Darshan Singh v. State of Punjab & Anr.* 2010 Cri LJ 1393 (SC) (2010). See also *Gottipulla Venkata Siva Subbrayanam and Ors. v. The State of Andhra Pradesh and Anr.*, 1970 CAR 105 (SC)
59. Article 21, Constitution of India, 1950. No person shall be deprived of his life or personal liberty except according to procedure established by law
60. 1996 AIR 1388.
61. Ibid.
62. Art. 3, Universal Declaration of Human Rights, 1948.
63. Art, 6(1), International Covenant on Civil and Political Rights, 1976
64. Art. 9(1), International Covenant on Civil and Political Rights, 1976
65. Justice Krishna Iyer in *Jolly George Varghese v. Bank of Cochin*, 1980 AIR 470.
66. *Chairman, Railway Board v. Chandrima Das* (AIR 2000 SC 988)
67. *People's Union for Civil Liberties v. Union of India* (1997) 1 SCC 301
68. Art. 33, Constitution of India, 1950.
69. *Ram Swarup v. Union of India* (AIR 1965 SC 247)
70. Sec. 21, Army Act, 1950. Power to modify certain fundamental rights in their application to persons subject to this Act. – Subject to the provisions of any law for the time being in force relating to the regular Army or to any branch thereof, the Central Government may, by notification, make rules restricting to such extent and in such manner as may be necessary the right of any person subject to this Act – (a) to be a member of, or to be associated in any way with, any trade union or labour union, or any class of trade or labour unions or any society, institution or association, or any class of societies, institutions or associations; (b) to attend or address any meeting or to take part in any demonstration organised by any body of persons for any political or other purposes; (c) to communicate with the press or to publish or cause to be published any book, letter or other document.
71. Art. 19(1), Constitution of India, 1950. All citizens shall have the right to freedom of speech and expression;
72. Art. 19(1), Constitution of India, 1950. All citizens shall have the right (c) to form associations or unions.
73. *Lt Col Prithi Pal Singh Bedi v. Union of India and Ors.* (1982 AIR 1413).

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74. 1982 AIR 1413
75. Dennis J. Baker, *Glanville Williams Textbook of Criminal Law* (London: 2012) at Chapter 21
76. Russell on Crime (11th Edn., vol. 1, p. 491)
77. Michael Gorr, "Private Defense," *Law and Philosophy*, vol. 9, no. 3 (August 1990, p. 241)
78. Cambridge University Press, 1995, p. 127.
79. Sec. 96, RPC, 1949
80. *Manjeet Singh v. State of H.P.* (2014) 5 SCC 697)
81. Sec. 97, RPC, 1949
82. *Laxman Sahu v. State of Orissa*, AIR 1988 SC 83.
83. *V Subramani v. State of Tamil Nadu* (2005) 10 SCC 358
84. 1973 CAR 72 (SC)
85. *Darshan Singh v. State of Punjab & Anr.*, 2010 Cri LJ 1393 (SC) (2010).
86. Sec. 100, RPC, 1949.
87. Sec. 21, RPC, 1949, includes army/air force/navy personnel.
88. Sec. 52, RPC, 1949, done with due care and attention.
89. Sec. 99, RPC, 1949.
90. "All norms followed: Army," *The Tribune*, 31 January 2018, available at <http://www.tribuneindia.com/news/jammu-kashmir/all-norms-followed-army/536710.html>. Accessed on 11 July 2018.
91. *Anita Thakur and Ors. v. Govt. of J&K and Ors.* (2016)
92. Sec. 4(a), AFSPA, 1990.
93. Section 146, 148, RPC, 1949.
94. Section 152, RPC, 1949.
95. *National Human Rights Commission v. State of Arunachal Pradesh & Anr.* 1996 SCC (1) 742 **STONE-PELTING IN KASHMIR VALLEY¹: VIOLATION OF HUMAN RIGHTS OF ARMED FORCES PERSONNEL**

The contents of this Issue Brief are based on the analysis of material accessed from open sources and are the personal views of the author. It may not be quoted as representing the views or policy of the Government of India or Integrated Headquarters of MoD (Army).



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