

Socio-Legal Aspects and Human Rights Violations of Pellet Victims in Kashmir

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ABSTRACT

The pellet victims in Kashmir are facing serious physical and mental health issues. The use of pellet guns by the security forces on protestors has been proved very fatal and gross human rights violations. The temporary and permanent injuries on the pellet victims in Kashmir is a serious subject which needs an immediate attention from the all sides of socio-political, legal-psychological and human rights organizations. India is not following international norms with its prevailing conditions to deal protests in Kashmir Valley. The use of pellet guns and firearms by the security forces violating the basic Principles of United Nations. The basic principles state that, "Law enforcement officials must abide both domestic as well as international norms before resorting to the use of force". In Kashmir, we find multiple number of cases who lost their eye sight and thousands of unarmed protestors who were grievously injured. The repercussion of pellet injury is more dangerous than the real dreadful act, after losing eye sight, the victims are facing terrible psychological trauma and are passively facing more anxiety and soreness. The most common and lasting effects of losing vision involves both mental and social concerns which diminished social confidence of the victims in the society. Pellet ridden Victims are experiencing both short and long term psychological effects which leads their life more depressed. It is a high time for the government of India to ban pellet guns and rehabilitate victims of pellet gun. The paper is going to highlight the main loopholes and lacunas of government policies for allowing "non-lethal" weapons to control crowds and plight of the victims who are going through grave physical and psychological trauma.

Key Words: Victim, Pellet gun, Security forces, Kashmir, eye sight etc.

1. INTRODUCTION

A precisely conscientious executive is indispensable for unimpeded functioning of an effective justice system for any democracy especially India as claimed world's largest democracy. But unfortunately, the unchecked abuse of power by the state agencies in a conflict state while dealing counter insurgency and day to day protests in Kashmir becomes a licence to coerce, harass, intimidate, arrest, assault, use of lethal weapons and even kill. The role of state government and its security forces is truly paramount in order to achieve peace and maintain law and order through an effective justice system, but it should not be unbridled and un-channelized power without any accountability. As aptly put out by the Hohfeldian that "where there is a right, there is a corresponding duty". The researchers have observed that it is of utmost importance that steps must be taken at the earliest possible towards ensuring that legality of the pellet guns should be reviewed again because as we know it has been proved very fatal to the human life in Kashmir. While dealing with protestors is a grave and serious concern in the state of Jammu and Kashmir, but we cannot stand to sacrifice unarmed protestors. Even at the time of war, civilians cannot become the casualty for the actions both of state actors and non-state actors.

The human rights activists have shown their concern over the large number of fatalities during protests in 2008, 2009, 2010 and 2016 pellet gun was introduced as a "non-lethal" substitute to bullets against the protestors in Kashmir. The main

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object of introducing this non-lethal weapon as an alternative to control street demonstrations so to minimize the chance of casualty during street protests in the Valley, but it failed to produce fruitful results and has been proved lethal several times leading to loss of eye sight, grievous injuries including death to common people who were not even active participant of the protests. A single shot fired from pellet gun can explode into innumerable pellets and can penetrate into body at several places like eyes, ears, face, legs, intestines, back, abdomen, head or any part of the body which causes severe fatal injury as proven from the reported cases. The use of it has faced sharp criticism in Valley from various organizations for devastating injuries on innocent unarmed civilians. A pellet cartridge holds more than 450 little iron balls and it disperses in the air, which can hit anyone within the range whether a person is protestor or not. As per doctor's statement who treated pellet ridden bodies said that it is more dangerous than bullets³. Dr. Sundaram Natarajan, a well-known leading Mumbai based ophthalmologist who operated 40 retinal surgeries on Kashmir's pellet victims in three days. The doctors from Soura Medical College requested him because as per them, there are many complicated cases which requires highly expertise to operate these pellet victims, it takes several hours more as compared to bullet injuries but requires presence of multiple super specialists. And according to the experts it is the deadliest weapon among the non-lethal weapons.⁴

1.1 Fatal consequences of pellet injury on life

The physical injury on the civilians is very much detrimental which sometimes takes the life of the innocent civilians. The state government should must immediately order their police forces to stop using pellet guns. Such kind of weapons have caused widespread physical injury and grievous wounds. The use of force is a moral, social and medical problem. When members of the security forces or Law Enforcement Officials apply such lethal weapons to control mob then questions need to be asked as to whether it was effective, necessary and proportional. Evaluations of such matters are often tied up with the effects of particular forms of weaponry and equipment. Stone throwing does not give police the right to shoot at protestors indiscriminately. No democratic country in the world would accept and agree to use deadly force and weapons upon the protestors. It is incumbent and necessary that every state has to follow key principles governing the use of force within national and international law.

1.1.1 Eye Injury

When small metallic iron balls (pellets) enters into eyes, there are more chances that it can inflict permanent damage to the human being. A 1997 American Academy of Pediatrics study on air-gun related eye injuries found that 66 percent of victims suffered partial vision loss or blindness. A 2008 British study, supported by the Charitable Trusts for the United Bristol Hospitals Medical Research Committee, found similar results: 65 percent of victims suffered vision loss or blindness.⁵ The below mentioned picture depicts injury on the face and eye speaks a lot about how deadlier the use of pellet guns is.

1.1.2 Skin Injuries

Skin injuries causes a lot of medico care and healthy amount of money for treatment. Besides the money incurring upon the treatment, the scratches remain there especially facial appearance of the victims turns very unusual. Moreover, small metallic balls when entering into body causes severe bruising, skin lacerations and deep puncture wounds on skin. Sometimes, small iron balls trapped in body which increases the chances of severe infection and may require minor surgery.⁶

1.1.3 Infection

The nature of pellet gun wounds makes them prone to infection. Like other puncture wounds, such as stepping on a nail, the pellets can drive bacteria deep into a wound, increasing infection risk. In one extreme incident in 1992, a Philadelphia man died from a bacterial infection after a BB lodged in his brain.⁷

From 2010 to 2018, we have seen various pellet victim cases in Kashmir who are permanently disabled by the pellet fires used by the security forces and also few cases of deaths are also associated with this deadly weapon.⁸

2. PROHIBITION ON THE USE OF PELLET GUNS IN DOMESTIC AND INTERNATIONAL LAW

³ SHRC takes Suo moto cognizance of pellet injuries to Kashmir boy. <http://www.greaterkashmir.com/news/kashmir/shrc-takes-suo-moto-cognizance-of-pellet-injuries-to-kashmir-boy/267265.html> (accessed on 18-02-2018).

⁴ <https://www.hindustantimes.com/india-news/mumbai-s-padma-shri-winning-eye-doctor-treats-pellet-gun-victims-in-kashmir/story-LehL0qlxlrUjyctZPijBQN.html> (accessed on 13-01-2018)

⁵ Mannan Bukhari, *Kashmir - Scars of Pellet Gun: The Brutal Face of Suppression* (Partridge Publishing, 28-July 2015).

⁶ Id.

⁷ <https://healthyliving.azcentral.com/what-are-the-dangers-of-getting-shot-with-a-bb-gun-12546047.html> (accessed on 20-01-2018).

⁸ <http://indianexpress.com/article/explained/kashmir-protests-burhan-wani-death-pellet-guns-rajnath-singh-2928387/>

“What do we mean by “non-lethal” weapons? A variety of definitions has been proffered, the most visible of which comes from the U.S. Department of Defense, where the U.S. Marine Corps houses the Joint Non-Lethal Weapons Directorate (JNLWD), the leading military arm in inter service research, development, and procurement in the field.”⁹

It is important to note that none of the definitions elucidates any complete assurance against lethal effects of the weaponry. The security forces in Kashmir needs a training to tackle situations while dealing and handling protestors so to reduce the probability of mortality. Both international and domestic law fails to make adequate provision for non-lethal weapons. The existing standards were crafted, of course, with other stimuli in mind, and contemporary treaties, statutes, and other legal tools, for the most part have not yet been adapted to the unprecedented stresses and opportunities of the modern capabilities. Still, there are some shreds of law that do regulate the emerging world of Non-Lethal Weapons for better or worse.¹⁰ The India has no separate law on non-lethal weapons and its use. It has been introduced in Kashmir in 2010, which proved very fatal and deadly to the human beings. The constitution of India under Article 21 which says it is the duty of the state to protect life of its citizens but using pellet guns violates the basic rights of its subject inhabitants.¹¹

The Common Article 3 is an attempt to provide the minimum humanitarian protection to victims in an internal conflict and has therefore also been referred to as a ‘Convention in miniature’. It is the only provision of the four Geneva Conventions that directly applies to internal armed conflicts. The text of the Article 3 states that it is applicable “in the case of armed conflict no of an international character occurring in the territory of one of the High Contracting Parties”. The emphasis is on basic humane treatment and minimum procedural guarantees. The Article imposes on internal conflict, certain legal obligations for the protection of those individuals who have not, or are no longer, actively participating in the hostilities. In contrast to human rights law, which generally restrains violations inflicted only by a government and its agents, the Common Article 3 expressly binds both government and opposing forces.¹²

In *Tennessee v. Garner*¹³, (the watershed 1985 case), in which the Supreme Court of USA decided that police may not use deadly force to prevent the flight of an apparently unarmed suspected felon, unless there is probable cause to believe that the suspect presents a significant threat of death or serious physical injury to the officer or others.

The rule of law is the basic foundation of Indian Constitution, no law empowers the police officials and CRPF to take law into their own hands by misusing their position. Indiscriminately using lethal weapons upon innocent citizens violates basic norms of the rule of law and human rights. The Criminal Procedure Code, (Cr. P.C.) provides procedure for dealing with “unlawful assemblies” under section 127¹⁴ of the Cr. P.C. The Cr. P.C. procedure under this section 127 means to disperse the unlawful assemblies or may arrest and confine the persons involved in unlawful assemblies, but law never gives un-channelized and unbridled power to the police and paramilitary force, to kill or to cause grievous injuries by using harmful pellet guns except in right to self-defense situations when all the crowd controlling methods has been adopted. Section 130 sub clause 2 of Cr. P.C, gives power to every commissioned or non-commissioned officer in command to disperse such assembly, shall obey the requisition of the Executive Magistrate such manner as he thinks fit, but in doing so, he shall use minimum force to restrict collateral damages, but unfortunately in Kashmir, security forces are not restraining but using the lost resort to open direct fire from pellet guns. The procedure which needs to be adopted and respected by the security officials is not being complied with. The acts by the paramilitary forces and by the state police are exercising without any checks and balances because of the Armed Forces Special Powers Act, 1990 which gives legal immunity to the security forces in Kashmir.

3. AMNESTY INTERNATIONAL RESPONSE ON PELLET GUNS

Amnesty international has suggested the government of India to ban Pellet guns in Kashmir. In its report, Amnesty said that security forces are responsible for blinding and traumatizing hundreds of people in Kashmir by using deadly weapons like pellet guns. The briefing presents the cases of 88 people whose eyesight was damaged by metal pellets fired from pump action shotguns used by the Jammu and Kashmir Police (JKP) and Central Reserve Police Force (CRPF) between 2014 and

⁹ David A. Koplow, *Non-Lethal Weapons: the law and policy of revolutionary technologies for the military and law enforcement* 7 (Cambridge University Press, 2006)

¹⁰ *Ibid.*, 35.

¹¹ Article 21 of the Constitution of India.

¹² U.C. Jha, *International Humanitarian Law: The Laws of War*, 80 (Vij Books India Pvt Ltd, New Delhi, 2011)

¹³ 471 U.S. 1. (1985). See Michael Avery, David Rudovsky, and Karen M. Blum, *Police Misconduct: Law and Litigation* (3rd ed. 2003).

¹⁴ The Executive Magistrate or Officer in charge of police station is empowered under section 127 Cr.P.C, may command any unlawful assembly, of five or more persons likely to cause a disturbance of the public peace, to disperse and there upon be the duty of the members of such assembly to disperse accordingly.

2017. As per Amnesty, authorities claimed that the pellet shotgun is not lethal, but the injuries and deaths caused by this cruel weapon bear testimony to how dangerous, inaccurate and indiscriminate it is. There is no proper way to use pellet-firing shotguns. It is irresponsible of authorities to continue the use of these shotguns despite being aware of the damage they do. People injured by pellet-firing shotguns have faced serious physical and mental health issues, including symptoms of psychological trauma. School and university students who were hit in the eyes said that they continue to have learning difficulties. Several victims who were the primary breadwinners for their families fear they will not be able to work any longer. Many have not regained their eyesight despite repeated surgeries.¹⁵

There are Domestic laws on how to control crowd and violent mob. The crowd dispersal techniques have never been used in Kashmir systematically and organized way. The mob control tactics must be used to minimize collateral damage and avoid the loss of human life at any situation. The security forces especially JKP and CRPF Personnel's should be given mandatory training on crowd controlling and emphasis should be placed on respecting human rights of its own citizens. As we know, mostly Water Cannons, Teargas etc. are generally used to disperse the protestors. However, maintaining Law and order in Kashmir becomes serious concern because pellet guns are being used frequently by the Police and CRPF personnel directly on civilian protesters, targeting their vital parts viz eyes, chest, head, back abdomen etc. which not only deprives the victims of their eye sight but also deprives them of their lives. The use of pellet guns in Kashmir violates both constitutional principles and covenant on civil and political rights of individuals.¹⁶

"In May 2017, The Supreme Court of India asked the Centre Government to consider effective means other than use of pellet guns to quell stone pelting mobs in Jammu and Kashmir as it concerns life and death. Chief Justice J S Khehar also expressed concern over injuries suffered by minors involved in protests in the Kashmir Valley. The Supreme Court had said pellet guns should not be used "indiscriminately" for controlling street protests in Jammu and Kashmir and be resorted to only after "proper application of mind" by the authorities. The Apex Court has also directed the authorities concerned to ensure that all the injured are extended adequate medical treatment by specialists for whatever injury they sustain."¹⁷

CONCLUSION

The Jammu and Kashmir State from 1947 up to today remains a hot bowl, the political conflict has sacrificed thousands of human lives both non-state actors and innocent civilians. The excessive use of Pellet gun by the security forces has caused loss of human lives, eye sight and other grievous injuries to the unarmed protestors and even non-protestors. The highest court of the India also showed great concern on the use of pellet guns upon protestors. The police and paramilitary forces are not well trained to control crowd in Kashmir. They are always using last resort in maintaining law and order in Kashmir without using other methods which are less harmful to control crowd and unlawful assembly. After analyzing the adverse effects of the use of Pellet gun by the law enforcing agencies, we can draw a conclusion that pellet gun violates the basic human rights of the individuals because its use is very fatal for the human beings which has many side effects like physical injury as well as psychological trauma for those who lost their eye sight. It is also a well-established fact that the victims of Pellet fires have suffered not only in terms of their health but they have to incur huge amounts for their treatment also. In many cases, the victims lost their financial capacity as they became disabled and unable to work. It has also been observed that a majority of pellet victims are from very poor families having hardly any source of Income. They become the lifelong responsibility (burden) for their family which is itself a serious problem for the victims. They are also facing mental health problems especially those who lost their eyesight in their tender age, it hurts them psychologically to feel useless, disabled and burden for others.

The pellet victim cases of Kashmir show the miseries which they are suffering even today without having any fault of their own (Insha Malik)¹⁸. The family members of the victims know how life becomes miserable and hellish for them. They feel alienated from the society, their dreams are shattered, they are maimed for life and they are half dead.

The Kashmiri people has suffered a lot, the indiscriminate use of pellet guns and the deadly injuries faced sharp criticism throughout the country. The government has to follow the constitutional norms, the government is not supreme before the

¹⁵ <https://www.amnestyusa.org/reports/losing-sight-in-kashmir-the-impact-of-pellet-firing-shotguns/> (assessed on 01-02-2018).

¹⁶ Article 6 (1). Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

¹⁷ <https://www.hindustantimes.com/india-news/supreme-court-asks-centre-to-consider-alternatives-to-pellet-guns-in-kashmir/story-VuJbPS4iO41XNhzU57YJOK.html> (accessed on 03-03-2018).

¹⁸ The 16-year-old, who has undergone several surgeries, was hit in the face after she opened her window during the Kashmir unrest in 2016.

fundamental rights of the individuals. The use of pellet guns as a crowd control tactic must be banned, it violates all Individual rights of the citizens of Kashmir.

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