

# CRITICAL DISCOURSE ANALYSIS OF USE OF HUMAN SHIELD IN INDIA: A PERSPECTIVE FROM PAKISTAN

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## Abstract

*In April 2017, the Indian Army used one of its citizens from Kashmir valley as a human shield. Although the use of human shields as a practice has prevailed in warfare, and many actors in international politics have been accused of this in the past, however, most of these cases involved weaker side using the human shield to ward off any aggression from a relatively powerful and technologically advanced enemy. The images of the Indian Army's use of the human shield in Kashmir went viral and started a discourse questioning the existence of this practice, afresh. The Indian Army strongly denied any 'wrong doing', and rewarded the officer responsible for the act, with a Commendation Certificate. Many high officials in India, quoting 'Armed Forces (Special Powers) Act', advocated immunity for the officer, who used fellow citizen as a human shield. This paper through Critical Discourse Analysis, using multiple extracts from media reports, and legal documents, explicates the use of the human shield to coerce Kashmiris and exert excessive power against them. It also highlights serious resistance inside India towards enactment of Armed Forces (Special Powers) Act.*

**Keywords:** Human Shield, Critical Discourse Analysis, Armed Forces (Special Powers) Act, India, State Power.

## Introduction

**D**ebate on the idea of state and the extent of state power has existed for thousands of years. Between the Greek City State System and the modern Nation State System, there has been a beginning and a revival of political philosophy discussion on the powers of a state. The process of evolution of the concept continues in this dynamic system of a state – citizen relationship. Traditionally this relationship has been asymmetrical and state has considered no authority superior than itself. Therefore in certain sense it would be prudent to claim that wherever men have existed there has been a 'State', or going a step farther to the Aristotelian claim that 'man is a creature formed for the life of the City State'.<sup>1</sup>

There has always been some resistance to the power that a state can exert on its citizens. Laski in his book *Authority in Modern State* argues that, in real life the

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state sovereignty is subject to limitation. 'The power it can exert, either directly, or through its instrument is never at any moment absolute'.<sup>2</sup> For example a state has power to enact laws deemed appropriate for smooth functioning; however, when these laws violate human rights or they are in serious clash with the existing international laws, questions arise regarding the legality of such laws. One such law which has existed for decades in India and has been practised in multiple regions, is the *Armed Forces Special Powers Act*.<sup>3</sup> Under the garb of this law, Indian army has committed multiple acts in violation to the international law and against basic human rights.

The use of human shield as a protective measure against the aggressor has been practised by combatants for centuries. Also referred as 'counter targeting', it is 'the use of persons protected by international humanitarian law, such as prisoners of war, civilians etc, to ward-off attacks on combatants and military objectives'.<sup>4</sup> In a similar event, Indian army used a Kashmiri youth as human shield, tied him in front of a jeep and paraded him in multiple villages. This act of Indian army drew both praise as well as criticism, however, the issue does not end there and Indian atrocities continue in the valley.

To this end, this paper constitutes a Critical Discourse Analysis of use of a civilian as a human shield by Indian army in Jammu and Kashmir region, under the umbrella of the powers granted to them through *Armed forces Special Powers Act*. The paper will be in four sections;

- Theory and Philosophy of Extent of the State Power and its Subjection to the Critical Discourse Analysis;
- Critical Visual Implicature,
- Human Shield and Indian (un)official Discourse; and
- Critical Legal Implicature of Human Shields.

### **The Theory and the Philosophy of Extents of the State Power and its Subjection to the Critical Discourse Analysis**

Ranging between those who support the idea of a state as the omnipotent and benevolent phenomenon, as argued by Fichte, Hegel and, Bosanquet, to those on the other side who contend state to be omnipotent and malevolent such as Godwin, Bakunin and Kropotkin. Some scholars argue that the state is benevolent and not omnipotent such as Locke and Mill and there are others yet, who argue the state just to be omnipotent such as Hobbes and Lyndon Baines Johnson.<sup>5</sup> Within this larger discourse of statehood and sovereignty, an assumed powerful-powerless relationship has always existed. Similarly, Hagel refers to this state-citizenship relationship as the natural bondage whereby anyone obeying the laws of the state is simply obeying the

nature, and is free in true essence and that 'the state is a divine idea as it exists on earth'.<sup>6</sup>

De Tocqueville, Carol and Richard in their book *Law and Administration* argue, that the 'Red Light Theory' and 'Green Light Theory' exist in order to curb the state tendencies to exercise excessive and coercive power over its subjects.<sup>7</sup> In Indian Administrative Law, similar provisions exist and both these theories are applicable to safeguard the rights of the citizens, since the government can be held accountable for exercise of excessive power against the human rights.<sup>8</sup> Similarly, the evolution of International Humanitarian Law and its global application limits states' ability to punish its citizens beyond certain limits. The theory of Post-structuralism argues in favor of those, who have been marginalized and silenced by the powerful (in this case state).<sup>9</sup> The primacy of the state and the authority vested in it, makes this 'powerful – powerless' relationship an appropriate candidate for subjection to Critical Discourse Analysis. As mentioned above, theory of Critical Discourse Analysis allows us to ascertain the relationship between the 'language form and function', and 'social practices' through reflexive methodical inquiry. The image of an Indian citizen gained lot of electronic and social media attention, who was accused of pelting stones at the military convoys. He was tied in front of a military jeep and was paraded through multiple villages for hours. This image and the subsequent discourse generated inside India and internationally, will be the central focus of discussion in this paper. This analysis also shows that condemnation of this act and other Indian Army atrocities, from the humanitarian quarters, as well as complains made by Pakistan at United Nation and other international forums, are neither unfounded nor biased.

### **Critical Visual Implicature**

In series of unfortunate events on 9 April 2017, Farooq Ahmad Dar from Budgam area of Indian occupied Kashmir, was stopped by the Indian Army as he was returning home after voting was beaten and tied to the bumper of the Indian Army jeep. Subsequently he was paraded for almost six hours through multiple villages, over a distance of almost 28 Kilometers. During this journey he was hit by stones by the officer riding behind him in the jeep, as he tried to talk to the spectators. Major Nitin Leetul Gogoi, the officer who used him as a human shield, was later awarded the Chief of the Army Staff's Commendation Certificate.<sup>10</sup>



**Image-1:**Image of a civilian tied to the jeep as a human shield in Indian Held Kashmir.<sup>11</sup>

Image 1 above can be analyzed through three hypothetical aspects.<sup>12</sup> These aspects will be explained with the help of technological, compositional and social factors. First of the three, i.e. the 'Production site' answers the question, 'how the image was made'. The 'Image Site' explains 'how the image looks like', and finally the 'Audiencing Site' allows the analysis from the position of audience or, 'how an image is seen' by the viewers. The focal site, for understanding an image and its social implications, where the viewers get involved is the 'Audiencing Site'.<sup>13</sup> Through previous knowledge and understanding, the viewers can look at the images in distinct ways. For example the genre of this image showing a human shield, is referred as 'Documentary Photography'. Gillian Rose argues that this genre explicates the relationship trajectory between the powerful with those who are relatively powerless.<sup>14</sup> 'Documentary Photography' has a direct theoretical relevance to Post structuralism, which allows the analysis of the plight of the excluded and marginalized 'others'<sup>15</sup> as a result of existing policies and powerful state discourses.

The image showing a Kashmiri citizen connotes more than it denotes. Simple facts in the image, such as the trees stems, grass or the houses in the background etc. are the examples of denoted objects. Connotation on the other hand, is invisible ideology behind the images.<sup>16</sup> Connotation in this image performs a significant social function of conveying the hidden message from the state to its citizens. It allows for a message to be communicated, without use of words (although in this case a sound in the background can be heard saying, 'those who throw stones will meet similar fate').<sup>17</sup> Moreover, Chief of the Indian Army Staff General Bipin, explicitly said that there is no

message for the civilians through this action<sup>18</sup>. However, the deconstruction of this image reveals a connoted message, showing the powerful agents of the state exerting the excessive power over the powerless 'other'.

Social factors such as deindividuation<sup>19</sup> and dehumanization<sup>20</sup> have also been articulated through connotation in this image. The deindividuation and dehumanization of an Indian citizen by the Indian Army, has a direct psychologically traumatizing impact<sup>21</sup> and this act also shows oppression of Indian citizens by the Indian Army. Additionally, the connotation also reveals that in Kashmiri citizens are generally considered/labelled as stone pelters, who could possibly be subjected to similar treatment.

The social distance<sup>22</sup> in an image can be analyzed in Critical Visual Analysis, as the distance between the viewer and the foregrounded object in the image. The social distance in this image is reduced to a great extent and viewers can immediately relate to the powerful and dominant state discourse exerting itself against the weaker citizen. The foregrounding of a human shield in the center of the image, and his straight gaze at the camera, serves dual purpose: first it is a pictorial display of the power discourse and shows 'powerful – powerless' relationship and secondly, it allows for an immediate and intimate involvement of the intended audience, who in this case are the residents of the Indian occupied Jammu and Kashmir.<sup>23</sup> The stability in the image shows that this is a deliberate image and not a random shot, and has been taken to *connote* a clear and deterring message to the viewers at the 'Audience Site'.

The image also shows that the jeep is very well armour protected, especially against harm from stones. Presence of soldier on the roadside holding the weapon, and another soldier with his upper body out of the roof opening of the jeep, diminish the much hyped threat to the Indian Army from civilian crowd.

## **The Kashmiri Human Shield and the Indian (un) Official Discourse**

After the image went viral, the statements by multiple senior officials from the Indian politics, as well as representatives of the armed forces are significant for this analysis. Most of the statements being analyzed below are in clear defense of an act of the Indian Army, which caught world attention due to violation of basic human rights. Referring to the Poststructuralist powerful-powerless relationship, these statements reveal a dominant state discourse. The oppression of a fellow citizen, which is violation of basic human rights has been lauded and rewarded in these statements.

### Extract 1: Official Government Stance<sup>24</sup>

Source	Date	Line	Extract
The Economic Times	Apr 17, 2017	1	The government has taken note of Army probe of an Apr 9 incident which concluded that the commanding officer took the decision reluctantly and as the last resort after he realized that his unit had to pass through streets crowded with mobs of stone pelters who had also taken position on surrounding rooftops.
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This statement was officially issued to the media almost a week after the incident took place, and by that time the video as well as the image of the Indian Army using a Kashmiri as a human shield, had already gone viral. The Government took 'notice' (Line 1) of the entire episode. The government concluded that the officer decided in using a civilian as a human shield, 'reluctantly and as a last resort' (Line 3). However, the critical visual analysis of the image of the human shield shows, that this was neither a reluctant decision, nor it was the last resort. The phrase 'Unit had to pass through streets' (Line 4 and 5), shows that this was a well-planned, pre-emptive and as a pro-active measure, taken in order to ensure the safety of the army troops moving through the villages. The analysis of this statement shows that the government of India has tacitly endorsed the use of its citizen as a human shield by endorsing the action of the Indian Army officer.

### Extract 2: Member Armed Forces Tribunal Air Martial (Retired) Anil Chopra<sup>25</sup>

Source	Date	Line	Extract
The Wire	Apr 17, 2017	1	Great and mature decision by the govt on young major's innovative idea in the valley.
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Extract 2 above, shows endorsement of Extract 1 from the government of India. Air Martial (Retired) Anil is a member of the Armed Forces Tribunal and his job is to help people from armed forces to seek justice during court martial cases and cases of similar nature. According to Anil, this was a 'great and mature decision by the government' (Line 1). Being the member of the tribunal, Anil is expected to have sufficient knowledge of existing laws, norms and obligations of the government of India towards its citizens. Ironically his tweet speaks contrary to the assumption and only reinforces the dominant state discourse, through a reprehensible use of the word 'young' (Line 1) and 'innovative idea' (Line 2) in the extract. The deconstruction of the word 'young' show that youth always aspires to experiment new ideas to seek innovative results. This statement is also an endorsement of the 'innovative idea' (Line 2) by the 'young major' (Line 1). This tweet also constitutes incitement and

insensitivity, on the part of a powerful agent of the state, against an excluded and marginalized citizen of the society.

### Extract 3: Member Armed Forces Tribunal Air Martial (Retired) Anil Chopra<sup>26</sup>

Source	Date	Line	Extract
The Wire	Apr 18, 2017	1	Any self-respecting nation should have shot 100 stone palters by now.
		2	

Extract 3 above, shows yet another tweet by Air Martial Chopra, who has explicitly embarked upon incitement. As a sequel to his previous tweet, he dares the 'self-respecting nation' to shoot '100 stone pelters' (Line 1 and 2). Violence against the stone pelters is not unprecedented in the world civil war history and such incidents do happen routinely in Israel, as well in Indian occupied Kashmir.<sup>27</sup> Analysis of the tweet also reveals assertion by Anil that, since 'India has not killed 100 stone pelters thus far'; therefore, 'their self-respect remains questionable'. The comparison of this tweet shows the clear violation of human rights of an Indian citizen and also a measure of the insensitivity on part of the state and its powerful agents. Advocacy of such provocative discourse resulted in deteriorating situation and subsequent killings at the hands of the Indian Army in Kashmir.

### Extract 4: Defence Minister of India Arun Jaitley<sup>28</sup>

Source	Date	Line	Extract
The Indian Express	May 24, 2017	1	Let us not forget the Army is a responsible institution and the Army was also interested in saving lives of various people who were involved in the election process and also the large crowd of people gathered there to protest.
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Extract 4 above, is the statement by the Defence Minister of India, who is reminding the audience to reminisce that the Indian Army is a 'responsible institution' (Line 1). Secondly, besides saving itself from the stone palter Kashmiris, Army was also busy saving lives of those who were involved in election process (Line 3). Thirdly, the army was also trying to 'save lives' (Line 4) of the large crowd of people who had gathered to protest the election and against the army. Therefore the 'human shield' act by the army was a necessary and a responsible act aimed at 'saving lives' (Line 2). Since there was a serious resistance against these elections and the total turnout was less than 7% (lowest ever in Kashmir's history)<sup>29</sup>, the Indian Army was ordered to ensure smooth conduct of the elections in the valley.

### Extract 5: Chief of the Army Staff General Bipin Rawat<sup>30</sup>

Source	Date	Line	Extract
The Economic Times	May 24, 2017	1	The Army has a responsibility to ensure violence comes down and peace prevails. This officer acted in a particular manner, where only someone on site could have taken a call. Under the circumstances, he took the right call. To ensure the confidence level of the officer and others operating in similar environment, he was, therefore, conferred with the award.
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The Chief of the Indian Army Staff General Bipin, bestowed a Commendation Certificate on Major Nitin Gogoi for using a fellow citizen as a human shield. In this extract the general has clearly laid out his policy towards the Indian Army's responsibility, which is to ensure that 'violence comes down and peace prevails' (Line 1 and 2). Deconstruction of the word 'ensures' (Line 1) reveals increasing aggression under the military order, at all costs. Defending this indignant action by the officer, General Bipin in this statement, endorses the act and references this as the 'right call' (Line 4). The second thing that he wants to 'ensure' (Line 5) is a certain degree of 'confidence' (Line 5), among all ranks of army and their superiors. The restoration of this 'confidence level' (Line 5), was ensured through use of the human shield, and subsequent award of the Commendation Certificate to the officer responsible for this act. As mentioned in the extract, this 'level' (Line 5), had to be restored at every cost, and in this case the cost was paid by the 'human shield' and the endorsed by the 'award' (Line 7). The use of conditional clause 'therefore' (Line 6) shows the explanation for this reward.

### Extract 6: Chief Minister of Punjab Amarinder Singh<sup>31</sup>

Source	Date	Line	Extract
NDTV	May 23, 2017	1	The Army Chief has done a great thing and I compliment him for the same. This will go a long way in boosting the morale of the force. You cannot have the army fighting the stone pellets with one hand tied behind their backs
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In Extract 6 above, the Chief Minister of Punjab, who served in the Indian Army to the rank of captain, endorses the act of grant of Commendation Certificate by Chief of Army Staff, since it is directly related to 'boosting the morale of the forces' (Line 2 and 3). The deconstruction of this statement reveals a connoted message to the armed forces, wiling them to dehumanize their fellow citizens, and expect a

reward for doing so. His concluding sentence compares the act of fighting against stone pelting, to a response with one hand tied behind their backs (Line 3 and 4). This is also an encouragement for the state to handover maximum power to army– a measure already granted to Army through *Special Powers Act* in the valley of Jammu and Kashmir.<sup>32</sup>

### Extract 7: Congress Party Chief Randeep Singh Surjewala<sup>33</sup>

Source	Date	Line	Extract
Hindustan Times	May 23, 2017	1	It is only the Army Chief's prerogative to award Commendation card to jawans and officers as per the operational requirement. There is absolutely no question of criticizing the Army Chief's decision.
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Extract 7 shows Randeep has made a closed ended statement, eliminating the question of criticizing the act and reward (Line 3 and 4). The political support from Congress Party Chief, one of the major parties in India, came to the Army Chief's act of rewarding the officer. This extract also reveals the powerful state agents, endorsing act of aggression against the weak citizens.

### Extract 8: Former Chief Minister of Jammu and Kashmir Omar Abdullah<sup>34</sup>

Source	Date	Line	Extract
The Indian Express	May 24, 2017	1	Have we set a precedent that allows an individual officer to take the law into his own hands and use an Indian citizen as a human shield as and when he deems it appropriate and necessary — to “save lives”? The greatness of great nations lies in holding their institutions to the highest possible standards of law, humanity and constitutional propriety. In fighting armed militancy or any form of internal conflict, the state cannot abdicate its responsibility to uphold the fundamental rights of its citizens by holding its army accountable. In an allegedly binary choice, between protecting the morale of the armed forces on one end and risking the faith and trust of the people of Kashmir on the other end, I earnestly hoped we would succeed in striking the balance of justice and fairness.
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Extract 8 above appears in contrast to the previous statements. The former Chief Minister's criticism involves clear rebuttal to the act of the human shielding by

the Indian Army. Echoing Air Martial (Retired) Anil (Extract 3 above), Omar Abdullah in his statement, puts a question mark in front of the 'greatness' of the Indian State (Line 4), with an implicit negative answer. His assertion regarding state's responsibility towards its citizens is ideally true but use of the word 'cannot' (Line 8), goes contrary to the modern-day state system's realist paradigm. The states involved in civil wars or internal insurgencies, rarely if ever, meet the theoretical humane responsibilities towards their citizens. In this case, the rights of citizen were clearly violated when he was tied to the jeep as a human shield and the violence was repeated through rewarding the officer who violated these rights. Omar's use of 'binary choice' (Line 10), has a special significance, as on one hand, state is worried about morale of its troops, and on the other hand it shows concern about the 'faith and trust' (Line 12) of Kashmiri people in the State of India. Increasing the weight behind state narrative creates an overall imbalance. The 'justice and fairness' (Line 14) was not served to the citizens in violation to the basic human rights, which could further reduce the citizen's trust in their state.

Such violation can be seen by absence of ratification of international obligations by the state of India and by the enactment of domestic laws which are in clear contravention to International Humanitarian Law and have been protested by citizens of the Indian State over the years.<sup>35</sup>

### **Critical Legal Implicature of the Human Shields**

The Indian constitution treats most international treaties and conventions as non-binding obligations, which, whenever possible should be fulfilled. Depending upon the popular and dominant discourse, the Indian State mostly works as omnipotent and malevolent. For the past many years, these popular discourses in India have been dominated by the doctrines of 'Moditva' and 'Hindutva', thereby giving a privileged treatment to one (Hindu) segment of the society and marginalizing the rest as 'others' regardless of religious, caste or gender denominations.

As mentioned above, the use of the human shields has been a conflict phenomenon especially in civil wars such as those witnessed in 'El Salvador, Somalia, Liberia, Sierra Leone and Chechnya' etc.<sup>36</sup> Generally the use of the human shields is the tactics adopted by the weaker side against the stronger enemy. State is a powerful entity and has weapons which are much more lethal and accurate as compared to the use of stones. Ironically, in this case the powerful side i.e. the Indian Army used a civilian as a human shield to save itself against the stone pelters. In the light of Geneva Convention, Indian Laws and normative Indian practice, in this section we have taken certain extracts to ascertain the legality of the use of the human shield by the Indian Army officer as well as the reward conferred on him by Chief of the Army Staff.

**Extract 9: Provision of Geneva Convention<sup>37</sup>**

Source	Date	Line	Extract
Article 51(7) of the 1977 Additional Protocol I	8 Jun 1977	1 2 3 4 5 6 7 8 9	The presence or movement of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favor or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attack or to shield military operations.

Extract 9 above, shows the provisions of legal framework and it clearly prohibits military officials to use civilians as a human shield, to ‘favor or impede military operations’ (Line 5). India is a signatory to the Geneva Convention; however, it has not signed this Additional Protocol. This shows the hesitation on the part of the Indian State to implement any laws favoring the protection of the human rights.

**Extract 10: Lieutenant General Retired Gautam Moorthy<sup>38</sup>**

Source	Date	Line	Extract
The Indian Express	May 24, 2017	1 2 3	If at all ay damage was caused, it was to the dignity of the young lad, who was tied up, which I believe he can live with.

Extract 10 above, is one of the many statements made by an ex-general, in favor of use of the human shield by Major Nitin. The statement begins with a conditional clause ‘if at all’ (Line 1), which means that the General does not believe that there has been any damage caused to anyone as a result of the use of an Indian citizen as a human shield by the Indian Army. However, if at all someone is affected that is the person who was tied to the jeep. This extract, uses the attribute of youth, echoing Extract 2 above, to defend the unlawful act of one young man against another. The General also ‘believes’ that since he is a ‘young lad’ (Line 2), and he infers the claim that, young people are more likely to endure both physical as well as psychological trauma. Therefore, the use of this human shield is likely to be forgotten by the individual himself and by the rest of the world. Analysis of such cruel and inhuman indignation of a fellow citizen, by an ex-general of the Indian Army, reveals the social and military practices in-vogue within India, as they deal with multiple insurgencies.<sup>39</sup>Besides this statement by the by the General, his broader argument in

favor of the use of the human shield include exhaustive use of Latin phrases, to make his case and justifications favoring the violation of human rights.<sup>40</sup>

### Extract 11: Indian Practice Relating to LTTE in Sri Lanka<sup>41</sup>

Source	Date	Line	Extract
Lok Sabha	18 Feb 2009	1	A serious source of concern to us has been the condition of the civilians and internally displaced persons (IDPs. Mostly Tamil, caught up in the zone of conflict. Estimates on the number of civilians trapped vary, but 70,000 or so are estimated to be there now. The LTTE [Liberation Tigers of Tamil Eelam] were reportedly using them as human shields.
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Extract 11 above, shows that the State of India understands the dangers of using the human shields. In this case, the possibility of using 'civilians trapped' (Line 4) in Sri Lankan conflict as 'human shields' (Line 6), is considered a 'serious source of concern' (Line 1) raised by India. The analysis of this extract reveals a dichotomy and Indian inconsistent approach in treating its citizens, within its claimed territory (Kashmir), as compared to those treated in similar manner in Sri Lanka. The state shows serious concerns when its citizens are used as human shields in Sri Lanka but ignores the same act if it happens in Kashmir valley.

### Extract 12: The Armed Forces (Jammu and Kashmir) Special Powers Act 1990<sup>42</sup>

Source	Date	Line	Extract
Armed Forces Special Powers Act 1990	1995	1	If he is of opinion that it is necessary so to do for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as a weapons or of firearms, ammunition or explosive substances.
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Extract 12 above, shows *Armed Forces Special Powers Act of 1990 for Jammu and Kashmir*. It shows the clear use of excessive state power by allowing its armed personnel to 'fire upon or 'otherwise use force', even at the cost of life of its own

citizens (Line 4 and 5). Democracies around the world, usually avoid promulgating laws which are detrimental and in gross violation of International Humanitarian Laws. The generalized use of word 'force' (Line 4), grants broad ranged and disproportionate powers to the armed forces. This law has been labelled as the most 'hated' and 'draconian' law and resentment has been shown by the Indian citizens against grant of such excessive powers to army, resulting in multiple cases of rape, torture, and dehumanizing treatment of its citizens.<sup>43</sup> Many reports have suggested that the 'sweeping powers' granted to the armed forces through this *Special Powers Act*, actually 'encourage' soldiers to 'kill, raid and rape'.<sup>44</sup> *Special Powers Act* in India is decades old and has not yet been repealed or updated. The Supreme Court of India ended the immunity against prosecution provided to the armed forces through this law, in July 2016.<sup>45</sup> However, Major Nitin had been rewarded by the State for the use of a fellow citizen as a human shield, prior to finalization and implementation of the Supreme Court's decision.

### Extract 13: The Indian Army Training Note 1995<sup>46</sup>

Source	Date	Line	Extract
The Indian Army Training Manual	1995	1	To educate all ranks in maintaining and upholding Human Dignity and protecting Human Rights in accordance with the law of the land and National and International Conventions, during peace and war. A soldier is trained to do only the correct and proper things from the time he is enrolled into the Service. Any violation is strictly dealt with by the superior authorities.
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Extract 13 above, shows the note on training of the Indian Army, which promotes the 'upholding of human dignity and protecting human rights' (Line 1 and 2). The 'violation' (Line 7) of this rule demands strict action by the superiors. Echoing the narrative of Extract 10 by General Moorthy, this extract reveals absence of clear understanding of human rights in Indian armed forces. In pure contrast to the Indian Army's teachings, the current Chief of Army Staff General Bipin, awarded Chief of Army Staff Commendation Certificate to the officer who breached all standards of international human right regimes.

## Conclusion

Many scholars have argued in favour of the state power and sovereignty. However, sometimes the misuse of power, calls for inquiring into such social practices. States facing the internal insurgencies, such as India, are more likely to act violently against their citizens. Despite the fact that India claims to be the largest

democracy in the world,<sup>47</sup> the continuous implementation of decades old draconian *Indian Armed Forces (Special Powers) Act*, is a serious violation of basic human rights and International Humanitarian Law. This paper has focused on a case of use of Indian citizen from Kashmir valley as a human shield by the Indian Army. The officer who used a fellow citizen as a human shield was immune to prosecution due to the *Special Powers Act*, moreover, in a negligent violation of Army's own teachings, the officer was rewarded with a Commendation Certificate. This act by the army emboldened the personnel of armed forces which resulted in subsequent deaths of the civilians at the hands of the Indian Army.<sup>48</sup> Christ of Heyns, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, specifically rejected *Indian Armed Forces (Special Powers) Act*, calling it symbol of 'excessive state power' arguing that, 'it had no role to play in democracy'.<sup>49</sup> India has selectively ratified the Geneva Convention, omitting the clauses which specifically call for protection of human rights, for example Additional Protocol of 1977 has not been ratified by India<sup>50</sup>. India has also been pressurized on multiple instances to, 'ratify a number of International Treaties, including *Convention against Torture* and the *International Convention for the Protection of All Persons from Enforced Disappearance*'.<sup>51</sup> This research also shows that in the garb of modern state system and democracy, multiple crimes against humanity are being committed in the name of state power. Presence of laws contrary to the International Humanitarian Law, and absence of ratification of many international treaties has allowed the Indian Army to use rape, raids, torture, murder and dehumanizing treatment as tools of war to defeat insurgencies. Admittedly, some of the acts of Indian soldiers, such as killing civilians could be considered a 'mistake'; however, serious questions remain unanswered, raised against the Indian Army's behavior under the clout of *Armed Forces (Special Powers) Act*. In a report by *The Diplomat*, the Indian Army was rightly questioned by the protestors when they asked, 'how can rapes fall under the category of acts done in the line of duty, requiring legal protection of the state?'<sup>52</sup> Similar unanswered questions exist regarding this use of the human shield by the Indian Army in Kashmir valley.

## NOTES

- <sup>1</sup> Bernard Bosanquet, *The Philosophical Theory of the State* (Canada: Batoche Books Limited, 2001).
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