"Your President Ordered Osama to Be Killed": The Legitimization of Global Resistance to Human Rights

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Speaking to T., one is more surprised that he has spent his life as a policeman than that he possesses a degree in politics. His conversation is peppered with references to Plato, Aristotle, Marx, and Locke, as well as Indian thinkers such as Gandhi and Vivekenanda. He is a high-ranking member of the Indian Police Service, which he entered after having completed a degree in political science and scoring well on the competitive national exam. He hopes to return to academia after retirement, and has ambitions to write a book on his theory of policing.

In our first and third interviews, he was articulate but conflicted. He lamented the corruption and disorganization that plague the police. These limitations, coupled with the challenges of policing a complex society, make extrajudicial methods seem sometimes necessary, he conceded. Ultimately, though, T. told me that he is a “great believer in democracy” and insisted that it should be possible to police without resorting to torture.

His second interview was radically different from our first and last conversations. The conflict seemed to have evaporated since we first met. He insisted over many hours that only after sustained physical torture can terrorists and hardcore criminals “break.” He saw an irredeemable conflict between democracy and policing, and viewed human rights as an unwelcome constraint that has caused terrorists and other criminals to increase in number.
Human rights monitoring makes it more difficult for the police to torture and kill criminals, he told me, and this undermines security.

It is unclear what caused this temporary change of heart. Shortly before this conversation, a bomb exploded in a district of Delhi that is within his jurisdiction, killing several people. It is possible that this radicalized his position. But whatever the reason, what is clear is that when he changed his mind, a ready-made discourse of security was available to him to justify his positions. Torture and illegal executions are not a problem of Indian police, he is able to say, but are a response to the inherent requirements of any modern state. To prove his point, he, like many other officers, has a quick point of reference: Just look at what the United States has done. For these officers, Guantanamo Bay, Abu Ghraib, and Bagram justify the torture that occurs in New Delhi.

I spent twelve months in North India between 2010 – 2012 interviewing officers like T. In total, I conducted 60 in-depth interviews with 33 police officers, some of whom were military and paramilitary officers who had been given policing powers and duties in parts of India that have been declared “Disturbed” by the federal government. All of these officers were participating in a two-year human rights course. The course was a distance-learning program that awarded the officers a Master’s degree in Human Rights. The officers pay a small fee to attend. As such, I had initially expected that I would be speaking with officers who represent the “best case scenario” in terms of buy-in to human rights. On the contrary, though, these officers rather revealed the forms of resistance that are available for police who are exposed to but in principle reject the human rights framework.

**Rejecting Rights in Favor of Security**
When there is a conflict between rights and security, and police cannot interpret the former in terms of the latter, they are explicit about which must trump. Moreover, rather than draw on what might be thought of as local beliefs to oppose international human rights, they often base their arguments in a competing principle of contemporary liberalism: the protection of the state. Furthermore, officers defend their stance by referencing the actions of countries such as the United States. Hence when they contest human rights, they have recourse to a competing international order composed of the discourse and practices undertaken for the sake of security by powerful Western governments.

**The Trump of Security**

While the term “public good” could denote the protection of individual rights, officers use it to refer to national security, and to them, rights that undermine security are untenable. Human rights activists typically agree that security is important, but see security and human rights protection as beneficial to each other. They assert that it is not necessary to violate rights in order to uphold security, and that rights protection creates a more secure society. But in the eyes of law enforcement officers, security and human rights are inevitably in conflict.

Officers frequently articulate this belief when discussing the Emergency declared under Indira Gandhi from 1975 until 1977, when the government suspended many basic rights as a response to political and social unrest. During this time, arrest without warrant and police torture of political activists, students, and opponents of the ruling party were rampant. Yet all of the officers whom I asked about the Emergency defended it. For example, when I asked a mid-ranking army officer serving in Kashmir whether “something like the Emergency is necessary in order to maintain security,” he argued:
Yes. Security does not come without a price. It does not come for the weak. You have to make yourself strong.

I then asked him what he thinks of the common perception that many innocent people were jailed during the Emergency and he replied:

These were strong decisions that were supposed to be taken because security is not without a cost.

That officers express this view in response to questions about the Emergency bears special relevance to their actions, since officers in Kashmir and parts of the Northeast are currently working under Emergency laws that allow for powers similar to those that characterized the Emergency in 1975. Hence they are not only justifying a historical event, but their own actions in the present.

Since officers believe that their primary function is to promote security, they view their violations of rights not as obstructions of justice, but as minor infringements of technical rules that at best are ill-adapted to the situation. For example, a low-ranking paramilitary police officer serving in Delhi who was previously stationed in Kashmir asserted:

When you find someone is really the accused, the prime task is to arrest him. In such procedures if there is time to follow the procedure laid down by law and human rights then it should be [followed]. But if there is not time, our main task is to arrest the person. In such cases an arrest warrant may not be able to be generated. When you have sufficient time then the full process should be followed.

It is not that this officer is unaware of human rights requirements or domestic law, which education could solve. And it is not that he acts with no regard for any ethical or legal goal and
purely for personal gain, which perhaps punishment or normative persuasion could help mitigate. Instead, his comments suggest that he sees human rights laws as less important than other goods.

Similarly, a high-ranking paramilitary officer expressed throughout the interview his support for human rights in the abstract. But he still cautioned, “Just for the mere sake of enforcing one’s rights we cannot function less,” and proceeded to justify human rights violations such as torture. Like the other officers, he did not outright deny the value of any human rights protection, but rather argued about when and to what extent rights should be upheld. He asserted:

There is no proper yardstick to judge as to how human rights can be enforced and how human value can be maintained. You can’t always go on ensuring the human value of a person because the profession is like this.

These comments suggest that officers cease to engage seriously with human rights ideals and laws once they believe they conflict with their priorities. The paramilitary officer quoted directly above quipped, “Should I take the suspected person to a three star hotel, offer him a glass of beer? No. [laughing]. Human rights.” He dismissed the legitimacy of rights here by implying that their importance is laughable compared to security.

Officers’ capacity to resist human rights educators’ efforts to persuade them may be bolstered by their ability to understand how their priorities differ from the human rights perspective. For example, I gave a low-ranking paramilitary officer a report by a human rights NGO alleging that military officers illegally arrested and severely beat a man who was later found dead. The incident took place in Assam, where similar to Kashmir, Emergency laws that provide security officers with expanded policing powers are in effect. I asked him why the NGO is critical of the action. He responded:
NGOs think in one way. Their point of view is purely in favor of civilians. But officers think about security. NGOs think terrorists can be scared but innocent people should not die. But security forces say anyhow the culprits should not escape. All the action has been for the good of society.

Again, these comments do not suggest a lack of knowledge about human rights or an absence of substantive beliefs. Rather he is aware of human rights principles but disagrees, and is able to articulate the nature of his disagreement. Hence a mere addition of information and principles through an education program would be unlikely to change his outlook.

Officers are so committed to the priority of security over rights that they are willing to accept consequences that they admit are highly negative. This acceptance extends to harming people who are clearly innocent, such as children. For example, a high-ranking army officer who had been stationed in Kashmir discussed the possible consequences of military activities:

If an innocent is shot unknowingly by mistake. Small children sometimes in a firefight. Despite our best efforts there are one or two per year. If you make a political issue out of it, if you make it anti-army where people get a personal benefit, then the soldiers lose their motivation. They don’t feel wanted. They feel, why should they work if people don’t want them? Why should we leave the barracks? And then the whole state will collapse.

The officer described an action that is considered wrong not only in the human rights system but in most ethical frameworks—the killing of children. He still argued, however, that officers responsible for the death of children should not be punished. He maintained this not because he thinks it is right to kill children, but because he believes that punishment would decrease morale and thereby compromise security.
Human Rights versus the State: Tension in Officers’ Explanations

This compromise of the security of specific people—in the above example, even children—for the sake of national security indicates a tension in officers’ explanations. They argue that they violate rights for the sake of security. But their actions compromise the personal security of those whose rights they violate. Moreover, their actions are often illegal and hence compromise law and order, further undermining the personal security of members of the public. This suggests that the terms “security” and “law and order” are often meant to express the state’s interests or officers’ goals, rather than the welfare of a community. For example, a mid-ranking military officer who had been stationed in Kashmir noted that there are different interpretations of what “human rights” means. I asked him to describe the different interpretations of human rights in Kashmir. He replied by switching focus to what he claimed is the primary question, that of national interest. He stated:

What is the national aim? We should always think of the national aim. Our aim is to keep J & K [Jammu and Kashmir] integrated with India and not breaking away. If you want that then you must maintain law and order.

This suggests that he understands “law and order” not as something that serves the local population, but rather as something that is for the sake of the state’s control over the territory.

This clarifies why the violation of the security of some people, even children, is not a violation of “security” as officers understand it. In this formulation, the point of security or law and order is to promote the interests of the state. This may conflict with the interest of civilians in general, and especially with the interests of particular civilians, such as those who happen to live in states experiencing conflict or those whom officers suspect of crimes.
This also helps explain officers’ reasoning regarding Emergency laws. When I asked a mid-ranking State Police Service officer from Rajasthan whether it is ever acceptable to limit rights, he replied:

Yes. Times of national emergency, internal threat. To agitate in an aggressive form and damage public property, to cause big stress to people cannot be allowed in the name of human rights.

I then asked him whether the human rights system contains guidance regarding when rights can be limited, and he responded:

The Indian constitution gives clauses for each right. Please read the fundamental rights. Nothing should threaten the unity and integrity of the nation. If any sect is doing something that feeds the separation, that breaks unity, doing something that makes you realize you are a Christian and I am a Hindu. Integrity means utmost faith in the system. If a common man breaks the law and nothing happens then there is a loss of faith in the law.

This officer argued that even heightening awareness of religious identity can be grounds for punishment for the sake of security, as nothing should threaten national unity—although the comment should be understood in the context of significant religious violence in India. It is also only the civilian breaking the law who threatens its authority, rather than police, who would presumably break it only for the sake of the state’s interest.

Conflict settings such as Kashmir offer officers a particularly strong defense of their position given the Emergency laws that provide legal backing to the priority they place on security over rights. Human rights professionals emphasize, however, that violations by the police and security forces are rampant throughout India and are by no means limited to areas of
conflict. Interviews support this assertion, as civil police serving in regions without Emergency law prioritize security above rights to the same extent. They did not have a specific “emergency” situation to draw on in their explanations. Instead, they tend to understand their work as occurring in a kind of undeclared emergency, perceiving Indian society as chaotic and lawless.

**Protections from the State by the State: Tensions in the Rights Framework**

Human rights are intended to protect civilians against the state. In spite of efforts to create accountability above national governments, state actors such as police officers bear the primary responsibility for protecting these rights. As with the way they interpret rights as based on security (see chapter 6), their rejection of rights for the sake of security is a reminder of why this is problematic.

While human rights education programs stress the importance of reaching law enforcement officers, the latter’s comments indicate that they do not act alone. As state agents, they exist within a web of expectations, commands, rewards and punishments that typically center at best on the goals of the state and at worst (in cases of corruption), on the private goals of individuals. Although some decisions officers make are likely within their control, their role as frontline representatives of the government at times pose inherent difficulties for their role as defenders of human rights against the government. This is especially the case when elected officials have significant influence over police officers’ careers, as is the case in India. Hence basing the protection of civilians from the state in state actors is beset by inherent difficulties.

This is all the more the case given that officers perceive their role to be that of state representatives more than as representatives of an abstract “rule of law.” When I asked how police should deal with political protests, one officer reflected, “The elected government do what
they want through the police.” Another officer responded to my questions about police violence against protestors similarly, arguing, “As law enforcement officers we are supposed to follow the government.” He went on to say that violence should be avoided, but if people are disobeying the government then officers are left with little choice. Another officer noted that the police must follow the orders of the government, musing that the police are like “the fingers” in relation to the brain: “When my brain tells my fingers to pick up the food to eat,” he quipped, “they do so.”

Although the establishment of government human rights bodies is an important achievement by human rights standards, it is fraught with these tensions. An officer who is responsible for investigating allegations of police abuse for a state human rights commission responded to my questions about a recent episode in which police beat impoverished farmers who were protesting the government’s seizure of their land. He replied, “That is not in the purview of the human rights commissions. When a factory comes, the government is bound to displace people so the matter is not referred to us.” This suggests that state human rights bodies likely address only those matters that the state considers human rights violations, which are unlikely to include state actions that are in the national interest.

This tension is compounded by the fact that officials in the National and State Human Rights Commissions who are responsible for investigating errant police behavior are themselves police officers. I asked the above state human rights commission investigator about the challenges he faces in his work. He responded, “We always conduct inquiries against our fellow brothers.” He reassured me that, “when someone is violating the human rights of an individual, he is brought to task.” However, he also admitted the difficulty in this arrangement, noting, “As government, we have to conduct the inquiry against other government servants.” In spite of this officer’s assertion, officers who torture are rarely “brought to task,” as described in chapter 2.
This lack of punishment may be partially explained by the beliefs and perceptions of the investigating officers within the National Human Rights Commission. In-depth interviews with these officials reveal that they hold many of the same views about torture articulated by officers serving in the field. They stress the incorrigibility of certain types of criminals, the pressures on officers to solve cases, and the expectations of supervisors and the public as motivating torture. They also note the ways in which officers’ own human rights are violated by the conditions in which they work, and suggest that officers’ exhaustion combined with a lack of training also contribute to torture. They acknowledge that the law against torture should be upheld, but express sympathy with officers whom they suggest have few options outside the use of torture.

That the officials who are responsible for investigating and punishing officers share the latter’s perceptions and empathize with their situation may deter them from punishing those who use torture. As police officers—and state representatives—they seemed to be hesitant to punish other officers whose constraints they understand so well.

**Resistance to Human Rights: Competing International Norms**

A premise of much scholarly work is that ideational obstacles to international human rights primarily take the form of domestic or local norms and values. This can be seen in the emphasis many researchers place on framing human rights in ways that match local culture.\(^2\) This study reveals that law enforcement officers do endorse norms and values that could be construed as “local” and that oppose human rights. But they also articulate their resistance to human rights in terms that align with and explicitly reference competing international principles. They defend the use of torture by drawing from the international consensus on the importance of state security and national integrity. They point to human rights violations committed in the
name of security by powerful countries such as the United States, and argue that any country would and should prioritize the nation above individual rights.

This suggests that domestic contexts are sites of contestation between competing international principles as local actors draw from those that advance their interests and values, and use them to form an internationally recognized “legitimate” argument against those norms they reject. It is not especially surprising that the international actions of the American military are noticed by Indian military officers and by police in the nation’s capital of New Delhi. But even police serving in towns outside the political center sometimes defend their behavior by referencing the actions of the United States and other countries.

For example, I asked a mid-ranking police officer in Uttar Pradesh whether it is possible to maintain law and order while still respecting human rights. He replied:

No it is not possible to do both. In developed countries also. The USA is violating human rights in Afghanistan, dropping bombs. People are dying. But you can say that they are doing good fighting terrorism.

Similarly, the high-ranking police officer in New Delhi whose vignette opened this chapter drew from the actions of the United States as part of his defense of police “encounter” killings in India (wherein the police assassinate suspected criminals). He first discussed the need for the practice in India, and argued against the human rights and laws that restrict it. He asserted:

I understand the concerns of civil society. But once a person has been caught red-handed and is guilty without a doubt—normally this person is killed by police in a staged fake encounter. This used to be effective because terrorists knew that once they were classified as terrorists they would be killed. This kept the terrorist population under control. But
once the human rights commission and the judiciary started interfering, this is done less and less and this is helping terrorism to spread.

Shortly thereafter, I asked him to elaborate on an earlier assertion that a tension exists between police work and democratic values. He explained:

Democratic culture says that arbitrary killing is not permissible because no life should be taken without the opportunity to defend himself. So extrajudicial killings are not possible. Only capital punishment after trial. State violence is not possible. But dreaded criminals are so strong they need to be killed on the spot. I am quoting your president. Your president ordered Osama to be killed.

Here, the American president’s decision to order the killing of an iconic international terrorist is salient for a police officer in Delhi when he justifies domestic extrajudicial killing by the police. His transition from discussing police violence in Delhi to international violence by the United States suggests the point he may be making: if assassination without trial can be justified in some cases, then there are indeed times when “inalienable” human rights must be sacrificed. He implies that if it is right for the United States, who is to say that it is not legitimate for other states with domestic problems? Hence international actions by far-away states can have meaning for how local state actors defend their own actions.

The US is not the only country police reference. For example, a high-ranking police officer from Punjab seemed to point to Israel’s legalization of practices that are considered torture under international law. He stated:

You have to extract information from people. A little bit of pain is very important. Pain has been accepted in the entire schema of things. Like with the Palestinian issue. It was
accepted at the international level that there should be some torture to get information from extremists.

It is unclear what he meant here by the “international” level in reference to the torture of Palestinians. At the least, the comment suggests that he believes this violence took place with some level of approval or at least without significant international condemnation.

At other times, officers stop short of arguing for the legitimacy of human rights violations, but point them out in other countries to suggest their inevitability. For example, I asked a mid-ranking army officer in Kashmir why human rights organizations criticize the army. After first musing that human rights activists have a job to do and “must make a big deal of things,” he stated, “There are aberrations everywhere, including among the US forces in Afghanistan.” He later made this point again when describing the human rights course in which he is enrolled. He mentioned that in the course they learn about “types of abuses in different places like America, Israel, Gaza, and India—anywhere it could be.” A mid-ranking police officer made a similar point. When I asked for his view of an NGO report on police torture in India, he replied, “Everywhere this happens, not just in India only. It can happen anywhere, in the Netherlands.” When I asked a high-ranking Indian Police Service officer from Madhya Pradesh about police violence in India, he compared the situation to the United States, reflecting:

It happened in Los Angeles. Because people did not have faith in the police, there was a communal riot. Also in New Orleans, it was found that the majority of the police were in the hands of hooligans. The new chief demanded that overnight the salary of police should double and that the people who have authority should be properly trained and paid.
He seems to approve of the way New Orleans responded to the problem, by training and properly paying police. But he also points out the ubiquity of the problem of police violence, or at least its presence in the United States, as a way of explaining its presence in India. Similarly, a high-ranking Indian Police Service officer from Punjab discussed his experience in a police training program he attended in New York City. He reflected that the NYPD is “quite professional” and that there are “so many things to learn from the New York police.” He noted, however, that there is “scope for further improvement.” He continued:

There is torture in New York also. But don’t cross the boundary. There is more respect for human dignity there…. You can observe certain things. Suppose in India you can go raid a house and pick someone up. In the US they only pick someone up with evidence. But when they do pick him up they torture him also. I spent three hours in the police station. This is from first hand experience.

This comment equivocates; he initially referred to torture in New York as something that should be improved, but quickly transitioned to suggesting that the torture is appropriate because it does not “cross the boundary.” Since he defended the use of torture in other parts of the interview, he seems to use this comment to justify the practice, pointing out that the country from whence the researcher has come also uses torture.

At other times, police criticize the United States for torture, even as they defend it in their own country. They wish to point out that those who criticize others for human rights violations are themselves guilty. For example, a low-ranking police officer in Haryana asked me after the conclusion of our interview, “Some philosophers such as Gandhi say that the USA is the biggest violator of human rights. What do you think of this?” A mid-ranking police officer in Uttar
Pradesh referred simultaneously to international support for and violation of human rights when he said:

Human rights have gained a lot of importance at the international level. In the world human rights are discussed in the context of arrest when people are kept in lock up.

America was criticized in this case in their role in Iraq when they arrested and tortured. By referencing the ways in which the United States and other countries have violated rights on the world stage, police who are accused of torture in local places can make an argument that torture is ubiquitous, and perhaps necessary and just. This is significant in that theorists typically focus their attention on how local norms may inspire resistance to human rights. Although officers’ beliefs about justice and the priority of security are salient locally, police are aware of the ways in which such values and aims are internationally recognized and draw from this to explain and defend their actions.

**International Cross-Pressures**

The cross-pressures of the contemporary world become further evident in these revealing statements. Representatives of powerful states such as the US might prefer to think of human rights violations in the “Global South” as unrelated to the actions of their own government, and as due to cultural norms, history, and resource deficiencies elsewhere. Similarly, state officials in India prefer to discuss police violations as caused by cultural and economic backwardness and committed by police in “far-flung” parts of the country. Such a framing posits competing moral orders, between a liberal international community composed of rights-respecting national governments on one hand and the “local” places deep within them on the other. But police in
“local” places see their violence as consistent with a normative order confirmed by the US and other countries in their discourse and actions.

**Implications for Human Rights Protection**

Officers’ rejection of human rights in favor of what they refer to as security or law and order present particular problems for the spread of human rights norms. First, when officers reject rights, they do not deny violations. These officers admit the occurrence of violations, and argue that they are worthwhile for the sake of more important goals. Hence this presents an obstacle for what some theorists have termed the “norm spiral,” in which state agents’ tactical concessions to rights should in theory trap them into compliance, when eventually activists can pressure them to close the gap between what they say and what they do. In contrast, the officers in this study do not become trapped in the logic of rights by denying violations. Instead, they defend violations, either by negotiating rights as discussed elsewhere (Wahl, forthcoming), or by drawing on competing values and goals as discussed above. In both of these responses, they draw on discourses that enjoy international legitimacy: those of liberalism and modern state authority.

Second, the officers in this study do not entirely ignore or disregard human rights arguments in favor of purely selfish aims. They instead argue in favor of goods that conflict with the rights framework. Educators and activists face not just a rejection of rights, then, but also beliefs and priorities that motivate these rejections. They need to convince officers that human rights are vital, but also that rights are more important than security, or at least that they do not conflict with security.
This challenge is similar to that faced by international activists who seek to influence elite state decision-makers. Previous research suggests that state leaders are more likely to violate international norms when they view the transgression as a way to promote another good. A similar process may be at work among local-level domestic state actors in regard to torture. The police, and at times the public, view this violence as a necessary means of upholding security and justice. The existence of these competing values may make it easier for officers to defend—and perhaps for the public to support—what may otherwise be understood as morally problematic. These competing values may also make the self-interest involved in such violence more forgivable in the view of those who commit it and in the view of the public, which indicates an obstacle for human rights educators.

Third, that these officers understand rights principles and still disagree with them presents a problem for programs that are premised on the idea that violations arise primarily out of ignorance, and aim to solve this through the addition of information about human rights.

Fourth, a major obstacle to rights diffusion is the normative legitimacy that officers’ beliefs sometimes hold on the world stage. Officers are aware of and reference norms of state security codified in domestic law and demonstrated in the actions of countries like the United States. In this way officers have a vast normative resource on which to draw to justify violations of human rights.

Finally, these obstacles point to a tension in the human rights framework. The protection of civilians from the state is based in the state itself. State actors work in institutions that reflect the interests and priorities of the state. They are limited (to greater or lesser degrees, depending on the country) in the extent to which they are likely to protect citizens from the state. Hence even after a state has signed a human rights treaty, it is not just individual aberrant officers
against whom human rights workers must argue, but the interests of the state, and the apparatus and norms that support those interests. This is particularly the case in national contexts where institutions meant to check state power do not have sufficient influence. In India, this tension is exacerbated by laws that limit the ability of civilians to prosecute public officials in court, along with corruption in the legal and political systems.

Moreover, law enforcement officers are aware of the discursive resource at their disposal. They draw from the widely accepted importance of state security to justify violence. While human rights advocates often worry that the perceived “Western” character of human rights will engender “local” resistance, this may be an outdated, even optimistic, concern. These police do not see human rights as Western. Instead, they see torture and extrajudicial execution as Western – and draw on the reality behind this perception to defend their own violence.

1 Asian Centre for Human Rights, “Torture in India”; Personal interviews with human rights professionals in New Delhi, 2011–2012

2 Merry, “Transnational Human Rights and Local Activism,” 38–51; Keck and Sikkink, Activists Beyond Borders; Checkel, “Norms, Institutions, and National Identity in Contemporary Europe,” 84–114;

3 In 1987, Israel legalized practices that under international law constitute torture. The High Court of Justice ruled in 1999 that “moderate physical pressure” should not be used routinely, but did not rule out its use entirely. Hajjar, “International Humanitarian Law and ‘Wars on Terror,’” 27.

4 Risse et al., The Power of Human Rights.