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USE OF TEAR GAS BY LAW ENFORCEMENT AGENCIES

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ABSTRACT:

Tear gas has been used for a very long time in several cases to restrain violent crowds in India as well as in various countries and has been perceived by individuals as a form of intimidation and helplessness. It was originally designed for military use and first used during World War I, but it has continued to be used as a form of crowd control by law enforcement officials in civilian circumstances. The tool built for its utility in wars has somehow found its place as a growing means of crowd control. Despite being banned under the Chemical Weapons Convention, the device produced for its use in wars has somehow found its place as a growing means to pacify demonstrators and similar situations of civil unrest. A long-standing subject of controversy has been the use of tear gas in taming civilian unrest. There have been many recorded fatalities, but one of the commonly used means of crowd control remains.

Keywords: *Tear gas, chemical weapon, crowd control, police, human rights, right to health and safety, right to life.*

Introduction

For a long time, countries such as the United Kingdom, the United States, Hong Kong, Istanbul, India and many others have used tear gas to monitor civilian mobs and situations of civil unrest. Initially, tear gas was developed as a tactic for military use, but France first used it in 1914. Tear gas has found a place for law enforcement officials to disperse peaceful or violent civilian demonstrations. "2-chlorobenzylidene malononitrile (CS), oleoresin capsicum (OC), and

chloroacetophenone (CN) are the most frequently used tear gases."¹Typically, these are used as sprays or in the form of gas bombs. Irritation and pain in the eyes and mucosal surfaces are the main side effects of these gases. (Peri Arbak, 2014). Nasal inflammation, rhinorrhea, cough, breathlessness, laryngospasm, pulmonary edema, and dysfunction of the reactive airways are the toxic effects of such gases on humans.²³

Of Late, in Kashmir and Assam⁴, tear gas was used by the Indian Government, resulting in numerous recorded casualties⁵, about 450 tear gas shells were deployed in just 5 days by the Delhi Police in the capital Delhi on people protesting against the new Citizenship Amendment Bill (CAB)⁶, which resulted in multiple injuries to individuals with university students losing eyes⁷ and hands amputated. Also, in closed college spaces, tear gas shells were hurled at university students, causing amputation of the hand of a student and causing suffocation and several injuries to others⁸.

There has been a long-standing controversy, debate along with criticism of the use of crowd control agents such as tear gas in law and order, but there is inadequate evidence available on the effects of tear gas, and analysis and study are required to be on the same level to understand the use and impact of tear gas. In India and other countries around the world, tear gas continues to be used. The United Nations guidelines are being abused and tear gas is being used arbitrarily, so the need for national and international legislation and guidelines is the need for the hour so that this growing danger can be curbed and the human rights of citizens around the world that are

¹ Angus Chen, How Tear Gas Works: A Rundown of the Chemicals Used on Crowds, SCIENTIFIC AMERICAN, November 29, 2018, last seen on 10/11/2019

²S. Park and S. T. Giammona, "Toxic effects of tear gas on an infant following prolonged exposure," The American Journal of Diseases of Children, vol. 123, no. 3, pp. 245–246, 1972.

³H. Hu and D. Christiani, "Reactive airways dysfunction after exposure to tear gas," The Lancet, vol. 339, no. 8808, p. 1535, 1992.

⁴Pranjal Baruah, Protesters pour out on Assam streets, The Telegraph, 11 December 2019

⁵ Adnan Bhat and Zubair Sofi, over 150 treated for tear gas, pellet gun injuries in Kashmir, AL JAZEERA AND NEWS AGENCIES, 23 August 2019

⁶Prawesh Lama, 450 tear gas shells fired in 5 days at 2 sites during Delhi protests, Hindustan Times, 19 December 2019

⁷PTI, 'Cops Lobbed Teargas in Reading Room, Student Lost Eyesight': Jamia Submits Fresh Report to Govt, News18, 22 December 2019

⁸Salik Ahmad, AMU: Student's Hand Amputated, 'Police Violence Worse Than In Jamia', Outlook India, 18 December 2019

being hindered by the use of such dangerous gases legalized by various countries can be prevented and new human rights are being hampered.

Human Right Infringement

Even after being banned by customary international law and subsequently by the military under the Geneva Protocol of 1925 and the Chemical Weapons Convention of 1993⁹, tear gas, which is regarded as a weapon of military warfare, has quickly found its role in taming crowds by law enforcement agencies.

European Convention on Human Rights (ECHR) is seeking to bring about change in the use of tear gas by directing the member states to review the current legislation and bring it in line with the human rights and international human rights instrument, to secure the right to free assembly, right to health and protection under the fundamental right to life. ECHR aims to shift police and law enforcement tactics from offensive weapons to a more civil rights-oriented method of educating police to use non-violent, dialog-based methods of crowd control, and investigates any instances of any ill-treatment by law enforcement officials.¹⁰

In *Nagmetov v. Russia*¹¹, the Grand Chamber of the European Court of Human Rights found the plaintiff's death due to tear gas to be a violation of Article 2 of the Convention relating to the protection of the right to life guaranteed to all people.

Under the “United Nations Human Rights Guidelines on Non-lethal Weapons in law enforcement”¹², the tear gas use legislation and guidelines specify that it should be used in the event of offensive circumstances and not passive circumstances.¹³ The rules of the United Nations and the European Court of Human Rights have also held that tear gas cannot be used in

⁹Toxic chemicals as weapons for law enforcement, International Committee Of The Red Cross, 6 February 2013 <https://www.icrc.org/en/doc/resources/documents/interview/2013/02-06-toxic-chemical-weapons-law.htm>

¹⁰ Committee on Legal Affairs and Human Rights, Parliamentary Committee, Council of Europe, Urgent need to prevent human rights violations during peaceful protests, 2016

¹¹*Nagmetov v. Russia*, Case No. 35589/08, 30th March 2017

¹²United Nations Human Rights guidance on non-lethal weapons in law enforcement, Geneva, August 2019

¹³United Nations Human Rights guidance on non-lethal weapons in law enforcement, Geneva, August 2019

enclosed spaces and must be fired at a high angle from a distance. It should also not be directly shot at the face or head of any person, as the same can lead to serious injury resulting in death¹⁴.

The use of tear gas is a blatant infringement of the human rights of different individuals around the world. Also, after having a gross and lethal health, climate and social effects, tear gas is permitted to be used, but it is only permitted as per the guidelines provided under different conventions and by the United Nations. A breach of human rights is any misuse or non-compliance with these protocols and guidelines.¹⁵

Violation of Right to Peaceful Protest and Dissent

Even after it has been outlawed for fighting, most countries such as the US, UK, India and Hong Kong still use tear gas¹⁶. As witnessed in India during the CAB protest, this dangerous chemical agent is being used as a political tool of mob control and to suppress any sort of dissent or protest against the government by its citizens, such as in Hong Kong and now¹⁷.

In every democratic nation, peaceful protest is important and should not be buried by resorting to such lethal weapons.

Over and over again the Supreme Court of India has ruled that police and law enforcement agencies are unable to use excessive force on people by using tear gas, but it is still being used in various parts of the country. Equality and freedom of speech, along with the right to peaceful assembly and dissent, which are the cornerstone of every democracy, are being thwarted.

¹⁴ European Court of Human Rights, *Ataykaya v. Turkey*, Judgment, 22 July 2014, paras. 56, 57.

¹⁵ Eric Reeves, *Tear Gas as a Chemical Weapon: When is it prohibited under international law? The question of Sudan at present*, SUDAN Research, Analysis and Advocacy by Eric Reeves, <http://sudanreeves.org/2019/01/24/tear-gas-as-a-chemical-weapon-when-is-it-prohibited-under-international-law-the-question-of-sudan-at-present/>, last seen on 10/11/2019.

¹⁶ Adnan Bhat and Zubair Sofi, *Over 150 treated for tear gas, pellet gun injuries in Kashmir*, AL JAZEERA AND NEWS AGENCIES, 23 August 2019

¹⁷ Naseer Ganai, *Not A Place to Breathe: How Tear Gas Poses A Public Health Risk In Kashmir*, Outlook India, 9 January 2019

In Re: Ramlila Maidan Incident Dt.4/5.06.2011 v. Home Secretary¹⁸, Union of India, took suo moto action against the Delhi Police for violating their authority by using excessive force and by using tear gas and lathi charges against protesters at Ramlila Maidan in Delhi in a manner not permitted under the procedures. Furthermore, the Supreme Court reiterated that the right to assemble and express oneself freely and lawfully pursuant to Article 19 is intrinsic and related to the right to freedom and liberty pursuant to Article 21 of the Constitution of India. Furthermore, the Supreme Court claimed that independence is subject to official interference, but such laws cannot be used under the garb of liberty to cripple it.

The Supreme Court upheld the right to protest in Himat Lal K. Shah v. Commissioner of Police¹⁹, and further held that the state must help the basic assembly of people. The right to protest against the government should be granted to citizens as it is a prerequisite of a people's democracy and government so that they are not governed by anarchy.

Violation of Right to Health and Right to Life

In Article 21 of the Constitution of India, the right to health and a safe environment has been read as a fundamental right and the corresponding obligation has been assigned to the State to maintain the same under Article 51-A of the Constitution. The Universal Declaration of Human Rights of the United Nations was accepted in a similar way by the Constitutions of all other countries. This was upheld in the Regional Director, E.S.I. Corpn, by the Indian Constitution. Anr. And Anr. V. De Costa Francis and Anr.²⁰ The basic right to life guaranteed by Article 21 of the Indian Constitution imposes a corollary duty on the State to safeguard every person's right to life.

Conclusion

¹⁸ In Re Ramlila Maidan Incident Dt.4/5.06.2011 v. Home Secretary, Union of India, Suo Moto Wp (Crl.) No. 122 of 2011

¹⁹ Himat Lal K. Shah v. Commissioner of Police, 1973 AIR 87, 1973 SCR (2) 266 (India)

²⁰ Regional Director, E.S.I Corpn. and Anr v. Francis DeCosta and Anr 1992 SCR (3) 23, 1993 SCC Supl. (4) 100 (India)

In addition to violating their right to dissent, peaceful protest and freedom of speech, there is an immediate need to avoid the aforementioned human rights abuses of citizens around the world. With an ever-growing rate of injuries and deaths due to tear gas deployment, few countries are attempting to innovate and implement non-lethal tear gas alternatives such as skunk, a recently used organic foul smelling, crowd and riot control agent by Israel²¹. After applying it to water, the foul-smelling mixture is sprayed and is an absolutely non-lethal and highly effective form of riot control. We can accomplish the goal of managing the crowd without causing any significant damage or impact to people, animals and nature by using non-hazardous means of crowd control agents.

Through enforcing strict laws and compliance with the United Nations Guidelines to protect human rights and avoid arbitrary misuse of such weapons, the use of tear gas must either be banned entirely or controlled from misuse. The need for an hour when the use of such gas is openly used by law enforcement agencies in the world and also in countries such as Hong Kong, France and Istanbul, often as a political tool to control citizens by its indiscriminate use, is a national and international law in accordance with the United Nations Human Rights Guidelines.

²¹ Wyre Davies, New Israeli weapon kicks up stink, BBC News, Jerusalem, 2 October 2008, http://news.bbc.co.uk/2/hi/middle_east/7646894.stm