

Indian Atrocities in Occupied Jammu & Kashmir

Background

Kashmir is one of the oldest, unresolved and long-standing conflicts in modern history. 71 years ago, through an armed invasion and aggression, India, occupied the major parts of the State of Jammu and Kashmir. Since then, it has brutally killed and injured thousands of Kashmiris and blinded hundreds for life, including women and children. To concretize its hegemonic design, India has deployed more than 700,000 security personnel in the region. They are engaged in a brutal campaign against innocent Kashmiris in order to curb their legitimate right to self-determination.

The right to self-determination, as enshrined in the Article 1 of the UN Charter, is one of the fundamental principles of International Law. It is also an overarching principle of the International Covenant on Civil and Political Rights (ICCPR), to which India is a signatory.

Until now, the UN Security Council has adopted 18 resolutions, which are directly or indirectly related to the Kashmir dispute. These resolutions clearly pronounced that the future of Jammu and Kashmir dispute would be resolved “through the democratic method of a free and impartial plebiscite” in accordance with the aspirations of the Kashmiri people, under the auspices of the United Nations.

Indian Prime Minister, Pandit Jawahar Lal Nehru himself at various occasions declared that the Kashmir dispute would be resolved in accordance with the wishes of the Kashmiri people. In his address to the Indian Nation on November 3rd, 1947 he said that “the fate of the Kashmir is ultimately to be decided by the people. That pledge we have given not only to the people of Kashmir but to the world. We will not and cannot back out of it.” It is, however, regrettable that decades after the adoption of these resolutions, India has not fulfilled its obligations under international law. Instead, it subjugates innocent and unarmed Kashmiris through undemocratic, inhumane and violent means to perpetuate its occupation.

Reports on the Human Rights Violations in Kashmir (2018)

India has been involved in committing serious crimes against humanity which have been recorded by a number of international organizations since many decades. This year is particularly significant, as two important reports have been released on the Kashmir issue by independent Commissions/Organizations.

First, is the report on the Situation of Human Rights in Kashmir (June 2018), issued by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the other; by the All Parties Parliamentary Group (APPG), which was released by the British Parliament (Oct 2018). These reports contain several similarities in their findings that highlight the gross human rights violations in Indian Occupied Kashmir (IoK).

Draconian Laws in IoK

Various facets of the Kashmir dispute such as its history, political aspect and the human rights violations had been the subject of extensive research; however, this particular paper

focuses on the black laws that govern the Jammu and Kashmir region and are exploited to authorize genocide and aggression by the Indian Security forces. These laws include:

- The Jammu & Kashmir Public Safety Act (PSA) of 1978,
- Armed Forces (Jammu & Kashmir) Special Powers Act (AFSPA) of 1990,
- Jammu & Kashmir Disturbed Areas Act of 1990,
- Terrorist and Disruptive Activities Act (TADA) of 1990,
- Prevention of Terrorism Act (POTA) of 2002, etc.

However, for the purpose of this paper, the focus will remain on the AFSPA and PSA, which according to the OHCHR report have “*created structures that obstruct the normal course of law, impede accountability and jeopardize the right to remedy for victims of human rights violations.*”

Public Safety Act (PSA)

The **Public Safety Act** was initially promulgated in 1978 (subsequently amended in 1987 and 1990). In the words of OHCHR report, this Act is typically used to “circumvent the protections of ordinary criminal procedure.” It empowers the State Government to detain a person without trial for two years under the pretext of ‘maintenance of public order.’ As examined by the South Asian Society of Criminology and Victimology (SASCV), “*This Act fell short of the recognized norms of justice, such as equality before law, the right of the accused of appearance before a Magistrate within 24 hours of arrest, fair trial in public, access to counsel, cross examination of the witnesses, appeal against conviction, protection from being tried under retrospective application of law, etc.*” Additionally, under Section 22 of this Act, any legal proceeding against security officials for acts “done in good faith” is also disallowed. The OHCHR report noted that between March 2016 and August 2017 “*over 1,000 people were detained under the PSA. Human rights groups had warned Jammu and Kashmir authorities that minors were also being arrested under the PSA in 2016 and 2017.*”

Armed Forces Special Powers Act (AFSPA)

The other Act that requires attention is the **Armed Forces Special Powers Act (AFSPA)**. It is pertinent to mention that this law was passed by Indian Parliament in Sep 1990; however, this came into effect retrospectively from Jul 1990 validating the past acts of the security forces. This indeed is a clear violation of the international norms and standards on the use of force. Indian ex-Vice President, Hamid Ansari, in the Eighth V.M. Tarkunde Memorial Lecture On ‘Citizens And State Conduct, (2014)’ himself recognized that there were frequent complaints about the misuse of laws such as AFSPA and PSA which “*reflects poorly on the State and its agents.*”

These laws are not only criticized by the International Human Rights Organizations, but the US State Department in its Annual Human Rights report also criticized them in the past many years. The 2017 Human Rights report on India summarizes the provisions of AFSPA in the following words: “*Under the AFSPA, a central government designation of state or union*

territory as a ‘disturbed area,’ authorizes security forces in the state to use deadly force to ‘maintain law and order’ and arrest any person ‘against whom reasonable suspicion exists’ without informing the detainee of the grounds for arrest. The law also provides security forces immunity from civilian prosecution for acts committed in regions under the AFSPA.”

All Parties Parliamentary Group (APPG) report by the British Parliament suggests that *“the effect of the AFSPA is to erode rather than strengthen the rule of law across the state. It militates against a return to a rule-governed society which incorporates respect for human rights, and its repeal should be a matter of priority.”*

It may be noted that since the enactment of these laws, the Government of India has failed to prosecute a single security person in Civilian Courts. A committee of Indian Government recommended in 2012 that cases of sexual violence by the Armed Forces be brought out of the purview of AFSPA, but this recommendation is also not yet implemented.

Overview of Human Rights Violations in IoK

To curb the Kashmiris’ legitimate demand for self-determination, the Indian Government has resorted to brutal means of suppression including custodial killings, fake encounters, use of pellet guns, unmarked graves, sexual violence, enforced disappearances, among others. This data, as documented in the OHCHR report by the United Nations, is presented below:

Time Period		Figures
Jul 2016 to Mar 2018	No. of civilian deaths	130-145
Jul 2016 to Feb 2017	No. of people injured	9042
Mar 2016 to Aug 2017	No. of people detained	1000
Jul 2016 to Feb 2017	No. of pellet gun victims	728
1989 to date	No. of people disappeared (as quoted by the Association of Parents of Disappeared Persons)	8,000*
1989 to 2017	No. of Registered cases of sexual violence	143
1 Jan to 2 Mar 2018	Cross-border violations from the Indian Side	415
	No. of civilian deaths	20
	No. of injured	71
Year 2017	Cross-border violations from the Indian Side	1970
	No. of Civilian deaths	54
	No. of civilian injured	51

**State & Central Government of Indian Occupied Jammu and Kashmir admits to a number of 4,000*

There is little progress towards credibly investigating instances of grave human rights violations by the Government of India. These inhumane tactics have been repeatedly reported by other international organizations as well. Some of these are listed below:

- The massive use of pellet guns blinded hundreds of men, women and children. In its report titled “Losing Sight in Kashmir: The Impact of Pellet-Firing Shotguns,” the Amnesty International compiled and presented 88 stories of pellet victims, some of which have lost their sight for life.

- There are reportedly more than 6000 mass graves found in IoK. Most recently, In Nov, 2017 India's own State-run Human Rights Commission, Association of Parents of Disappeared Persons (APDP) has asked the Government to investigate at least 2,080 unmarked graves along the LoC.
- The OHCHR during its research has found 143 documented cases of alleged sexual violence. (Please note most of the cases of sexual violence are not documented or reported.)
- In 2014, the Committee on the Elimination of Discrimination against Women (CEDAW), which is an international treaty adopted in 1979 by the United Nations General Assembly (UNGA), and ratified by India in 1994, expressed particular concern about the provisions of AFSPA which required prior authorization by the Government to prosecute security forces with rape charges.

US Laws and Human Rights

The status of Human rights in Kashmir is deplorable and is in clear contradiction with the American value system and fundamental US laws. As referred to in the first ten amendments of the US Constitution, which is commonly termed as the "Bill of Rights," the State is responsible for protecting fundamental rights of all US citizens. It is responsible to guarantee rights of freedom of speech, religion, assembly and petition. In addition, it also bars security entities to perform search and seizure, without the due process of law. It limits cruel and unusual punishment and enforced self-incrimination. Moreover, it bars the government from depriving any person of their right to life, liberty or property.

Conclusion

The reports published by the OHCHR and APPG are testimony to the fact that Kashmir is an internationally recognized dispute which requires urgent attention by the world community. India continues to suppress the legitimate rights of innocent Kashmiris, neglect their rightful demand for self-determination and ignore calls for probes into gross and systematic human rights violations by multiple international humanitarian organizations.

As an internationally respected defender of human rights, the United States of America bears a moral responsibility to play its role in conveying a clear message to the Government of India to put an end to the barbarism in IoK and to repeal black laws. India should fulfill its commitments and international obligations under international law.

I would urge all members in Pakistani Americans to please step forward and play their due role in highlighting the Kashmir dispute, in particular the draconian laws being implemented in IoK, when interacting with members of the US Administration, US Congress, civil society groups' academics and fellow citizens. Your voice would make a huge difference. If you are able to play a part in easing the sufferings of Kashmiris in IoK through the repealing of these black laws, you will have rendered a great service to humanity.

List of Abbreviations

AFSPA	Armed Forces (Jammu & Kashmir) Special Powers Act
APDP	Association of Parents of Disappeared Persons
APPG	All Parties Parliamentary Group
CEDAW	Committee on the Elimination of Discrimination against Women
ICCPR	International Covenant on Civil and Political Rights
IoK	Indian Occupied Kashmir
OHCHR	Office of the United Nations High Commissioner for Human Rights
POTA	Prevention of Terrorism Act
PSA	Public Safety Act
SASCV	South Asian Society of Criminology and Victimology
TADA	Terrorist and Disruptive Activities Act
UNGA	United Nations General Assembly

References

Office of the United Nations High Commissioner for Human Rights (2018). Report on the Situation of Human Rights in Kashmir (14 June 2018) p.05, 08-11, 17-22, 25, 2, 35, 47. Available at <https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf> [Accessed at 12 Dec, 2018].

All-Party Parliamentary Kashmir Group (2018). Human Rights violations in Kashmir. [online] London: APPG, p.10. Available at: <https://www.scribd.com/document/391974177/Kashmir-APPG-Draft-Report-Human-Rights-Inquiry-October-2018> [Accessed 10 Dec. 2018].

Tariq Ali, Hilal Bhatt, Angana P. Chatterji, Habbah Khatun, Pankaj Mishra and Arundhati Roy (2011) p. 126-127.

Kanyakumari, Jamil Nadu, (2013). Second International Conference of the South Asian Society of Criminology and Victimology (SASCV). (11-13 Jan, 2013) p. 186.

Ansari, H. (2014). Vice President delivers Eighth V.M. Tarkunde Memorial Lecture On 'Citizens And State Conduct'.

Country Reports on Human Rights Practices for 2017 (Bureau of Democracy, Human Rights and Labor, 2018) Chapter India, p.04. Available at: <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

Amnesty International (2017). Losing Sight in Kashmir. [online] India: Available at: <https://amnesty.org.in/wp-content/uploads/2018/01/Losing-Sight-in-Kashmir-The-Impact-of-Pellet-Firing-Shotguns.pdf> [Accessed 11 Dec. 2018].

CEDAW/C/IND/CO/4-5 (2014). Convention on the Elimination of All Forms of Discrimination against Women, para 12.

Bill of rights transcript text Available at: http://www.archives.gov/exhibits/charters/bill_of_rights_transcript.html (Accessed: 15December 2018).