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# Crisis in Kashmir: Violation of Fundamental Rights and International Treaties

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## ABSTRACT

*Kashmir has been facing a humanitarian crisis since the time of independence which increased in the '90s. The atrocities are mostly done by the armed forces and militants, the level of atrocities is such that thousands of families have been destroyed and the atrocities done by the armed forces do not even get registered in police stations. The women of Kashmir are the most vulnerable amongst the vulnerable because they are victims of both active and passive atrocities. The article has discussed the kind of atrocities Kashmiri faces and how India violates various international treaties and conventions. The article has also discussed various statutes and their enactments in Kashmir and how these statutes have affected the lives of civilians of Kashmir.*

**Keywords:** *Half-widows, Atrocities.*

## I. INTRODUCTION

Imagine living in a state where you cannot access the internet, cannot make phone calls to your loved ones who live far away from you, Imagine getting beaten by soldiers just because they have a suspicion that you work for a terrorist organization, mere suspicion, that's Kashmir for you. Since the day of the abrogation of Article 370 from the Indian constitution, the lives of Kashmiris have become more difficult as there is an internet blackout in Kashmir and it's almost 100 days now. The Kashmiri students preparing for various civil services exams are facing a huge problem, although the environment in Kashmir was never good enough to study because of militants and the Indian army after the internet blackout, it has become worse. The situation in Kashmir is contradictory to the idea of Mr. Modi's digital India.

The bigger problem is the ignorance of media houses when it comes to covering the actual situation in Kashmir. Indian media houses are not interested in human rights violations in Kashmir, they never were. The only thing in which they are interested is showing how Central Government has abrogated Article 370 within a day and how he fulfilled the dream of every citizen. No media house is covering what is going on in Kashmir after the abrogation of Article

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370, how many people have died? How many women have been raped? How many women have become half widows? There is no data regarding this and the people of India are not concerned either, they are more concerned about buying plots and marrying Kashmiri girls. The media is shamelessly showing that there is peace in Kashmir now, the state who has been fighting with India for almost fifty-five years has suddenly decided not to fight anymore after the abrogation of Article 370 which gives them special status.

This article is based on human rights violations of Kashmiri civilians by the Indian government through Indian armed forces and it portrays the actual situation in Kashmir. It deals with the history of Kashmir to get an insight into what facts and circumstances lead Kashmir to this stage. The article also deals with various international treaties and conventions and violations of these treaties by India in the state of Kashmir.

## **II. HISTORICAL BACKGROUND**

The issue of humanitarian rights in Kashmir has always been there because of the incidents that took place at the time of partition. The genesis of the Kashmir dispute lies in the decision taken by the British government at the time of partition of India into two dominions India and Pakistan. The question of the 565 or so princely states, which varied in size from about 85,000 sq. miles (Kashmir) to 0.29 sq. miles (Vejonness),<sup>9</sup> was left vague<sup>3</sup>. All the princely states had two options either to join Pakistan or India depending upon the wish of the majority of the population and their geographical contiguity. The Hindu Maharaja of Kashmir Hari Singh wanted to stay independent initially but a Muslim uprising in Poonch and massacre in the Jammu area provoked the tribesmen from the northwest frontier of Pakistan. In October 1947, the actual trouble in Kashmir began when the Maharaja ordered Muslims to surrender their arms to the police, the Muslims in Poonch organized themselves as guerilla bands and the Muslims present in Jammu were massacred by Hindu and Sikh militants.<sup>4</sup> After this incident, the tribesmen entered Kashmir to retaliate and to take revenge for their fallen brothers who were massacred by Hindus and Sikhs. On Hari Singh's request, Indian troops were dispatched to help him deal with the tribesmen, but not before forcing him to accede to India. The trouble spread further when in spring, 1948, the Indian army carried out a massive offensive that escalated to war between India and Pakistan.<sup>5</sup> After the whole massacre both the countries complained to the UN about the issue and UNCIP passed a resolution, calling for a plebiscite to determine the wish of Kashmiri people, although India accepted this resolution subsequent

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<sup>3</sup> CHAUDHARY MUHAMMAD ALI, *THE EMERGENCE OF PAKISTAN*, 215 (1967).

<sup>4</sup> PREM NATH BAZAZ, *THE HISTORY OF THE STRUGGLE FOR FREEDOM IN KASHMIR* 338 (1954).

<sup>5</sup> S.H. Zaidi, *The Intractable Kashmir Issue: Search for a Rational Solution*, 56, *PIIA* 53, 60-61 (2003).

efforts by the UN to withdraw Indian troops from Kashmir and efforts to hold a plebiscite have been unsuccessful.

The political turmoil in Kashmir plays a crucial role to create a base for all human rights violations that take place in Indian occupied Kashmir region. After the Maharaja had acceded to India, Nehru asked him to hand over the administration to Sheikh Abdullah. Nehru considered Sheikh Abdullah as a popular personality in Kashmir and mentioned that he has a very high opinion about his integrity and general balance of mind. Nehru believed that he is a good decision-maker who can make mistakes in minor decisions and cannot make mistakes in major decisions that are in the welfare of the state.<sup>6</sup> Abdullah only trusted Nehru and in India, no one trusted Abdullah other than Nehru, Abdullah always had a fear that if India becomes Pakistan of Hindus until Nehru is there, there will not be any such problem but he was sure that this kind of problem will surely arise after someone takes over Nehru. Sheikh Abdullah being a secularist had always preferred India over Pakistan but it was clear that he always had a third option for Kashmir and that was Independent Kashmir.<sup>7</sup> In 1950, Abdullah broached the idea of Independent Kashmir with Loy Hender.<sup>8</sup> It was rumored that Abdullah would declare independence on August 21, 1953, on the festival of id but on August 8 he was deposed as PM of Kashmir and put in jail. Newspapers in India started writing against Abdullah and started creating bitterness against him. Abdullah was a charismatic personality and putting him in jail and making a new PM against the will of the people of Kashmir created a feeling of hatred amongst Kashmiris. Since the arrest of Sheikh Abdullah, terror has reigned in the Indian occupied Kashmir. In March 1955, between 1,200 and 1,400 people were shot dead to suppress the anti-Bakhshi demonstrations after the Sheikh's arrest.<sup>9</sup> The situation was so worse in Kashmir that Abdullah wrote a letter from his prison cell and described India's action on Kashmir as "a fraud upon our people, betrayal of their right of self-determination and a gross breach of international commitments and promises."<sup>10</sup> Soon after the release, Abdullah told the pressmen that his stand on Kashmir remains unchanged and the people's will on the Kashmir issue should prevail. However, Abdullah stressed a peaceful solution for Kashmir but the actions taken by the Union government on Kashmir made the situation even worse. The union government arrested Abdullah again on May 1, 1958, and the reason given was that he was rousing communal passions, preaching two-nation theory, and above all getting funds from

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<sup>6</sup> Ramachandra Guha, *Economic and Political Weekly*, 39 EPW 3905, 3906-3907 (2004).

<sup>7</sup> P. A. Sebastian, *Kashmir behind the Propaganda Curtain*, 31EPW 319, 320 (1996).

<sup>8</sup> *Supra* note 6.

<sup>9</sup> *Abdullah's release and Re-arrest*, 11 PIIA 99, 105-106 (1958).

<sup>10</sup> *Id.*

Pakistan for his subversive activities. The whole arrest scenario of Abdullah and other political leaders crates unrest in Kashmir and this leads to the formation of various terrorist organizations and their main way to take revenge from India but while taking revenge from India they have killed their people.

### III. HUMANITARIAN CRISIS SINCE THE '90s

Although all the Kashmiris have been facing atrocities by both the Indian army and militant organizations in Kashmir the humanitarian crisis increased in the '90s. By 1987 Kashmiri youth had concluded that they could not go on waging the peaceful struggle for their promised right of self-determination for eternity. y. In 1988, 1989, and 1990 there was mass unrest in the valley in which almost the entire population participated. The Jammu and Kashmir Liberation Front (JKLF) dominated the scene of militancy in Kashmir until 1992. The JKLF took an unequivocal stand for the total independence of J and K from the occupation of India and Pakistan.<sup>11</sup> There were various incidents of brutality against the Hindu community and the intensity of the incidents was such that Hindus were forced to evacuate Kashmir and thousands of Kashmiri pandits left Kashmir within a few days. Muslim militants not only forced Hindus to leave the valley but also raped women and done and butchered thousands of pundits.<sup>12</sup> A consequence of these incidents in the valley was the enactment of the Armed Forces (Special Powers) Act (AFSPA) in Kashmir. Besides, there is the Public Safety Act (PSA), Terrorist and Disruptive Act (TADA), and several other laws which suppress basic civil liberties in Kashmir<sup>13</sup>. Since the enactment of these laws massive human rights violations are taking place in Kashmir, Indian forces have been carrying ruthless operations on the militants who are fighting for self-determination of Kashmir the consequences of these operations are not restricted to only militants but the common people of Kashmir are also facing problems because of these laws and the operations held by the Indian armed forces in Kashmir. Among all the problems the main problem faced by the civilians of Kashmir is the Armed forces (Special Powers) Act. This act gives arbitrary power to armed forces to arrest, without a warrant, kill someone on suspicion and other arbitrary powers to the armed forces. Section 4 of AFSPA clearly states that any soldier doing his duty in a particular disturbed area can fire upon or 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

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<sup>11</sup> P. A. Sebastian, *Kashmir behind the Propaganda Curtain*, 31EPW 319, 321 (1996).

<sup>12</sup> RAHUL PANDIT, *OUR MOON HAS BLOOD CLOTS: THE EXODUS OF KASHMIRI PANDITS* 74 (2013).

<sup>13</sup> Lubna Mohiuddin, *Human Rights Violations: A Case Study of Kashmir*, 50 PIIA 75, 75-76 (1997).

or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances.<sup>14</sup> The National Human Rights Commission is not acknowledging the fact that there are various kinds of atrocities taking place in Kashmir. Incidentally, Kashmir's Human Rights Commission set up under the Jammu and Kashmir Protection of Human Rights Act 1997 has not much to show by way of results either.<sup>15</sup> There are so many atrocities that are not even registered by the police or even if the victims go to the concerned police station they deny to file a complaint, even if the complaint is filed and the investigation has taken place, in most of the cases the petitioner would not be able to go to court and the hearing of the concerned case because almost every day there is a curfew in Kashmir due to stone pelters and militants so the people who need justice are not getting justice because of the various forces present in Kashmir. So this is not only an army that is infringing the human rights right of Kashmiris but the whole system is ignorant about the actual condition of Kashmiris.

AFSPA was imposed in Kashmir to suppress the militancy which was rising at a very high speed in Kashmir, although it gives arbitrary power to armed forces to use force or even cause death in case if they find an individual who is acting in contravention of law but it also takes care of the people who are a victim of this act. Section of AFSPA states that any person arrested and taken into custody under this Act shall be taken over to the officer in charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest.<sup>16</sup> In case of arrest of any person, army authority is duty-bound to handover to the officer-in-charge of the nearest police station with the least possible delay<sup>17</sup> but contrary to these sections and guidelines in the statute there are cases of forced disappearances in Kashmir. A lot of families in Kashmir have come across this issue, every time, every day the fear of getting disappeared is always present in the mind of Kashmiris. The forced disappearances here are mostly carried out by armed forces to pressurize men suspected to be militants to surrender, or to intimidate men from joining militancy, or to discourage people from giving aid and shelter to the militants, or simply because they are the only male members at home during crackdowns.<sup>18</sup> Armed forces are not the only party involved in forced disappearances of Kashmiris, Militants are equally responsible for the incidents of disappearances of Kashmiris but the victim of these incidents are the civilians of Kashmiris,

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<sup>14</sup> Armed Forces (Special Powers) Act, 1958, No. 28, Acts of Parliament, 1958 (India).

<sup>15</sup> A. G. Noorani, *Kashmir, and National Human Rights Commission*, 35 EPW 1785, 1786 (2000).

<sup>16</sup> Armed Forces (Special Powers) Act, 1958, No. 28, Acts of Parliament, 1958 (India).

<sup>17</sup> Horendi Gogoi v. Union of India, (1991) Gau CR 3081 (India).

<sup>18</sup> Soudiya Qutab, *Women Victims of Armed Conflict: Half-widows in Jammu and Kashmir* 61, ISS 255, 257 (2012).

who are least concerned about the self-determination of Kashmir. Due to incidents of forced disappearances the women of Kashmir are becoming half widows, the person who is abducted by either armed forces or militants group has very least or no chances of coming back, half widows do not get any benefits that widows get in Kashmir because there is no evidence of the person's death. The half widows are the most vulnerable among the vulnerable in Kashmir because they lose their family as well lose the hope of getting benefits from the government. After all, the government will never accept them as widows. During crackdowns, half widows are more prone to getting raped by army forces. Although Section 4(d) gives power to armed forces to enter and search without warrant any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained<sup>19</sup> but there is no enumeration about the power given to armed forces to rape women and molest them while searching their premises. There are hundreds of cases every year about Kashmiri women getting raped during crackdowns, in a case, the brutality committed by armed forces was such that a village has been named village of rape victim because during a crackdown armed forces raped 29 women.<sup>20</sup> The police are so ignorant about this issue that they do not register about these incidents and no action is taken on army personnel who have committed these crimes.

With this kind of atrocity, Indian armed forces are violating various articles of UDHR. The most significant right regulated in both Covenants and not contained in UDHR is the people's right of self-determination enshrined in common Article 1. Further, under the ICCPR, certain rights may never be suspended or limited, even in emergencies. For instance, no state party may derogate from its obligation to protect the right to life under Article 6(i) freedom from torture Article 7<sup>21</sup>, a scenario in Kashmir is totally in contradiction with this article because every individual in Kashmir is facing various kinds of tortures from rapes to the usage of pellet guns by the Indian army every day is full of torture in Kashmir, though India is a party to most of the human rights conventions the fact remains that it is committing massive violations of the above mentioned international human rights law in the Indian-held Kashmir. Since the Vienna Declaration and Programme of Action were adopted by the UN, the same applies to India as well. There are various articles in the Vienna declaration that deal with the Human Rights issue. Article 1 (5) of the Vienna declaration that it is the duty of the state regardless of political and cultural systems to protect Human Rights and their fundamental freedom. But if we look at the Kashmir scenario due to political and cultural differences, the lives of Kashmiris have become

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<sup>19</sup> Armed Forces (Special Powers) Act, 1958, No. 28, Acts of Parliament, 1958 (India).

<sup>20</sup> Soudiya Qutab, *Women Victims of Armed Conflict: Half-widows in Jammu and Kashmir* 61, ISS 255, 259 (2012).

<sup>21</sup> Lubna Mohiuddin, *Human Rights Violations: A Case Study of Kashmir*, 50 PIIA 75, 82(1997).

full of melancholy. The wave of saffronisation in India recently has created so much problem for the people who are not Hindus. Hindu chauvinism has become the biggest problem for people who are of different religions and live in India. There is not a single article regarding the Vienna declaration that India violates, there are so many articles regarding Human Rights and unfortunately, India is not following any article amongst them. Other than the Vienna declaration, India is also violating Crime against Humanity and various other conventions and treaties which deal with the Human Rights of every person across the globe. India not only abides with international treaties and conventions but shamelessly does not follow its constitution which is written by the people of this country for their people. Part III of the Constitution of India dealing with fundamental rights apply to the State of Jammu and Kashmir (with modifications and exceptions) by the Constitution (Applications to Jammu and Kashmir)<sup>22</sup>. Article 20 of the Indian Constitution protects persons from criminal conviction under ex post facto laws, against double jeopardy and self-determination.<sup>23</sup> Further article 22 provides the right of protection against the arrest of an individual. The provisions of Article 22 apply to the State of Jammu and Kashmir with the reservation of clauses 4 and 7 which say that no law providing for preventive detention shall authorize detention for a period exceeding three months unless an advisory board has reported that there is sufficient cause for such detention.<sup>24</sup> The state is ineffective when it comes to the protection of these fundamental rights of Kashmiri civilians. Every day Indian armed forces and Militants violate the fundamental rights of Kashmiri civilians in one way or the other. Article 22 of the Indian constitution which is applicable in the state of Jammu and Kashmir which gives protection against arrest and detention of a civilian does not carry any kind of importance in the state of Kashmir because people which are arrested by the police either disappear or even if they are in the police custody they do not get the rights a citizen should get the kind of brutality the accused face in the custody is beyond the limits of inhumanity. In most cases, they are not presented in front of a magistrate in 24 hours because most of the time there is a curfew in the state so it also becomes difficult for police forces to take the accused from the police station to the court. Other than all this torture, India has oppressed their only dream of a plebiscite to get self-determination and during the process of oppression, the violence used by armed forces has snatched thousands of lives.

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<sup>22</sup> Lubna Mohiuddin, *Human Rights Violations: A Case Study of Kashmir*, 50 PIIA 75, 85 (1997).

<sup>23</sup> INDIA CONST. art. 20

<sup>24</sup>.. Adarsh Sein Anand, *The Development of the Constitution of Jammu and Kashmir*, 226



#### **IV. CONCLUSION**

Now that India has abrogated a clause from article 370 of the Indian constitution and made it an integral part of India officially, still the only thing civilians of Kashmir want is self-determination. The Kashmiris have been facing atrocities from the Indian state for the last fifty years just to get independence but after abrogating article 370 India has snatched their only dream to form an independent state. If India does not want to give independence to Kashmir, it should not give them wounds either. Now that India has made its decision and merged Kashmir with India at least it should now abide by international treaties and conventions and most importantly with the constitution of India. No matter what was the history between India and Kashmir but now India should strive for peace. India should now focus on the welfare of Kashmir because for the last so many years both of them were so busy fighting that no one cared about the development of the state. There is a need to create various other government departments and the most important should be the one that takes care of the half widows, there is a need to create policies that take care of half widows and govt. should also stop the activities which make women half widows.

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