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Carta de fecha 3 de agosto de 2020 dirigida a la Presidencia del Consejo de Seguridad por el Representante Permanente del Pakistán ante las Naciones Unidas

Siguiendo instrucciones de mi Gobierno y como continuación de mi otra carta de fecha 3 de agosto (S/2020/771), tengo el honor de transmitir adjuntos dos documentos: a) un examen jurídico de la disputa relativa a Jammu y Cachemira (véase el anexo I)*; y b) un informe sobre las violaciones de los derechos humanos a gran escala en el territorio de Jammu y Cachemira ocupado por la India (véase el anexo II)*.

Le agradecería que tuviera a bien hacer circular la presente carta y sus anexos como documento del Consejo de Seguridad en relación con el asunto “La cuestión de India-Pakistán”.

(*Firmado*) Munir **Akram**
Representante Permanente

* Los anexos se distribuyen únicamente en el idioma en que fueron presentados.

Anexo I de la carta de fecha 3 de agosto de 2020 dirigida a la Presidencia del Consejo de Seguridad por el Representante Permanente del Pakistán ante las Naciones Unidas

Annex I to the letter dated 3 August 2020 from the Permanent Representative of Pakistan to the United Nations addressed to the President of the Security Council

The Jammu & Kashmir Dispute – A Legal Appraisal

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The Jammu & Kashmir Dispute – A Legal Appraisal

Introduction

The Jammu and Kashmir dispute is the unfinished agenda of the partition of the Indian subcontinent. It is also one of the oldest issues on the agenda of the United Nations Security Council. Over the years, a concerted attempt has been made by India to obscure the fundamental legal and political aspects of the dispute, in particular, to justify its occupation of Jammu and Kashmir, and to deny the Kashmiris their inalienable right to self-determination "*through a free and impartial plebiscite*" as provided by several Security Council Resolutions.

2. A similarly fallacious and equally dubious legal reasoning was employed in the wake of the illegal and unilateral Indian action in occupied Jammu and Kashmir on 5 August 2019. Notwithstanding Pakistan's legal position on the so-called 'Accession' of Jammu and Kashmir to India, the pre-meditated action to deprive the "*special status*" of the occupied territory under the Indian Constitution has removed the fig leaf to justify India's presence in Jammu and Kashmir.

3. This document seeks to distill fact from fabrication by placing the legal aspects of the Jammu and Kashmir dispute in perspective.

Self-determination – a fundamental right

4. Self-determination has been one of the most important principles of international law and international politics of our times. It set in motion the restructuring and redefinition of inter-state relations since the beginning of the last century.[1] The notion of self-determination found the most vivid expression in the struggle against decolonization.

5. One of the central "Purposes and Principles" of the UN Charter is "*to develop friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples…*".[2] Common article I of both the International Covenants on Civil and Political Rights and on Economic and Social Rights (1966), upholds the right to self-determination as a fundamental basis for the promotion of the objectives of both conventions.[3]

6. The right of self-determination was also the central principle in the Declaration on the Granting of Independence to Colonial Countries and Peoples –"The Declaration on Colonial Countries".[4] The incorporation of the right to self-determination in the "Declaration on Friendly Relations among States" further crystallized the notion of self-determination as customary international law.[5]

7. The resolutions of the United Nations and international practice have established the scope of the right to self-determination, and the methods and modalities for its realization. The *erga omnes* nature of the right to self-determination has been conferred by the International Court of Justice (ICJ) in a number of cases.[6] The scope and conduct of the right to self-determination has been further elaborated by the Human Rights Commission/Council, the Committee on the Elimination of Racial Discrimination and numerous prominent jurists.

[1] For a detailed background reference, see Antonio Cassese, 'Self-determination of peoples: A legal reappraisal' (Cambridge: 1995)
[2] Article 1(2) of the UN Charter
[3] Common article 1 of the two covenants reads: "*All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*"
[4] GA Resolution 1514 (1960); Paragraph one of the Resolution provides that "*The subjection of peoples to alien subjugation, domination and exploitation "constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations, and is impediment to the promotion of world peace and cooperation*".
[5] GA resolution 2625 "Declaration on principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations", 24 October 1970.
[6] See for example, ICJ Advisory Opinion on Namibia (1971), Western Sahara (1975), The East Timor Case (1995), Advisory Opinions on the Legal Consequences of the Construction of the Wall (2004) and the Chagos Archipelago (2019)

8. The partition of the subcontinent was also based on the principle of self-determination. Thus, contiguous Muslim-majority areas formed the territories of Pakistan and contiguous Hindu-majority areas formed the territories of India. This principle was jointly accepted by the representatives of Muslims, Hindus and the colonial British Government. This also served as the cardinal principle for the accession into either Dominion of the over 560 Princely States in British India (which were ruled over by princes and potentates and enjoyed varying degree of autonomy under British suzerainty).

9. No trouble arose with regard to the accession of the vast majority of the Princely States to either Pakistan or India. Those States which were contiguous to India and had a Hindu majority acceded to India, with the exception of Hyderabad.[7] Those which were contiguous to Pakistan and had a Muslim majority acceded to Pakistan, with the exception of Kashmir. One Princely State, Junagadh[8], acceded to Pakistan which, although not contiguous to Pakistan by land, had access through a short sea trip.

10. At the initial stages, the Indian position on the Jammu and Kashmir dispute also espoused the principle of self-determination.[9] In the 1950s, the Indian Government subsequently changed its position on the issue of self-determination for Jammu and Kashmir citing 'changed circumstances'.

Question of accession

11. India claims that the accession of Jammu and Kashmir is 'perpetual and irrevocable'. However, from the outset, the fact and validity of the alleged Accession was highly questionable for several reasons:

One, no authentic copy of the Instrument of Accession signed by the Maharajah has ever been produced by the Government of India;

Two, the Maharaja was not a free agent at the time of the so-called 'accession' to India (26 October 1947) as he had signed a 'Standstill Agreement' with Pakistan.[10] This created a legal bar to the Maharaja's capacity to alter the existing position unilaterally;

Three, on 26 October 1947, when the Maharaja allegedly signed the Instrument of Accession to India, he had lost effective control over most of the State of Jammu and Kashmir due to a popular Kashmiri uprising and was no longer competent to sign the so-called Instrument;

Four, the Maharaja's purported action was manifestly contrary to the wishes of the Kashmiri people or, as the Indian Government itself put it in the case of Junagadh, "*in utter violation of the principles on which Partition was agreed upon and effected*";[11]

Five, the resolutions of the Security Council, by prescribing the exercise of self-determination by the people of Jammu and Kashmir, have conditioned, if not nullified the validity and legality of any such Accession;

[7]Hyderabad was a Hindu-majority state with a Muslim ruler, the Nizam. The Nizam did not want to accede to either India or Pakistan but instead to enter into a special treaty relationship with India. The Indian Government rejected this position and demanded that the State should accede to India unconditionally. The Nizam also offered to hold a plebiscite under UN supervision which was also rejected by India. In August 1948, India occupied the State in what was characterized as a 'police action'. For more details on Hyderabad's case before the Security Council, see *Eagleton, Clyde.* "The Case of Hyderabad before the Security Council", *The American Journal of International Law* 44, no. 2 (1950): 277-302

[8]Junagadh was also a Hindu-majority state with a Muslim ruler. Junagadh entered into a standstill agreement with Pakistan on 15 August 1947 and acceded to Pakistan on 15 September 1947. India demanded a plebiscite under the joint control of the Junagadh State and the Indian Government. Junagadh was forcefully occupied by India in November 1947.

[9] In a telegram to the Prime Minister of Pakistan dated 31 October 1947, the Prime Minister of India stated: "Our assurance that we shall withdraw our troops from Kashmir as soon as peace and order are restored and leave the decision regarding the future of the State to the people of the State is not merely a promise to your Government but also to the people of Kashmir and to the world."

[10] The Maharaja's Government entered into a '*Standstill Agreement*" with the Government of Pakistan, on 15 August 1947 (no such Agreement was concluded between the State of Kashmir and the Dominion of India); normally, a standstill agreement would have been a prelude to full accession.

[11]See supra note 9

Six, the so-called Instrument of Accession was at best, 'provisional'. For example, in a telegram to the Prime Minister of Pakistan, the Prime Minister of India stated: "*Our assurance that we shall withdraw our troops from Kashmir as soon as peace and order are restored and leave the decision regarding the future of the State to the people of the State is not merely a promise to your Government but also to the people of Kashmir and to the world.*"[12]

12. Even if hypothetically the fact of Accession is accepted, India's own subsequent actions have invalidated it. The Indian Constitution provided the terms under which the Maharaja's Accession was signed, surrendering only the limited powers for defence, foreign affairs and currency, but retaining all other authority with the State. Jammu and Kashmir was the only State which "negotiated" the terms of its membership with the Indian Union. Neither side could amend or abrogate it unilaterally, except in accordance with the terms of that pact.[13] Over the years, while IOJ&K's special status was reduced into an 'empty shell' through executive orders by successive Indian Governments,[14] it was nonetheless, considered a permanent part of the Indian Constitution. The procedure for amendment or abrogation was well-neigh impossible. The unilateral and illegal action by India on 5 August was a flagrant breach not only of the 'solemn pact' with the Kashmiris, but also violative of the provisions of the Indian Constitution itself. By unilaterally altering the status of IOJ&K without any recourse to the Kashmiri people, India has materially breached the so-called Instrument of Accession, the Simla Agreement and UNSC resolutions.

Security Council endorsement of the Kashmiris right to self-determination

13. India took the Jammu and Kashmir dispute to the UN Security Council on 1 January 1948. Presenting its case, India claimed that it had brought a "*simple and straight forward*" issue to the Security Council: *"The withdrawal and expulsion of the raiders and invaders from the soil of Kashmir and the immediate stoppage of the fight are thus the first and only tasks to which we have to address ourselves.* "[15]

14. The Council refused to take a narrow and simplistic view. Chiding India that "*No party coming here to discuss a case like this can expect trends in the Security Council towards the application of force, or towards a solution which would ally the United Nations with one side so that it could be successful in a military attack or defence*",[16] the Council's approach was based on the clear understanding that the "*whole thing, from the preliminary measures as to the fighting, right up to the conduct of the plebiscite in the end, is all one problem*".[17]

15. Accordingly, the Council and the UN Commission on India and Pakistan (UNCIP)[18] created under its authority, endeavored to embody these principles into their resolutions. Beginning with Council resolution 38 (17 January 1948), requesting each side to "*inform the Council immediately of any material change in the situation*", subsequent Council resolutions recognized that the "*final disposition of the State of Jammu and Kashmir will be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations."*[19] The UNCIP resolutions of 13 August 1948[20] and 5 January 1949[21] further elaborated and expanded the 'fair and equitable' conditions whereby free

[12] Telegram from the Prime Minister of India to the Prime Minister of Pakistan dated31 October 1947
[13]A.G. Noorani, 'Article 370: A Constitutional History of Jammu and Kashmir (Oxford: 2011), page 1
[14]In 1964, the Union Home Minister Gulzari Lal Nanda said in the Indian parliament: "*Article 370, whether you keep it or not, has been completely emptied of its contents. Nothing has been left in it.*" Cited in Noorani, Article 370: A Constitutional History, page 2
[15] S/PV.227, 15 January 1948, page 29
[16]Statement by the representative of the US to the Security Council, S/PV.243, 10 February 1948, page 75
[17] Statement by the representative of the UK to the Security Council, S/PV.236, 28 January 1948, page 283
[18] Established under the Council resolution 39 of 20 January 1948, the Commission was invested with the dual function: 1. to investigate the facts pursuant to Article 34 of the Charter; 2. to exercise, without interrupting the work of the Security Council, and mediatory influence likely to smooth away difficulties, to carry out the directions given to it by the Security Council, and to report how far the advice and directions, if any, of the Security Council, have been carried out.
[19] Council resolutions 47 (April 1948), 80 (March 1950), 91 (March 1951), 98 (December 1952), 122 (January 1957), 123 (February 1957), 126 (December 1957)
[20] The UNCIP resolution of 13 August 1948 contained three parts: Part I (Cease-fire order); Part II (Truce agreement) and Part III (the two sides to enter consultations with the Commission to determine 'fair and equitable' conditions for plebiscite).
[21] The UNCIP resolution of 5 January 1949 elaborated the plebiscite arrangements including the appointment of a Plebiscite Administrator.

expression for the future status of Jammu and Kashmir could be determined in accordance with the will of the people.

16. Importantly, however, under international law, the Kashmiris' right to self-determination is neither conditional nor contingent upon Security Council resolutions. Even if there were no Council resolutions, the consent of the people would have to be summoned to provide the basis, rationale and framework for the disposition of the State of Jammu and Kashmir. This right of the Kashmiris is inherent as the principle for the partition of the subcontinent. As long as Kashmiris are denied this fundamental right, the plan for the independence, and partition, of the subcontinent remains unfulfilled.[22]

Kashmir "Elections"/ Constituent Assembly

17. On 27 October 1950, the National Conference political party in Kashmir proposed that a Constituent Assembly be summoned to determine the "future shape and affiliations of the State". Consequent to the proclamation made by the Ruler, the so-called Constituent Assembly first met in October 1951 and remained in session until November 1956.

18. In March 1951, the Security Council adopted Resolution 91, underscoring that "*convening of a constituent assembly as recommended by the General Council of the "All Jammu and Kashmir National Conference" and any action that assembly may have taken or might attempt to take to determine the future shape and affiliation of the entire State or any part thereof, or action by the parties concerned in support of any such action by the assembly, would not constitute a disposition of the State in accordance with the above principle*."[23] In fact, the Indian representative himself told the Council that while "*the constituent assembly cannot be physically prevented from expressing its opinion on this question [of accession]. But this opinion will not bind my Government or prejudice the position of this Council.*"[24]

19. In November 1956, after the so-called Constituent Assembly fraudulently declared Jammu and Kashmir as part of India, the Security Council adopted resolution 122 (1957) reminding the parties that the "*final disposition of the State of Jammu and Kashmir will be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations.*"

20. The following facts are also noteworthy:

- **One**, the so-called Constituent Assembly was elected through a fraudulent vote. Seventy-three of the seventy-five members of the Assembly were elected "unopposed". The London Times, in an editorial of September 7, 1951, entitled "No fair Vote" characterized the results as "farcical".[25] Noting the entirely one-sided result of the election, Josef Korbel comments: "No dictator could do better".[26] Such an illegitimate body was nothing more than a convenient surrogate for India. It could not pronounce on the status of Jammu of Kashmir, let alone 'decide' it.
- **Two**, presuming that the Constituent Assembly did possess authority to pronounce on the future status of Jammu and Kashmir, it did not represent the entire State of Jammu and Kashmir and surely did not speak for the people of Azad Jammu and Kashmir. A constituent 'part' cannot determine for the 'whole'.
- **Three**, it is a universally accepted principle of international law that every state has to carry out its obligations arising from treaties and other sources of international law, in good faith, and may not invoke provisions of its constitution and internal laws as an excuse not to fulfill its duties. The decision by the so-called Constituent Assembly to unilaterally renege on its international obligations in express violation of Council resolutions

[22] A comparable case is the British Cameroons, where plebiscites were held to decide whether the area should join Nigeria or Cameroon.
[23] Security Council Resolution 91 (31 March 1951)
[24] Statement by the Representative of India to the Security Council, S/PV.538, 29 March 1951, page 3
[25] Cited in A.G.Noorani, The Kashmir Question, page 58
[26] Josef Korbel, Danger in Kashmir **(**Oxford, 2005**)**, page 222; Korbel was a Czechoslovakian diplomat who was India's nominee to the UNCIP; he served as the UNCIP Chair.

cannot absolve India of its international obligations. This action was in specific breach of Resolutions 91 and 122 and are therefore, null and void.

Legally binding effect of Security Council Resolutions

21. India has made a disingenuous attempt to erode the legally binding nature of Council resolutions. The Indian representative made the following startling claim before the Council in 1957: "*The commitment about a plebiscite is usually spoken of as though it were the law of the Medes and Persians, but what does it amount to? It amounts to an expression of a wish on the part of the two Governments. The expression of a wish is far less than what may be called as an international obligation.*"[27] This is clearly specious legal reasoning.

22. Over the years, India has also attempted to argue that the UNSC resolutions on Kashmir were only of a "recommendatory" nature. To this end, the ICJ's advisory opinion in the *Namibia* Case (1971) is instructive:

> *"It has been contended that Article 25 of the Charter applies only to enforcement measures adopted under Chapter VII of the Charter. It is not possible to find in the Charter any support for this view. Article 25 is not confined to decisions in regard to enforcement action but applies to "the decisions of the Security Council" adopted in accordance with the Charter. Moreover, that Article is placed, not in Chapter VII, but immediately after Article 24 in that part of the Charter which deals with the functions and powers of the Security Council…. the language of a resolution should be carefully analysed before a conclusion can be made as to its binding effect. In view of the nature of power of Article 25, the question is to be determined in each case, having regard to the terms of the resolution to be interpreted, the discussions leading to it, the Charter provision invoked, and, in general, all circumstances that might assist in determining the legal consequences of the resolution of the Security Council."*[28]

23. Notably, the UNCIP resolutions of 13 August 1948 and 5 January 1949 were accepted by both sides. India accepted them as "*international engagements*".[29] These provide a framework for the resolution of the Kashmir dispute through a free and impartial plebiscite. The UNCIP resolutions are binding on both Pakistan and India under international law.

24. As for interpretation of the Security Council resolutions, Pakistan has supported the option of 'arbitration' or a possible referral to the ICJ to resolve divergence on interpretations. India has rejected all efforts. This has been the cause of stalemate in Kashmir.

25. As India is responsible for blocking and delaying the implementation of the Security Council resolutions, it cannot take advantage of its own default by claiming that the resolutions have become inoperable. "*It is bad jurisprudence….to construe a resolution as invalid simply because the state to which it was directed could for decades successfully defy the will of the Security Council…Mere non-enforcement of a resolution over a long period is not a sufficient basis to challenge its continued validity.*"[30]

26. Indeed, Security Council resolutions are immutable. They can be invalidated only by fulfillment of the obligation, consent of the parties or a subsequent resolution or decision by the Council itself. None of this has happened with regard to Jammu and Kashmir. These obligations arising from the Security Council resolutions on this dispute cannot be unilaterally annulled or renounced by India.

[27] S/PV.763, 23 January 1957, page 10
[28] ICJ Advisory Opinion (June 1971), pages 40-41
[29] Statement by the Representative of India to the Security Council, S/PV.767, 8 February 1957, page 29
[30] Khan, Ali. "The Kashmir Dispute: A Plan for Regional Cooperation". Columbia Journal of Transnational Law 31(1994): page 534

Illegality of India's Military presence in Indian occupied Jammu and Kashmir

27. Today, Indian Occupied Jammu and Kashmir is the most militarized zone in the world[31], where close to 900,000 security forces have been deployed by India to curb the legitimate struggle of the Kashmiris for their inalienable right to self-determination.

28. These military deployments are in violation of the relevant UNSC/UNCIP resolutions as well as the 1948 Karachi Agreement on a ceasefire which specifically prohibited "*introduction of additional military potential by either side into the State of Jammu and Kashmir*".[32] Subsequent Council resolutions affirmed this principle by seeking 'demilitarization' by both sides.

29. In defense of its continued illegal military occupation in the Indian occupied Jammu and Kashmir, India argues that it had accepted the option of holding a plebiscite (as well as demilitarization) in Jammu and Kashmir on the condition that Pakistan would first remove all its forces from Azad Jammu and Kashmir. The argument is disingenuous and a complete distortion of facts. The essence of the earlier Commission resolutions (13 August 1948) was that the obligations of withdrawal of forces by the two sides were reciprocal and concurrent. Moreover, Pakistan has always argued that these withdrawals had to be governed by a "*Truce Agreement*" between the parties. It was India which consistently refused to co-operate.

30. The further proof of Indian refusal to demilitarize is to be found in the report of Sir Owen Dixon (UN Representative for India and Pakistan) to the Security Council, contained in Document S-1971, in which he concluded as follows:

> *"In the end, I became convinced that India's agreement would never be obtained to demilitarization in any form or to provisions governing the period of plebiscite of any such character, as would in my opinion, permit the plebiscite being conducted in conditions sufficiently guarding against intimidation and other forms of influence by which the freedom and fairness of the plebiscite might be imperiled".*[33]

31. The above facts make it clear that the persistent Indian refusal to withdraw its forces from Jammu and Kashmir despite its legal obligation to do so, and the visible opposition of the people of Jammu and Kashmir to India's military presence makes this presence, under international humanitarian law, a "*hostile army*" suppressing a legitimate indigenous resistance for self-determination. This status of a hostile occupying force has been established by the decades of its most brutal and systematic violations of the human rights of the people of Jammu and Kashmir, and particularly since the 1989 Kashmir uprising in response to the massacre of 100 Kashmiris peacefully protesting another fraudulent election.

32. The real aim of India's massive military force in occupied Kashmir is to instill fear and terror among local population and thus quell their legitimate demand for self-determination. The sheer size, deployments and repressive actions of the Indian forces in Jammu and Kashmir today amounts to foreign and colonial occupation identical to the occupying armies of the former colonial powers.

Illegality of Indian unilateral actions of 5 August 2019

33. This equivalence with foreign and colonial occupation was further reinforced on 5 August 2019 when the Indian government, unilaterally and illegally, abrogated the '*special status'* accorded to the Indian occupied state of Jammu and Kashmir.

[31] Rani Singh, Kashmir: The World's Most Militarized Zone, Violence After Years of Comparative Calm, https://www.forbes.com/sites/ranisingh/2016/07/12/kashmir-in-the-worlds-most-militarized-zone-violence-after-years-of-comparative-calm/#67299ebf3124

[32] Paragraph G of the "Agreement between Military Representatives of India and Pakistan Regarding the Establishment of a Ceasefire Line in the State of Jammu and Kashmir (Karachi Agreement)" https://peacemaker.un.org/indiapakistan-karachiagreement49

[33] Para 52 of Document S/1971

34. Through this illegal move, Jammu and Kashmir was illegally bifurcated (Jammu and Kashmir and Ladakh), and its status downgraded from a 'state' to a 'union territory'. This was a blatant violation of UNSC resolutions.[34] In light of the provisions of Council resolutions 91 and 122, these unilateral changes are "null and void" and do not change the disputed status of Jammu and Kashmir or erode the obligation of parties including the United Nations, to hold the plebiscite prescribed by the UNSC resolutions.

35. The Indian illegal and unilateral actions are also in violation of India's own Constitution. In the past, the Indian Supreme Court[35] and Jammu & Kashmir High Court had effectively rejected requests for repeal of special status on the ground that those arrangements have attained "*permanence*" (after dissolution of Constituent Assembly) and cannot be revisited or amended. However, this critical safeguard was brushed aside by the Indian Government through craftily drafted maneuvers, simply changing the 'interpretation' of the Constituent Assembly to mean the Legislative Assembly of Jammu & Kashmir.[36] However, even the recommendation of the Jammu & Kashmir Legislative Assembly was not obtained by New Delhi since the Assembly had been dissolved in November 2018. Thus, the people of Jammu and Kashmir were not consulted at all in the process of making these far-ranging changes.

36. As discussed above, the Article 370 set out the terms on which Jammu and Kashmir is purported to have provisionally acceded to India. By removing this Article, India has removed the fig leaf to justify its presence in Jammu and Kashmir and has nullified India's claim to Kashmir even by its own criteria.

37. Moreover, the Indian government was fully aware of the illegality of its actions. The illegal move of 5 August 2019 was accompanied by a huge security clampdown in the occupied territory, the expulsion of foreigners and non-Kashmiris, a communications blackout including the shutdown of internet and telephone services, a total curfew and the deployment of 180,000 additional troops and detention of the entire Kashmiri leadership.

38. Subsequent actions, especially the promulgation of the so-called "Jammu and Kashmir Reorganization Order 2020" in May 2020, whereby certain categories (especially military and paramilitary forces) are provided a fast track pathway to 'domicile' themselves and their families in the State[37], redrawing of electoral constituencies, and the issuance of new maps (reflecting all of Jammu and Kashmir, including Azad Jammu and Kashmir, as part of India) have left little doubt that India's underlying intention is to create a new political and demographic reality in occupied Jammu and Kashmir and thus consolidate its occupation.

39. India has tried to justify these actions as a purely "domestic" issue. However, the UN Secretary General, in his statement of 8 August 2019, categorically stated that the "*position of the United Nations on this region is governed by the Charter of the United Nations and applicable Security Council resolutions*."[38]

40. Moreover, the Indian attempt to alter the demography of the State is a violation of the Fourth Geneva Convention (1949) which prohibits the Occupier from demographically transforming the territory in order to advance a claim of sovereignty and undermining the Occupied People's right to self-determination.[39]

41. The sole purpose of these illegal measures is to turn the indigenous Muslim majority into a minority through "*demographic flooding*" from outside. If allowed to be fully implemented, this design to change the demographic reality in Indian occupied Jammu and Kashmir may constitute a violation of the provisions of the Genocide Convention.

[34] See supra note 20

[35]Prem Nath Kaul vs The State of Jammu & Kashmir (1959); Sampat Prakash v. the State of Jammu and Kashmir, (1969) 2 SCR 365; State Bank of India vs. Santosh Gupta (2016); Kumari Vijayalakshmi Jha vs Union of India &Anr (2017); Bench of judges Adarsh K Goel and R F Nariman on a petition filed by Kumari Vijayalakshmi Jha (2018)

[36] The Constitution (Application to Jammu And Kashmir) Order, 2019 C.O. 272 http://egazette.nic.in/WriteReadData/2019/210049.pdf

[37]According to media reports, Indian authorities have already granted domicile certificates to atleast 25,000 non-Kashmiris including, among others, the Indian government officials and military personnel and their families

[38]Statement attributed to the United Nations Secretary General, 8 August 2019

[39]Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, para. 121

Freedom Struggle is not Terrorism – Legitimacy of the Kashmiri cause

42. While most dependent or occupied peoples have been able to exercise their right to self-determination peacefully, there are some who were forcibly denied this right and were obliged to struggle for it. The people of Indian Occupied Jammu and Kashmir have been obliged to do so.

43. General Assembly resolution 2649 (1970) "Affirms the legitimacy of the struggle of peoples under colonial and alien domination recognized as entitled to the right of self-determination to restore to themselves that right by any means at their disposal". The resolution further "Recognizes the right of peoples under colonial and alien domination in the legitimate exercise of their right to self-determination to seek and receive all kinds of moral and material assistance, in accordance with the resolutions of the United Nations and the spirit of the Charter of the United Nations."

44. Despite the legitimacy of their cause, which has been duly recognized by the Security Council, the struggle for self-determination of the Kashmiri people has been brutally suppressed by the Indian occupying forces in blatant violation of international law and the relevant General Assembly resolutions which state that "*all armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence…*"[40]

45. As history attests, the suppression of the right of peoples to self-determination has often been justified by portraying struggles for self-determination and freedom as "*terrorism*". Taking a cue from the colonial playbook, India has tried to tarnish the legitimacy of the Kashmir cause by portraying it as terrorism. Nelson Mandela was sentenced to life imprisonment for "*terrorism*".[41] He once famously said: "*A freedom fighter learns the hard way that it is the oppressor who defines the nature of the struggle, and the oppressed is often left no recourse but to use methods that mirror those of the oppressor*."

46. While the political history of Jammu and Kashmir remained mostly non-violent, the persistent refusal by India to grant the people of Jammu and Kashmir their right of self-determination, as promised in the UNSC resolutions, led to popular alienation. The rigging of the 1987 "elections" in the Indian occupied Jammu and Kashmir was a watershed moment. It led to popular protests. India killed 100 peaceful protestors in Srinagar on 20 December 1989 and ignited the popular freedom struggle of the Kashmiri people. The 1989 Kashmiri uprising was similar to the African National Congress' decision in 1964 to take up arms against the apartheid regime. The Kashmiri resistance in occupied Kashmir, just like ANC's in South Africa, cannot be equated with "terrorism" by any stretch of the imagination. As stated above, the legitimacy of such national liberation movements for self-determination against colonial domination by all available means has been recognized by the United Nations.

47. In truth, the only terrorism being perpetrated in Jammu and Kashmir is India's "state terrorism" against the innocent Kashmiri people. Since 1990, the Indian occupation army has martyred over 100,000 Kashmiris, widowed 22,000 women, orphaned 108,000 children and raped more than 11,000 women. India's state terrorism has intensified since August 5, 2019.

48. India has misused its "counter terrorism" laws to perpetuate its illegal occupation in Jammu & Kashmir. Several Special Rapporteurs and Mandate Holders of the Human Rights Council have recently declared that India's counter-terrorism laws and actions are incompatible with human rights law.

49. The Unlawful Prevention Activities Act (UAPA) 1967, India's principal counter terrorism legislation, has been repeatedly misused to stifle the voices of dissent and resistance in the occupied Jammu and Kashmir. In recent times, the Jammu and Kashmir police has also invoked Section 13 of UAPA against people who accessed social media through VPN to bypass the internet ban imposed in the occupied territory since 5 August 2019. Similarly, cases have also been registered against independent journalists under Section 13 for '*uploading anti-national posts on Facebook with criminal intentions to induce the youth and glorifying anti-national activities'*.

[40] OP4 of the UNGA resolution 1514
[41] https://time.com/5338569/nelson-mandela-terror-list/

50. Such blatant misuse of counter terrorism laws illustrates how these laws are being abused to perpetuate the oppression against people of Jammu and Kashmir.

The failure of bilateral efforts to resolve the Kashmir dispute

51. The Jammu and Kashmir dispute is the central cause of tensions between Pakistan and India. Over the years, multiple rounds of bilateral talks on Jammu and Kashmir have failed due to Indian obduracy.[42] When faced with the possibility of multilateral consideration of the issue, India argues that, following the Simla Agreement, Jammu and Kashmir is purely a bilateral issue. However, in recent years, India has refused to revive the composite bilateral dialogue in which the Kashmir dispute is the first agenda item. After 5 August 2019, Indian spokesmen have asserted that that the only issue for bilateral discussion is the "return" of "Pakistan occupied Kashmir" (Azad Kashmir) to India.

52. The Kashmir dispute cannot be left unattended for multiple reasons: One, there are grave violations of human rights taking place each day in the Indian occupied Jammu and Kashmir. The international community which so vocally espouses the cause of human rights cannot be allowed to continue atrocities and crimes against the Kashmiri people. Two, there is an ever-present threat to international peace and security, due to a possible escalation of ceasefire violations along the Line of Control (LoC) into a full-fledged conflict or as a consequence of an Indian "false flag" operation. India's baseless allegations of "infiltration" across LoC are an attempt to create a casus-belli for another aggression against Pakistan. Three, the Security Council and the Secretary General of the United Nations are legally and morally obliged to secure implementation of the binding UN resolutions and agreements on Jammu and Kashmir to which they are a Party.

53. The deteriorating human rights and humanitarian situation in Jammu and Kashmir in the wake of India's illegal and unilateral actions of 5 August 2019 has made active international engagement imperative. Pakistan and India have fought three wars over Jammu and Kashmir. A catastrophic war was avoided in February 2019 due to Pakistan's measured response to Indian aggression.

Obligations of Security Council, the UN Secretary General and the International Community

54. While the Indian actions in occupied Jammu and Kashmir are legally void, they are not happening in a 'void'. The BJP-RSS leadership has made no attempt to hide their agenda to consolidate the occupation of Jammu and Kashmir, to colonize it and transform it into a Hindu-majority "territory". They call it the "Final Solution".

55. Last year, an international organization, Genocide Alert, warned of a danger of genocide in occupied Jammu and Kashmir. Subsequent Indian actions have affirmed this grim prognosis. Since 5 August 2019, India has 'deliberately inflicted' on Kashmiris the inhumane conditions of a complete and crippling siege of the occupied territory, 'forcibly transferred' thousands of men and young boys to prisons across India, and enacted laws to enable Indian 'settlers' to be domiciled in occupied Jammu and Kashmir.

56. In recent years, the Council has taken important steps to hold perpetrators of grave crimes including genocide to account. It should act to prevent a similar genocide of the Kashmiri people. The Council knows from bitter experience that the failure of timely intervention – as in Bosnia and Rwanda – can lead to devastating humanitarian consequences. It can also lead to a threat to international peace and security.

57. The Council should act with decisiveness to ensure that its resolutions on Jammu and Kashmir are implemented.

58. Over the years, the Secretary General has utilized a range of measures including fact-finding missions, appointment of Special Representatives, and the use of good offices, to promote peaceful settlement of disputes.

[42] Composite Dialogue Process (1998-2008), the Peace Process initiated by President Musharraf of Pakistan and Prime Minister Vajpayee (and later PM Manmohan Singh) of India.

The Secretary General has the authority "*on his own initiative or at the request of the States concerned, [to] consider undertaking a fact-finding mission when a dispute or a situation exists*" as explicitly recognized by the General Assembly in its 1991 Declaration on Fact-Finding.[43]

59. The Secretary General can avail of the full panoply of measures available to him to promote an equitable solution to the Jammu and Kashmir dispute in accordance with Security Council resolutions.

60. The Jammu and Kashmir dispute cannot be forgotten. Its people are determined to secure their inalienable right to self-determination. Their struggle is a just struggle for a fundamental right guaranteed under the UN Charter, international law and the resolutions of the Security Council. Pakistan is a Party to the dispute. It will fulfill its obligations as a Party. The Government and people of Pakistan remain steadfast in their adherence to the Security Council resolutions and in our strong support to the right of the Kashmiri people to self-determination.

[43]UN GA resolution 46/59 (9 December 1991), para 13

Anexo II de la carta de fecha 3 de agosto de 2020 dirigida a la Presidencia del Consejo de Seguridad por el Representante Permanente del Pakistán ante las Naciones Unidas

India's Massive and Consistent Human Rights Violations in Occupied Jammu and Kashmir

Table of Contents

India's Massive and Consistent Human Rights Violations in Indian Occupied Jammu and Kashmir

INTRODUCTION

The Indian Occupied Jammu and Kashmir (IOJ&K) has a long and tragic history of massive human rights abuses by Indian occupying forces, who for over seven decades are committing atrocities with complete impunity[44]. Today, IOJ&K is the most militarized part of the world[45], where close to a million security forces have been deployed to curb the legitimate struggle of the Kashmiris for their inalienable right to self-determination.

2. After cold-blooded murder of Burhan Wani in 2016, the Indian "state terrorism" against Kashmiris in IOJ&K reached unprecedented levels with attendant consequences for human rights. Taking serious note of these excesses, the United Nations human rights mechanisms, notable human rights organizations, independent observers, parliamentary bodies, think tanks and the international media took to report most extensively about the appalling state of human rights in IOJ&K.

3. One of the most significant pronouncements on India's systematic and wide-spread violations of human rights in IOJ&K came from the United Nations High Commissioner for Human Rights, who published two comprehensive reports (2018[46] and 2019[47]) on the despicable state of human rights in IOJ&K, repeatedly calling for establishment of a "Commission of Inquiry" (COI) to investigate gross and systematic violations of the rights of people of Jammu and Kashmir[48]. The Special Mandate Holders and Rapporteurs of the Human Rights Council have also frequently urged India to ease restrictions in Kashmir, and hold the perpetrators of these heinous crimes accountable.

4. A new chapter in the repression of Kashmiris at the hands of Indian authorities was opened on 5th August 2019, when India illegally and unilaterally changed the status of IOJ&K and paved the way for demographic change in the valley with an aim to turn the indigenous Muslim population into a minority. This was accompanied by a huge security clampdown in the occupied territory, a communication blackout including shutdown of internet and telephone services, an excruciating curfew and an additional deployment of additional 180,000 paramilitary troops, turning the territory into world's biggest open-air prison.[49]

5. Since then, there has been no letup in the worsening humanitarian situation in IOJ&K. Almost a year into the siege, hundreds of political leaders[50], including pro-Indian political figures[51] remain detained, thousands of young men and children[52], political activists, human rights defenders, journalists[53] and lawyers[54] have been arbitrarily arrested and nearly five thousand incarcerated[55]. Muslims have been denied the right to offer Friday and Eid

44. https://amnesty.org.in/projects/justice-jammu-kashmir/
45. https://www.forbes.com/sites/ranisingh/2016/07/12/kashmir-in-the-worlds-most-militarized-zone-violence-after-years-of-comparative-calm/#67299ebf3124
46 https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf
47. https://www.ohchr.org/Documents/Countries/IN/KashmirUpdateReport_8July2019.pdf
48. While Pakistan welcomed these reports and supported the call for establishment of COI, India rejected them.
49 https://www.bbc.com/news/world-asia-india-49294301
50 https://www.reuters.com/article/us-india-kashmir-separatists-insight/lock-them-up-india-marginalizes-kashmiri-separatist-leaders-by-detaining-dozens-idUSKCN1UR4F9
51 https://www.indiatoday.in/india/story/kashmir-article-370-mehbooba-mufti-arrested-taken-to-guest-house-1577554-2019-0805
52 https://www.reuters.com/article/us-india-kashmir-children/nine-year-old-among-nearly-150-children-briefly-held-in-indian-kashmir-court-probe-idUSKBN1WG47W
53 https://thewire.in/rights/nazir-ahmed-ronga-lawyer-detained-kashmir-crackdown
54 https://thewire.in/rights/nazir-ahmed-ronga-lawyer-detained-kashmir-crackdown
55 https://www.theguardian.com/world/2016/nov/08/india-crackdown-in-kashmir-is-this-worlds-first-mass-blinding

prayers, in utter violations of their fundamental freedom of religion or belief.[56] Doctors and emergency personnel are being regularly harassed and there are reports of acute shortage of medical supplies.[57]

6. Despite calls to ease up the restrictions, the India authorities also callously exploited the COVID-19 crisis to further advance its unlawful occupation. The coronavirus has exacerbated the suffering of the Kashmiris condemning them to the precipice of a vast human tragedy. The prolonged siege in Indian occupied Jammu & Kashmir had already depleted essential medical supplies in hospitals, turning them into graveyards[58]. Now with the coronavirus spreading rapidly, the hospitals are entirely incapable of meeting the public health crisis.

7. Post August 5th 2019, the UN Secretary General Antonio Guterres has expressed concerns "over reports of restrictions on the Indian-side of Kashmir, which could exacerbate the human rights situation in the region".[59]

8. The Office of the High Commissioner of Human Rights has expressed concerns on the excessive use of force including the use of pellet-firing shotguns, detention of political leadership, curbing of freedom of religion or belief, movement, peaceful assembly, and restricting their rights to health, education.[60]

9. UN Special Rapporteurs have termed the shutdown of the internet and telecommunication networks in IOJ&K, as "inconsistent with the fundamental norms of necessity and proportionality," and "a form of collective punishment of the people of Jammu and Kashmir, without even a pretext of a precipitating offence". They have called the detentions in IOJ&K to "constitute serious human rights violations".[61]

10. The Organization of Islamic Countries (OIC) and the Independent Permanent Human Rights Commission (IPHRC) have termed IOJ&K as "world's largest prison".[62]

11. Commentators and citizens of Kashmir believe that "*Once the real political leaders are freed from detention or house arrest, and people are allowed to express their sentiments freely, there will be huge protests and people will come out against illegal Indian moves to annex Kashmiris' land and resources*".[63]

56Written statement submitted by the Jammu and Kashmir Council for Human Rights (JKCHR) during the 42nd Session of the Human Rights Council http://www.jkchr.com/statements/A-HRC-42-NGO-137.PDF

The New York Times Report, 'India's Crackdown Hits Religious Freedom in Disputed Kashmir': https://www.nytimes.com/aponline/2019/12/10/world/asia/ap-as-kashmir-religious-freedom.html

The Washington Post Report, 'India's crackdown hits religious freedom in disputed Kashmir': https://www.washingtonpost.com/world/asia_pacific/indias-crackdown-hits-religious-freedom-in-disputed-kashmir/2019/12/10/9613c378-1bc2-11ea-977a-15a6710ed6da_story.html

57A team of women human rights defenders comprising Annie Raja, Kawaljit Kaur, Pankhuri Zaheer from National Federation Indian Women, Poonam Kaushik from Pragatisheel Mahila Sangathan and Syeda Hameed from Muslim Women's Forum visited IOJ&K between September 17 and 21, 2019. The report can be found at:

https://www.freekashmir.org/womens-voice-fact-finding-report-on-kashmir/

58 https://www.wsj.com/articles/indias-kashmir-clampdown-turns-hospitals-into-graveyards-11566990962

59 Statement attributable to the Spokesman for the Secretary-General on the situation in Jammu and Kashmir: https://www.un.org/sg/en/content/sg/statement/2019-08-08/statement-attributable-the-spokesman-for-the-secretary-general-the-situation-jammu-and-kashmir

60Press Briefing Note dated 29 October 2019 on Indian Administered Kashmir by OHCHR, Update of the High Commissioner for Human Rights during the 42nd Session of the Human Rights Council

61The UN Special Procedure Mandate Holders communication dated 22 August 2019 to India. The UN experts included Mr. David Kaye (USA), Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Mr. Michel Forst (France), Special Rapporteur on the situation of human rights defenders; Mr. Bernard Duhaime, Chair-Rapporteur, Working Group on Enforced or Involuntary Disappearances; Mr. Clement Nyaletsossi Voule, Special Rapporteur on the right to peaceful assembly and association; Ms Agnes Callamard, Special Rapporteur on extrajudicial, summary or arbitrary executions.

62 OIC IPHRC Press release: https://www.oic-iphrc.org/en/press_details.php?id=SU9LMzkxOV9AIyFA

63 https://www.bbc.com/news/world-asia-india-49294301

OCCUPATION AND THE CULTURE OF IMPUNITY

12. Famous researcher and historian Alastair Lamb once wrote, "*it has become apparent that the Indian Republic is faced with, at least in that part of the Vale of Kashmir which it occupies, what can only be described as a terminal colonial situation*."[64]

Human Rights and the Rule of Law

13. To continue this colonial project in IOJ&K[65], India has devised an elaborate legal and administrative architecture to enable its security forces to maintain occupation at all cost. Indian forces enjoy complete impunity for all actions that are taken in service of 'state terrorism' in IOJ&K, with almost non-existent safeguards and standards to observe human rights.

14. Human rights and the rule of law have been greatly jeopardized in IOJ&K by various national laws and their implementation by governmental personnel. These range from distortions created by laws themselves to malpractices at the operational level.[66] A brief account of these is given further below.

The "permanence" of "emergency" laws

15. In substance, India has treated the situation in IOJ&K as a state of emergency but avoided classifying it as such in international terms, thereby obstructing the call for accountability and transparency.[67]

Derogation of rights under international human rights humanitarian law obligation

16. India is a party to 1966 International Convention of Civil and Political Rights (ICCPR) which reinforces universal standards in the civil and political field, closely linked with the rule of law. The human rights propounded in this instrument include the right to self-determination, the right against arbitrary arrest, security of person, freedom from torture, and equality before the law. In IOJ&K, however, Indian actions are in stark contravention to the provisions of this instrument.

17. On another front, India is a party to the four 1949 Geneva Conventions on humanitarian law which establish basic rules concerning international and non-international armed conflicts. Of particular relevance to the situation in IOJ&K is Article 3, enshrined in all four Conventions, which pertains to protection accorded to those taking no active part in hostilities in non-international armed conflicts by prohibiting the following:

1. Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
2. Taking of hostages;
3. Outrages upon personal dignity.

18. India has been reluctant to classify the conflict in IOJ&K as a non-international armed conflict under the Geneva Conventions for fear of internationalizing the Kashmir issue. It does not allow an unfettered access to the International Committee of the Red Cross (ICRC), which is a key international organization offering protection and assistance in such situations, to operate in IOJ&K. Even when ICRC is allowed access, its freedom of movement is severely restricted.[68]

Preventive Mechanisms

19. India has developed comprehensive legal mechanisms which give security forces emergency and overarching powers without any checks and balances, leading to grave human rights violations. Two important pillars of these

[64] https://fpif.org/terror-impunity-kashmir/
[65] https://www.theguardian.com/commentisfree/2019/aug/14/narendra-modi-kashmir-hindu-first-india-autonomy
[66] https://www.icj.org/wp-content/uploads/1995/01/India-human-righst-in-Kashmir-fact-finding-mission-report-1995-eng.pdf
[67] https://www.icj.org/wp-content/uploads/1995/01/India-human-righst-in-Kashmir-fact-finding-mission-report-1995-eng.pdf
[68] https://www.icj.org/wp-content/uploads/1995/01/India-human-righst-in-Kashmir-fact-finding-mission-report-1995-eng.pdf

emergency provisions are the so-called Public Safety Act (PSA) and the Armed Forces Special Powers Act (AFSPA).

Public Safety Act (PSA)

20. Public Safety Act (PSA) is a special law that allows for administrative detention of up to two years without charge, in name of "security of state" and "maintenance of public order".[69]

21. This law was recently amended in Kashmir to allow detainees to be moved out of the state, which led to transportation of many Kashmiris in jails all over India. The OHCHR reports that at least 40 people, mainly political leaders, were transferred to prisons outside the state in 2018. Transferring detainees to other states makes it harder for family members to visit and for legal counsel to meet with them. OHCHR also noted that prisons outside the state were considered hostile for Kashmiri Muslim detainees, especially political leaders.

22. The OHCHR[70] and other human rights organizations have repeatedly called on Indian authorities to repeal this draconian law which is often used by security forces to detain protesters, political dissidents, and other activists on vague grounds for long periods, ignoring regular criminal justice safeguards.

23. By using the PSA to incarcerate suspects without charge or trial, Indian authorities have made a mockery of basic principles of the rule of law and severely upended the "right to fair trial" and "due process" safeguards which are ***erga omnes*** obligations under international law. The PSA violates international human rights law on a number of levels:

- Firstly, under international human rights law, restrictions on liberty must obey the principle of legality and proportionality. Legal parameters must be adequately accessible, so that people know how the laws limit their conduct, and they must also be precise, so that people can regulate their conduct accordingly. However, the PSA does not define "security of the state", and provides a vague and over-broad understanding of "public order".
- Secondly, anyone arrested has a fundamental right to be immediately informed about the reasons for the arrest. The UN Human Rights Committee has stated that this must also apply to preventive and administrative detentions. However, Section 13 of the PSA allows the detaining authority to not communicate grounds of detention, and also to withhold any information that it considers "to be against the public interest to disclose".
- Thirdly, any arrested person also has a right to judicial review of her detention. The PSA, however, makes no such provision for ordinary judicial review. Instead, an Advisory Board which lacks independence from the government reviews all orders. The Board provides for no opportunity to appeal, there is a bar on legal representation for the detained person, and the Board's report is confidential.
- Fourthly, through its Section 16(5) the PSA violates the detained person's right to communicate with and be represented by a counsel of their choice by explicitly stipulating that legal counsel cannot represent a detained person before the Advisory Board.
- Fifthly, it denies individuals the right to remedy under international human rights law and standards[71]. Section 22 of the PSA provides a complete bar on criminal, civil or *"any other legal proceedings...against any person for anything done or intended to be done in good faith in pursuance of the provisions of this Act"*. By protecting officials even in situations where PSA is abused, this section enables impunity[72].

69 Under section 8 of the PSA, a Divisional Commissioner or a District Magistrate - both executive authorities - may issue a detention order to prevent any person from acting in a manner prejudicial to the "security of the State or the maintenance of the public order".

70 In 2012, the UN Special Rapporteur on the situation of human rights defenders, after a fact-finding mission to India, expressed serious reservations and called for the repeal of the PSA.

71. When acceding to the ICCPR in 10 April 1979, India made a reservation to Article 9, declaring that it "shall be so applied as to be in consonance with the provisions of clauses (3) to (7) of Article 22 of the Constitution of India." (Article 22 (3) weakens the protections for arrested persons that are present in Article 22(1) and 22(2) for persons subjected to administrative (or "preventive") detention.) The right to be produced before a magistrate within 24 hours of arrest, and to consult and be represented by a lawyer of choice, which is otherwise available to persons arrested in India, is unavailable to persons placed in administrative detention.

72. The Armed Forces (Special Powers) Act, 1989, which is in force in Jammu and Kashmir, contains a similar provision which has often been used to block accountability.

Armed Forces Special Powers Act (AFSPA)

24. The Armed Forces Special Powers Act, or AFSPA has long been a symbol of abuse, oppression, and discrimination in IOJ&K. Its application and misuse have fueled a cycle of tyranny and atrocity[73] condemning the people of Kashmir to immense suffering and misery.

25. The act grants the military wide-ranging powers to arrest without warrant, shoot-to-kill, and destroy property in so-called "disturbed areas."[74] It also protects military personnel responsible for serious crimes from prosecution.[75]

26. According to independent observers like the Human Rights Watch, the AFSPA has not only led to massive human rights violations, but it has allowed members of the armed forces to perpetrate abuses with impunity. It facilitates abuses, especially extrajudicial killings, torture, rape and "disappearances", and shields members of armed forces by prohibiting prosecutions from being initiated without permission from the central government[76]. Such permission is rarely granted.

27. Meenakshi Ganguly, senior South Asia researcher for Human Rights Watch says, *"The Indian government's responsibility to protect civilians from attacks by militants is no excuse for an abusive law like the AFSPA. Fifty years of suffering under the AFSPA is 50 years too long – the government should repeal the AFSPA now."*[77]

28. Enacted on August 18, 1958 as a short-term measure to allow deployment of the army against an armed separatist movement in India's northeastern, the AFSPA has been invoked for six decades. It has since been used throughout the Northeast, particularly in Assam, Nagaland, Tripura and Manipur. A variant of the law was also used in Punjab during a separatist movement in the 1980s and 90s, and has been in force in Jammu and Kashmir since 1990.

29. Indian officials have long sought to justify use of this barbaric law by citing the need for the armed forces to have extraordinary powers to combat armed insurgents. The Indian Army maintains that if they are not allowed to continue to operate in the Kashmir Valley without impunity then Kashmir will secede.[78]

30. The Army's top commander in Jammu and Kashmir was reported to have said the India could be compelled to grant the Kashmir independence if the controversial Armed Forces Special Powers Act was lifted.[79]

31. In 1997, the United Nations Human Rights Committee expressed concerns over the "climate of impunity" provided by the Act. Since then, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions (2006), the Committee on the Elimination of Discrimination against Women (2007) and the Committee on the Elimination of Racial Discrimination (2007), have all called for an end to the AFSPA.

32. The OHCHR in its two reports on Jammu and Kashmir also noted that AFSPA "*remains a key obstacle to accountability*," because it provides effective immunity for serious human rights violations. The reports recommend establishment of a 'commission of inquiry', "*to conduct a comprehensive, independent, international investigation*" into allegations of human rights violations in Kashmir to address one of the most serious humanitarian crises of the world.

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73. https://www.hrw.org/news/2018/03/20/security-forces-india-engage-extrajudicial-killings-then-are-protected

74. Section 4 of AFSPA provides: "Any commissioned officer, warrant officer, non-commissioned officer...may, in a disturbed area, (a) if he is of opinion that it is necessary to do so 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..." Such provisions clearly violate the international standards on use of force, including lethal force, and the related principles of proportionality and necessity.

75. Section 6 of AFSPA and 7 of the Jammu and Kashmir AFSPA, grant protection to the officers acting under these Acts and stipulate that prosecution of members of the armed forces is prohibited unless sanction to prosecute is granted by the central Government.

76 Since the law came into force in Kashmir in 1990, the Indian government has not granted permission to prosecute any security force personnel in civilian courts.

77 https://www.hrw.org/news/2008/08/18/india-repeal-armed-forces-special-powers-act

78 https://www.amnestyusa.org/listen-to-the-silent-cries-of-the-disappeared-in-kashmir/

79 https://www.thehindu.com/news/national/army-raises-secession-spectre-to-counter-plan-to-lift-afspa/article2615878.ece

VIOLATIONS OF HUMAN RIGHTS IN IOJ&K

33. Despite widespread and endemic abuse of human rights in IOJ&K, there is little criticism from within India on the atrocities committed by Indian armed forces in name of maintenance of law and order.

34. Kashmiri journalist and author, Mirza Waheed has written extensively about this indifference. In his recent article in the Guardian he wrote,

> *"Two-and-a-half decades of rebellion against India in Kashmir have hardened the indifference of India's political and intellectual classes to the human cost of the country's repressive tactics in the valley.*
>
> *The hostility now appears to be total, unbridgeable, and for those on the receiving end, unbearable. Powerful TV studios urge the state to be more aggressively macho, while actively suppressing or distorting news from Kashmir.*
>
> *One prominent newspaper ran an online poll about the continued use of the pellets that had wounded and blinded so many Kashmiris – a clear majority voted in support. Eminent columnists speak calmly of the need for "harsh love" toward civilian protesters to rationalize the state's ruthless response. And the Twitter account for a government initiative, Digital India, posted a poem calling for the army to murder Kashmiris until they surrender."*[80]

35. Some of the most serious reported cases of various human rights violations carried out by Indian security forces in IOJ&K are appended below.

Extrajudicial killings

36. Extrajudicial killings at the hand of security forces during regular interaction or in custody is a regular feature of daily life in IOJ&K. Most Kashmiri families have lost a relative, friend, or neighbor in the violence. Over a hundred thousand Kashmiri civilians have been killed in the wave of unrest gripping IOJ&K for decades.

37. To seek protection under AFSPA, the security forces brand the murdered as militants, or "over-ground workers"[81], a term used by them for peaceful civilians accused of providing ideological or material support to so-called militants.

38. The Srinagar-based Jammu and Kashmir Coalition of Civil Society reported that conflict-related casualties were the highest in 2018 since 2008, with 586 people killed, including 160 civilians.[82] In 2019, 159 militants and 80 civilians, including 12 women, were extra-judicially killed by security forces.

39. In wake of 5 August actions, the Indian occupation forces have doubled down on so-called "cordon and search operations" and fake "encounters" to conduct extra-judicial killings. In one example of this inhumanity, Indian security forces have refused to return the bodies of killed Kashmiris to their families for proper burial. Even recently, the international community was outraged over the viral image of a three-year-old Kashmiri child sitting on his grandfather's chest in the middle of a street who had been extra-judicially killed by the Indian armed forces.[83]

Arbitrary arrests and detentions

40. Indian forces routinely detain Kashmiris whenever they fear that large scale protests and unrest is imminent. This is done mostly when Indian forces kill a militant/freedom fighter or introduce new draconian laws to keep things in Kashmir under control.[84] In such circumstances, the authorities use what is called a '*revolving-door'*

[80] https://www.theguardian.com/world/2016/nov/08/india-crackdown-in-kashmir-is-this-worlds-first-mass-blinding
[81] https://www.hrw.org/news/2018/03/20/security-forces-india-engage-extrajudicial-killings-then-are-protected
[82] https://www.hrw.org/news/2019/07/10/kashmir-un-reports-serious-abuses
[83] https://www.aljazeera.com/indepth/opinion/photo-dead-kashmiri-making-macabre-narrative-200707151444834.html
[84] https://www.thehindu.com/news/national/about-4000-people-arrested-in-kashmir-since-august-5-govt-sources-to-afp/article29126566.ece

detention policy[85] to keep people coming out on streets to protest against Indian actions. In Srinagar district alone, 1,500 youth was picked up and then released under a continuous process in couple of weeks following August 2019 decision.[86]

41. According to multiple reports, more than 4000 Kashmiris were detained under the PSA. This was done by the Indian government to prevent them from protesting against the illegal Indian actions of revoking the status of an internationally recognized disputed territory in violations of international laws and relevant UNSC resolutions.

42. Those detained included approximately 400 elected officials and political leaders, as well as former chief ministers of Jammu and Kashmir belonging to the National Conference and the Jammu and Kashmir People's Democratic Party[87]. There were also around 144 children among detained, including a nine-year-old Sahil Ahmad Sheikh from Srinagar's Batamaloo.[88]

43. There have been serious allegations of torture and beatings in custody.[89] Many detainees were not allowed to contact their families or lawyers. Most of the detainees were flown out of Kashmir because prisons there ran out of capacity.

44. The officials completely ignored numerous habeas corpus petitions and used powers under the PSA to block all legal recourse to free the arbitrarily arrested people.

45. Some Kashmiris told Human Rights Watch that Indian security forces have also detained family members of suspects instead, when they have failed to locate them. This amounts to collective punishment, in violation of international human rights law.[90]

46. In order to control the unrest caused by illegal Indian actions of August 2019, the government openly claimed that these arrests could be made indefinitely. On September 7, India's national security adviser, Ajit Doval, told NDTV that "*the government had no specific plans to start releasing the detainees as it was being extra careful about the entire situation,*"[91]

47. And even when some of these people were released, the government required the detainees to sign an undertaking that barred them from speaking against "*the recent events*" in Jammu and Kashmir for one year, and not issue any statement, public speech, or participate in public assembly and related events as such acts have the "*potential of endangering peace and tranquility and law and order in the state*".[92]

48. It is also a sad fact in Kashmir that many detained never return home. At least 6,000 single or mass graves have been found in India-held Kashmir since 2008, and many of them are believed to be possible victims of enforced disappearances, a phenomenon in which a Kashmiri man disappears after being picked up by the Indian army or police.

49. Prolonged detention without charge violates India's obligations under international human rights law, especially ICCPR, which prohibits arbitrary arrest and detention. Anyone detained should be promptly taken before a judge and provided the reasons for their arrest and detention and any charges against them. They should have prompt access to a lawyer and family members.

[85] https://www.thehindu.com/news/national/now-revolving-door-arrests-in-kashmir/article29310428.ece
[86] https://www.ndtv.com/india-news/mehbooba-mufti-daughter-iltija-javed-writes-to-amit-shah-says-caged-like-animals-2085742
[87] https://www.hrw.org/news/2019/09/16/india-free-kashmiris-arbitrarily-detained
[88] https://www.reuters.com/article/us-india-kashmir-children/nine-year-old-among-nearly-150-children-briefly-held-in-indian-kashmir-court-probe-idUSKBN1WG47W
[89] https://www.aa.com.tr/en/asia-pacific/69-deaths-in-kashmir-since-aug-5-rights-group-says/1688788
[90] https://www.hrw.org/news/2019/09/16/india-free-kashmiris-arbitrarily-detained
[91] https://www.ndtv.com/india-news/they-can-challenge-their-detention-nsa-ajit-doval-on-j-k-political-leaders-2097181
[92] https://www.telegraphindia.com/india/crisis-in-kashmir-bond-of-silence-that-buys-freedom/cid/1712906

50. United Nations treaty bodies and special procedures have repeatedly called on India to amend the Public Security Act to ensure that it complies with its international human rights obligations.

51. Recently, UN human rights experts and special mandate holders, including David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Michel Forst, Special Rapporteur on the situation of human rights defenders; Bernard Duhaime, Chair-Rapporteur, Working Group on Enforced or Involuntary Disappearances; Clement NyaletsossiVoule, Special Rapporteur on the right to peaceful assembly and association; and Agnes Callamard, Special Rapporteur on extrajudicial, summary or arbitrary executions jointly issued a statement saying that such detentions constitute serious human rights violations. They also expressed their "grave concern" over allegations that "the whereabouts of some of those detained is not known, heightening the risk of enforced disappearances, which may proliferate against the backdrop of mass arrests and restricted access to the internet and other communications networks".[93]

Reprisals against journalists and human rights defenders

52. Indian occupation forces have employed terrorizing methods of reprisals to silence the Kashmiris from sharing information about grave human rights violations with the rest of the world including the United Nations. Reprisals especially of journalists[94] and human rights defenders, to the extent of extrajudicial killing, are being pursued across IOJ&K.[95] Unlawful Activities (Prevention) Act (UAPA) is being used to silence and harass the human rights defenders. Kashmiri media houses are regularly being vandalized and journalists being killed, beaten or being tried under UAPA.[96]

Sexual violence

53. The women and girls have been the biggest victims of the India's illegal occupation. Kashmiri women have to resist the occupation not only of their land but also of their bodies as systematic sexual abuse and other forms of gender-based violence are often deployed as weapons in the war in Kashmir. Every home in Kashmir has a tale of the price that has been paid in the quest for the right to self-determination.[97]

54. Over the years, the rape of Kashmiri women by Indian forces has become a means of collective punishment against the entire population. Human Rights Watch has identified two main scenarios in which Kashmiri women are subject to rape by Indian forces: during '*search and cordon operations'* and during reprisal attacks by Indian forces after military ambushes.

55. Although Indian human rights groups and the international press have reported on the widespread use of rape by Indian security forces in Kashmir, there are no reliable statistics on the exact number of rape and sexual assault cases because of the restrictions on communications placed by the Indian authorities.

[93] https://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24909&LangID=E

[94]Communication dated 12 May 2020 sent to India by the UN Special Rapporteur on the promotion and protection of right to freedom of opinion and expression, Working Group on Arbitrary Detention and the Special Rapporteur on the Situation of Human Rights Defenders:https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25237

[95]Report by Committee to Protect Journalists, 'India uses opaque legal process to suppress Kashmiri journalism, commentary on Twitter': https://cpj.org/blog/2019/10/india-opaque-legal-process-suppress-kashmir-twitter.php

[96]UAPA invoked against journalists include Masrat Zahra and Gowhar Geelani and Peerzada Aashiq,

- Communication dated 6 May 2020 to India by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Working Group on Arbitrary Detention, Special Rapporteur on the promotion and protection of right to freedom of opinion and expression, Special Rapporteur on independence of judges and lawyers, Special Rapporteur on the rights of freedom of peaceful assembly and association, Special Rapporteur on the situation of human rights defenders, Special Rapporteur on minority issues, Special Rapporteur on the right to privacy, Special Rapporteur on freedom of religion or belief.

[97] https://thediplomat.com/2018/02/all-these-years-later-do-not-forget-the-kunan-poshpora-mass-rapes/

56. One of the most horrific incidents of gendered violence in the region is the **Kunan Poshpura mass rapes of 1991** where more than 300 Indian army soldiers raped as many as 150 women.[98]

57. Almost 29 years later, the Indian state has refused to acknowledge the crimes, while the survivors are left with little to no avenues to pursue justice as the Indian army has continued to exercise barbarism and has enjoyed complete impunity, thanks to the AFSPA.

58. According to 1996 Human Rights Watch report, India uses rape as a "counter-insurgency tactic" in Indian Occupied Kashmir to terrorize the populace. A retired Indian Major General, SP Sinha, once said on national TV that Kashmiri women should be raped to avenge atrocities against Kashmiri Pandits during their exodus from Kashmir in 1990.[99]

59. In 2019, a Bharatiya Janata Party leader also reflected Indian mindset when she encouraged "Hindu brothers" to gang-rape Muslim women openly in the streets.[100]

60. Fetishization of Kashmiri women is not new in India. Even Indian Prime Minister Nehru had once compared the Kashmir valley to a gorgeous young woman that was courted by many[101]. After India revoked the special status of Kashmir in August 2019, many Indians openly said that they would go to Kashmir and get brides from there. A Google trends data shows searches in India for "Kashmiri girl"[102] and "How to marry Kashmir women" was increasingly searched after August 5.[103]

61. On August 10, Manohar Lal Khattar, chief minister of Haryana, was quoted as saying: "*Some people are now saying that as Kashmir is open, brides will be brought from there*."[104] Nivedita Menon, a Professor at Jawaharlal Nehru University in New Delhi, said: "*These are proclamations of conquest and plunder, and reveal the real intention behind the abrogation of 370.*"

Use of pellet guns

62. IOJ&K is suffering from what **New York Times** called an '*epidemic of dead eyes*'[105], as Indian security forces use metallic pellet guns on peaceful protestors, seriously hurting them and blinding many in the process.

63. India introduced the officially "non-lethal" pellet shotgun in Kashmir in 2010, when major anti-India protests and clashes with government forces left over 100 dead.[106]

64. Pellet guns were used indiscriminately after massive protests erupted in entire Kashmir following the death of Burhan Wani in 2016, and the year is still recalled by locals as the year of mass blinding in Kashmir, or as the "*dead eye epidemic*". In the seven months following Wani's killing in July 2016, over 6,000 people were injured by pellet guns, including 782 who suffered eye injuries, according to Amnesty.[107]

65. One journalist covering this turbulent time reported:

> *"In a matter of four to five weeks, Indian troops, with a clear mandate to be unsparing, wounded over 10,000 people. One of the youngest – five-year old Zohra – was admitted to a hospital in Srinagar with lacerations to her abdomen and legs. Fourteen-year-old Insha was in the family kitchen when a swarm of pellets pierced*

[98] https://thediplomat.com/2018/02/all-these-years-later-do-not-forget-the-kunan-poshpora-mass-rapes/
[99] https://scroll.in/video/944004/caught-on-tv-ex-army-officer-wants-death-for-death-rape-for-rape-in-favour-of-kashmiri-pandits
[100] https://scroll.in/latest/928986/bjp-mahila-morcha-leaders-says-hindus-should-enter-muslim-womens-homes-and-rape-them-expelled
[101] https://www.hindustantimes.com/india/nehru-compared-kashmir-to-a-beautiful-woman/story-Wc4rEpAZ1PphMtQvG6ku6H.html
[102] https://www.americanbazaaronline.com/2020/02/24/womens-bodies-weaponization-of-rape-in-kashmir-440299/
[103] https://www.aljazeera.com/indepth/features/women-biggest-victims-inhumane-siege-190820122327902.html
[104] https://www.aljazeera.com/indepth/features/women-biggest-victims-inhumane-siege-190820122327902.html
[105] https://www.nytimes.com/2016/08/29/world/asia/pellet-guns-used-in-kashmir-protests-cause-dead-eyes-epidemic.html
[106] https://www.france24.com/en/20181130-indian-pellet-guns-kashmir-kill-blind-enrage
[107] https://time.com/longform/pellet-gun-victims-kashmir/

her face. She has lost vision in both eyes. In southern Kashmir, four girls, aged between 13 and 18, were shot in their faces last week. It is doubtful that these little girls posed a threat to the military force – estimated at 700,000 soldiers and police – stationed in Kashmir."[108]

66. As the uprising continued, the armed forces, by their own admission, fired nearly 4,000 cartridges at stone-throwing demonstrators, crowds protesting against police brutality, and even onlookers. This means that they sent, by one recent estimate, 1.3m metal balls hurtling towards public gatherings predominantly made up of young unarmed people.[109]

67. Government data from 2017 revealed the weapon killed 13 people and injured more than 6,000 in eight months alone, including nearly 800 with eye injuries. In 2018, a 19-month-old girl Heeba Jan suffered severe eye injuries after being hit by a pellet gun fired by security forces and became the "*youngest victim*" of pellet-induced eye injuries.[110]

68. Indian authorities continue to use this barbaric tactic of crowd control despite international condemnation. One army commander has said that it is by far the most effective weapon at his disposal, boasting that "*If you pinch them, only then people will understand*." [111]

69. The Secretary General's recent report "Children and armed conflict" covering the period January to December 2019,regarding IOJ&K notes that "The United Nations verified the killing (8) and maiming (7) of 15 children (13 boys, 2 girls), between the ages of 1 and 17, by or during joint operations of the Central Reserve Police Force, the Indian Army (Rashtriya Rifles) and the Special Operations Group of the Jammu and Kashmir Police... the casualties that occurred in Jammu and Kashmir were mainly caused by torture in detention, shootings, including from pellet guns…".[112]

70. Human Rights Watch and other leading human rights organizations have repeatedly called on Indian government to publicly order its security forces to abide by the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The Basic Principles state that security forces shall "*apply non-violent means before resorting to the use of force and firearms*," and that "*whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; (b) Minimize damage and injury, and respect and preserve human life*." Furthermore, "*intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life*."

71. India so far was not heeded to these calls.

Torture

72. The widespread human rights violations, including use of indiscriminate torture, is a tactic employed by Indian armed forces to break people's will in IOJ&K.[113]

73. Unlike other forms of heinous human rights abuses like extra-judicial killings, enforced disappearances or indiscriminate and excessive force exemplified by the use of pellet shotguns, torture is a state crime that often remains hidden even from the media, unless the victim dies as a result of his/her injuries. As deaths caused by torture-related injuries are not immediate but may occur after years or even decades, accurate figures of such fatalities and morbidity are extremely hard to estimate.

[108] http://www.albiladdailyeng.com/indias-crackdown-kashmir-worlds-first-mass-blinding/
[109] https://www.theguardian.com/world/2016/nov/08/india-crackdown-in-kashmir-is-this-worlds-first-mass-blinding
[110] https://www.bbc.com/news/world-asia-india-46368231
[111] https://www.nytimes.com/2016/08/29/world/asia/pellet-guns-used-in-kashmir-protests-cause-dead-eyes-epidemic.html
[112] A/74/845–S/2020/525
[113] https://www.jkccs.net/wp-content/uploads/2019/05/TORTURE-Indian-State's-Instrument-of-Control-in-Indian-administered-Jammu-and-Kashmir.pdf

74. Since 5 August 2019, reports of torture of civilians by Indian armed forces in IOJ&K have surfaced repeatedly. Human rights researchers were able to gather information concerning the torture of 14 individuals, mostly youth, on the night of 5 August. These 14 were tortured by Indian Army personnel led by Major Aditya from Zaldoora Camp in Pulwama District, South Kashmir. The 14 were detained after an army raid on their homes in Nadapora village of Parigam area in connection with a stone-pelting incident against the motorcade of an army commander earlier in the day. Army personnel took the victims to the roadside, forcibly removed their clothes, severely beat them with bamboo sticks and plastic canes, and forced them to sit one on top the other. One of the victims, an electrician who runs a religious school in the village, was severely tortured for refusing to shout "*Jai Shri Ram*" [Praise the Hindu God] through the local mosque's loudspeakers.[114]

75. Twenty-four additional cases of torture were reported from Gulshanabad, Gung Bug, Tengpora, Firdosabad, Boatmen's Colony and Mansoor Colony in Srinagar District.

76. In addition, on 3 September, 24-year-old Riyaz Ahmad Thickrey died in police custody after being tortured in the Handwara area of Kupwara District. On 17 September, 15-year-old Yawar Ahmed Bhat from Chandigam Village, Pulwama District, died after consuming poison possibly as a result of trauma of being detained.

77. The Association of Parents of Disappeared Persons (APDP) and Jammu Kashmir Coalition of Civil Society (JKCCS) jointly published a report in 2019, exposing the extent of torture used by Indian authorities. The report says that the majority of forms of torture listed in the UN Istanbul Protocol have been used in Jammu and Kashmir.

78. In 326 cases, the victims were reportedly beaten; in 231, they were electrocuted. More than a hundred victims said they were stripped naked, put through roller treatment (using a heavy roller to apply pressure on the legs), restrained in stress positions, or hung upside down. The report also mentions cases of forced labour.

79. Following graph shows the findings of the above-mentioned report on torture in detail:

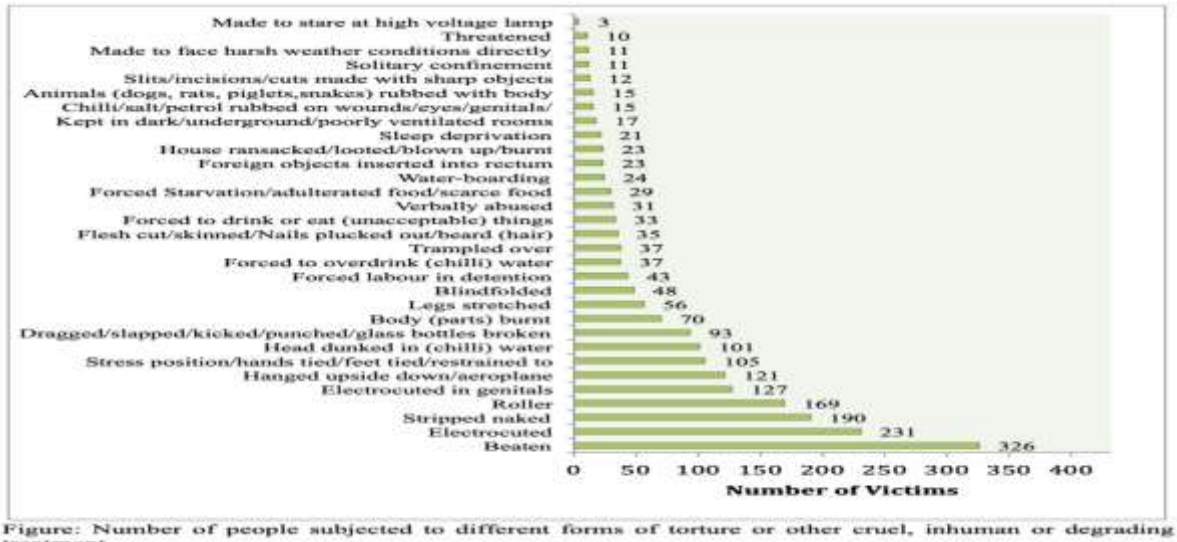

Figure: Number of people subjected to different forms of torture or other cruel, inhuman or degrading treatment

HIDUTVA IDEOLOGY AND HUMAN RIGHTS ABUSE IN IOJ&K

80. While legal and administrative protection to the Indian armed forces was provided through Indian brutal occupation of Kashmir, the current BJP-RSS government, have taken this culture of impunity one step further.

[114] https://thewire.in/rights/kashmir-boy-dies-by-suicide-after-allegedly-being-beaten-by-soldiers

81. Any criticism of human rights abuses by armed forces is now deemed unpatriotic by the party's ultranationalist supporters. Perpetrators are frequently protected, such as the officer who strapped a civilian atop a military vehicle as a human shield against stone-throwing protestors in Kashmir in April 2018. Instead of prosecuting him, the government praised the officer's actions and honoured him with a commendation.[115]

82. Ignoring complaints from Kashmiris, the Attorney General at the time said, *"the Army should be applauded for this action"*. Similarly, in February 2018, some BJP leaders joined the *Hindu Ekta Manch* in a demonstration in support of a Hindu police officer accused of raping and killing an eight-year-old Muslim child in Jammu.

83. The recent claims made by Prime Minister Narendra Modi and Home Minister Amit Shah that the autonomy to Jammu and Kashmir was the cause of "separatism" in Jammu and Kashmir are also disingenuous.[116]

84. Their statements cannot eyewash the fact the followers of Hindutva ideology have long sought to annex the land and resources of IOJ&K, by revoking its special status, bringing demographic changes to turn Muslim majority of the region into a minority, and ruthlessly suppressing all form of dissent and opposition. The recent "reorganization" of Jammu and Kashmir reflects this supremacist agenda to turn Kashmir into an Indian colony.[117] For Indian political class currently ruling India, "*land is more important than the people of Kashmir*".[118] Around 25,000 Indian nationals have been granted domicile certificates till date.

85. In 2002 the Rashtriya Swayamsevak Sangh (RSS), the core organization of the Hindu nationalist movement, demanded that Kashmir should be divided into three parts: a separate Hindu-majority Jammu state; the Muslim-majority Kashmir valley; plus, union territory status for Ladakh.

86. Simultaneously the Vishwa Hindu Parishad (VHP), an RSS affiliate, called for the state to be divided into four parts: a separate Jammu state and Ladakh as a union territory, plus the carving out of a sizeable area, also with union territory status, in the Kashmir valley to be inhabited solely by Kashmiri Pandits, the valley's small Hindu minority who were forced to leave nearly en masse when insurgency erupted there in 1990. Under the VHP plan, what remained of the Kashmir Valley would then be left to the Muslim majority.

87. India under BJP-RSS has emerged as the largest and most pervasive purveyor of terrorism. It has used terrorism as an instrument of its repressive policies against its own Muslim population in India and in IOJ&K.

88. Atrocity crimes being carried out in IOJ&K and within India against its Muslim minority do not begin in a day. They are always preceded by systematic hate speech, discriminatory policies and other warning signs.

89. The recent spike in systematic violence and discrimination against Muslims in India, coupled with decades of oppression and atrocities in IOJK, are all part of the "Hindutva" ideology of BJP-RSS government which seeks to eliminate the heritage of Islam from India through destruction of Muslim shrines, monuments and transformation of India's Muslims into oppressed, second class citizens, and non-citizens. If the state sponsored religious hatred, stigmatization, stereotyping and discrimination against Muslims remain unchecked, they can lead to ethnic cleansing, genocide, and crimes against humanity.

CONCLUSION

90. Indian occupying forces continue to commit grave human rights violations in IOJ&K in plain sight of the international community. More recently Indian aggression against Kashmiris has taken a form of a collective punishment for the occupied people without even a pretext of a precipitating offense.[119] India's long and cruel

[115] https://www.hrw.org/news/2018/03/20/security-forces-india-engage-extrajudicial-killings-then-are-protected
[116] https://www.bbc.com/news/world-asia-india-49316350
[117] https://www.theguardian.com/commentisfree/2019/aug/14/narendra-modi-kashmir-hindu-first-india-autonomy
[118] https://thewire.in/politics/hindu-rashtra-project-end-goal
[119] https://news.un.org/en/story/2019/08/1044741

occupation has brought unimaginable suffering for the people of IOJ&K in which many war crimes and crimes against humanity were committed.[120]

91. The atrocities in IOJ&K are putting enormous strain on the peace and security of the region, threatening escalation between two nuclear armed neighbours who have fought multiple wars over Kashmir. The champions of human rights cannot afford to remain silent in face of such cruelty, which has gone unchecked for far too long.

92. The international community must prevail upon India to 'unlock' freedoms[121] in IOJ&K, lift inhuman military siege, release all political prisoners, restore access to internet and communications services and allow people to enjoy all liberties and freedoms. Above all India should also allow the Kashmiris to exercise freely their inalienable right to self-determination, which remains the only abiding guarantee for a lasting peace in the region.

[120] https://time.com/longform/pellet-gun-victims-kashmir/
[121] https://news.un.org/en/story/2019/10/1050141