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## Kashmir Conflict and Human Rights Violation

**ABSTRACT:** Since from the ancient period, the valley of Kashmir has stood for peaceful observation, intellectual advancements, and religious diversity. This diversity, evident from the blend of Islam, Hinduism, Sikhism, and Buddhism in the state, made advancement of warfare rather than cultural advancement. The insurgency in late 1980s and counter-insurgency from the Indian side in the valley not only threatened Kashmir apart, but also laid its shakes on the rest of the world. The valley of Kashmir is considered as the hazardous place on earth. Since the partition of India and Pakistan in 1947, the state of Jammu and Kashmir becomes an unresolved land. The people who live there has been at the roots of constant tension between the world's largest democracy (India) and its neighbor (Pakistan). The uncertainty and lack of any conclusive resolution to the political dispute have left the population of the state of Jammu and Kashmir divided and uncertain about their future. The land of Kashmir, with immense beauty and tourist industry, disappear completely in the face of military invasions and terrorist activities, and gave birth to human rights violations. This article, using the historical method, qualitative approach, and personal and collective memories' study, tries to elaborate the Kashmir conflict with its implications, and to analyze the hidden truth of Kashmir, which created an alienation among people, and becomes a major reason for the uprising in the valley. Besides that, the article will present the abuses that are still prevailing in the Kashmir valley.

**KEY WORDS:** Kashmir Conflict; Insurgency; Torture; Enforced Disappearances.

### INTRODUCTION

From July 09, 2016, the uprising after the death of Buran Wani should be a matter of utmost concern not only for India, but to whole world. It changed the whole discourse of freedom movement of Kashmir, which was at the merge of death. People from whole valley protested against the killing of Buran Wani and his two associates. From south to north, everyone looks disappointed and gossips about the death of Burhan Wani. His death proved the

hypothesis that people of valley supports rebels, who carries the mission of freedom from the Indian dominion (Ali, 2016; Dasgupta, 2017; and Haq, 2017a).

However, the approach adopted by security forces provoked the every Kashmiri to come on roads and stage protests. The violence that once again emerged shows stronger than the previous one. The funeral of Burhan Wani presented a different image on international level, and Burhan Wani was considered more dangerous

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than alive. The world community gave statements on solving the Kashmir dispute. The countries like Norway, China, New Zealand, United Kingdom, Saudi Arabia, and Turkey demanded the both India and Pakistan to solve the dispute and pressurized India to stop human right violations (Wani & Suwirta, 2013; Athialy ed., 2017; Haq, 2017a; and Khan, 2017).

Those aware of Kashmir history would be knowing that violence in Kashmir valley generally tends because of state of exception, which according to Giorgio Agamben (2005), as cited also in Kenneth Hemmereichs (2009), violence had become a dominant paradigm of government (Agamben, 2005; and Hemmereichs, 2009). However, this argument was further carried out by Walter Benjamin in 1978, that law itself is a kind of violence that constitutes and maintains social relations by creating a monopoly on force and coercion. The state justifies lethal weapons, killings as a means of law making, or law preserving like war against terror, maintenance of law and order. It is because state wants to establish power through violence (cf Benjamin, 1978; Benjamin & Osborne eds., 2000; and Robinson, 2013).

Same way, the Indian government employed laws like Public Safety Act (1978) and Armed Forces Special Power Act (1990), which clearly shows that India uses laws to maintain law and order; and to destroy internal or external political, ideological, or security threats (Al, 2011; Haq, 2017a; and Hoskote & Hoskote, 2018).

This article, using the historical method, qualitative approach, and personal and collective memories' study (cf Johnson, 1982; Yow, 2005; Silverman, 2006; Creswell, 2009; and Shah, 2012), tries to elaborate the Kashmir conflict with its implications, such as: the Road to Insurgency in Kashmir; Torture as a Tool of Impunity; Enforced Disappearances; and Impacts on People.

## FINDINGS AND DISCUSSION

**The Kashmir Conflict.** The state of Jammu and Kashmir lies in the heart of Asia. It is situated between 32.17 and 36.58

degree north latitude, and 37.26 and 80.30 degree east longitude. In the west, the state is bounded by Pakistan; in north east by China; by Afghanistan in the north west; and in south by India. The area of the state is 85,806 square miles, and total population stands for 1.25 crore, or 1,2541302 (Bhatt & Bhargav, 2005; and Tabasum, 2012:5).<sup>1</sup>

The conflict of Kashmir is deeply rooted in the colonial history of the sub-continent. The dispute of Kashmir between India and Pakistan is as old as the two countries themselves, dating back to the partition and independence from Britain in 1947. At present, the parts of Kashmir are not only occupied by India and Pakistan, but China also occupied some parts of it (Ganguly, 1990:57; Bose, 2003; and Choudary, 2010).<sup>2</sup>

The state of Jammu and Kashmir has Muslim majority population and was variously ruled by central and west originating Mughal-Afghan dynasties. In the nineteenth century, the Britishers take it from Sikhs and sold to a Hindu Dogra Maharaja Gulab Singh in the Treaty of Amritsar for seventy five Lakh Rupees. Thus, the valley of Kashmir witnessed the Hindu Dogra Maharaja Gulab rule from 1846-1947. The people led a miserable life and were treated as slaves. The imposition of heavy taxes, capital punishment, and the constant terror was created by the Hindu Dogra Maharaja Gulab's against Kashmiri Muslims (Ahmad, 2010; Kaul, 2010:43; Wani, Suwirta & Fayeye, 2013; and Haq, 2017a).

The origins of conflict of Kashmir lies in the sub-continent's partition, in 1947, created the independent states of India and Pakistan. With this, the hundreds of nominally independent princely states were absorbed into India and Pakistan. The Dogra ruler, Maharaja Hari Singh of Kashmir, wants to remain independent and refused to accede

<sup>1</sup>See also, for example, "Census 2011". Available online at: <http://www.census2011.co.in/census/state/jammu+and+kashmir.html> [accessed in Gandhinagar, India: December 14, 2017].

<sup>2</sup>In the entire state of Jammu and Kashmir, India has occupied 43% of the region known as IOK (Indian Occupied Kashmir); and 37% of the region is occupied by Pakistan which is known as "Azad Kashmir" or POK (Pakistan Occupied Kashmir). The third part which China occupied during 1963 War is known as "Aksai Chin".

to either nation (HRW, 1993:20; and Haq, 2017a). In 1947, Maharaja Hari Singh faced the armed revolt by Muslims from Poonch. The revolt then spread in other parts of Jammu and Kashmir. In order to stabilize the situation, the Maharaja Hari Singh signed a still stand agreement with Pakistan (Jha, 2003; and Ankit, 2010).

In August/September 1947, the situation deteriorated and Kashmiri Muslims revolted openly. The tribesmen from Pakistan's north west frontier province also joined in the armed insurrection. By the October 1947, the tribesmen capture the several towns and massacred a large number of civilians and advanced to capture the capital of valley (Jha, 2003; dan Hussain, 2009:1008). To crush the rebels from the state, the Maharaja Hari Singh to seek assistance of India's Prime Minister, Jawahar Lal Nehru, who agreed to send troops only if Kashmir formally acceded to India. On October 27, 1947, the Maharaja Hari Singh agreed to sign the instrument of accession to India on the condition that Kashmir should be permitted to retain its own constitution (HRW, 1993:20; Ankit, 2016; and Haq, 2017a).

In the same year, both India and Pakistan fought their first war on Kashmir dispute, and India took the matter before the UN (United Nations). With the intervention of UN, a cease-fire agreement was signed on January 1, 1949 (Hussain, 2009:1008; Wani & Suwirta, 2014; and Nawaz, 2018).

In 1965, once again both the countries went to war over Kashmir and divided the old LoC (Line of Control) of Jammu and Kashmir into four political units, namely: Jammu and Kashmir, Ladakh (Indian occupied Kashmir); Azad Kashmir (Pakistan occupied Kashmir); the Northern Area administered by Pakistan; and Aksai-Chin, controlled by China (Hussain, 2009:1009; Choudary, 2010; and Haq, 2017a).

In January 1966, Tashkent Agreement was signed between India and Pakistan, and both countries decided to solve the Kashmir dispute through peaceful negotiations. In 1972, another agreement was signed after the war, and both countries decided to end their conflict and resolved to settle their

differences through bilateral negotiations and this agreement came to be known as Simla Agreement (Indurthy & Haque, 2010; Singh, 2011:12; and Cheema, 2015).

### ***The Road to Insurgency in Kashmir.***

After Simla Agreement, the central government attempted to control the political system of valley. However, the secessionist's sentiments were alive among Kashmiri's from 1947. In 1980, the Islamization of Kashmir spread quickly, and the theme "Islam is in danger" mobilized the youth. The Islamic literature was being distributed to create awareness among the people and small pamphlets, like "Tragedy of Kashmir" and "Kashmiris Fight for Freedom" appeared in the valley created frustration among educated people and created hatredness among them towards India (Tremblay, 1996/1997; and Haq, 2017a).

The influence of Saudi emerged in 1979, by holding an Islamic conference in Srinagar and setup the Jhelum Valley Medical College in 1980, through which the message of radical Islam and communalism was been spread in the valley. The establishment of *Madrasahs* (Islamic modern schools) from the early 1980s, also planted the seeds of Islamic fundamentalism in Kashmir from an early age created irritation among Muslims and they adopted the way of violence, which come in the form of insurgency (Pandita, 2003; and Bakaya & Bhatti, 2005).

The spread of modernization and communication created a political conscious among Kashmiri educated and ambitious youth, and they got dissatisfied with the political system of the valley. The rise of unemployment in the valley also gave a wide spread frustration among youth against their leaders and policies of central government (Ganguly, 2007; Guler, 2017; and Haq, 2017a).

In 1986, an accord was signed between Indian Prime Minister, Rajiv Gandhi, and Farooq Abdullah, Chief Minister of Jammu and Kashmir, which was widely criticized in the state and was considered as a betrayal of Kashmiri interest. This accord generated bitterness and revolt among young educated Kashmiri Muslims against the India and

adopted the path of violence (HRW, 1993:21; Ganguly, 2007:310; and Haq, 2017a).

These are primary reasons, which created the environment of insurgency. Besides that, there are major misfortunes that played a great role in insurgency. Among them is the inflexible election of 1987, in which a new party namely MUF (Muslim United Front) takes part. The MUF, which had the support of pro-independence activists, Islamic fundamentalists, and many frustrated Kashmiri youth, contested the election for State Assembly. There was a widespread loophole in the vote count, and MUF were defeated as they were considered dangerous by the Indian state (HRW, 1993:21; Teng & Gadoo, 1998; and Chenoy, 2001).

In this election, at least seventy five percent polling was recorded in the state which is considered as highest ever in the valley. The collusion of National Conference and Congress claimed sixty-six seats. MUF had contested on forty-four seats and won only four. In this context, Balraj Puri (1993), as cited in Victoria Schofield (2003) and Inamul Haq (2017a), stated that the result of elections gives strength to the fundamentalist forces in the valley (Puri, 1993; Schofield, 2003:137; and Haq, 2017a).

It is noteworthy that BJP (*Bharatiya Janata Party*) and Congress opened their accounts in the valley and gives challenge to MUF, who was considered as emerging party in the valley. The leaders of the MUF were trying to change the political system by democratic and peaceful methods, instead of that guns were handed to them. They were arrested and tortured in jails, and the result of this was that militancy (terrorism) grew in Kashmir. The another reason of militancy was the lawlessness in the region by which economic situations got worse and created a spiral of violence, causing many young educated and unemployed youth to join the militant ranks (Kazi, 2007; Yaqoob, 2016; and Haq, 2017a).

The increasing insurgency in the valley was the consistent failure of democracy. After elections, a candidate of MUF later on became chief patron of *Hizb-ul-Mujahedin*. Most of the educated youths joined the

JKLF (Jammu and Kashmir Liberation Front), which was active from 1964. In 1988, the wide protest began in the valley along with anti-India demonstration resulted into strikes, arrests, and torture by the police. The turning point was the kidnapping of Rubbia Sayeed, daughter of Mufti Mohammad Sayeed, on December 8, 1989, in exchange for the release of five JKLF leaders (Puri, 1993; Schofield, 2003; and Haq, 2017a).

After the event, Indian government launched a massive crackdown on the militants. With the resignation of Farooq Abdullah, the Governor rule was imposed in the valley on January 19, 1990, and former Governor, K.V. Krishna Rao, was replaced and Jaghmohan Molhotra was appointed as new Governor. From the first day of his appointment, security forces opened fire on crowd of unarmed demonstrators killing fifty three civilians on January 20, 1990, commonly known as “Gawkadal Massacre”, by which insurgency spread in whole Kashmir (HRW, 1993:22; Schofield, 2003; and Haq, 2017a).

**Torture as a Tool of Impunity.** In 1990s, with the appointment of Jaghmohan Molhotra as a Governor, on 19 January 1990 – 26 May 1990, gives birth to massive human rights violations. The security forces carried out a ruthless campaign of terror against the people, who are fighting for their freedom or self-determination. Unrestricted arbitrary powers were given to the security forces to suppress the movement in the valley. As a result, thousands of Kashmiri were killed, injured, prosecuted, or arrested (Khan, 2015; Yaqoob, 2016; and Haq, 2017b and 2017c).<sup>3</sup>

India government describes the insurgency as law and order problem; and in order to deal with the situation, several oppressive laws have been put into force, which becomes a great reason for the Human Rights violation in the valley. Among such laws include the Jammu and Kashmir Disturbed Area Act in 1990; Armed Force Special Power Act in 1990; and Public Safety Act in 1990, which suppress the basic liberty in Kashmir (Mohiuddin, 1997:75;

<sup>3</sup>See also “Rape in Kashmir a Crime of War” in *Asia Watch and Physicians for Human Rights*, Volume 05(9).

Bakaya & Bhatti, 2005; Haq, 2017a; and Hoskote & Hoskote, 2018).

The security forces used different forms of torture in the valley. Besides that crackdown, arson, and burning of shops and houses became a custom of Indian security forces. Custodial killing, arrest without warrant, were the tools adopted by the forces (Schofield, 2003; AI, 2011; and Haq, 2017b and 2017c).

In August 1992, an operation was carried out by Indian security forces in the valley known as "Operation Tiger". The main characteristics of this operation were to do surprise raids and search operations designed to catch and kill. This operation was considered as brutal measure adopted by Indian government, in which the execution of the detainees increased to a greater extent. The other operations were carried out in the valley having code names, like "Shiva", "Eagle", and "Cobra". The main goal of these operations was to create an intense fear among the people of valley, who were demanding separation from the India (HRW, 1993:22; Goodhart *et al.*, 1995; and Haq, 2017b and 2017c).<sup>4</sup>

The secessionist movement in the valley got support from the locals in every way. The security forces suspects every individual as the supporter of militants. In order to find out, they took anyone in the custody and tortured him. It is a practice to reveal information about suspected militants or to confess to militant activity. It was also done to those who created a climate of political domination (PHRAW, 1993; Tremblay, 1996/1997; and AI, 2011).

After insurgency, Indian government took strict methods in eliminating the movement of succession in the valley. They used other groups like *Ikhwan-ul-Muslimoon* (Renegades), *Muslim Mujahedeen* (Struggle), VDC (Village Defense Committees), and SPO (Special Police Officers), who played a central role in torture without any accountability. These groups are not recognized officially, and Indian government used them as a shield for prosecution (Bose,

2003; Imroz *et al.*, 2012; and Haq, 2017a).

These groups also were acted like *Salwa Judum* of Chhattisgarh. The number of these parallel militia groups of valley is greater than Chhattisgarh. The Jammu and Kashmir Coalition of Civil Societies has reported that young boys of valley continue to be arrested and subjected to torture and harassment. In March 2011, Margaret Sekaggya, the UN (United Nations) Special Rapporteur on Human Rights Defenders, stated that Police used to detain the people and beat them mercilessly and torture, killing and custodial deaths by Police and Para-Military Forces were prevalent in the valley (cited in IDMC, 2007; and Haq, 2017a).<sup>5</sup>

The group of Interlocutors set up in October 2010, by Central Government, states that the people of valley feared oppression by the hands of security forces, police, armed groups, and militants. The coercive methods of torture are used by state actors in order to crush insurgents, while as non-state actors used torture to pressurize the state machinery. The innocent civilians became targets of both state actors as well as non-state actors. In state actors, there comes security forces and police; and newly formed *Ikhwan-ul-Muslimin* (Renegades) and militants (terrorists) form the group of non-state actors (Swami, 2010; AI, 2011; Jacob, 2016; and Haq, 2017b and 2017c).

**Enforced Disappearances.** According to the Declaration on the Protection of All Persons from Enforced Disappearance, proclaimed by the General Assembly in its resolution 47/133 of 18 December 1992, states that an enforced disappearance occurs, when persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the government,

<sup>4</sup>See also "India's Secret Army in Kashmir: New Patterns of Abuse Emerge in the Conflict (1996)" in *Human Rights Watch*, Volume 8(4c), pp.1-54.

<sup>5</sup>See also "Human Rights Violations in Jammu & Kashmir: A Report" in *Outlook Magazine*. Available online also at: <http://www.outlookindia.com/article/Human-Rights-Violations-in-Jammu--Kashmir--A-Report/211099> [accessed in Gandhinagar, India: December 14, 2017].

followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law (cited in Crew, 2008; IHRLC, 2014; and Haq, 2017a).<sup>6</sup>

The International Convention for the Protection of All Persons from Enforced Disappearance defines as following here:

*[...] an enforced disappearance as: the arrest, detention, abduction or any other form of deprivation of liberty by agents of the state or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law (IHRLC, 2014).*

The presence of military personnel's in the valley created a fear, threat, and insecurity among people. The disappearance of thousands of Kashmiri youth has made a measurable economic and mental impact. The earning members of the family who goes missing from insurgency leaving behind half-widows. There is no accurate number of half-widows as per Pervez Imroz, a Human Rights Activist and Lawyer of Srinagar High Court, argues that their number ranges between 1,000 – 1,500 (cited in Imroz *et al.*, 2012; Hassan & Shafi, 2013; Qayoom, 2014; and Haq, 2017a).<sup>7</sup>

The members picked on suspicion by security forces leading to mental torture for the whole family. The half-widows do not know about their husbands, whether they are dead or alive, and lived on the hope that one day, they may return home. Many women, whose husbands have disappeared, prefer to wait for them and do not remarry for the fear of social isolation (Shafi & Hassan, 2013; Qayoom, 2014; and Haq, 2018).

After the insurgency, the people of

Kashmir face lot of problems in all ways. They face psychological torture more than physical torture, and women are the most victim of this torture. The disappearance of their sons, brothers, fathers, or husbands shattered their dreams and psychologically distracted. They are the patients of trauma and blood pressure, and also faces problems in every section of their life whether physically or economically. The youth also became the victim of torture. Their potential was destroyed and distracted from the real image of life; and gun was given in their hands, which creates chaos and confusion in the valley (Qutab, 2012; Jahangir & Shafi, 2013; and Haq, 2018).

**Impacts on People.** The conflict of Jammu and Kashmir in 1989, with a political demand of self-determination, has been met with a brutal response of state and has claimed gross human rights violation. The oppressive response used by Indian state to suppress the movement is torture, rape, enforced disappearance, custodial deaths, and burning of houses in the valley, violence laid its impacts deeply in the social life. After insurgency, all these violence's had a serious effect on mental and physical health in all Kashmiri in all groups, classes, and communities in all areas from last twenty five years (Noorani, 2002; Farasat, 2013; and Haq, 2018).

The depression is considered as most important feature of mental health. It has been analyzed that people in the valley face depression at individual and collective level. Due to depression, most of the people take drugs. A survey conducted by Action Aid International in Kashmir, in 2000-2001, according to them, 59.30% males and 39.50% females were suffering from depression and hypertension (Amin & Khan, 2009; and Haq, 2017a and 2018).

After 1990, anxiety emerged as social-psychological problem in Kashmir after counter-insurgency measures adopted by the security forces. This created the feeling of insecurity among individuals. In the valley usually no one is sure to return home safely in the evening. The environment of torture, killing, and disappearances of Kashmiri

<sup>6</sup>See also "International Convention for the Protection of All Persons from Enforced Disappearance". Available online at: <https://www.ohchr.org/Documents/ProfessionalInterest/disappearance-convention.pdf> [accessed in Gandhinagar, India: June 8, 2018].

<sup>7</sup>See also, for example, "Torture Trial: A Documentary Prepared by Pervez Imroz". *Unpublished Report*. Available online also at: <https://www.youtube.com/watch?v=-FdpaLuqOig> [accessed in Gandhinagar, India: December 14, 2017].

youths led to psychological problems related to anxiety. There were hundreds and thousands of such cases in the past twenty five years, mainly because of the impact of militancy and militarization (Amin & Khan, 2009; Dabla, 2012; and Haq, 2018).

## CONCLUSION

The valley of Kashmir has been in conflict between government forces and militants from the last two decades. Bomb attacks and shoot-outs from both sides have affected the ordinary life of common people. However, the armed violence prevailing in the valley was treated by India as a proxy war; and in order to curb it, they initiated counter-insurgency operations. As a result of these operations, many special powers like Armed Forces Special Power Act and Public Safety Act were entrusted with the security forces. With the imposition of such laws, the armed forces find a free hand in the name of law and order to commit the human rights violation in the valley. These special powers also make the people of valley to live in a state of constant fear of arbitrary arrests, enforced disappearance, sexual harassment, torture, and custodial death.

It has been argued that thousands of people have victimized to this practice Human Rights abuses from governmental forces and militants are reported in the form of arrest, extra-judicial killing, house to house searches, abductions, and torture. The presence of military personnel's in the valley created a fear, threat, and insecurity among people. The disappearance of thousands of Kashmiri youth has made a measurable economic and mental impact. The earning members of the family, who goes missing from insurgency, leaving behind half-widows.<sup>8</sup>

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<sup>8</sup>**Statement:** I am stating that this paper is my original work, and the References are properly included. Likewise, this paper is not product of plagiarism, and only be published in the HONAI journal, not to other scholarly journals.

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