

## **Kashmir at Crossroad: The Partition's Unfinished Agenda**

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### **Abstract**

*Independent dominions in shape of Pakistan and India emerged as result of partition on 14 August and 15 August 1947 respectively while the fate of over 500 princely states awaited decision. Due to overwhelming majority of Muslims, Jammu and Kashmir should have acceded to Pakistan. The hardness in Indian stance resulted in the two wars i.e. of 1965 and 1971 besides two limited wars of 1947-48 and 1999 Kargil war. South Asia remained on the brink of war in 2002 standoff and the current escalations in Azad Kashmir. Contrarily, both Pakistan and India had agreed upon the United Nations resolutions, including, "the accession of the state of Jammu and Kashmir will be decided through free and impartial plebiscite under the auspices of United Nations". The Indian strategy was to gain time on the pretext that "Indians are superior to Pakistanis in military and industrial power therefore Pakistan would accept a settlement imposed by the Indians". Additional India pleaded that Pakistan had joined defence Pacts with west, so India moved away from the process of Plebiscite. Now, India wants to discuss only terrorism brushing aside the core issue of Kashmir. Resultantly, the people of Kashmir are at the mercy of despotic and tyrant Indian Forces and they are suffering the most. How long the innocent population of Kashmir will be looking to ask the world to come forward for an open hearted settlement of this long outstanding dispute? The situation may escalate into a nuclear flashpoint.*

**Key Words:** Pakistan, Kashmir Issue, India, UNO, India, Cross Border Terrorism

### **Introduction**

Kashmir, called paradise by the Mughal emperors due to its beauty, is situated at confluence of China, India, Pakistan and Afghanistan in the mountains of Himalaya (Musarat J Cheema, 2015, p. 45). The area of Kashmir before the partition was 222,799 square Kilometres that has lost its status as paradise in the last seven decades being under despotic Indian Occupation. Its Muslim population has been trapped among many but mainly between Pakistan and India. It became an intermediary and middle of the road of interstate conflict in the

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1947-48 and 1965 wars between India and Pakistan whereas the area has also seen heavy fighting during 1971 war (Alastair Lamb, 1997, p. 175). The Line of Control (LoC), 778 km of length, intersects J&K between Azad Kashmir and IHK and 198 km long borders of the state with Indian Punjab and Pakistani Punjab.

It is claimed that since the resolutions were adopted under Chapter VI (Settlement of disputes) rather than chapter VII (Threat to the peace and act of aggression) therefore, UNSC can only suggest and not enforce its recommendations. It is true that the Kashmir dispute was filed by India under chapter VI but the resolutions are silent as to under which chapter, they were adopted. A cursory look into the history makes it evident that the Kashmir problem was not a mere dispute, rather a threat to the peace of the region; so logically resolutions had been adopted under Chapter VII rather than chapter VI. To further fortify this point, it may be noted that three wars have been fought between the two countries on Kashmir issue and any untoward incident can trigger a fourth war between the two nuclear armed neighbours that could have international fallouts (Pakistan Today, 5/2017).

Historically, both Pakistan and India agreed upon the United Nations' resolutions adopted to settle the Kashmir issue, confirming "the accession of the state of Jammu and Kashmir to India or Pakistan would be decided through the democratic method of a free and impartial plebiscite to be conducted under the auspices of the United Nations". In the interstate relations, it is not unlike the way the other interstate disputes are fought, as at the most, Kashmir dispute has some vital stuff of strategic importance nor does it have some area having importance geopolitically. However the causes can be found in misconceiving the idea of building of state of South-Asia during the partition in 1947. India in its building a nation state on the basis of secularism kept trying to engulf the Muslim dominated Kashmir for the basic reason of demonstrating secularism worldwide (Ravi Krishnan Khajuria, 2016).

### **Indian Secularism vis-à-vis Status of Kashmir for Indian Dominion**

India expostulated; if a state with Muslim majority might have flourished within its state then India would be accepted as secular state all over in the world. On the other hand, Kashmir is having much of the value to live up as Pakistan was created under two nation theory and being the Muslim Majority state it would integrate into Pakistan. Pakistanis argue that Kashmir is like spinal cord of a body and Pakistan would be incomplete if Kashmir is not included in its geographical status (Ganguly S, 2007). As of now, Pakistan, being one of the party, excogitates Kashmir problem as an unfinished agenda of the subcontinent's Partition. Moreover, Kashmir is never a problem based on territorial or bilateral disputes whereas the right of self-determination of

Kashmiris was acknowledged through UN resolutions and this self-determination was itself promised by India.

### **Indian Projection of Kashmir Dispute with Global War on Terror**

The Indian Media project the uprising of Kashmiri Muslims' ensemble as terrorists. The strange disinformation is believed by those who live outside the Kashmir valley without having accessibility to the remote areas of Kashmir. This patterning of India is adding only fire; however, it is probably, the Indians who are favouring to create an environment of distrust. This battling environment in Kashmir is more cultivated, organized and disenchanted than war in Gaza and the massacre in Congo. Extraneous antecedents, including poor administration by the government of India and human rights violations by Occupation Forces, have developed a climate of tending to help in struggling for self-determination in the state (Sukhanver, 2014).

The existing administrative machineries in the state, in most of the cases, are tenuous however, where the administrative machineries are active, they have been plagued by corruption. None from the governments including central and state, could do to remove the agony of the people of Indian Held Kashmir. The lethargic state of affairs has developed a feeling of variance and delinquency among the masses of Kashmiri people. These feelings of delinquency have only summed up antagonism to India and its people; therefore, the environment of tension is created. This feeling of variance also emboldens and strengthens the activities of freedom fighters (Khurshid, 2017).

Today, international politics is playing a vital role that made the environment tilted in favour of India. In the last period of Clinton, US and its allies started to allow and advance a policy of non-intervention that favoured India the most, which supports bilateralism in resolution of disputes between the two countries. This mischievous environment is never acceptable and as such it is pernicious to Pakistan because under this garb, Indians are breeding abhorrence of terror in the entire state to strengthen the sway that the uprising is nothing but terrorism. This impression is giving nothing but wrong direction to state of affairs in Kashmir (Muhammad, 2016).

### **The Genesis of Dispute, the Geneva Convention III Article 118, Sec II and Article 25**

At the inception, in 1947, India entered into the comity of sovereign nations by contravening the already accepted partition plan of the Subcontinent. India pre-empted first, Junagarh and Hyderabad through forceful entry of forces in these princely states and then reduplicated to repeat the same in Kashmir. Concurrently she was intriguing against Pakistan on all fronts including the

refusal on handing over the Pakistani assets already agreed upon so that the new state could collapse as soon as possible. On the other hand, at the end of 1971 Indo-Pak war, India did not release POWs hence violated the principle of Geneva Convention that forces all the states to release and repatriate POWs without any delay after abeyance of hostilities. Additionally, UN Charter enforces the right of self-determination in the entire world but the same has been violated wilfully by India ( Adil Akhzer, 2016).

### **Violation of Simla Accord**

In order to initiate the process of the establishing durable peace, both Pakistan and India agreed that in Jammu and Kashmir, the LoC resulting from the cease fire of December 1971, shall be respected without prejudice to the recognized position of either side. Neither side shall seek to alter it unilaterally, irrespective of mutual differences and legal interpretations. Both sides further undertake to refrain from the threat of use of force in violation of this Line". India violated the accord on the following occasions:-

- a. India violated this condition almost immediately the Simla Agreement was signed. The Indian army forcefully entered into the Pakistani held territory and established 6-8 posts on Pakistan's side of LoC.
- b. India, in 1984 did not only violate Simla Agreement but it violated 1949 Karachi Agreement defining candidly Cease Fire Line CFL between India and Pakistan as prevalent after United Nations mediated the Cease Fire of 1949.
- c. India entered its forces in Siachen Glacier i.e. Operation Meghdoot, occupied much of the area and the two main passes Sia La and Bila Fond La.
- d. Again not caring for the international norms, India crossed over the LoC and set up 12 posts in the Qamar Sector, in 1988, setting aside the Simla Agreement.

All efforts went in vain towards a durable solution to the Kashmir dispute when India stalled composite dialogue. Strange enough that world body is silent over this stance as to how both the countries will proceed for the settlement of Kashmir while taking care of Simla Agreement. The Simla agreement was primarily meant to resolve all the disputes to include the main dispute of Kashmir but big brother has been avoiding the right of little brother and in such situation, one way left as to resort to mediation or face the consequences of inhalation or suffocation. General Raheel Sharif, the former Chief of Army Staff, during his visit to UK candidly announced that Kashmir is

unfinished agenda of Partition and should be resolved under the auspices of UN (General Raheel Sharif, 2015)

Simla Agreement clearly denoted the resolution of Kashmir issue but in vain. As Simla Agreement inked, "India and Pakistan resolved that the two states lay off the confrontation course which have spoiled the relations. What to talk to resolve the Kashmir issue, Simla Agreement did not ensure to send back the prisoners of Pakistan from Bangladesh. General Qamar Javed Bajwa, Chief of Army Staff has reiterated that Kashmir dispute should be resolved through political and diplomatic means (General Javed Qamer Bajwa, 2017). The two countries need to promote harmonious and friendly relationship for durable peace; this will create an environment to devote their resources and energies for the welfare of people ( Vol XI, Docus 756 of US Foreign Relations of 1952–1954). Seeing the situation, now the Simla Agreement should not be a hurdle in raising the voices of people of Kashmir as they are facing the historical human rights violations. The Indian Standing on Kashmir as reflected in official website of Indian Embassy is under.

a. **Kashmir - An Indispensable Unit of India**

- (1) Jammu and Kashmir is not controversial area rather J&K is legally part of India and J&K accession is legal and final.
- (2) Jammu and Kashmir accession to India was desired and registered by Sheikh Abdullah.
- (3) Azad Kashmir, under Pakistan control, does not exist for India; therefore it should be relinquished by Pakistan.
- (4) Daily happenings in Kashmir is the internal issue, therefore International Community does not have any business with it.

b. **Elections as Alternate to Plebiscite**

Plebiscite is not the only way to know the will of the people rather election is an alternate to plebiscite whereas people of Kashmir took part in elections repeatedly hence demanding for plebiscites useless. Kashmiris by and large are happy in India.

c. **Cross-border Terrorism is the Root Cause**

Pakistan is sponsoring terrorism in Kashmir whereas Kashmir does not have any other issue except terrorism. Anything happening in valley is not freedom movement rather it is a Pakistani sponsored terrorism, therefore, normality will return if Pakistan get out of the sponsoring of terrorism.

d. **Imperceptible State of Human Right Violations**

Enough Constitutional Machineries are looking after to enquire any accusations levelled.

e. **Discourses are Conditional**

Opening of discussions or restoring composite dialogues on the issue of Kashmir etc. Will be restricted after acknowledging it as an integral part of India.

### **Indian Machination for Monstrosity in Kashmir**

Historically, Universal Declaration of Human Rights (UDHR) is a turning point for the status of human rights. The Declaration was drafted for all regions by their respective members who were representing different laws and cultures (translated into 500 languages). On 10 December 1948, in Paris, the Declaration was unanimously adopted by UNGA through General Assembly Resolution 217 as a prevalent typical standard for all nations and all peoples. The Declaration unfolded, in the history of human kind that elementary human rights should be protected generically. On the other hand, since 1989, over 1, 00,000 Kashmiri have been martyred, hundreds of thousands more suffered injuries and equal numbers have been internally displaced (Amensty International, 2017).

Around forty thousand Kashmiris have already fled to neighbouring Azad Kashmir as refugees. Daily life has been muddled and degraded whereas suspicion continues to suffuse various parts of Kashmir. Not a single night passes without a fear that a knock on door at night will be a call to come out side and then he will never come back. Psychological distressing concerned to violence has been volumetric and large to any extent, as lives are constantly under physical threat. On the forefront and rightly so, the people of Kashmir are struggling for their political rights but Indian forces have been committing massive human rights violations and at present no one is ready to ask them for these violations (Human Rights Report, 2016).

The efforts of Pakistan to settle on the basis of human rights violation are obvious. On the floor of UN, Mr Nawaz Sharif, the then PM of Pakistan earnestly communicated what is needed for resolving the Kashmir issue. In the spirit and policy of Pakistan, he dilated upon; “one, we propose Pakistan and India to formalise and respect 2003 understanding of a complete ceasefire in Kashmir and LoC, two, we propose Pakistan and India reaffirm that they will not resort to the threat of force under any circumstance, three, steps must be taken to demilitarise Kashmir, four, agree to mutually withdraw troops from Siachen”. He further dilated upon that both the countries should understand the roots causes of the issue and stressed the need to work for practical actions for aversion of escalating the present situation (Muhammad Faysal, 2016).

Summary of atrocious act of Indian terrorism, since 1989, in Indian Occupied Kashmir are as under (Usman Khurshid, 2017).

a.	Total Killings	-	100,000 (the figures may be more)
b.	Custodial Killings	-	7,097
c.	Arrests	-	142,294
d.	Children Orphaned	-	107,656
e.	Women Widowed	-	22,826
f.	Enforced Disappearance	-	10289
g.	Gang Raped	-	10,717
h.	Houses/Structures Destroyed	-	108,310

### **Pitfall in the System of UNO**

The negative response of International Community on the committal of huge international crimes is pointing towards the inherited pitfall of UN system and its faulty functioning. This commensurate to state a compelling declaration that it is the complete inability or failure of Security Council to run the world affair that does not care to react to human rights crimes being committed. The need of hours is to work on the precarious convergence of international organizations and humanitarian acknowledgement, mainly in two leading areas of concern while addressing these problems and their probable confluence:

- a. The UNGA - Resolution 377A, “Uniting for Peace Resolution” (U4P), states that UN General Assembly can recommend collective measures to include Use of Force on footing of any breach to international security or aggression, in the cases of veto, when Security Council could not act.
- b. The UN, “Responsibility to Protect” (R2P), states that international community may Use of Force to protect the citizens of a country when that country fails to protect them.

### **Recounting of Incidents in Indian Held Kashmir (2016)**

Years interceding with a killing mark of Kashmiris un-customarily in the year 2016, when a number of innocent citizens and handsome boys were killed at Boniyar by CISF – (Paramilitary Central Industrial Security Forces personnel). In 2016, Kashmir saw; much anticipated and dilated upon report of interrogators making jinn out of lantern of Aladdin, but flaw necromancy power, as a result, exalting scepticism of Indian Government earnestness towards settlement of the Kashmir issue, discussion over the initiation of yearly Amarnath Yatra, count of Yatris and passage to the cave; to the developments like tenacious and abortive attempts to inquire halfway abrogation of AFSPA (Amensty International, 2017).

The other areas were; soft stance of Pakistan over Kashmir issue, the rampage on death in various Hospitals, the miscarry attempts of Indian government to ask redemption of a few power projects from NHPC, telling inter-positioning of Amnesty International (AI), the fallout of the Case of Jaleel Andrabi - Judgment, killing of many members of Panchayat, un-abating demand the J&K's Panchayati Raj Act - 73<sup>rd</sup> Amendment of Indian Constitution, Surfacing of various Shrine's disrespect, preparing grounds for abrogating Article 370 and 35A of Indian Constitution, cases for Court Martial for fake encounters and other miscellaneous events etc. (ITPK, 2012, p. 241-243). In addition, the other events were the everlasting, unforgettable and mercifulness hanging of Afzal Guru's in February 2013, discloser of multi-corer gauche in Cricket Association for Jammu and Kashmir, intermittent house arrest of Syed Ali Geelani, clean chit by Bedi Commission to Chief Minister and Haji Mohammad Syed Yousuf's death case, killing of Burhan Wani and uprising in brutalities of Modi Sarkar (Amensty International, 2017).

### **Kashmir's Descant and Emanation of Acquisition**

The things are in precarious condition and environment of suspicion is prevailing everywhere in Kashmir to the extent that everyone knows of something happening like imposition of curfew, arrest, rape and searches to target innocent people resulting into patterning of degradation of every moment of life. Complaints are in abundance, one can hear the scary Mothers and Parents whose beloveds have been arrested or called for interrogations and never fell back to their houses. There are thousands of cases of disappearances, illegal arrests, tortures and detentions, custodial killings and rapes and hopes for justice are nowhere in sight (Ali Sukhanver, 2014).

A banana republic - the Jammu and Kashmir, as it often stated, has a doubtful distinction and highly unfair to be figured out in many ways, that would be fairly germane in much others. It is ironic to describe the Kashmir problem is irrelevant and might be termed to be the socio-political upheaval of civil war of three decades. Some mark it as an international terrorism but truly they are getting the support on the basis of political and moral grounds from the Muslim World. It is universal fact that the people of Kashmir are facing the worst kind of state terrorism. They are peacefully agitating for self-determination who live in agony of extreme violence of as many as approximately seventy long years at the hand of occupation forces (Maqbool, 2014).

### **Militarisation**

The ratio is one soldier to twenty people in Kashmir after properly counting the population and the number of soldiers performing their internal security duties.



At the moment, there are 10,00,000 soldiers against one Crore population approximately 5,00,000 troops to include 3,00,000 from regular army, 70,000 soldiers from Rashtriya Rifle and 1,30,000 men from central police. The young generation in these past 20 years are watching the bunch of the soldieries and soldiers in every corner and very often in their houses to be searching for nothing but humiliation (M. Saleem Pandit, 2014). People grieved for many reasons; instead to restrict the role of security forces to only against fighting freedom fighters and external defence, these forces are operating for domestic oppression. Professor Hameeda Nayeem says, "Indian Forces have transformed themselves into a source of worry and creation of deep insecurity in the lives of citizens who act persistently violators by converting them in suppressive unlawful agents that is undermining the democratic credentials as a state (Suhasini Raj, 2014).

### **Draconian Laws**

In Indian Held Kashmir, militarisation is customarily tailgated by the Indian's Draconian laws. These laws have such spewed effects on population that the rights related to human and democracy get scrubbed away. The true reflection of the application of these laws can be seen in Kashmir, Assam, Manipur and other places. In Manipur, Special Power Act of 1958 for Armed Forces was enforced, for the long five decades. Previously, this act was enacted on Naga dissent. In 1980, the same was further introduced in Assam and in 1987; the same was enforced in Kashmir. The act reflects in Section 4 that officers belonging to armed forces have to opine to think what would be considered to act and basing on their opinion, they can resort to rule of engagement that could be fire or use of force to the extent of causing death to any person. It allows arresting any person without any warrant or entering any premises for search. To dispose of all protests and dissents silently, the Public Safety Act of 1978 for Jammu and Kashmir has been enforced. This act is highly draconian and notorious in nature for its tumultuous misuse and in no way fulfilling any aspect of international human rights standards (Tramboo, 2015).

### **Pallet Gun Firing**

The enforcement of draconian law to press the Kashmiris has brought in focus the brutality of Pellet Gun. On 8 July 2016, hundreds of people have received treatment for acute injuries in eyes when occupied forces carried out Pellet Gun firing to control the mob that were agitating after the killing of Burhan Wani, a freedom fighter. Police has declared that Pellet Gun is never a lethal arm, however, doctors giving treatment to the injured people, have confirmed that the injuries have been making the victims incapacitated for the entire life. The cartridges are made of small pellets of lead, when fired, don't ensue rather spread

the over the entire area. These, lead made pellets, drill into the body especially those soft and exposed part of the body like eyes (Akhzer, 2016).

Eyes are highly fragile to sustain such powerful pellets hence damages rather maim the parts forever. Additionally the pellets go inside the eyes that destroy the tissues and incapacitate each of the part of the eye. Freedom fighters and the prevailing leadership alike have generally heightened voices against the use of these guns. In 2014, the ruling party up roared in the floor of state assembly about using of Pellet Guns. The present Chief Minister, Mehbooba Mufti had been attacking the previous government for their policy on the issue of Pellet Guns for rending the youth blinds but clenching the power, she failed to control over the use of pellet guns. Mr Nayeem Akhtar, the spokesman of J&K government, announced that we disapprove the use of these guns but we will have to persist with this necessary evil till we find a non-lethal alternative ( Khan, 2016).

## **Disappearances**

The militarization and detention in Kashmir have astounding impact like extra-judicial killings, high scale custodial deaths and large number of enforced disappearances. It has been ingrained by Pervena Ahangar, Chairperson, APDP (Association of Parents of Disappeared Persons) that the figure of disappearance reaches 15,000 since 1989. It has been proved too that many of the disappeared have been killed by army while in custody. Approximately, 512 persons killed during fake encounters, has been reported by Rashid Billa, SDPO, at Sowa. Muhammad Yasin Malik, Chairperson JKLF has stated that he had taken 150 victims along to Delhi, but what happened to them, these were maltreated whereas he was targeted by throwing black ink on him. All these criminalities are being committed but no serious inquiries are conducted by the Central Government. In December 1992, UN had a declaration for disappearance and its article 2 states that prohibition of disappearance is absolute and there is no excuse to it by any state. In 2006, UNGA adopted unanimously convention to protect forced disappeared (Usman Khurshid, 2017).

## **Rapes**

Women are exposed to the extreme forms of dehumanizing in the juxtaposed environment in Kashmir. The virilised body permeates army or other forces are inherently ant females, hence they are creating a hostile ambiance for women, in such situation rape is a common phenomenon. In the cases of rapes either investigations are not conducted or keep them at low profile to make them worthless to be presented for inquiry. Such inquiry complaints are laying pending in abundance. In Kunan Poshpara, Kupwara, during the search operations,

4<sup>th</sup>Rajputana Rifles, had raped approximately 100 women within 13 to 80 years ages, out of which mostly they were pregnant and disabled women and girls. Despite to have much of the reports in journals and newspapers and reports of NGOs both international and national of these rape cases, nothing has been initiated against the culprits (Ali Sukhanver, 2014).

### **Plight of the Disabled**

Due to the discriminate fire of Indian Forces, people have been converted into maimed and disabled during nonviolent protests and agitations throughout the Kashmir conflict. The ratio of disabled are much high where they use torturing a tool during investigations resulted into disability for life including suffering financially, physically and mentally. These incidents reflect a conflict of such high potency still no worthwhile steps have been taken by any quarter for the rehabilitation of people. These disabled persons in most of the cases appeared to be cursing to survive and shattered in all spheres miserably for the rest of their lives. They expressed that the aftermath of these extending physical injuries, were highly unbearable. Now, living normal lives, are difficult for them with these agonistic environment, mental pain and trauma (Laura Schuurmans, 2014).

### **Trial Rights in Military Courts**

In Indian Held Kashmir, military courts prevail with specific structural disfigurement to be deflecting them short of fair trial standards hence rendering them incompatible for litigating violations of human rights. The establishment of army and other specialists in military law of India, are unconcerned about these trials related to human rights. They have acknowledged ingrained follies and defects of these Military Courts as these lack independence - being under control of establishment and can mould its results on will. The Indian Supreme Court has also revisited the system of military courts and asked on a number of occasions for reforms in the system especially in 1982. The Apex court while quoting a judgment states that authorities of Court Martial are adhoc authorities specifically appointed by Military Establishment from subordinates whose validity can be questioned any time (Navdeep Singh, 2014).

### **Pressure on Families to Withdraw Their Complaints**

The difficulty of registering the cases and pursuing them against Occupation Forces because of harassment intimidation and threats has become talk of the town and confirmed by Amnesty International about. An incentive often conjured by police and security forces to pressurize the effected families for withdrawing their cases as financial compensations are given without any liability's

acceptance. In many cases, the effected families after interview told that police in general, had been threatening and retaining compensations until the effected families agree for withdrawing their cases against the occupation forces. There are yet other families who after interviewing, expressed their views for accepting financial compensation from government, both via unofficial and official modes, would be meaning no longer pursuable of investigations in their complaints. Some of the families strongly believed that government's compensations were forms of bribery to cease perusal their complaints (Amnesty International, 2016-2017).

## **India and Changing the Special Status of Kashmir**

India has been on its way to reshape the demographic status of Indian Held Kashmir through attempting to excurse Muslims from majority to minority. Since 1947, the state is enjoying special status but BJP government has been trying to change Article 370A of the constitution by revoking special status. Due to which non-Kashmiri can't permanently settle or buy land in the disputed territory. Theoretically the disputed region enjoys autonomy, with New Delhi retaining control over defence, foreign affairs and economic matters. To rupture the uprising of Kashmiris, India adopted the policy to kill uninvolved people. This grand strategy involves not only rupturing the uprising but also to change the demographic status by converting the majority into minority. To achieve this end, in juxtaposition, killing the Kashmiris in abundance, it is working in adjudicating non locals, obliging ex-servicemen from armed forces who have a record of committal of crimes against the Kashmiris and establishing colonies for those who have been working for political manipulation (Amnesty International, 2017/2018). In this regard, following efforts are underway by India:-

- a. Manipulation of Census Reports.
- b. Being part of BJP's election manifesto, Indian is preparing grounds to abrogate article 370 which offers special status to Indian Occupied Kashmir.
- c. India is in its way of trying to abrogating Article 35 A that denies purchasing property and right to vote to the Non State Subjects in IOK by filing two different petitions in Indian Supreme Court through RSS, Jammu & Kashmir Study Centre and We the Citizens and three petitions by West Pakistan Refugees.
- d. Establishing of separate Townships for Kashmiri Pandits through demanding three reserve state assembly seats, identifying seven places for their settlement out of which three

- have been shortlisted. In addition, land is being issued to Hindu Industrialists.
- e. Issuance of Permanent Resident Certificate to the Children of Hindu families who are non-state subject up till now the Indian has issued approx. 500 PRCs to the students in Kishtwar, Jammu out of the proposed 5000 in total.
  - f. Allotment of Land to the retired army personnel by allotting 173 Kanal of land in the vicinity of Srinagar Airport and is being enhanced to 350 Kanal.
  - g. Converting of 150 years old graveyard into playground in Bagh Jogian village of Bishnah in Jammu District to corner and suppress Muslims of Jammu.
  - h. Extension of special powers to IOK police by carrying out raids, cordon and search operation owing to immunity under the draconian laws.
  - i. Collection of Statistics Act 2008 through introducing a bill in the Indian Parliament to extend the jurisdiction of the collection of statistics Act 2008 with achieving two objectives; breakthrough in diluting the special status of IOK and controlling over all statistics.
  - j. Fulfilment of Act 2002 for Enforcement of Security Interest and Securitization and Reconstruction of Financial Assets.
  - k. Central Goods and services Tax bill has been passed by Indian Parliament to bring various types of direct and indirect taxes under the central control mainly aiming to change the special status.

### **Role of Major Powers viz-a-viz Pride and Prejudice**

The deep-rooted historic rivalry over Kashmir, between Pakistan and India, has been long running concerns over the international security since the inception of both the countries in 1947. In the last half a century, Pakistan and India have fought three full-scale wars, a mini war in Kargil in 1999, and also prepared for a destructive war (possibly nuclear) in 2002 over Kashmir. Today, the conflict overlaps with other security issues: ethnic conflict, cross-border terrorism, human rights violations, and nuclear proliferation. Nevertheless, Pakistan and India have failed to settle the long outstanding issue. The on-going peace process has been stalled due to the Modi's hard stance over various issues including side-lining the issue of Jammu and Kashmir (Pandit, 2014).

The mediation process succeeds not merely when a mediator is unbiased or impartial, but when he or she possesses resources and leverage that either disputant values. Thus leverage is more important than impartiality for effective

mediation. South Asia has been considered an important region for its significant geo-political location. In addition, the 9/11 terrorist attack and subsequent 'War against Terrorism' have made this region even more important for the international community. All major powers have been involved in the region as a result of their respective political, economic and strategic interests. The best to perform in this role is US; hence all out efforts are required in this direction to compel US to mediate on Kashmir issue (Order No. 723-GR, GAD of 1990, p. 3).

### **Evaluation of Facts and Figures in Indian Held Kashmir - 2016**

Like previous years, the year 2016 had on move to pass violently but the authorities of Jammu and Kashmir had been claiming this to be peaceful. This imbued peace was destitute of peace and justice and was overloaded with injustice and violence. The year 2016 had endorsed tenacious violence, denial of civil and political rights, heightened militarization and surveillance, human rights abuses and absence of mechanisms of justice. The violent incidents figures advocate that the year of 2016 had been the year of victimization, mourns, losses, lies and pain for the Kashmiris people. A total of 383 persons lost their lives due to incidents of violence in Kashmir; these figures include 145 civilians, 138 alleged freedom fighters and 100 armed forces personnel. Of the 145 civilians, six were children and nine were women (Human Rights Report, 2016). The salient of the year are as under:-

- a) 6217 unmarked mass graves, 132 cases of enforced disappearances, a number of extra judicially killing by the occupation forces, probing of abuses in cases of human rights, detention of 500 persons under the Public Safety Act, rapes and molestations against women, and 214 cases of human rights violations clearly show the grave law and order situation in IHK.
- b) Kashmir day was celebrated in Pakistan with renewed commitment and fervour on the part of Pakistani government and the Pakistani population, acknowledging their full unanimity with Kashmiri brethren in their struggle for self-determination, engraved in UN Charter. Rallies and meetings were held distinguishing the day of unification with the courageous struggle of Kashmiris for freedom from Indian occupation.
- c) Cairo's summit called on India to inquire into the mass graves and make sure the trial of those involved in human rights violations. The Cairo's Summit expressed concern over the cease fire violations on LoC and welcomed Pakistan's proposal for inquire through UNMOGIP.

- d) The Kashmir issue has been on UN agenda for over six decades that is looking for a settlement whereas termed to be a pathetic behaviour of international community who could not pressurize India for fair, free and impartial plebiscite as reflected in UNSC resolutions.
- e) In the post Kargil era and due to 9/11 India locked Kashmir to have a nexus between Kashmir Issue and Terrorism, hence it is on forefront for asking Pakistan to cease its moral assistance for Kashmir cause.
- f) India has been searching for implicating Pakistan into any act of terrorism on Indian soil.
- g) India has kept Indian and Pakistani dialogue process as hostage to its policy for pressurizing Pakistan.
- h) As encouraged by US partnership, India managed in getting unwarranted influence in Afghanistan peace process with severe consequence to Pakistan. They are using it to pressurize Pakistan from its western border so that they could redefine the Kashmir dispute.
- i) Despite of crackdowns of Military and curfews, the people of Kashmir on their way to demand freedom for Kashmir.
- j) With Judicial murdering of many like Afzal Guru the valley remained tense.

### **Evaluation of Facts and Figures in Indian Held Kashmir -2017**

Many incidents during the year 2017 committed in Jammu and Kashmir in which a number of people including unarmed protesters were killed mercilessly and quite a number others injured, by Occupation Forces. The committal of such crimes is under the pretext of self-defence which reflects towards non-professionalism on part of Indian Army and grave situation in Kashmir. It also reverberates on their ineptitude to avoid crisis in 4GW and any crisis being created. These incidents happened, are never to be its first kind but continuous of violence have been on move since resurfacing of armed conflict from 1989. The infamous 2008 Amarnath Land Row, the Shopian Double rape and Murder case row of 2009, the 2010 Machil Fake encounter Row and now in 2017, the occupation forces have showed many examples of Non-professional crisis handling and mishandling, resulted into to a greater mistrust about the occupation forces (Tribune, 16/6/2017).

The armed conflict in Kashmir sustained levels of violence similar to those in previous quarters. According to the body count kept by the South Asian Terrorism Portal, 30 people died as a result of violence linked to the armed conflict, most of them were freedom fighters operating in the state. In March, the

Indian defence minister said that the security forces had killed 26 insurgents in the first three months of 2017. The districts of Shopian and Pulwama were affected the most by the violence. The most serious events of quarter including an insurgent attack on a police station in Jammu on 20 March that caused the deaths of 3 members of the security forces, one civilian and 2 insurgent (Indian Express, 2017).

The slow but steady rate of death reached to 18 casualties during the quarter, including state security agents, insurgents and civilians. In April, a soldier and three police officers were killed by the insurgency in Baramulla and Srinagar and another three people were killed when the police opened fire on a group of demonstrators in Badgham and Anantnag. One of them was a 16-year-old boy, which triggered a resurgence of protests. In May, sixteen civilians were injured in a grenade attack in a market in the district of Shopian. The attack was against a police celebration, but the freedom fighter went after the wrong target (Amnesty International, 2017).

Since the Indian coalition government formed in February, hostility has risen against separatist and pro-Pakistani groups. At present, the trickle of fatalities of former insurgents (nearly 10 this quarter) and their family members has led to a boom in activities like protests and strikes, organized especially by the Hurriyat Conference. In Sopore (Baramulla), at least four former members of the party were reported killed. Both Hurriyat and the Jammu & Kashmir Liberation Front called a general strike for 17 June. On 21 June, two freedom fighters and a civilian were shot dead (Amnesty International, 2017). Apathy for the major powers that had on a record of strange and different responses for the violations of human rights in various parts of the world. The salient are as under:-

- a) After Afzal Guru was hanged on 9 February 2013 on allegations to be part of planning on Indian Parliament's attack on December 13, 2001. A complete shutdown, protests and clashes on fourth death anniversary of Afzal Guru was reported.
- b) Clashes erupted in several localities of Kashmir especially in Old city area of Soura and his hometown Sopore where protesters and government forces were locked in stone-pelting clashes. Several youths and police personnel suffered injuries during clashes in Soura's main market. According to eye-witnesses, the police and paramilitary forces resorted to tear-gas shelling to disperse the protesters.
- c) The police got powers similar to that of controversial legislation, AFSPA; Omer Abdullah's government opposed the same.
- d) The High Court in Occupied Kashmir gave verdict that Kashmir was retaining limited sovereignty and wouldn't be merged into India. It further explained that Article 370 is an abiding provision hence cannot be amended or repealed or abrogated.



- e) During the speeches of General Raheel Sharif, Ex Chief of Army Staff, on 6<sup>th</sup> September 2017 and during his visit to UK categorically relived and stressed the peaceful settlement of Kashmir issue, the unfinished agenda of partition under the UN charter.
- f) Nawaz Sharif, ex Pakistani Prime Minister has proposed four points peace agenda with India; one, India and Pakistan to respect and formalise 2003 understanding about ceasefire of LoC and in Kashmir, two, India and Pakistan to notify that threat of force would be avoided, third, for demilitarisation of Kashmir, gradual steps should be appropriated, and forth, troops should be withdraw mutually from Siachen.

## **Key Recommendations**

### **To the United Nations**

- a) Impress upon the government of India to embed an end of on-going violation of human rights in Indian Occupied Kashmir.
- b) In the event of continuing non-cooperation by India, the UNSC, acting under its obligation to upholding the obligation of International security and preventing any further violation, should evoke Chapter VII of UNSC for forceful intervention and demilitarization.
- c) Condemn and block the attempts of the Indian government to change the demographic status of the majority Muslim State of J & K through establishment of the illegal settlements of non-residents.
- d) Encourage and facilitate both Pakistan and India to resume the dialogue process for peacefully resolving all outstanding issues to include Kashmir.
- e) Human Rights Council should appoint a special rapporteur with a mandate to initiate a report on human rights in Azad Kashmir and Indian Held Kashmir.
- f) Pakistan and India should be encouraged by Human Rights Council to issue standing invitation to UN working groups and special rapporteur to conduct inquiries of all the abuses in Azad Kashmir and Indian Held Kashmir.

### **To the International Community**

- a) UN Human Rights Council should be encouraged by the international community to appoint a special rapporteur and be mandated to publish reports on human rights situation in Azad Kashmir and Indian Held Kashmir thereby encouraging both Pakistan and India to publicly acknowledge for cooperating with the rapporteur.
- b) They should condemn violations of humanitarian law and human rights by any group in Kashmir.
- c) Press multilateral organizations to talk on violation of human rights thereby all grants and lending of all sorts should be conditioned for undertaking significant steps to end abuses in Kashmir.
- d) Condition military sales, aid and military cooperation for undertaking to end the abuses and withdrawing exemption of punishment on committal of crimes for armed forces in Kashmir.

### **To Government of India**

- a) To immediate cease up the gross acts of violation of human rights of Kashmiri people in IOK.
- b) Improve the Human Right Situation in Kashmir and try to create consensus among the masses in India for resolving the Kashmir issue under the UN's auspices.
- c) Allow free access to international media for impartial reporting.
- d) India should establish an independent Inquiry Commission to enquire in the violations of human rights by Indian Army since the start of conflict.
- e) India should repeal legal provisions giving any immunity to the Occupation Forces to include Sections 45 and 197(2) of Criminal Procedure Code.
- f) India should amend Human Rights Protection Act (HRPA) for allowing Human Rights Commission to enquire the allegations levelled against the occupation forces for abusing.
- g) India should enforce laws that give protection to the detainees from mistreatment and torture including bringing detainees before magistrate to revisit the legal aspects of detainees within 24 hours.
- h) Authorities should respond to habeas corpus petitions for disappearance and detentions.

- i) India should allow International Red Cross to undertake acts for protection activities in Kashmir to include access to army and paramilitary centres of investigations.

### **To the Government of Indian Held Kashmir**

- a) The government in its own capacity, should establish an independent Inquiry Commission to enquire in the violations of human rights by Indian Occupation Forces since the start of conflict.
- j) Governmental its own or in collaboration with Indian government should repeal legal provisions giving any immunity to the Occupation Forces to include Sections 45 and 197(2) of Criminal Procedure Code.
- k) Government should make sure to enforce laws that give protection to the detainees from mistreatment and torture including bringing detainees before magistrate to revisit the legal aspects of detainees within 24 hours.
- l) Authorities should respond to habeas corpus petitions for disappearance and detentions.
- b) Government should allow International Red Cross to undertake acts for protection activities in Kashmir to include access to army and paramilitary centres of investigations.
- c) The government should establish a review committee to overlook affairs of those freedom fighters who had surrendered or are surrendering.

### **To Freedom Fighter Groups**

- a) All-important steps should be taken by the groups to ensure adherence to Article 3 Geneva Conventions of 1949 and customary International Humanitarian Law.
- b) The freedom fighter groups should publicly rebuke abuses blamed for.
- c) The groups should allow and facilitate all displaced Kashmiris to return to their homes.
- d) The groups should permit civil organizations for undertaking inquiries into the abuses if any committed by Freedom Fighters.
- e) They should provide details of deaths of freedom fighters to any international organization so that their families could be informed.

## **Conclusion**

In 1947, majority of the community of Kashmir including Christians, Sikh and Hindus were against the merger of Kashmir to India. However, India captured the area against the wills of people therefore the conflict, with the passage of time, has now become the astounding issue between nuclear neighbours Pakistan and India. It will not be wrong in saying that Kashmir is now unknown to murder and bloodshed due to the brutalities of occupation forces against the population. Taking the account for criminalities, in global media, Indian army is at the top on global crimes list due to its sexual harassment, war crimes, raping of innocent Kashmiris, barbarity, injuring, and killing of Maoists, Christians and Gujrati Muslims. These large number of occupation forces in Kashmir has been amply proving the criminal boom of the Indian Forces. Resolving of the Kashmir issue is need of hour as it is the bone of contention between nuclear Pakistan and India. Major wars between Indo-Pak are the biggest disgrace to the regional peace. To summarize, this dispute, in foreseeable future, cannot be settled without interference or mediation. Hence international community will have to come to rescue the Kashmiris people and should exert pressure on India to stop forth with its barbarities and resolve its settlement on basis of humanitarian ground.

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