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UPR Submission against India

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Violation to Right to Self Determination of the People of Kashmir

Human rights are the backbone of human dignity. The rule of law and respect for human rights as enshrined in the Universal Declaration of human rights is the first priority of all Member States and a moral responsibility as well.

It is recognised that the right to life is the most fundamental and basic of human rights. Indeed, the right to life is the fountain from which all other human rights spring, therefore it deserves the greatest respect.

With the end of the world wars and the beginning of the process of decolonization, the international Community laid the foundation for the promotion and protection of human rights by proclaiming the Universal Declaration of human Rights. Recognising the ‘inherent dignity and the equal and inalienable rights of all members of human family’ the General Assembly of the United Nations enshrined the right to life in article 3 of the Universal Declaration stating, “*everyone has the right to life, liberty and security of person*”.

. The right to self-determination is a fundamental principle of human rights law. The enjoyment of human rights depends on the realization of the right to self-determination. Actually, human rights originate from the self-determination.

The right of self-determination is a fundamental principle in international law. It is embodied in the Charter of the United Nations and the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Common Article 1, paragraph 1 of these Covenants provides that, "*All peoples have the rights of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*"

The right to self-determination is the cornerstone of the international world order and established human rights under the UN Charter. It is applicable to all peoples whose self-determination had been suppressed.

Undoubtedly there exist many countries which are signatory to UN Conventions, Universal Declaration of Human Rights and other Covenants-are involved in systematic human rights violations. The human rights violations are massive in the areas of conflict and in areas under foreign occupation. This situation results in massive migration and unrest, deprivation of education and health care. Massive and systematic human rights violation is being carried out by the State of India in Kashmir which is a UN recognised disputed territory.

Background of the Kashmir Issue

With the lapse of British rule in South Asia and emergence of Pakistan and India as two sovereign States, the Jammu and Kashmir popularly known as Kashmir – a Princely State had an option to accede to one of the two dominions. But the Indian Government

intervened and fraudulently landed her troops in Srinagar on October 27, 1947 and illegally occupied the territory of Jammu and Kashmir with sheer use of force. As the situation intensified, the question was brought to the UN Security Council and the Security Council passed numerous resolutions. Amongst these, those of August 13, 1948 and January 5, 1949 provide the basis and structure for the final disposition of the state of Jammu and Kashmir in accordance with the “will of the people” to be expressed through a “fair and impartial plebiscite” conducted under the “auspices of the United Nations”. These resolutions were agreed upon by India and Pakistan constituting as international agreements of building force. Besides, India has made numerous commitments to the world to hold plebiscite for final disposition of the state of Jammu and Kashmir. On October 31, 1947, just four days after the forcible occupation, the Indian Prime Minister sent a telegram to the Prime Minister of Pakistan saying:

Our assurance that we shall withdraw our troops from Kashmir as soon as peace and order is restored and leave the decision regarding the future of the state is not merely a promise to your Government, but also to the Kashmir and to the world.

On Feb. 23, 1948, before the 239th meeting of the UN Security Council speaking through its representative Mr. Gopalaswami Ayyanger, India repeated its stand saying;

As the Security Council is aware, the Government of India is fully committed to the view that after peace is restored and all people belonging to the state have returned there, a free plebiscite should be taken and the people should decide whether they wish to remain with India, go over to Pakistan or to remain independent if they choose to do so.

From time to time, the Government of India repeated its aforementioned stand. But on other hand India was deploying huge forces in the Jammu and Kashmir to make her hold strong on Kashmir by military might. It has been accompanied with continued dodging the implementation of UN resolutions under a host of pretexts thereby perpetuating her unlawful occupation. Finally, once India was sure that her military grip over Kashmir was strong enough, she started claiming Kashmir as her integral part.

There are two types of human right violations taking place in Indian Controlled Kashmir. **One human right abuses** in shape of killings, torture, disappearances etc and **the constitutional human right violations.**

The Government of India has enacted a series of laws that are in violation of international humanitarian laws. These laws facilitate human right violations. Even shoot to kill has been granted to Indian soldiers with complete protection against prosecution. As a result, human right violation has drastically increased in Indian occupied Kashmir. Some of these laws are;

1. **The Jammu and Kashmir Public Safety Act (PSA).**
2. **The National Security Act 1980 (NSA)**
3. **The Armed Forces (Jammu and Kashmir) Special Powers Act.**

1. The Jammu and Kashmir Public Safety Act (PSA).

Under Section 8 of the Jammu and Kashmir Public Safety Act, the Government has the power to detain any person purely on the purported presumption that he may in future commit any act that will be harmful to the maintenance of public order or to the security of the State. The period of the detention, is twelve months in case of a person acting in any manner harmful to the maintenance of public order and two years in case of person acting in any manner prejudicial to the security of the State? The use of vague and ambiguous definitions used in this Act is contrary to the principles of security of the

person as laid down in the Article 3 of the Universal Declaration of Human Rights and Article 9(1) of International Covenant on Civil and Political Rights, which says, ***“Everyone has the liberty and security of person. No one shall be subjected to arbitrary arrest, detention...”***

Under Section 13(1) of the Act, when a person is detained in pursuance of the detention order the Government shall communicate him the grounds of his detention, but the Act Stands amended. Now the duty to inform the detainee of the grounds for his detention does not require the authority to disclose facts, which it considers to be against the public interest to disclose...(Section 13(2). This provision is inconsistent with International Covenant on Civil and Political Rights Article 9(2), which says, ***“Anyone who is arrested shall be informed at the time of the arrest of the reasons for his arrest and shall be promptly informed of any charge against him”***.

Persons detained under this Act were primarily kept in detention centers within the State of Jammu and Kashmir. This provision was omitted and as a result, persons detained under this Act are now taken to various detention centers of India, thousands of kilometers away. The Government has deliberately amended this provision with the objective to deprive the detainee of the right to defend and consult the lawyer of his choice. It is very expensive, time consuming and impossible for the old parents to see the detainees.

The suspension of the legal safeguards relating to arrest and detention facilitates torture. ICCPR prohibits torture and Article 4 of ICCPR lies down that no derogation from this article can be allowed under any circumstances, not even in times of emergency.

Under this Act, there is no provision for the victim to claim compensation for the unlawful arrest or detention. This is inconsistent to Article 9(5) of the International Covenant on Civil and Political Rights, which lays down “*Anyone who has been victim of unlawful arrest or detention shall have an enforceable right to compensation*”.

Section 22 of the Act provides protection against prosecution, suit or legal proceedings to all acting under this Act. This immunity against prosecution has resulted in widespread torture and arbitrary arrest and detention.

2. The National Security Act 1980 (NSA)

The Act permits administrative detention of any person for a period of one year. Under section 8(2) of this Act, the authorities are empowered not to disclose the grounds of detention to the detainee. This provision is in direct contravention of Article 14(3)(a) of the International Covenants on Civil and Political Rights (ICCPR), which says, “*...3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality.*

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.”

In considering India’s second periodic report in 1981, the members of the UN Human Rights Committee were of the opinion that the National Security Act (NSA) derogated the rights guaranteed under the Article 9 of the International Covenants on Civil and Political Rights which states, “*1. Every one has the right to liberty and security of person. No one shall be subjected to arbitrary arrested or detention. No one shall be deprived of his liberty....*”

The Human Rights Committee finally observed that the Act deprives the rights guaranteed under ICCPR.

3. The Armed Forces (Jammu and Kashmir) Special Powers Act, 1990

The Act under section 4 (a) authorizes the members are armed forces of India to “*fire upon or otherwise use force even to causing of death against any person*” without fire orders.

This has effectively revoked non- protection against deprivation of life. The International Covenant on Civil and Political Rights (ICCPR) expressly prohibits derogation from the right to life under any circumstances. Article 6 of the International Covenant on Civil and Political Rights declares, “*Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrary deprived of his life*”. Thus even during times of emergency or war, no one shall be deprived of his life.

The Act under Section 4 (d, e) empowers the armed forces to enter and search, without warrant, any premises at any time. This virtually puts the Kashmiri communities at the mercy of the Indian militia.

The Act under the section 4 (c) it is the discretion of a Commissioned officer, Warrant officer, non-commissioned officer or any other persons of equivalent rank in the armed forces to arrest, without warrant any person at any time. This has practically terrorized the entire Kashmiri population.

On the top of these, the Act provides protection to the members of armed forces against prosecution, suit or legal proceeding for their actions in respect of any thing done or purported to be done in exercise of the powers conferred by this Act. This has not only encouraged the occupations forces to blindly indulge in human rights abuses, but has also freed them from accountability for their misdemeanors.

As a result of these, human rights violations at the hands of Indian administration and forces have drastically increased in Indian occupied Kashmir.

Thousands of Kashmiri men, women and children have been tortured and killed. Millions of dollars worth property had been destroyed. Thousands of Kashmiris have been arrested and taken to unknown interrogation centres and torture cells. United States, Department of State, Washington in "INDIA- COUNTRY REPORT ON HUMAN RIGHTS 2006 (Released by the Bureau of Democracy, Human Rights and Labour, March 06, 2007) said:

Government forces continued arbitrary and unlawful deprivation of life of those in custody. Police and prison officers also committed extrajudicial killings...by staging encounter killings in Jammu and Kashmir. Prison conditions were harsh, life threatening, and did not meet international standards. Prisons were severely overcrowded, and food and medical care in adequate.. The International Committee of the Red Cross (ICRC) visited 61 detention centres but the ICRC was not authorised to visit interrogation or transit Centres, nor did it have access to regular detention centres in the northern states...According to credible reports, in addition to harassment during searches and arbitrary arrests, security forces cleaning minefields abducted

and sometimes used civilians as human shields. Such abuses occurred mostly in the Kupwara and Doda districts.”

The Human Rights Watch in their Report “INDIA Everyone Lives in Fear” Patterns of Impunity in Jammu and Kashmir, September, 2006 said:

India army and paramilitary forces have been responsible for innumerable and serious violations of human rights in Kashmir. Extra judicial executions are widespread. Police and army officials have told Human Rights Watch that alleged militants taken into custody are often executed instead of being brought to trial because they believe that keeping hardcore militants in jail is a serious risk. Most of those summarily executed are falsely reported to have died during armed clashes between the army and the militants in what are euphemistically called “encounter killings”.

The Jammu and Kashmir indisputably happens to be one of the very few places in the world where human rights are ruthlessly trampled.