

# INDIA

## Universal Periodic Review

Submission By  
Kashmir Institute of International  
Relations





**KASHMIR  
INSTITUTE OF  
INTERNATIONAL  
RELATIONS**

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## **I. Brief Bio KIIR**

Kashmir Institute of International Relations is a non-profit, non-partisan, non-governmental organization established in 1993 in Muzaffarabad, Azad Kashmir. With the motto of “Peace through Dialogue” KIIR is working for a peaceful South Asia. KIIR believes peace can only be achieved by the resolution of the Kashmir dispute through substantive dialogue between India, Pakistan and Kashmiris.

To achieve this goal, KIIR has engaged policymakers and policy implementers: Members of Parliament, Political Activists, Lawyers, Journalists, Academics and Social Activists. KIIR is working to enhance the capacity of Kashmiri civil society actors in the areas of reconciliation, negotiation skills and conflict resolution. The objective of these initiatives is to facilitate dialogue that is conducive to reconciliation and peace in the region

## **II. Methodology**

This submission focuses on India’s role in J&K, based on primary data recorded and verified by various local non-governmental organizations and International Human Rights groups.

## **III. Back Ground and Contextual Framework**

Human rights violations in Indian occupied Jammu Kashmir are systematic, deliberate, and officially sanctioned. India has never prosecuted even one of its 800,000 military and paramilitary personnel there for human right abuses, and its law grants legal immunity for any actions aimed at suppressing Kashmiri dissent or support for self-determination. Information compiled by various human rights organizations establishes that a massive complain of brutal oppression has been launched by the Indian army since January 1989. Various estimates are given of the death toll of civilians so far.” The two reports by the Office of the UN High



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Commissioner for Human Rights (OHCHR), released on 14 June 2018 and July 8, 2019, raises serious concerns about abuses by state security forces in Indian Administered Kashmir by Indian forces and recommended to establish a Commission of Inquiry to conduct a comprehensive, independent, international investigation into allegations of human rights violations in Kashmir Human Rights and urged the governments of India and Pakistan for unconditional access to Kashmir to assess the human rights situation. The UN High Commissioner for Human Rights Michelle Bachelet voiced concerns over human rights violations in Jammu and Kashmir. On Feb 10, 2021, five UN special rapporteurs in a letter to the Indian government raised their concern regarding Indian illegal unilateral action of abrogation of Article 370 and said that “It is also feared that the military presence in the area is likely to increase, which might lead to a possible higher risk of human rights violations.” According to UN experts, “allegations of arbitrary detentions, extrajudicial killings and enforced disappearances are part of what appears to be an ongoing pattern of serious violations of human rights by Indian government forces in the Jammu and Kashmir region.”

United Nations experts have expressed concern over repressive measures and broader pattern of systematic infringements of fundamental rights in Indian-administered Kashmir and asked the Indian government to respond to allegations of rights violations in the disputed region. The UN experts in one of their communications to the Indian government, communicated their concerns, by highlighting the cases of three Kashmiri men -- Waheed Para, Irfan Ahmad Dar and Naseer Ahmad Wani. The Indian government has responded to none of these communications so far, according to the UN. Meenakshi Ganguly, South Asia director for Human Rights Watch, says that the UN experts had raised some extremely serious concerns and the Indian authorities should order independent investigations into these allegations and hold those found responsible to account.

Reports on the culture of impunity in Indian Administered Kashmir have been released from time to time by different human rights groups, highlighting human rights abuses but this has made no difference in ground. A renewed wave of terror has been unleashed by Indian state in Administered Kashmir using all armories available to suppress the people’s peaceful resistance. The brutal repression has been widely reported by the local and international media and earned India enormous condemnation at local and international level. But Indian state still



remains in denial mode.

#### **1V. Barbaric State sanctioned violence**

Indian oppression in Kashmir has elevated since August 5, 2019. Modi government has on the path to change the Muslim majority into minority in Indian Administered Kashmir. India is unambiguously implanting settler colonialism in Kashmir which is bound to have serious consequences if not challenged in an equally calculated and measured manner. Indian troops are killing Kashmiris especially the youth of Kashmir by using different draconian and false laws.

According to reports from 1989 till November, 2021, Indian troops have killed around 95,917 people in Kashmir while the number of custodial killings is 7,215. Over seven decades, millions of Kashmiris have been killed by Indian troops for demanding their right to self-determination. Atleast 484 Kashmiris were killed by Indian troops since August 2019, most of the people were killed during fake encounters while others died in detention. A surge in violence is seen in Kashmir after September 2021, fake encounters and search operations are increasing day by day. The Cordon and Search operations (CASO) conducted by Indian troops and paramilitary forces started in October, 2021 which resulted in killing of dozens of innocent civilians.

The Indian police and the security forces use metal pellets on children, youth and women to stop and disperse people from protests. Use of metal pellet is against the humanitarian laws because of its worst effects and injuries but Indian troops, de-spite knowing the facts, are violating all the decrees and continuing their acts of state terrorism. Indian police continued to beat and torture innocent Kashmiris in custody by gaining power under some draconian laws like, Public Safety Act (PSA), Unlawful Activities (Prevention) Act (UAPA), the Armed Forces Special Power Act (AFSPA) has provided impunity to Indian armed forces and police. Under the power of these laws, they are continuously committing grave human rights abuses in Jammu & Kashmir. More than 13,000 boys have been detained by Indian Authorities in IOK since Aug 5 & at least 2,300 people have been booked under the UAPA in the last two years in IOK.



The Indian State is infringing upon the Geneva Conventions, 1949, and Additional Protocols, and international humanitarian law principles of distinction between civilian and non-civilian targets, prohibition on indiscriminate attacks and proportionality of use of force. In their utilization of power against Kashmiri people, State constrains additionally disregard the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990, and Code of Conduct for Law Enforcement Officials, 1979.

The solicitation by the UN High Commissioner for Human Rights for a fact-finding mission was rejected by Government of India. Correspondingly, the United Nations Military Observer Group in India and Pakistan has been precluded access by Government of India from securing to do any work in J&K. Access for Kashmiri civilians to this body is additionally seriously limited.

Past UPRs of India, in 2008, 2012 and 2018 concentrated on confirmation of universal traditions, and nullification of Armed Forces Special Powers Act, 1990 [AFSPA], Public Safety Act (PSA). In all three UPR's, India's National Reports made no notice of J&K in this manner guaranteeing that J&K remains a blind side in the UPR procedure.

#### **IV. Ratifications by India**

1. The International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) is an international human rights instrument of the United Nations and intended to prevent forced disappearance defined in international law, crimes against humanity.
2. India must execute the UN Convention for the Protection of All Persons from Enforced Disappearance without reservation, including the affirmations in accordance with Articles 31 and 32, to perceive the capability of the Committee on Enforced Disappearances



3. India has yet to endorse two of the principle human rights treaties.
4. Ratify convention against torture and other inhuman and degrading treatment
5. Ratify convention of the rights of all migrant workers and their families and the two discretionary protocols to international convention on civil and political rights and Indian has additionally yet to sign the Rome statute on universal criminal court.

#### **V. Cooperation with UN Representatives and Mechanism**

The UN Special Rapporteurs through their official communications addressed to the government of India have regularly raised alarm over arbitrary arrests, detentions, torture, corporal punishment, extra-judicial killings, and siege and communication blockade in the trouble region and warned New Delhi that the policy of repression was not conform with global human rights norms, however, the government of India has not responded to the communications yet.

Despite these indictments, Indian government is in a state of defiance and denial. Besides rejecting the two Kashmir reports released on 14 June 2018 and July 8, 2019, by the OHCHR the Indian government refuses to grant access to any independent international observer, organization and media to investigate the gross human rights violations being committed by its troops in Kashmir.

Kashmir Institute of International Relations remains concerned about the human rights situation in India and especially in the part of Jammu and Kashmir that remains under Indian occupation owing to such massive violations.

#### **VI. Violation of Geneva Convention**

Introduction of the new domicile law is a clear violation of the Geneva Convention also. The fourth Geneva Convention bars an occupation force from deporting or transferring its own



civilian population into the territory taken over by it. It is a grave breach of Additional Protocol I. Under the Statute of the International Criminal Court, “the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies” constitutes a war crime in international armed conflicts.

Many military manuals prohibit the deportation or transfer of its civilian population into the territory it occupies. This rule is included in the legislation of numerous states. Official statements and reported practices also support the prohibition of transferring one’s own civilian population into an occupied territory.

Attempts to alter the demographic composition of an occupied territory have been condemned by the UN Security Council. In 1992, it called for the cessation of attempts to change the ethnic composition of the population, taking place anywhere in the former Yugoslavia. Similarly, the UN General Assembly and UN Commission on Human Rights have condemned such settlement practices. According to the final report of the UN Special Rapporteur on the Human Rights Dimensions of Population Transfer, including the Implantation of Settlers and Settlements, “the implantation of settlers” is unlawful and engages the responsibility of the state and the criminal responsibility of individuals.

In 1981, the 24th International Conference of the Red Cross reaffirmed that “settlements in occupied territory are incompatible with article 27 and 49 of the Fourth Geneva Convention.”

In the Case of the Major War Criminals in 1946, the International Military Tribunal at Nuremberg found two of the accused guilty of attempting the “Germanization” of the occupied **territories.**

## **VII. Freedom of Speech and Expression and Practice of Religion**

In 2019, Indian government amended the Unlawful Activities Prevention Act (UAPA) 2008, allowing authorities to categorize individuals as terrorists. Previously, the designation was reserved only for organizations. The UAPA law allows authorities to designate someone as





'terrorist' and detain them without producing any incriminating evidence. More than 1,948 people were arrested under this law in 2019, an increase of nearly 37 percent from the previous year.

Indian anti-terrorism agency, NIA (National Investigation Agency) continued raiding the houses of prominent Kashmiri leaders, activists, and journalists. Apart from political leaders and journalists, the youth of Kashmir is being illegally detained on fake charges.

Journalist Khurram Parvaiz was arrested on November 22, 2021 under Unlawful Activity Prevention Act and is still in detention at Rohini Jail Com-plex. UN experts has urged Indian authorities to re-lease the human rights defender immediately. An expert stated that, "We are concerned that one month after Mr. Pervez's arrest, he is still deprived of liberty in what appears to be a new incident of retaliation for his legitimate activities as a human rights defender and because he has spoken out about violations. The Public Safety Act is a prime example of the process being the punishment. With no provision for appeal, the only respite is a habeas corpus petition that can be filed only after the order has been approved by the Board which takes around three months if the timeline stipulated in the Act is strictly adhered to. The role of the detaining authority is pivotal in ensuring that there is fair and cautious use of preventive detention. It is their duty to exercise application of mind and ex-amine all the material placed by the police. Preventive detention aims to detain a person who is likely to commit a crime. The purpose is to pre-vent a crime from happening as opposed to ordinary criminal law which is punitive in nature and triggered after commission of an offence.

### **VIII. Administration of justice, including impunity, and the rule of law**

Life in Kashmir has become more challenging when India unilaterally abrogated articles 370 and 35A which gave special status to the state of Jammu & Kashmir. The Indian government issued over 3.4 million bogus domicile certificates to non-Kashmiris as part of New Delhi's plan to



change the demographic structure of the occupied territory. the Indian design in the occupied territory is a direct violation of the resolutions of the UN Security Council and international law, including the 4th Geneva Convention. Over 800,000 occupation troops have perpetuated the worst reign of terror against the innocent Kashmiris. By repealing Article 370 of the constitution, people from the rest of India were given the right to acquire property in Administered Kashmir and settle there permanently. Kashmiris as well as critics of India's Hindu nationalist-led government had seen the move as an attempt to dilute the demographics of Muslim-majority Kashmir with Hindu settlers.

The Indian government claimed to bring developmental changes and peace in the region but the aims of the Indian government were different. It's been two years of ample turmoil in the occupied valley, the people of Kashmir are facing extreme violence and suffering. There is a rise in search operations, raids and fake encounters. Extra-judicial killings, Illegal detentions, torture, and different ways of violence of Human rights by Indian armed forces has become a routine in Indian Administered Kashmir. Indian authorities continued the human rights violations by using fake operations and false laws like The Cordon and Search Operations (CASO), Public Safety Act (PSA), Unlawful Activities Prevention Act (UAPA), Armed Forces Special Power Act (AFSPA) and raids by the infamous National Investigation Agency (NIA) of India. Indian troops, Paramilitary forces, Special Forces groups conduct these operations for extrajudicial killing, illegal detention, raiding homes, destroying homes by using chemical explosives of innocent Kashmiris. These operations are nothing but the updated ways of massacre of people of Kashmir especially Muslims.

In short, the laws authorized in Indian and implemented in Jammu and Kashmir are as opposed to the global human rights law along with that the humanitarian law and it certainly negates the Universal revelation of human rights especially the article 1, article 3 article 7 article 9, and article 19.

## **IX. Right to travel**

Government of India has denied travel documents to all leaders of political decent in Jammu and Kashmir. Over 80, 000 civilians including human rights defenders and academicians are waiting



for security clearance from different intelligence agencies to get their passports.

#### **X. Recommendations**

1. Accede to Conventions on Torture and Enforced Disappearance, Rome Statute of the International Criminal Court, Mine Ban Treaty, 1997, and 1977 Additional Protocols of the Geneva Conventions.
2. Allow unhindered access to OHCHR fact –finding mission to Jammu and Kashmir and oblige the request of United Nations high commissioners public appeal for the same during 33rd session.
3. Allow UN special procedures and mandate holders to visit India and Indian Administered Kashmir.
4. Repeal armed forces special powers act of 1990 (AFSPA) and Jammu Kashmir Public Safety Act (JK PSA).
5. Stop criminalizing freedom of expression and freedom of opinion through Unlawful Prevention Activities Act UAPA
6. Ensure freedom of travel, including grant of travel documents, to people of J&K regardless of political thoughts, affiliations or activities.
7. Allow unrestricted access to ICRC, MSF and UNMOGIP.
8. . De-militarize schools, hospitals and all other such public institutions in J&K.

#### **Submitted by**

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