**HUMAN RIGHTS VIOLATIONS IN JAMMU AND KASHMIR**

**By**

**ANUSHKA KAMTHAN**

**5TH YEAR BA LLB**

**BANASTHALI VIDYAPITH**

****

***August 20, 2021***

**Abstract:**

Jammu and Kashmir is a paradise for the visitors but for civilians, it was converted into hell. Jammu and Kashmir are famous for their natural beauty all over the world. Now, Jammu and Kashmir were converted into fields of war because of a territorial dispute between India and Pakistan. Several times Pakistan try to capture the Indian territory. To protect the territory a large number of military forces are deployed in Jammu and Kashmir just to protect the territory and also protect the civilians from the attack of Pakistan. The real fear of civilians of Jammu and Kashmir is not the attack of Pakistan but the unwarranted arrest, torture, killing, rape by the Security forces. Various activities confront the violation of human rights in Jammu and Kashmir. There are various untold stories about violations of human rights in the valley of Jammu and Kashmir. Due to this violence, several people suffered from the brutal torture of police, security forces, and other militant groups. Thousands of people die under custodial death and their families are unable to get the dead body of the deceased. If we start counting the sufferers of the violence of Jammu and Kashmir, then it reveals an uncountable number. Thousands of people lost their daughter, father, mother, brother, uncle, and loved ones. In this research paper, I will discuss the violation of human rights in the valley and also the case studies. Human rights are the rights that are available to every human being but why civilians of Jammu and Kashmir have been suffering from inhuman behaviour by military forces. They could not enjoy their basic right of freedom of speech and expression, right to education, right to access information, etc. India is a democratic country and J&K is part of the valley. Why there is no democracy on that part because the democracy is survived only where there is dignity and respect of the individual. Every civilian now after the abrogation of the Special status of Jammu and Kashmir hopes for a peaceful life in the valley.

**Keywords:** Violation, Human rights, Civilians, Torture, Jammu and Kashmir.

**Introduction:**

Human rights are the basic rights and these rights have come from birth. These rights are available to everyone without any discrimination based on language, nationality, caste, sex, and religion of the person. Mainly state is responsible for the violation of Human rights either directly or indirectly. Sometimes the state is engaged in human rights violation with the various actors of the government like police, military forces, judges, prosecutors, government officials and other. A large number of Indian Army, Central Reserve Police Force, and Border Security personnel are standing there for the protection of territory, border, and civilians of Jammu and Kashmir but they are the gross violator of human rights in Jammu and Kashmir. The United Nations Human rights office said that armed groups were responsible for human rights abuses including kidnappings, killings of civilians, sexual violence, recruitment of children for armed combat, and attacks on people affiliated or associated with political organizations in Jammu and Kashmir.

The current situation of Jammu and Kashmir after the abrogation of Article 370 of the constitution of India is even worse. A large number of restrictions were imposed in the area of Jammu and Kashmir after the revocation of the special status of Jammu and Kashmir. Now, Jammu and Kashmir are the union territory, and after that government has restricted their freedom of movement, freedom of speech, right to health care, and access to information. The education of children is very much affected due to the imposition of restriction and the effect of Covid-19. Thousands of people are arrested without any charge and detained for months and years. If the special status is removed then the rule of law must be followed in that area but no such rules and regulations are followed. According to the criminal procedure code, if you arrested a person then you have to present that person in front of a magistrate within 24 hours and also provide the reason for arrest to the arrested person but not even signal condition is followed. Human rights, as well as constitutional rights of Jammu and Kashmir civilian, violated. The government has to take the steps to stop the violation of human rights but they created more hurdles to the civilian of Jammu and Kashmir.

India signed the Universal Declaration of Human Rights on 1 January 1942. Article 1 of the Universal Declaration of Human rights clearly stated that “All human beings are born free and equal in dignity and rights”. This shows that the Universal Declaration of Human Rights is inalienable and universally acceptable. But the implementation of these rights in Jammu and Kashmir are quite different. In that place, people are denied even basic rights such as freedom of speech and expression, freedom of movement and freedom to get information, etc.

**Historical Background:**

Jammu and Kashmir had a historical background of the violation of Human Rights. At the time of independence, all the violent activities started. 1990 and 2000 are the most drastic year of human rights abuses by security personnel and armed groups. In 1990, opposition armed forces attack the Hindu majority of Kashmiri Pandit and provoke them to leave the place. After the attack, various Kashmiri pandits were helpless and they flew to Delhi from Jammu[[1]](#footnote-1). In that attack, various Kashmiri pandits lost their near and dear ones. In 1992 and 1993, Indian security personnel and military troops started a campaign “Catch and kill.” If military forces had have any doubt about their activity and identity then they would directly shot that person. All activity created fear in the mind of civilians and in that campaign various civilians also died. Kashmir merged in India because they wanted freedom and protection from the side of India, and not an environment of fear or killing.

In 1992, Asian Watch and Physicians for Human Rights (PHR) gives a notice to the Kashmir government to prepare a report of human rights abuses and violation of laws of war by the Indian military forces and security personnel of India but no action was brought on the government side. There are several operations run by Indian government troops or military forces in J& K area ‘Operation Tiger’ and ‘Operation Shiva[[2]](#footnote-2)’. This operation causes trouble to the civilians by engaging in house burning, shop closing, and other activities, etc. The Asian Watch and Physician Human Rights team investigate the valley of J& Kin 1992. There are various things confront in the investigation like there were 44 extrajudicial killings, 15 rape cases, and eight cases of torture committed by Indian security forces.

In 2010, some youth doing protest and throwing stones at security forces. Security forces started firing and shot dead various protestors. In Srinagar and North Kashmir, it’s a very common scene of that place. According to the report, 3,500 people were arrested and 120 people were detained under Jammu and Kashmir Public Safety Act. Various RTI applications are filled to disclose the number of the detainee. In 2014 Jammu and Kashmir State Home Department declared that 16, 329 people had been detained under administrative detention since 1988.

There are various suspicious acts done in Jammu and Kashmir. State Human Rights Commission stated that in August 2011, they were found various unidentified bodies buried in a graveyard in the area of North Kashmir[[3]](#footnote-3). State Human Rights Commission takes initiative to start the identification of these bodies through DNA Profiling. J& K governments denied because there is a lack of forensic experts and laboratories and further no action taken. In all these years, later we called J&K a paradise but now it became a place of gross violation of Human rights. The civilians of J&K have no human and basic rights. They have to suffer a lot and after the abrogation of Article 370 of the constitution of India, noting is changed.

**Violation of Human Rights:**

There are various activities done in the valley of J&K that cause human rights violation.

**Arbitrary Arrest and Detention:**

The trend of arbitrary arrest and detention in Jammu and Kashmir without charges and trial is very common. Indian security forces or military personnel made arrests and rarely inform about the arrest the local police[[4]](#footnote-4). In India, there is a law if any person is arrested then he/she should be brought before the magistrate within 24 hours but this is rarely happening in Jammu and Kashmir, Many times the minister of Ministry from Home Affairs provides assurance to the civilians but the government did not take action anymore.

Many cases of human rights violation are registered in November 1994, various times security forces wrongfully detained the people because of having a similar name of secessionist groups. Mostly all the detention has been done under Jammu and Kashmir Public Safety Act in which the government can detain the person for two years without any charge or trial. If the detainee asked about the ground of making an arrest then personnel simply provide the reason of 'Public Interest'.

In Jammu and Kashmir, there were also preventive and special laws but they did not provide a legal safeguard to the civilians of Jammu and Kashmir. There are two major Acts applicable in Jammu and Kashmir. One is the Public Safety Act and the Second is the Terrorist and Disruptive Activities Act under which arrest and detention will be done by military forces. There are various cases which are pending for several years and there are also some other cases in which the court passed an order just to protect the detainees[[5]](#footnote-5). In some cases, arrested persons were released in a month or a week but in some cases, detainees were spent two or three years without having been tried.

**Case: Muneer Ahmad Sheikh[[6]](#footnote-6)**

Police arrested Muneer Ahmad Sheikh under the case of having been a possession of a prohibited weapon. The trial of this case was on the waiting list. At that time three other charges were also framed by the security forces under Public Safety Act. The High Court and trial court declared that there were no charges framed against him and passed an order of acquittal but the force didn't release the accused and illegally detain him. When the order of release is passed the security forces framed other charges on Muneer Ahmad Sheikh under Public Safety Act. Hence the case is still pending in J&K High Court.

**Case -Rayees Ahmad Mir v Union Territory of J&K[[7]](#footnote-7)**

Rayees Ahmad Mir, a 16-year-old boy according to the school record. He was arrested under a criminal charge of throwing stones at security personnel. After two days, the executive officer passed an order of detention under Public Safety Act and reject the bail application. The order of executive was challenged in High Court. The high court decided to send him to a juvenile home because according to pieces of evidence he was 16 years old. But still, he is under detention of police authority and a court order is not executed.

These two cases show the failure of state machinery or now we called it a union territory. The order of court passed but was not implemented. The security forces arbitrary arrest and detain the civilian of J&K. This is a violation of Human Rights violation because every person has a right to information on what basis he was arrested and detained. Military forces did not follow the rule and orders of the court. The ground for arrest and detention was never made clear to detainees. J&K is also liable for the violation of international law of Human Rights Violation. India is a signatory of various human rights covenants. According to the Internation Covenant of Civil and Political Rights Article 9 states:

“Provided that everyone has the right to liberty and security of person. No person shall be subjected to arbitrary detention only on the ground of procedure established by law otherwise detention is not allowed.”

Meenakshi Ganguly, South Asian Director, Human Rights Watch "The government has a responsibility to address violence during protects but indefinitely detaining people without charge only add to the lawlessness."[[8]](#footnote-8)

**Custodial Death:**

The number of custodial death in J&K is increasing day by day. . Custodial death means death under the custody of the police of military security forces. The brutality of custodial death had done through the operation run by government troops. After the arrest, only a few people returned alive, and remains people only news come of death. Due to increasing custodial death government try to hide the act of military security forces by giving a reason of 'encounter' or 'cross-fire without giving any evidence. The government always provides this reasoning behind the custodial death of a civilian without any proof of charges against him. Sometimes, t[[9]](#footnote-9)here is an eyewitness who saw the marks of torture on the body of a deceased person and medical report of post mortem consider the reason for death is unbearable torture. Military forces never take the responsibility for their wrong.

**The Times of India commented** in march 1993 that over the past six months "custodial killing of both militants and others became almost a daily phenomenon"[[10]](#footnote-10).

There are various cases of custodial death in which several cases never come up because of secrecy.

**Masroof Sultan,** a student, was tortured by an electric shock at the time of interrogation by the military forces. The place where he was tortured was called papa II in Srinagar. Border Special Forces brutally beat him until his one leg broke down after he was survived. BSF tried to kill him but he did an act of death and survived. The police found him alive and before that BSF declare that person died in an exchange of fire.

In that area, the military forces were so much power and they ultimately used their power which causes the violation of human rights. Custodial death is one of the cruelest forms of human rights abuse.

**Custodial Death of J&K youth Irfan Ahmad Dar[[11]](#footnote-11) (17/9/2020),**  This was a case of custodial death or cold-blooded murder according to kin of deceased person Irfan Ahmad Dar. He was 23 years old, a shopkeeper. Police arrested him on 15 September in a case of harboring terrorists. Later police informed them that he was trying to escape from police custody and was found dead. According to the information provided by police, after that police take him to the nearby hospital in Srinagar and the hospital did post mortem. His body was later buried by police personnel which is 130 kilometers from his home. The family member sought the body of Irafan but the police denied it and buried them. This was done by the police just to remove all the pieces of evidence.

"The cold-blooded murder of 23 yr old Irfan Ahmed Dar, a shopkeeper by profession wrongfully accused of being an OGW is a grim reminder of how truth is mangled & stories are fabricated to justify killing innocent civilians in J&K" **Mehbooba Mufti[[12]](#footnote-12)**

So, to see both the case studies mentioned above shows a gross violation of human rights. These true stories of J&K tell us the reality of human rights in J&K. In J&K, there is an institution that can protect the human rights abuses but in front of military forces they have no power to protect the civilian's rights.

**Torture:**

The torture in Jammu and Kashmir by security forces is very exceptional brutality. There is a large number of cases in which people died due to torture. The area in which security forces engaged in operations then the population of that area is at high risk. The kinds of torture include beatings, electric shocks, crushing their legs with heavy rollers, hanging people upside down for many hours, and burning parts of their bodies. Torture is an institutional method of control regularly practice in Kashmir. According to the report of the Jammu and Kashmir Coalition of Civil Society (JKCCS), there are 432 cases documented in which 70% of cases victims are civilians. This survey was done between 1990 and 2017.

In the whole world, J&K is considered the most militarized area, this is an alarming situation for human rights violation. At present, According to the JKCCS report estimated 650,000- 750,000 Indian troops are in the area of J&K. After the removal of special status by abrogation of Article 370 of the constitution. The incidence of human rights violations is increased.

**Manoj Joshi distinguished fellow at the observer Research Foundation,** a New Delhi-based think-tank, told India to spend "It is well known that torture is widely used by police forces across the country, of course, it does not serve the interest at the Indian state. To the contrary, it negatively impacts it."[[13]](#footnote-13)

There are various cases of torture in J&K. In 1993, **Manzoor Ahmed Ganai**, died which his leg was amputated. He died because a soldier put a light in his leg with paraffin and suspended him upside down for 24 hours. A doctor from Srinagar hospital said if we give treatment to him at right time then we will be able to save him but now there is no chance.

There are a lot of case studies in which we can see the torture of security forces. **Mohammad Syed of marijuana in Srinagar[[14]](#footnote-14)**. He was 24 years old arrested in 1990 for interrogation. In the Jammu Interrogation center, he spent two and half months. After that, he was sent to Kathu Jali, Nanital Jail, and Allahabad. In all these jails, he spent 14 years after that sent to Satwari interrogation center. During interrogation with Mohammad Syed, they would beat him with anything, they found. Due to torture, he lost one eye and already did six surgeries just to stop the infection from another eye. Now, he was completely blind and depend upon donations for survival.

There are various untold stories which we can see in J&K. The torture of security forces leave a bad impact on the future generation. They will lead him to a negative approach related to military forces.

**Khurram Parvez, a human rights activist based in Kashmir[[15]](#footnote-15)**, says India has "Institutionalised" torture in Kashmir. "India signed the United Nations Connection against Torture and other cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) in 1987. It has been 34 years, but it has still not ratified that convention", he said, adding that India is among only forces of 81 signatories to the convention not ratify it other three include Brunei, Haiti, and Sudan.

In 2010, Lok Sabha passed a Prevention of Torture Bill but to date, there is no further progress in it. This will show that India didn't want to stop this torture.

**Conclusion and Suggestions:**

Government has to provide guidelines related to arrest and detention so that we can stop arbitrary arrest and detention to some extent. India is a signatory of the United Nations and India is also a signatory of various covenants of human rights. The UN convention by criminalizing torture is a way ahead towards stopping the torture. There is a necessity that parliament, as well as state legislative assemblies all over India, made law on the prevention of torture. They have to make another provision also to provide health assistance who are disabled because of the torture by military security Forces. All the torture that was done by military forces in the name of operation all is liable for the violation of the right to health. Several kinds of freedom that are available to humans being except J&K. In that place various restriction imposed by the government. Government has to understand that restrictions on internet access and the right to information are not a good solution. These only restrict the rights of J&K and excluded them from others. They also have a right to live a peaceful life with respect and dignity. Government has to take steps towards provide a better life for J&K civilians and protect their human rights.

**About the Author:**

Anushka Kamthan is a Fifth-year law student studying in Banasthali Vidyapith with a fascination and vehement sense of respect and admiration towards all aspects of the law. She has worked under various projects related to legal awareness and believes in the ideals of justice, equity and good conscience. In the future, she plans to pursue International Human Rights in order to further the cause of humanity. The author has a specific interest in human rights and lives by the quote.

1. Amnesty International Report, “ **Denied**”, <https://www.amnesty.org/download/Documents/ASA2018742015ENGLISH.PDF> [↑](#footnote-ref-1)
2. Human Right Watch, Human Right Crises in Kashmir, <https://www.hrw.org/sites/default/files/reports/INDIA937.PDF> [↑](#footnote-ref-2)
3. Special Correspondent, “J&K Human Rights Commission’s SIT confirms 2,156 unidentified bodies in ‘mass graves’”,The Hindu, <https://www.thehindu.com/news/national/jk-human-rights-commissions-sit-confirms-2156-unidentified-bodies-in-mass-graves/article2379921.ece> [↑](#footnote-ref-3)
4. Amnesty International Report, “ India @Summary of Human Rights Concerns in Jammu and Kashmir”, [**https://www.amnesty.org/download/Documents/176000/asa200021995en.pdf**](https://www.amnesty.org/download/Documents/176000/asa200021995en.pdf). [↑](#footnote-ref-4)
5. Human Right Watch, India: Free Kashmiris Arbitrarily Detained, <https://www.hrw.org/news/2019/09/16/india-free-kashmiris-arbitrarily-detained> [↑](#footnote-ref-5)
6. Amnesty International, A Lawless Law, <https://www.amnestyusa.org/files/asa200012011en_11.pdf> [↑](#footnote-ref-6)
7. Rayees Ahmad Mir v. Union of Jammu and Kashmir, J&K HC (decided on 10-10-2020). [↑](#footnote-ref-7)
8. Human Right Watch, India: Cease Wrongful Detentions in Jammu and Kashmir, <https://www.hrw.org/news/2016/10/15/india-cease-wrongful-detentions-jammu-and-kashmir> [↑](#footnote-ref-8)
9. Amnesty International, @ Torture and deaths in custody in Jammu and Kashmir, <https://www.amnesty.org/download/Documents/176000/asa200011995en.pdf> [↑](#footnote-ref-9)
10. Amnesty International Report, “ India @Summary of Human Rights Concerns in Jammu and Kashmir”, [**https://www.amnesty.org/download/Documents/176000/asa200021995en.pdf**](https://www.amnesty.org/download/Documents/176000/asa200021995en.pdf). [↑](#footnote-ref-10)
11. The Times of India, “ Jammu and Kashmir Youth Custody Death: Kin Public asked to record the statement”, [https://timesofindia.indiatimes.com/india/jammu-and-kashmir-youth-custody-death- kin-public-asked-to-record-statements/articleshow/78222814.cms](https://timesofindia.indiatimes.com/india/jammu-and-kashmir-youth-custody-death-%20%20%20kin-public-asked-to-record-statements/articleshow/78222814.cms) . [↑](#footnote-ref-11)
12. The Indian Express, J &K : Protest in Sopore over alleged custodial death of youth, https://indianexpress.com/article/india/jammu-kashmir-sopore-youth-custodial-death-6599579/ [↑](#footnote-ref-12)
13. India Spend, New Report Cities 432 cases In Kashmir From 1990-2017, 70% victims are civilians, https://www.indiaspend.com/new-report-cites-432-torture-cases-in-kashmir-70-victims-civilians/ [↑](#footnote-ref-13)
14. The Hindustan Times, “ With Wound that never heal, Kashmir’s torture victim’s struggle for normal life”, <https://www.hindustantimes.com/cities/others/with-wounds-that-never-heal-kashmir-s-torture-victims-struggle-for-a-normal-life-101624739221540.html> [↑](#footnote-ref-14)
15. BBC, ‘Don’t beat us just shoot us’: Kashmiri allege violent army crackdown, <https://www.bbc.com/news/world-asia-india-49481180> [↑](#footnote-ref-15)