



REPORT ON SEMINAR:

**“INTERNATIONAL HUMAN RIGHTS LAW AND
HUMANITARIAN LAW VIOLATIONS IN INDIAN
OCCUPIED JAMMU AND KASHMIR”.**

10th December 2021

Jammu Kashmir House Islamabad



Organized by

Kashmir Policy Research Institute (KPRI)

Muzaffarabad Azad Jammu & Kashmir

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KASHMIR POLICY RESEARCH INSTITUTE (KPRI)

KPRI is a premier and leading think tank in Azad territory of the erstwhile State of Jammu and Kashmir. It was established in March 2017 as an independent and non-profitable forum, dedicated to evolve policies, provide in-depth understanding and conduct research on various aspects of history, contemporary politics and conflict of Jammu and Kashmir.

SIGNIFICANCE OF HUMAN RIGHTS DAY

Human Rights Day is observed all over the world, every year on 10th December, to honour the Universal Declaration of Human Rights that was adopted by the United Nations General Assembly on 10th December 1948. The Universal Declaration of Human Rights proclaimed the inalienable rights which everyone is inherently entitled to as a human being - regardless of race, color, religion, sex, language, or national origin. While this year the Human Rights Day marks as equality for all, the struggle of Kashmiris for their inalienable right to self-determination is still being responded with brutal use of force by the Indian Forces.

People of the Indian Occupied Kashmir are facing massive human rights violation; the continuous plight of Kashmiris has also increased our responsibility to project human rights violations exerted by Indian forces and State upon them.



Topic: “International Human Rights Law and Humanitarian Law Violations in Indian Occupied Jammu and Kashmir”.

Background:

Kashmir Conflict is one of the simmering issues over the globe causing not only instability in the region but also a threat to peace of the world. This struggle of Kashmiris for their inalienable right to self-determination is being responded by brutal use of force by Indian Army and massive human rights violations. The use of pellet guns has caused thousands injured, defaced and blinded. Many people are languishing in prisons and others facing persecution.

Above State of affairs has increased our responsibilities and role for seeking means for resolution of the conflict and drawing attention of the world towards human rights violations in Indian occupied Kashmir. The seminar was organized to enhance our knowledge and awareness regarding the cause and identify role of youth, media and intelligentsia in this regard.

Following were the sub topics discussed by the speakers in the seminar:-

1. An overview of Human Rights Violations in IIOJK: Post 5th August 2019 Situation of IIOJK.
2. Human Rights Violations in IIOJK: Role of Academia, Researchers and Universities in Exposing India.
3. Violations of IHL in IIOJK: Available Legal Avenues for Govt. of Pakistan and AJK.
4. Human Rights Violations in IIOJK: Strategy to expose India on Diplomatic Fronts by Pakistan and GoAJK.

President Azad (Liberated) Jammu and Kashmir Barrister Sultan Mehmood Chaudhry was the chief guest. Following scholars of international repute addressed the seminar on their respective subjects:-

1. **Ambassador Abdul Basit**, Former Pakistan Ambassador to Germany and HC to India. Also served as FO Spokesman Presently President Islamabad based think tank Pakistan Institute for Conflict and Security Studies, author of the book titled “Hostility”.
2. **Dr. Muhammad Mushtaq Ahmad, Consultant** for dissemination of international humanitarian law, International Committee of the Red Cross (August 2010 onwards) , Amicus Curiae And Juris Consult for Supreme Court and Federal Shariat Court, author of several books including “Jihad, Resistance and Rebellion in Islamic and Modern International Law”
3. **Dr. Asma Shakir Khawaja**, Associate Professor/ Head of Department, Strategic Studies, National Defence University, Islamabad. Author of the book, “Shaking Hands with Clenched Fists: The Grand Trunk Road to Confidence Building Measures between Pakistan and India.”
4. **Altaf Hussain Wani**, Chairman Kashmir Institute of International Relations (KIIR) and Member All Parties Hurriyat Conference

Raja Muhammad Sajjad Khan Director KPRI was the moderator of the Seminar.

INTRODUCTORY REMARKS:

Mr. Aijaz Hussain Lone

Secretary Jammu and Kashmir Liberation Cell



Secretary Jammu and Kashmir Liberation Cell welcomed and thanked the President, speakers and participants of the seminar. He said that Kashmir Policy Research Institute is the premier think tank of Azad Kashmir. This think tank is publishing research journal “International Journal of Kashmir Studies”. He briefed about the human rights situation in IOJK. He added that,

“IOJK is a heavily militarized zone, the ratio of civilian to security personnel is about 7:1. In last 30 years 95, 917 civilians were killed by Indian forces; around 8,000 to 10,000 cases of enforced disappearances have been reported since 1989. According to the latest reports 8652 mass graves have been identified in 8 districts of IOJK.

There are more than 3000 half widows, half-widow is a term given to Kashmiri women whose husbands have disappeared and are still missing during the ongoing conflict in Kashmir. These women are called "half-widows" because they have no idea whether their husbands are dead or alive. Impunity is provided to Indian forces under draconian laws like Public Safety Act, Armed Forces Special Power Act etc.

Indian forces are maiming, blinding, and killing people in Kashmir as they continue to defy international norms by using pellet guns as a means of crowd control. Since 2014, Indian forces have killed 140 people, blinded 1,253 and seriously injured over 15,500 people by pellet shots. 1.8 million (45%) adults in Kashmir valley have significant symptoms of mental distress due to Indian atrocities. These violations are

war crimes & crimes against humanity. On 5th August 2019 Indian Govt. amended Article 370 and revoked Article 35-A. These articles were there to protect the demography, culture and identity of Kashmir. The purpose of revocation is to settle Indians in Kashmir and change Muslim majority into minority. This also resulted in change of Union territory as division into two territories Ladakh & Jammu and Kashmir. Constitution, flag and autonomy have also been snatched. Kashmir has been practically under siege from 5th August, 2019, 13000 innocent young people disappeared including 144 children even a 09 years' boy. All communication tools, including phone access to the internet, have also been cut off; curfews and travel restriction imposed. The IOJK administration has issued over 4.2 million domicile certificates since then.

FIRST SPEAKER:

Mr. Altaf Hussain Wani

Chairman KIIR



**Topic: AN OVERVIEW OF HUMAN RIGHTS VIOLATIONS
IN IOJK: POST 5TH AUGUST 2019**

What actually happened on 5th august 2019? Let me take a few minutes to refresh your memory

1. 2019 is the darkest year for Kashmir.
2. The year saw the loss of Kashmir's special status guaranteed to it under article 370.
3. So-called J&K Reorganization Act 2019 led to the dissolution of the State reducing its status from State to a Union Territory.

4. The valley and its adjacent Muslim majority districts were put under harsh military lockdown coupled with communication blockade;
5. Millions of people were caged in their houses, political leadership of all sorts was either arrested or detained in their own homes;
6. All means of communication were blocked and a complete media shut-down was enforced in the region.
7. Thousands, mostly the young boys, were arrested, and even several journalists associated with local and international media outlets were detained under the PSA for covering incidents of violence taking place in the valley.
8. Members of civil society, intellectuals, lawyers and academicians were taken into custody to ensure a grave-yard silence in the region.
9. Above all the censorship imposed on the media made it difficult for the outer world to exactly know what is actually going on in Kashmir.

Ladies and gentlemen!

What is the current situation in IOK, let us take a look at it...?

A year and half later, life in Kashmir is still far from normal;

There is no respite in State sponsored violence; on the contrary violence has hit startling levels;

Despite Indian government's claims of lifting restrictions essential fundamental freedoms including people's right to freedom of speech and expression, the right to assemble and the right to opinion stand severely restricted.

Media in Kashmir continues to be in a State of repression

The one and half year siege has led to a severe economic meltdown,

Education sector remains badly affected;

Educational institutions have been virtually shut for the past two years, as internet shutdowns have made it difficult for schools, colleges and universities to start online classes in the days of pandemic.

Ladies and gentlemen!

Absolute lawlessness in Kashmir has given birth to yet another epidemic of fake-encounters and faceless funerals that keeps haunting people in the State. From organizing fake encounters to garlanding and awarding of killers has become an unofficial policy directive of the BJP government in Kashmir.

Situation has worsened to the extent that Kashmiris are not even allowed to mourn the death of their beloved ones killed in military operations.

Even people are not allowed to bury their near and dear ones killed in fake encounters.

Gravity of the situation can be gauged from the fact that the youth who are being killed in fake encounters are buried in faraway places and even their parents are not allowed to participate in final rituals.

A ruthless campaign has been launched, whereby, Indian occupation authorities have imprisoned politicians, journalists, and civil society members, to intimidate and suppress any form of dissent.

Even human rights defenders (HRDs) are being harassed and humiliated by the Indian secret agencies. This policy of coercion and intimidation has adversely affected the HRD's work in the region.

Ladies and gentlemen!

This abysmal situation in the region is no doubt a matter of serious concern for the civilized world. We have seen that over the past couple of years there has a growing realization about the worsening situation in the region.

Apart from leading global rights watchdogs, we have seen office of the UNCHR has released an eye-opening report on the human rights situation in Kashmir, which is the reaffirmation of the fact that the world is really worried over the terrible situation in the occupied Kashmir,

I would request honourable President to play the role in highlighting the Kashmir issue at international level. I have few suggestions in this regard,

- I. Incentivize research in AJK Universities,
- II. Equip the younger generation with knowledge and argument and give them space to project Kashmir cause at the international level by their interaction with Universities, academia and think tanks.
- III. Recruit the people of knowledge and wisdom in the departments of International relations, Kashmir studies and Law to enrich research on Kashmir and promote Kashmiri and Pakistani narrative.

2ND SPEAKER

Dr. Asma Shakir Khawaja



Topic: HUMAN RIGHTS VIOLATIONS IN IIOJK: ROLE OF ACADEMIA, RESEARCHERS AND UNIVERSITIES IN EXPOSING INDIA.

Dr. Asma Shakir congratulated KPRI for organizing this seminar on eve of international Human Rights Day. She said that role of academia, researchers and universities was very important but we were not focusing in this dimension. India is investing a lot in promoting her false claims through books, research papers and articles. If we search the books or articles from Pakistan or Azad Kashmir they are very few. India is selling her false claims but we cannot present our legal case through academia. She suggested that:

1. HEC and universities should promote research on different dimensions of Kashmir conflict.
2. Think tanks should be established in Azad Jammu and Kashmir and KPRI should be strengthened.
3. In policy making bodies and administration of universities of AJK people are mostly from natural sciences and their focus is only to promote research in natural sciences. There is a dire need to revisit this policy and universities should include the academic/ research experts on Kashmir in their policy making forums.
4. In universities of Azad Jammu and Kashmir capacity building of existing faculty/ human resources in Kashmir Studies, IR, History, Law, Political Science, Strategic Studies and Mass Communication

is necessary. Culture of research should be promoted in these subjects.

5. Government of Azad Kashmir should support and strengthen KPRI.

3RD SPEAKER:

Dr. Muhammad Mushtaq Ahmed



Topic: VIOLATIONS OF IHL IN IIOJK: AVAILABLE LEGAL AVENUES FOR GOVT. OF PAKISTAN AND AJK.

I had the opportunity to discuss important legal issues related to Kashmir. Initially I thank Allah Almighty for granting me the privilege that under my supervision three Ph. D dissertations on legal issues concerning Kashmir have been written by , Dr. Idrees Abbasi (Secretary to the Government of Azad Kashmir) , Sardar Waqar Khan Arif (Chairman, Department of Law, Kotli University) and by Raja Sajjad Khan (Liberation Cell, Government of Azad Kashmir). My speech at the seminar is limited to three legal questions:

What is the legal status of the Kashmir issue?

Sadly, the young generation in Pakistan and Azad Kashmir in particular has many misconceptions about this question. People in occupied Kashmir have a better understanding of the legal basis of this dispute. A study of the following legal documents is essential for legal analysis:

The Paris Agreement of 1928, established the principle that no State can be acquired through occupation, and that sooner or later the occupying power must evacuate the occupied territory, even if there is no resistance to the occupation.

Article 2, sub-section 4, of the 1945 United Nations Charter outlaws not only the use of force but also threat to use the same.

Indian Independence Act of 1947, which laid down principles for future of various political units of the subcontinent after the withdrawal of the British.

Standstill Agreement of 1947, under which Maharaja of Kashmir agreed with Pakistan that conditions would be maintained.

Accession Document of 1947, according to which Maharaja allegedly annexed Kashmir to India; and 1948 resolutions adopted by the UN Security Council on the subject.

Analysis of these legal documents and the relevant legal principles reveals that the accession had no legal status, because by the time annexation was made, Maharaja had lost his control over Kashmir and even if this document is authentic, it was written in a State of coercion and compulsion.

Moreover, when India itself took the matter to the UN Security Council and recognized the referendum from there, it legally withdrew its accession claim and since then the accession document has lost its status.

Hence legally the State of Jammu and Kashmir is an occupied territory which has been aggressively occupied by India and part of which has been liberated (Azad Jammu and Kashmir and Gilgit-Baltistan). This is

the worst example of prolonged occupation. Some more conclusions are drawn in this regard. If it is occupied, then the State of war is maintained, even if there is a ceasefire and no further resistance.

This is an international dispute, not an internal Indian affair. India is an occupying power which does not have the power to change the demographics of the occupied territories. People of the occupied territories cannot be sworn allegiance to the occupying power and they have the right to fight for freedom against the occupying power.

Is this an internal matter of India?

The answer to this question is clear from the previous discussion. If it is occupation, and of course it is, then it is not an internal matter of India. It is an international armed conflict to which the entire International Law of Armed Conflict or IHL applies.

Among the arguments put forward by some for declaring it an internal matter of India, it is necessary to analyze two important arguments.

First argument is that after the (so-called) elections in Kashmir in 1957, the Assembly there declared its accession to India. However, these elections and the Assembly elected as a result of them, have no status under international law.

Secondly, after resolution of this Assembly, the issue was raised again in the UN Security Council and from there, Resolution No. 122 was adopted which made it clear that this election was not a substitute for the referendum which was decided in 1948. So the matter remained as it was.

Second argument is that the Shimla Agreement of 1972 turned Kashmir into a bilateral dispute. This claim is also absolutely baseless. At the time

of concluding the agreement in 1972, Pakistan's position was extremely weak, but it nevertheless made it clear that the agreement would not affect the legal interpretation of the parties and that any party could not change unilaterally.

There are many other important aspects of this agreement, such as the separate mention of international borders and the Line of Control. However, it is absolutely unfounded that this agreement made the UN resolutions irrelevant. This is the propaganda of India which some of us have tried to promote in ignorance (and some for personal gain).

There is no doubt that Kashmir is a well-occupied territory, even if a State inflicts such atrocities on its own people in its own territory as India is constantly inflicting on Kashmir, then according to contemporary international law, it does not remain an internal matter of the State but becomes an international issue. Over the past half-century, international human rights law has changed the old concept of State sovereignty and is now called "Responsibility to Protect".

It is also a matter of international law that if the internal affairs of a State threaten international peace, it becomes an international issue. (See, Article 2, Sub-Article 7 and Article 39 of the UN Charter.) It is a fact that Kashmir can lead to a dangerous war between two nuclear powers. Therefore, it cannot be called an internal matter of India in any way.

What legal avenues are available to us?

First of all, we have to correct our basic concept. This problem is not only of Pakistan and India, but also of the Kashmiris who are being helped by Pakistan to gain independence from the occupation of an usurping State. From this point of view, the Govt. of base camp for liberation of occupied

part of Kashmir “Govt. of Azad Jammu and Kashmir must recognize the status of "exile government".

It would be just like when Germany occupied France in World War II, then its exile government was established and Britain and others helped it and gradually France was liberated from German occupation. The issue can be raised more effectively in the international arena if Pakistan continues to support the Azad Kashmir government in this way.

This does not mean that it is only an issue of Kashmir and Pakistan has nothing to do with it. I have already explained in detail on various occasions that how important Kashmir is for Pakistan and how without Kashmir the question of survival and existence for Pakistan.

As for the question of legal avenues, there are many possibilities. The question is not of possibilities, but of determination and planning.

Instead of UN Security Council, the issue of Kashmir can be raised in UN General Assembly, where there is no obstacle to veto. This will help in escalating international pressure over India.

There is a lot to talk about in terms of human rights violations and there should be, but as explained in detail, this is not just an issue of human rights violations but these violations are being committed by the occupying power in the occupied territories, these are also war crimes. This aspect especially needs to be brought to the notice of the world.

These war crimes can be agitated on a number of forums, including the International Criminal Court. It is true that no one in Pakistan or India has ratified the Charter of this Court and it is also true that the UN Security Council cannot be expected to refer this matter to this Court. There is a

third way to start a case in this court. If the prosecutor of this court receives a large number of war crimes complaints, including evidence, he has to review them, and if he is satisfied that a lawsuit has been filed, he must proceed with the trial.

If the government of Pakistan does not act on this aspect out of self-interest, then this work can be done by ordinary people and especially Kashmiris (Diaspora) in different countries of the world can play an important role in this regard.

There is a need for the universities of Pakistan and Azad Jammu and Kashmir, especially their law departments, to play vital role in researching the legal aspects of the Kashmir issue.

4TH SPEAKER:

Ambassador Abdul Basit



**Topic: HUMAN RIGHTS VIOLATIONS IN IIOJK:
STRATEGY TO EXPOSE INDIA ON DIPLOMATIC
FRONTS BY PAKISTAN AND GOAJK**

Ambassador Abdul Basit discussed the situation of Kashmir and said that people of Indian Occupied Kashmir are struggling for liberation with full commitment. They are paying sacrifices, facing oppression and rejecting every temptation by India. Now it is the responsibility of Pakistan and Azad Kashmir to sensitize the world as well some practical steps should be taken. Although after 5th August 2019, the Govt. of Pakistan has highlighted this issue at international forums but we cannot get support from the influential capitals of the world. We should analyze our

weaknesses and devise a strategy to counter Indian actions in IIOJK. He suggested that his book “Hostility should be read which provides a way forward for Pakistan in handling Kashmir issue at diplomatic fronts.

Address by the Chief Guest

President Azad Jammu and Kashmir

Barrister Sultan Mehmood Chaudhry



President Azad Jammu and Kashmir Barrister Sultan Mehmood Chaudhry said that the Prime Minister of Pakistan Imran Khan is raising the issue of Kashmir at international level in a lively manner. Indian Army is committing serious human rights violations in occupied Kashmir. There is a need to increase international pressure on India for which the Kashmiri diaspora has to be mobilized.

I am trying to make efforts at international level regarding the Kashmir issue. Today, on the occasion of International Human Rights Day, we assure the people of Occupied Kashmir that we are with them in their struggle and we will make their voice heard in every nook and corner of the world.

Prime Minister of Pakistan Imran Khan also said yesterday that if there was a better government in India, then the Kashmir issue could have been discussed with them. It is our stance that if India takes one step, we will take two steps. It is time to expose Indian atrocities to the international community as India is committing gross violations of human rights in Occupied Kashmir. We have to expose it to the world and bring her to a defensive position. He said that he led anti-India protests in New York, Brussels, Paris and UK. The world is now recognizing and paying attention to the ongoing human rights violations in Occupied Kashmir.

Public opinion is with us but we have to work with member of Parliaments and intellectuals in bringing governments to act in this regard. I salute the sacrifices of brave people of Occupied Kashmir. The youth have to go ahead and play their role. Universities of Azad Jammu and Kashmir should play their role in this regard and as chancellor of the universities of Azad Jammu and Kashmir I shall ensure the capacity building of universities, research on Kashmir and their close coordination of universities with KPRI and Jammu Kashmir Liberation Cell.

RECOMMENDATIONS BY SPEAKERS

Following is synopsis of recommendations presented by the speakers in their addresses: -

1. War crimes by Indian forces in IOJK should be raised at the International Criminal Court although Pakistan and India have not ratified the Charter of this Court and the UN Security Council is not expected to refer this matter to this Court, however, the prosecutor of the court could be accessed and got involved through war crimes complaints, including evidence by a large number of general public.
2. Govt. of base camp for liberation of occupied part of Kashmir i.e. "Govt. of Azad Jammu and Kashmir" may be given the status of "exile government" for the whole State. Foreign office of Pakistan and relevant quarters should examine and give recommendations regarding this proposal.
3. Kashmir issue may be raised in the UN General Assembly where there is no apprehension of veto. This will help in increase of international pressure over India.

4. Violations in IOJK are more than a mere issue of human rights violations as these are being committed by the occupying power in the occupied territories, which mean they are infact war crimes. This aspect especially needs to be brought to the notice of the world.
5. There is a need for the universities of Pakistan and Azad Jammu and Kashmir, especially their law departments, to play their full role in researching legal aspects of the Kashmir issue.
6. HEC and universities should promote research on different dimensions of Kashmir conflict.
7. Think tanks should be established in Azad Jammu and Kashmir and KPRI should be strengthened.
8. In policy making bodies and administration of the universities of AJK. There is a dire need to include the academic/ research experts on Kashmir, International Relations, International Law and Conflict Management Studies.
9. In universities of Azad Jammu and Kashmir capacity building of existing faculty/ human resources in Kashmir Studies, IR, History, Law, Political Science, Strategic Studies and Mass Communication is necessary. Research culture should be promoted in these subjects.
10. Government of Azad Kashmir should support and strengthen KPRI.
11. Research in AJK universities may be incentivized.
12. Younger generation may be equipped with knowledge and arguments to project Kashmir cause at the international level through interaction with universities, academia and think tanks.

