

ANTI-TERROR LAWS AND AMENDMENT OF ARTICLE 370 IN JAMMU AND KASHMIR

Written by KS Luckyson James

Research Scholar, Department of Political Science, University of Delhi, Delhi, India

ABSTRACT

Legal measures to enact the Jammu and Kashmir Reorganization Act, 2019 have nullified the special status under Article 370 which paves the way to reorganize the State into two Union territories. The proclamation of President's rule in the State made it easier for the Centre government and Parliament to bypass the authority of the State government and Legislative Assembly. Unless some constitutional limitations are put into place on the role of Governor under Article 356, the federal structural powers of States are always in peril.

INTRODUCTION

Jammu and Kashmir is the northernmost part of the state which lies in the Himalayan region bordering with Pakistan, Tibet and China. Srinagar is the summer capital and Jammu is the winter capital of the state. According to an official census of 2011, the population of Jammu and Kashmir has formed 1.04 percent of India with the population of 10.25 million of which the number of male and female are 6,640,662 and 5,900,640 respectively. An increase of 23.64 percent i.e. approximately 2400,000 overall populations as against the 2001 census.ⁱ

Presently, the literacy rate is 67.16 percent, an increase of more than 10 percent in a decade. The literacy rate of male is higher than female.ⁱⁱ The national average of literacy rate is 65 percent. It is well known that the state has been divided on religious lines; Kashmir has a Muslim majority population, Jammu region has a predominantly inhabited by Hindu population and majority of the Ladakhis follows Buddhism. But most interestingly, there is no data on the basis of religion which constitutes Hindus, Muslim, Sikhs and Christian in the state. It is yet to be released by the government in future.

Kashmir is the zone of conflict between India and Pakistan. As the process of decolonisation in South Asia has come to an end, British India was divided into two separate countries – India and Pakistan. In this process, the remaining smaller princely states of ‘British Raj’ were given an option to merge in either of these two countries or to retain its independent entity. Most of them have decided to join India or Pakistan, on the basis of its geographical proximity or religious affinity. However, the territorial dispute of Kashmir was much more complicated – as its demography with a Muslim majority ruled by a Hindu King.ⁱⁱⁱ

The genesis of the conflict was that the state of Jammu and Kashmir was ceded to India as Maharaja Hari Singh signed an Instrument of Accession on 26 October, 1947. In return, India assured him of all possible help at the time of any eventualities or disturbances in the state.^{iv} But according to Sajjad Shaukat in his article on ‘Dynamics of Kashmir’s Accession to Pakistan Day’ observed that initially on 19 July, 1947, All Jammu and Kashmir Muslim Conference unanimously adopted a resolution for the accession of the State of Jammu and Kashmir with Pakistan. But Sir Hari Singh, a Hindu ruler of J&K signed an Instrument of Accession in connivance with the Indian Prime Minister Jawaharlal Nehru and Governor General Lord Mountbatten to join India. The Radcliffe Boundary Award was announced on

August 16, 1947, in which a majority Muslim area of Gurdaspur District was given away to India to provide a direct land route to the Indian armed forces to move into Kashmir. As a result, on September, 1947, there was a rebellion against Maharaja by the Pakistan supported tribesmen in Jammu and Kashmir.^v By noticing the exigencies of the situation; Maharaja sought an immediate India's assistance to protect his kingdom.

On 1 January, 1948, under Article 35 (Chapter VI) of the Charter of United Nations Security Council, India registered a complaint accusing Pakistan of 'assisting and aiding' tribesmen from Pakistan by intruding into state of Jammu and Kashmir. It was also claiming that Jammu and Kashmir is part of the territory of India by virtue of Maharaja Hari Singh signed an Instrument of Accession with Indian Union. On 26 October, 1947, Maharaja of Kashmir 'appealed urgently to the Government of India for military help. He also requested that the Jammu and Kashmir State should be allowed to accede to the Indian Dominion.'^{vi} As a result, the request of Maharaja was the direct culmination for signing the Instrument of Accession in exchange of India's assistance.

Here, the Government of India had committed a grave mistake by promising to decide the future of Jammu and Kashmir through 'the recognized democratic method of a plebiscite or referendum' under the supervision of United Nations Organization. After all, earlier by signing the Instrument of Accession, the question of having plebiscite should not be raised. It was unnecessary to mention the words 'plebiscite or referendum' to the letter from the Representative of India to the President of the Security Council dated 1 January, 1948.

Natwar Singh describe as an 'original sin' of Prime Minister Jawaharlal Nehru for taking the Kashmir issue to the UNSC in 1948. According to him, it took many years for diplomats to reverse the situation. It was during the session of UNSC on Kashmir issue on 3 September, 1965, Indian delegates walked out as a show of protest against the speech of Pakistan Foreign Minister Zulfikar Ali Bhutto was a turning point in the history of India and Pakistan dispute. As a result, United Nations completely lost interest to discuss the issues of Kashmir for several decades.^{vii}

But later on, the issue of plebiscite was never dying down; ‘to decide the future of Kashmir through plebiscite’ becomes the core demand for all the stakeholders including Kashmiri nationalists, Pakistan and UNO, except India, who shy away from holding its promise plebiscite. It paves the way for the much more complicated situation for several decades to come. Whatever the circumstances happened between 1948 till up to the Shimla Agreement of 1972, if the promise plebiscite was held in accordance with the wishes of Kashmiri, then the majority of Muslims may have been opted to secede with the Dominion of Pakistan. The leader of National Conference, Sheikh Abdullah who was the head of interim administration of Jammu and Kashmir, his influence to the Muslim population had certain limitation; if it is not universal.

The Pakistani tribesmen incursion into Kashmir ended in 1949 with UN monitored ceasefire between the two countries. After the defeat of Pakistan in the War of 1971 and subsequently, by signing the Shimla Agreement of 1972, the ceasefire-line drawn up in Kashmir was converted into the “Line of Control” which forced Pakistan to accept as a permanent de facto boundary. With the activation of the “Line of Control”, India pointed out that U.N Military Observer Group in India and Pakistan (UNMOGIP) should left India as it has no mandate to stay on. Whereas, on the other hand, Pakistan wants UNMOGIP continue to monitor the “Line of Control” as it has disputed between the two parties. As a result, the mandate of UNMOGIP have severely curtailed as its activities are confined only within the office premises at Sonawar in Srinagar.^{viii}

From 1948-1972, United Nations initiated to form UNMOGIP, United Nations Commission for Indian and Pakistan (UNCIP) as a dispute mechanism to monitor the cease-fire agreement and mediate the dispute between the two countries. Within this period, UN appointed a number of individuals as its representatives - General A. G. L McNaughton, Owen Dixon and Frank Graham as mediators and passed a number of resolutions such as Resolution No. 38, 39, 47, 307 etc. which was intended to resolve the border dispute mostly by holding a plebiscite.^{ix} UN passed 23 resolutions on Kashmir and Resolution No. 307 of 31 December, 1971 was the last straw to call upon to both the countries to observe and respect the ‘ceasefire line’.

However, United Nations engagements to resolve the Kashmir dispute for more than two decades were largely unsuccessful as India refuses to co-operate third party involvement. According to Shimla Agreement, 1972 that was signed between India and Pakistan was essentially emphasized on the bilateral solution on Kashmir dispute. Recently, UN Secretary General, Kofi Annan was not allowed to visit India in the wake of Parliament attack in 2001. However, UN passed a resolution which removed the Kashmir dispute from its list of unresolved international territorial dispute on November, 2010. It gives a great blow against Pakistan to internationalize the Kashmir dispute, Pakistan's UN envoy, Amjad Hussain Sial, strongly protested against the resolution.

KASHMIR UPRISING AND CROSS BORDER TERRORISM

The ideologies of separatist movements were largely mould by the UN involvement on Kashmir dispute. Afzal Beigh formed Plebiscite Front in 1995 was one of the epitomized of United Nations influence, demand for self-determination. In 1990s, with the intensification of Kashmiri uprising ferociously spreading all over the state, the nationalist shouted a slogan while holding a procession 'Until a plebiscite is held, our struggle will continue'. UNMOGIP office at Sonawar was a launch pad for pro-independence movement. They submitted a number of Memorandums demanded for the international supervision of plebiscite, for the early implementation of UN resolution to fulfill their desire to live with dignity and self-determination.

One of the Memorandum states that "...We the people of Jammu & Kashmir have firm faith in the institution of United Nations, which has been working for the mitigation of the sufferings of the oppressed around the world, will actively engage/monitor and intervene in Jammu and Kashmir and; A) Call upon India to end its forcible occupation of Jammu and Kashmir and also desist from use of brute force against the people of Jammu and Kashmir. B) By itself take all effective measures in giving the people of the State, the chance to exercise their right to self-determination for deciding their future as has been conceded to them by Pakistan and India and approved by the United Nations Organization..."^x

The *Greater Kashmir* which is one of the largest selling English daily in Kashmir Valley quoted Zafar Shah, an eminent Kashmiri lawyer as stated that "The U.N resolutions passed in 1948 are the backbone of the Kashmir struggle and give legitimacy to it".

But the problem is that United Nations has not recognized the Kashmir conflict as Kashmiri nationalist movement rather it has been conceived as an India and Pakistan conflict. Since 1989, a number of Pakistan based militant groups are waging a proxy war^{xi} across the border against India. They set up training camps at Pakistan-Occupied-Kashmir (POK) and infiltrated inside the Indian Territory to terrorized innocent people. As a result of this situation, Indian government has enacted number of repressive measures such as Jammu and Kashmir Public Safety Act, 1978, Jammu and Kashmir Disturbed Area Act, 1990, Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 to combat the disruptive activities of terrorism emanating from across the border.

Jammu Kashmir Liberation Front (JKLF) was formed in 1964 which was the first militant group to fight for independent state. As per according to the sources, the nature of militancy in Kashmir has witness a dramatic shift from the supremacy of Lashkar-e-Taiba (LeT) during the late 1990s whose members are mostly from Pakistan. Now after two decades, the Hizbul Mujahideen (HM) whose members are constituted mostly from Kashmir becomes the number one militant group. There is a process of Indigenization of militancy in Kashmir as local youths are driven away to joining the rank and files of Hizbul Mujahideen. As reports from the Jammu and Kashmir police department, it is estimated that the strength of HM has reduce from 10,000 cadres in early 1990s to 3,000 militants in 2004. It is encouraging that militant activities are reducing. They avoid Fidayeen attacks rather their offensives are getting milder.^{xiii} Thus, this is the warning call to the policy makers to address the root cause of problem at local level and grievances of the youths by providing opportunities to live with respect and dignity.

JAMMU AND KASHMIR PUBLIC SAFETY ACT, 1978 (ACT NO. VI OF 1978)

The Jammu and Kashmir state legislature had enacted the Public Safety Act, 1978 (PSA) in order to maintained public order and security in the state. The state Governor gave his assent on 8 April, 1978.

The Public Safety Act is a tough law which can detain certain person for a period of 12 months for acting in contravene for the maintenance of public order.^{xiii} Clause (b) of the Act, allows a person to detain without trial for a maximum period of 2 year for indulging any activities which is harmful to the security of the State.^{xiv} From the year 2009 to 2011, at least 1,332 persons have been book under the Public Safety Act in Jammu and Kashmir.^{xv} Chief Minister Mufti Mohammad Sayeed said in the Legislative Council during the question hour that as of now, on 20 March, 2015 only 73 persons are detained under PSA out of which 17 are Indians and 20 are foreigners.^{xvi} Recently, the release of Mr. Masrat Alam Bhat who is the Chairman of Jammu and Kashmir Muslim League from Baramulla jail was a very controversial. Some of the political parties describe it as ‘anti-national’. He was incarcerated under the Public Safety Act for almost two decades. On defending themselves for the release of Mr. Masrat, the government of Mufti Mohammad Sayeed pointed out that they were acting in accordance with the ruling of Supreme Court.^{xvii}

Apart from AFSPA, section 22 of the Jammu and Kashmir Public Safety Act, 1978 provided immunity to the security forces from prosecution in the civil court. It stated that “No suit, prosecution or any other legal proceeding shall lie against any person for anything done or intended to be done in good faith in pursuance of the provisions of this Act.”^{xviii}

The Jammu and Kashmir Interlocutors Groups was constituted to recommend a ‘political solution’ on issues in the state. It was constituted in the waked of stone pelting protest in 2010. The members were journalist Dilip Padgaonkar, former Information Commissioner M. M. Ansari and academician Radha Kumar. The report was submitted to the then Union Home Minister P. Chidambaram which recommended for the repeal of Public Safety Act and AFSPA in the state.^{xix}

THE ARMED FORCES (JAMMU AND KASHMIR) SPECIAL POWERS ACT, 1990

In Jammu and Kashmir, the areas within 20 km along the ‘Line of Control’ in the Rajouri and Poonch district and some other districts such as Anantnag, Baramulla, Badgam, Kupwara, Pulwama and Srinagar were declare as “disturbed” under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990.^{xx} Under section 3 of the Act, the Governor issued

notification on 10 August, 2001 extended the 'disturbed' area to the whole districts of Jammu, Kathu, Udhampur, Poonch, Rajouri and Doda.^{xxi} There are 12 districts in the state which were put under the ambit of AFSPA.

At the same time, the Disturbed Area Act 1990 was promulgated by the Governor on 5 July, 1990 while the state was under the president's rule. The Act provided the sweeping powers to the armed forces, stated that any "person who is indulging in any act which may result in serious breach of public order or is acting in contravention of any law or order for the time being in force, prohibiting the assembly of five or more persons or the carrying of weapons".^{xxii}

Wajahat Habibullah commented on The Justice Verma Committee recommendations about amendments of AFSPA said that those members of armed forces committed sexual harassment should not be given protection under the law. Regarding to the removal of AFSPA, he observed that "If this law cannot be removed, then the loopholes in this law should be removed. This should be done after discussions with Army,"^{xxiii}

Former Union Minister for New and Renewable Energy Farooq Abdullah suggested for the removal of AFSPA from some areas in the state as situations are improving, but the Army has serious reservation on account of security concern. The Defence Ministry has pointed out that the decision for the removal of AFSPA would be taken by the Unified Command.^{xxiv} In 2011, former Chief Minister Omar Abdullah wanted to remove AFSPA from four districts of Kathua, Jammu, Srinagar and Badgam. Lieutenant-General (Retd) Syed Ata Hassain who was the head of Srinagar based 15 Army Corps said that the situation has improved in Jammu and Kashmir but Pakistan sponsored terrorism by waging a proxy war against India is a matter of concern.^{xxv}

Sheikh Mustafa Kamaal, Additional General Secretary of National Conference said that AFSPA "was not brought by the Army but by the politicians in connivance with the then Governor Jagmohan." The Army Chief's statement is illogical. He made this statement in response to the then Army chief, General Bikram Singh's statement on 14 January, 2014, that "we need to look at the developments in Afghanistan in 2014 before we can look at perhaps tampering with or diluting the disturbed areas act. This is in regard to the AFSPA in J&K."

Kamaal further pointed out that even the then Prime Minister, Manmohan Singh himself admits that militancy level in the state has reduce to 10 per cent, then what is the need of sweeping powers given to Army to fight militancy and when militancy is at its lowest ebb, the AFSPA

is not needed. The party has believes that the AFSPA has lost its relevance. “Time has come when AFSPA should be scrapped in a phased and time bound manner”. He said the stands of all the leaders of National Conference are very clear that “the foot-prints of armed forces must be reduced and the acts like AFSPA had to go.” They believe that Army has no reason to retain this Act.^{xxvi}

PDP spokesperson Mehboob Beg welcomes the report of Amnesty International '*Denied: Failures in accountability for human rights violations by security force personnel in Jammu and Kashmir*'. The report recommended for the repeal of AFSPA from Jammu and Kashmir. He said that it is a "vindication of PDP's stand on the issue". He added that "It does not behoove a democratic country like India to have a draconian law like AFSPA exist in any part".^{xxvii}

Dr. Jitendra Singh, the Minister of State in PMO and also hailing from Udhampur constituency in Jammu and Kashmir observed that the last word on AFSPA should come from the security force, not from the side of politician.^{xxviii} The former Deputy Chief Minister Nirmal Singh said that there are sporadic incidents of terrorist attack are occurred in the state. The final decision will be taken by central government.^{xxix} The killing of 17 soldiers of 10 Dogra units at a pre-dawn attacked by the terrorist at Uri sector (Baramulla district) on 18 September, 2016 and the unrest of Kashmir valley for three months since 8 July would have some implication for the enforcement of AFSPA.

HUMAN RIGHTS VIOLATION IN JAMMU AND KASHMIR

Human Rights violation committed by both the security forces and the militant groups are enormously very high. The strategy of counter-insurgency in Jammu and Kashmir has dominated the people not only geographically but also physically dominated in the forms of extensive torture, extrajudicial killings, enforced disappearances and sexual violence.^{xxx} Civil societies are trying to internationalize the Kashmir issue, essentially because justice delivery mechanism is far away to bring the perpetrators of crime to justice.

Recently, the United Progressive Alliance (UPA) government procured “non-lethal” pellet guns and pepper grenades in order to curb protest with minimum casualties. The used of these weapons has cause injuries in the chest and abdomen. Most of the unarmed protesters received

serious eye injuries which led to the lost of eyesight. According to information retrieved from the Right to Information (RTI) reveals that in between 2010 to 2013, 36 persons had received eye injury from pellets. In 2010, 12 protesters become completely blind. A 16 year old, Hamid Nazir Bhat, class X student from Palhalan village in Baramulla District has lost his right eye by pellet firing.^{xxxix} His family said that he went for tuition. Doctors in the Bemina Hospital and Shri Maharaja Hari Singh Hospital put out the number of people disable by pellet guns at more than 700. Sheikh Sajad, a senior ophthalmologist observed that “while they haven’t been killed, their lives are ruined forever.”^{xxxix} The Sher-e-Kashmir Institute of Medical Sciences (SKIMS) at Srinagar had reportedly confirmed that six person death of pellet injuries in between June 2010 and September 2010.^{xxxix}

The violent protest broke out in the Kashmir valley for three months on account of the killing of militant commander Burhan Wani on July 8, 2016. In the violent protest, 51 percent of the 5,800 civilians injured were caused by the pellets and 68 deaths in 45 days. In view of the public outcry against the use of pellet guns, the government has decided to dispatch around 1,000 chilli-filled grenades to the Kashmir valley as an alternative to metal pellets. A seven member committee was form on 26 July headed by T.V.S.N. Prasad, Joint Secretary from the Ministry of Home Affairs to study into the alternative to the use of pellet. Its report was submitted to the Home Secretary.^{xxxix}

In another instance, the Taxi drivers were harassed on everyday basis. They were asked to send at least one taxi every evening at 29 Rashtriya Rifle camp. They will get back their vehicle when they bring another vehicle in the next evening. The taxis are used in the counter-insurgency operation and the drivers do not received even a single penny from the Army. In every 10 km they received only a liter of fuel.^{xxxix}

There are thousands of unmarked graves existed in 55 villages in Jammu and Kashmir. On August 2011, this report was confirmed by the Jammu and Kashmir State Human Rights Commission (SHRC) that about 2,156 unmarked graves was existed in more than two-decade old conflict in the state.^{xxxix}

According to the guidelines of National Human Rights Commission, if any members of the security force who is being nominated for the gallantry award has to be probe into the gun battle by district magistrate, but the guidelines of NHRC were not followed. Under the directives of Ministry of Home Affairs, the government of Jammu and Kashmir order

magisterial probe into 30 encounters that was occurred in 2014. But here also, the probes were not carrying out. Sometimes the authority order to carry out “belated probes” as a mere “formality” which serves no purpose. By doing this, it was only for face saving for them from future embarrassment. ^{xxxvii}

According to Khurram Parvez of Coalition of Civil Society (CCS) says that the Jammu and Kashmir High Court order for CBI inquiry into an incident of ‘Sailaan massacre’. According to an inquiry reports of the State Human Right Commission, it has concluded that the massacre of 21 civilian were cold-blooded. On the contrary, the findings of police were that it was an encounter. After three years, CBI did not arrived yet to any conclusion. There are other incidents of fake encounters occurred in the state such as Shooting at Gwakadal, Srinagar, Death of Miwaiz Maulvi Mohammad Farooq, The Beijbehara Killings, Jalal Andrabi, Chattisinghpora massacre, Pathirabai killings, Barakpora killings etc.

The outcome of Machil encounter case by sentencing six army personnel to life imprisonment is a very rare judicial pronouncement. It is a welcome step taken in a right direction. ^{xxxviii} According to court of Inquiry, three Kashmiri youths were shot dead by the Army personnel after they were taken away by the counter-insurgents with the promise of Army jobs on April 2010. The reason behind the killing of innocent people was to get monetary reward for eliminating militants. ^{xxxix} The counter-insurgency operation, for the sake of fighting militants has been increasingly monetized to incentivize in the form of cash reward, promotion and gallantry awards which threaten the very existence of unarmed civilians.

JAMMU AND KASHMIR ELECTION 2015

Jammu and Kashmir legislative assembly election was held in between 25 November and 20 December 2014 of which no political party gets a clear-cut majority to stake claim to form a government. Out of 87 seats in the assembly, PDP has got 28 seats from the mostly Muslim majority areas of Kashmir. The BJP has got 25 seats from the predominantly Hindu populous from Jammu. National Conference got 15 seats and Congress party 12 seats which come to third and fourth positions respectively. As a result, it becomes a hung assembly as no party had capable to form a government.

In spite of ideological differences, the BJP and PDP decided to form a coalition government under the Common Minimum Programmed which was drafted by the representatives of their respective party. They have differences on the questions of special constitutional status - Article 370 and controversial issue on AFSPA. PDP insisted for the complete withdrawal of AFSPA from the state within the time bound of one year and immediate withdrawal from certain areas due to improve law and order situation. It has stated that “The tangible improvement in security situation in Jammu and Kashmir needs to be reciprocated with matching measures like revocation of the controversial AFSPA so that people feel the real change on the ground.” BJP favours partial withdrawal from some areas in the State which has relatively peaceful.^{xi} Even though PDP wants to score some political points by removing AFSPA in one go, Professor Navnita Chadha Behera has pointed out that it is very clear that “there is no easy options available for them to actually implement this agenda.”^{xii}

After two months of confabulation, there was a break through after 20 rounds of talks between the two parties. Finally, they arrived at some understanding on the Common Minimum Programmed of governance as they call it “Agenda for the Alliance.”^{xiii} This is the first time for BJP to participate in the government formation in the state of Jammu and Kashmir. On the issues of AFSPA, CMP stated that the coalition government would form panel to discuss phased withdrawal and “examine the need for de-notifying ‘disturbed areas’. This as a consequence, would enable the Union Government to take a final view on the continuation of AFSPA in these areas’. Initially, BJP wanted to scrapped Article 370 but later on, they remain status quo. In the CMP, it has stated that they will respect the aspiration of the people as envisage in the Constitution.^{xiii}

The PDP leader, Mufti Mohammad Sayeed was swear in as the 12th Chief Minister of the state. The swearing-in ceremony was held on 1 March 2015 in Jammu. Nirmal Singh of BJP has got the post of Deputy Chief Minister.^{xiv} After the releasing of Mr. Masrat, Chief Minister Sayeed wanted to go slow on AFSPA as PDP do not like to test the patience of its coalition partner BJP. Unfortunately, Mufti Mohammad Sayeed passed away on January 7, 2016 due to multi-organ failure at AIIMS, New Delhi. After PDP-BJP stalemate for few months, Mehbooba Mufti was sworn in as a first woman Chief Minister of the State on April 4. After few years of coalition government, major differences occurred between the parties which led to the imposition of President’s Rule in the State on 18 December, 2018.

AMENDMENT OF ARTICLE 370

Legal measures to enact the Jammu and Kashmir Reorganization Act, 2019 have nullified the special status under Article 370 which paves the way to reorganize the State into Union territory of Jammu and Kashmir and Union Territory of Ladakh on 5 August, 2019.^{xlv} The proclamation of President's rule in the State had made it easier for the Centre government and Parliament to bypass the authority of the State government and Legislative Assembly. Unless some constitutional limitations are put into place on the role of Governor under Article 356, the federal structural powers of States in India are always in peril.^{xlvi}

Subsequently in the aftermath of bifurcation, more than 173 leaders of mainstream political parties, legislatures, former ministers and activists were under detention, out of this, around 70 leaders from the National Conference, 79 from the Peoples Democratic Party, 12 from the PC, and 12 from the Congress.^{xlvii} 34 of these political detainees were lodge at Centaur Hotel on the bank of the Dal Lake, owned by the Indian Tourism Development Corporation (ITDC). The accommodation at this Hotel facility was temporarily converted into a subsidiary jail since 5 August.^{xlviii}

The Jammu and Kashmir administration on 13 October 2020 revoked Section 19(1) of Public Safety Act of Peoples Democratic Party (PDP) president Mehbooba Mufti, after 14 months of detention. She was the last of the senior leaders to be released under detention.^{xlix} Restriction on the movement of people under Section 144 of Criminal Code of Procedure, severe communication clamp down on internet connectivity, mobile and landline services were imposed.

CONCLUSION

The Kashmir issue has become increasingly complicated as there is no end of dispute in any foreseeable future. After ceasefire agreement was signed in 2002, ceasefire violation by unprovoked firing of small arms and mortar shelling by Pakistani Rangers towards the Indian position and civilian areas are increasing, on day-to-day basis. There is no end in sight of Pakistan wages a proxy war against India by supporting the militant groups and separatist organizations in Kashmir. India responded with repressive measures such as AFSPA and large

deployment of armed police forces to maintained law and order situations in the state. At the same time, law enforcement agencies under the cover of these special laws and non state actors committed a lot of human rights abuses.

It is like a story based on fiction and sometimes extremely terrible to hear that massive unmarked graves are existed in Jammu and Kashmir. Even though, there are numerous human rights abuses have been occurred in the Northeast region, it is very seldom to come across such a grave in the region. Naturally, every grave has its own epitaph whatever a person would be

But in Jammu and Kashmir, most of the militants are either 'foreign origin' or home grown. Some of them come from across the border and got killed in an encounter, and it is logical to assume that their identities are difficult to identify. So, their bodies lie in a category of unmarked grave. On the other hand, some of the security forces committed a heinous crime deliberately by killing the innocent civilian in a frame encounter. They did so, as they were desperate to get an incentive for promotions, awards or certain amount of money as a catch-prize for fighting insurgency. Rethinking the monetization of counter-insurgency campaign is necessary as it has deliberately misused and benefited by some rogue elements within the defense forces. Probe should be properly carried out before facilitating the gallantry awards in accordance with the guidelines of National Human Rights Commission.

AFSPA or PSA should be repeal or suitably be amended but it is likely to be resisted by the security forces. In this scenario, the purpose of anti-terror laws needs to be re-examined or amend because the purpose of every law is to serve for the common good and welfare of the people. But if the laws do greatly misused and deprived people of their basic rights, then, the laws become a bad law. The bad laws are not worth preserving in a civilized democratic society rather it should be repeal. The deviant behavior of security forces or non-state actor who has perpetrated sexual violence and extrajudicial killings should not be protected with impunity. Prompt action is needed from the Central government to bring the effective mechanism of justice to the people. As already stated above, there is a process of Indigenization of militancy in Kashmir, the root causes of these problem and grievances of the youths should be addressed at local level by providing adequate opportunities to live a life of respect and dignity.

ENDNOTES

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- i Jammu and Kashmir Population Census data 2011. <http://www.census2011.co.in/census/state/jammu+and+kashmir.html>.
- ii *Ibid.*
- iii Akbar, M.J. (2003). *Kashmir: Behind the Vale*. Roli Book: New Delhi, pp. 94-102
- iv The Maharaja demanded to have its own constitution with special autonomy which is outside the constitution of India. Clause 7 of the Instrument of Accession, 1947 stated that: “Nothing in this Instrument shall be deemed to commit me any way to acceptance of any future constitution of India...” Instrument of Accession executed by Maharajah Hari Singh on October 26, 1947. [http://www.claudearpi.net/maintenance/uploaded_pics/1947_1026InstrumentofAccession.pdf] accessed on August 6, 2015. The state’s new constitution was adopted by Prime Minister of Jammu and Kashmir Bakshi Gulam Mahammed on January 23, 1957 and ratified the state’s accession with Indian Union. Subsequently, Article 370 was inserted into the Constitution of India as a result of its accession. Clause 1(c) of this Article stated that Article 1 of the Constitution of India, in relation to the territories of India shall apply to the state of Jammu and Kashmir. Article 1 can be introduced in the Parliament without the consent of that state legislature. Other provisions shall apply in ‘consultation’ with the state government pertaining to the legislative power of Parliament in ‘concurrence’ with the state government and with some ‘exceptions and modifications’ by the order of President. Article 248 is also applicable to Jammu and Kashmir, which states that parliament can legislate enumerated in the Concurrent List and State List. Chaturvedi, K.N. (2007). *The Constitution of India*. Government of India, Ministry of Law and Justice. <http://lawmin.nic.in/coi/coiason29july08.pdf>.
- v Shaukat, Sajjad (2014). ‘Dynamics of Kashmir’s Accession to Pakistan Day’. <http://readersupportednews.org/pm-section/109-109/24836-dynamics-of-kashmirs-accession-to-pakistan-day>.
- vi Text of India’s complaint to the Security Council, January 1, 1948. <http://www.jammu-kashmir.com/documents/jkindiancomplaintun.html>. Article 35 of the U.N. Charter states that “Any Member of the United Nations may bring any dispute, or any situation of the nature in referred to Article 34 (situations ‘likely to endanger the maintenance of international peace and security’), to the attention of the Security Council or of the General Assembly.”
- vii Singh, Natwar (2015). ‘India’s walkout from UNSC was a turning point: Natwar’. *The Hindu*, 1 September.
- viii **Ahmad, Wajahat (2015). ‘Kashmir and the United Nations’.** *Kashmir Observer*. <http://www.Kashmirobsrver.net/news/opinion/kashmir-and-united-nations>.
- ix *Ibid.*, The United Nations Security Council resolutions on Kashmir were passed under the Chapter VI of the UN charter which is advisory in nature and not mandatory for enforcement. The UNSC resolution under the Chapter VII is binding and requires enforceability. See. United Nations Security Council Resolution 47. https://en.wikipedia.org/wiki/United_Nations_Security_Council_Resolution_47. Natwar Singh suggested that India complained against ‘Pakistani aggression’ rather it should have been listed under Chapter VII which is enforceable and more forceful to obey its resolution.
- x Srinagar (2008). ‘Kashmiri separatist submit memorandum to UN office’. *The Indian Express*, 18 August. <http://archive.indianexpress.com/news/kashmiri-separatist-submit-memorandum-to-un-office/350192/>
- xi Haidar, Suhasina (2015). ‘He waged a proxy war against India’. *The Hindu*, 17 August. Here, JKLF and other militant outfits were benefited from the former head of Pakistan’s Inter-Services Intelligence (ISI) Hamid Gul’s ideology. In an interview with Pakistani journalist, he pointed out that “some militant groups are active in Kashmir; they are only doing the work of the [Pakistani] military.”
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