



## The Legal Interpretation of Laws Imposed in Indian Occupied Kashmir

Muhammad Zohaib,<sup>1</sup> & Syed Ali Raza Shah<sup>2</sup>

### Abstract:

The government of India has imposed repressive laws, such as the Armed Forces Special Powers Act (AFSPA) and the Jammu and Kashmir Public Safety Act (PSA) in Indian Occupied Kashmir (IOK) since late 1980s. Under these laws, the security forces enjoy absolute powers to take any decision against the people of IOK. The lives of locals have been made very tense by the Indian security forces who can arrest people of any age and without warrants, gun down on the basis of suspicion, misbehave with women during the search operation, and use pellet guns against the peaceful protestors. The victims cannot approach the Indian legal system for justice in several cases because these laws do not give them permission. These laws are also the major cause of social, political, and economic deprivation and have no any relevance with major binding international human rights documents. In this article, an effort has been made to interpret these two laws in the light of different major international human rights declarations which are binding on all states of the world.

**Keywords:** Repressive laws, AFSPA, PSA, International Human Rights Laws, Rule of Law, Accountability.

### INTRODUCTION

Because of International Human Rights Laws, basic fundamental human rights have gained universal recognition as legal rights, not just moral or political rights (IHRL). No one's fundamental rights can be revoked because of their religion, caste, colour, or language. The IHRL forbids the adoption of any policy or the enactment of any law with the intent of infringing on people's fundamental rights. These rights include the right to life, property, freedom of expression, the right to work, education, and access to health care. The International Covenant on Civil and Political Rights establishes all guiding principles for states to follow when dealing with people in order to protect and promote their rights through legal means. It was the most significant achievement of the United Nations General Assembly, which adopted the United Nations Charter in 1945 and the Universal Declaration of Human Rights in 1948.

Human rights have been explained in these two documents, and a pledge to secure them at any cost has been made. The UN and its organs are adamant that people's rights must be protected and promoted on the basis of equality. Nonetheless, UN member states are legally obligated to

---

<sup>1</sup> Ph.D Scholar in Political Science, International Islamic University, Islamabad, Pakistan.  
Email: zohaib.altaf96@gmail.com

<sup>2</sup> Ph.D Scholar in Political Science, International Islamic University, Islamabad, Pakistan.  
Email: ali.phdps37@iiu.edu.pk

implement human rights laws in their respective jurisdictions (Amato, 1982). The right to self-determination is a vital right enshrined in Article 1 of the United Nations Charter which states that everyone has the right to self-determination. They have the right to freely determine their political status and to pursue their economic, social, and cultural development as a result of this right. Woodrow Wilson, the President of the United States, included the right to self-determination in his famous fourteen points. It is also a crucial component of the International Covenant on Civil and Political Rights (Hannum, 1998). On January 5, 1949, the United Nations Security Council granted the people of Jammu and Kashmir, a disputed state bordering India and Pakistan, the right to self-determination. The right of Kashmiris to self-determination was also recognized by India's founding fathers. In a telegram to Pakistan's first Prime Minister, Liaquat Ali Khan, Mr. Jawaharlal Nehru, India's first Prime Minister said that, "I would like to make it clear that the question of assisting Kashmir in this emergency is not intended in any way to influence the state to accede to India". Our position, which we have repeatedly stated in public, is that any question in any territory or state must be decided in accordance with the wishes of the people, and we continue to hold this position (Agrawal,1995). In practice, however, the Indian government's official policies have remained diametrically opposed to the beginning of the dispute.

It has never collaborated with all those forces that can assist in holding a plebiscite or referendum in Kashmir to exercise the right to self-determination. India has been deliberately violating international law by using force to suppress the legal demands of Kashmiris. It also deployed nearly one million security personnel to oppress all those who seek the right to self-determination (Riyaz, 2020). The deployed forces in IOJK are impervious from any illegal or prohibited action. The draconian laws AFSPA and PSA are the primary source of impunity. Because of these laws, the armed forces have the authority to take any action necessary to quell protests for fundamental human rights. They engage in almost all of the activities that are prohibited by international human rights law. Since the implementation of these two illegal laws in the 1990s, the international community has documented numerous violations.

Over ten thousand innocent men, women, and children have been killed. During search operations, many women have been raped by security personnel. Police have also taken custody of a number of children. They have been detained in order to blackmail their respective families. The security personnel demanded between thirty and fifty thousand rupees to release them from the jails (Farooq,2019). Since the implementation of these laws, international human rights organisations have documented the socioeconomic and political impact on people's daily lives. When the Indian government declares a specific area or a whole region of a state to be a "disturbed region," people are unable to move around just to fulfil their daily needs.

In the event of a violation, security forces have the authority to kill them. As a result of the excessive use of force, the general public is fearful. This research article highlights some major social, economic, and political impacts that occur on a regular basis. Following that, these laws are scrutinized in light of International Human Rights Laws (IHRL). The major IHRL are the 1948 Universal Declaration of Human Rights (UDHR), the 1966 International Covenant on Civil and Political Rights (ICCPR), and the 1966 International Covenant on Economic, Social, and Cultural Rights (ICESCR) (ICESCR, 1966). The Convention on the Rights of the Child (1989) and the

Convention on the Elimination of All Forms of Discrimination Against Women (1979) will help to highlight the illegal provisions of the PSA and AFSPA.

### **STATEMENT OF THE PROBLEM**

Since the 1990s, India has imposed repressive laws in IOK, including the Armed Forces Special Powers Act and the Public Safety Act. The armed forces have complete impunity under these laws to kill, detain, and torture the people of IOJK. Through these draconian laws, India has legitimized lawlessness in Kashmir, in violation of India's international obligations under international treaties. As a result, it is necessary to examine these legislations in the context of international law in order to reveal the ways in which they contradict and violate international Human Rights law.

### **RESEARCH QUESTIONS**

1. What are the major repressive laws imposed by the government of India in IOJK since 1990?
2. What are the socio-economic and political effects of AFSPA and PSA on masses in IOJK?
3. How are these laws against the basic spirit of International Human Rights Laws?

### **RESEARCH METHODOLOGY**

Qualitative approach of research has been used in this research study. Secondary sources are used to collect the data which includes books, research articles, international newspapers, reports issued by Amnesty International (AI) and the United Nations Human Rights Council (UNHRC).

### **THEORETICAL FRAMEWORK**

Human Rights Theory and Evidence was proposed by two American social scholars, Jessica Anderson and Amanda. They established three assumptions based on empirical international relations theory. They are of the view that;

1. When power-hungry leaders assume governmental office and wield power, they violate the rights of ordinary citizens through the executive branch of government.
2. International norms and treaties fully protect and uphold human rights. These norms and treaties have an impact on state behaviour.
3. Some states only respect the norms and treaties that provide a better position for their national interests.

According to this theory, when Indian leadership comes to power, they use force against the people of Indian Occupied Jammu and Kashmir to achieve political goals. After assuming power, they create and implement brutal laws to violate the rights of IOJK Muslims with the help of the legislative and executive branches of the government. Taking the other two assumptions into account, India is a member of nearly all of the major IHRL. It is the Indian government's legal and moral responsibility to uphold these treaties. However, it only abides by international treaties that benefit its own interests. It is uninterested, regrettably, with the protection of the rights of the people of IOJK.

### **LITERATURE REVIEW**

Many social scientists and academics have written books and research papers on the Kashmir conflict. Several reports on violations of people's fundamental rights and liberties have been issued by governmental and non-governmental human rights organisations. As a result, the reports of Amnesty International, "India, Impunity Must End in Jammu and Kashmir", "Access to Justice in Jammu and Kashmir", "India: The Armed Forces Special Powers Act: Time for a Renewed Debate in India on Human Rights and National Security", and "India: A Lawless Law: Detentions under the Public Safety Act" are the main strengths of this research article.

In 2020, Abdul Majid published a research article titled Kashmir: A Conflict Between India and Pakistan. It is a detailed article in which he discusses the nature of the conflict between India and Pakistan over the state of Jammu and Kashmir, as well as the current social, economic, and political environment in IOJK. He also looked at draconian laws in the context of the Indian constitution (Majid & Hussain, 2020).

The scholar writes about human rights violations in IOJK in his research article, Kashmir Conflict and Human Rights Violation. He also criticized the PSA and AFSPA, which grant unlimited and unchecked authority not only to the armed forces, but also to other state administrations acting on behalf of the central government. They have the authority to declare any specific area or the entire state a disturbed region, impose curfews, and disable communication networks. The people of IOJK are not allowed to make public any statements opposing the government's policies, which means they do not have the right to free expression. If anyone publicly criticizes Indian repression, security forces have the authority to detain him for one or two years without issuing a warrant or following legal procedure (Haq, 2018).

The researcher writes in an article titled "Legal Perspective of Kashmir" that the government of India has imposed many repressive laws in IOJK that exploit people's freedom, and their lives have become increasingly stressed and ridiculously difficult. These laws cannot be imposed anywhere because they flagrantly violate people's fundamental rights, international norms, and agreements (Khan, 2015).

Seema Qazi wrote about the inhuman behaviour of Indian security personnel toward women in the IOJK in her research article, "In Kashmir: Gender, Militarization, and the Modern Nation-State." The majority of rape cases occur during search operations, which are conducted under the Armed Forces Special Powers Act. During home inspections, they damage private and public property, shoot men, and rape women and young girls. Rape, on the other hand, is used as a political weapon in the IOJK to maintain occupation (Qazi, 2010). Another research article "Use of pellet guns for crowd control in Kashmir: How lethal is "non-lethal?" by David revealed the impact of the excessive use of illegal weapons in IOJK. He stated that while the use of pellet guns against humans is an internationally recognized illegal act, Indian forces can use them and do whatever they want in IOJK. Several thousand people have been injured or killed by pellet guns; some have died, while others have permanently lost their sight. Many governmental and non-governmental organizations, including the United Nations Human Rights Council and Amnesty International, have repeatedly condemned the use of pellet guns (David, 2016).

Following a review of the literature, it is reasonable to conclude that inhumane, brutal, and cruel incidents have occurred in IOJK. The Indian government has given the armed forces the authority to

use excessive force against civilians under the AFSPA and PSA. It is impossible to live a normal life under the guise of these laws. As a result, several writers, experts, and academic researchers have written extensively about these laws. However, no attempt has been made thus far to analyze the illegal nature of these laws in relation to International Human Rights Laws. As a result, the goal of this study is to fill this particular existing gap.

### **INDIAN REPRESSIVE LAWS**

Jammu and Kashmir, the oldest disputed state, is located in the northwestern part of the Indo-Pak Subcontinent. Its borders are shared by four independent nations: Afghanistan, Pakistan, India, and China. The state has a total area of 86 thousand (square miles) and a population of more than thirteen million people. According to the statistics, Kashmir is larger than 87 sovereign states and more populous than 141 independent states worldwide (Shakeel, 2002). The state of J&K is divided into three major parts, each of which is controlled by one of the three major Asian nuclear powers, China, India, as well as Pakistan.

The IOJK is divided into three major sub-regions. Jammu has a Hindu majority, Kashmir Valley has a Muslim majority, and Ladakh is a Buddhist-dominated region of the state. The state of IOJK is a vastly militarized zone and a flashpoint between two competing South Asian powers. It is regarded as the most dangerous area on the map of the world. For the past seventy years, the people of that region have suffered as a result of war, and a sense of fear has prevailed. Their lives, liberties, and property are seriously compromised. Culture, identity, and religion are all under attack. The Indian government's villainous intention is to ingrain Indian culture and religion in IOJK through demographic changes and excessive use of force by granting unusual powers to security forces under draconian laws such as AFSPA and PSA (Cheema, 2016).

In 1987, the Indian government held state elections in IOJK. Because of massive rigging, these elections gained negative popularity. According to India Today, "600 workers were arrested in areas where the MUF, independents, and People Conference candidates were showing strength beginning about two weeks before the elections." People immediately started movements and peaceful protests against the central government and the newly elected IOJK government. With the passage of time, these movements and protests grew in popularity. The Indian government pursued aggressive policies in order to settle political disputes and gain control over movements. In 1989, it declared governor rule and suspended the people's fundamental rights. It also established AFSPA and PSA. Under these laws, the state was declared a troubled region, and armed forces began arresting people without warrants and killing them for no apparent reason (Widmalm, 1997).

### **THE ARMED FORCES SPECIAL POWERS ACT**

On July 5, 1990, the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 (AFSPA, 1990) went into effect in Jammu and Kashmir. The government of India and the Governor of the State can declare any specific area or the entire state as a "disturbed region" under this act. Then, under section 4, all branches of security forces operating in IOJK have the authority to kill, detain, arrest, and torture residents of the troubled area in order to maintain law and order. Ground troops have the authority to use force and conduct searches in that area. If the government believes that the situation is out of control, the central government can give military troops additional civilian

powers to control the situation. Armed forces can search people's homes, shops, and other secrets without their consent under this Act.

### **PUBLIC SAFETY ACT**

This Act is known as the "Jammu and Kashmir Public Safety Act" (PSA, 1978). It was first implemented in IOJK in 1978, then amended in 2002 and again in 2012. According to this act, the central government and the governor of IOJK have the authority to declare any part of the state a "prohibited place." The government has the authority to declare the entire state illegal. Without the permission of security forces, no one may visit, move, or pass through the prohibited zones. Five or more people cannot congregate in the troubled area. Security personnel have the authority to search and investigate people, their homes, and their vehicles without their permission. In the event of a violation, people must pay fines and face harsh punishments. Security forces detain people on suspicion and arrest civilians without warrants for extended durations. When anyone is arrested under this act, the right to a fair trial is denied for nearly two years. This barbarous law primarily affects politicians and activists.

### **IMPACT OF THESE LAWS**

Even their natural rights, such as the right to life and liberty, are denied to the people of IOK. Before the 1990s, the nature of exploitation of their rights was different, but after that, the government enacted laws to run the affairs of the state with the intention of shoot-to-kill. These laws give troops permission to commit atrocities against innocent people. People who have been oppressed in the state do not have the same rights as other free people around the world. They are unable to express their views on their rights, which include the right to a fair trial and effective and timely justice. Other innocent people's social, political, and economic rights have not been implemented in accordance with international human rights laws. As a result, they have faced significant humanitarian challenges in achieving their fundamental rights.

### **POLITICAL IMPACT**

Under these laws, the presence of a massive army with absolute power has a significant political impact. Through harassment, the armed forces have fostered an atmosphere of hostility. Ordinary citizens and politicians are unable to voice their opinion. It is extremely difficult for them to participate in the political process because they are constantly afraid of arbitrary detention, torture, and misbehavior with their families. All of these factors are impediments to political activity. The right to life is the most fundamental of all basic rights.

All other rights are considered subparts of it. If a person's right to life is insecure, he or she cannot exercise his or her other fundamental rights. In most cases, people migrate from one location to another and seek asylum when they believe their lives are in danger in that location. As a result, the democratic society is very conscious of the need to protect this special right impartially. Furthermore, any democratic state cannot withstand long-term violations of human rights such as those occurring in IOJK. Section (4) of the AFSPA in Indian law gives armed forces the legal authority to kill people on speculation. According to the Kashmir Media Service, the total number of killings has continued to rise from 95, 592 since 1989 (Jahangir,2013).

Burhan Wani, a widely esteemed young man who started a freedom movement on social media, was killed by armed troops in 2016. People's hearts were broken by his death, which prompted protests both inside and outside of Kashmir. Strong protests were staged by ardent citizens from all districts of IOJK. To disperse the demonstrators, troops used pellet guns, tear gas, and opened fire on them. More than 133 civilians were killed as a result. More than 20,000 people were injured in the accident. More than a thousand people lost their sight, in addition to several other serious injuries. According to the New York Times, 2016 was the "year of dead eyes." Slater (2018) The harrowing tale does not end there; the forces also targeted ambulances and hospitals. All of the photographs from those incidents are available on Amnesty International's website.

For political reasons, the security forces also detained and tortured the people of IOJK. Amnesty International's 2010-11 report and the United Nations High Commission's 2018-19 report provide a better understanding of the reasons for arbitrary arrests, detentions, and torture. Shabir Shah, the most prominent leader of the J.K Democratic Freedom Party, was arrested and sentenced to 25 years in prison under the PSA. Journalists and Amnesty International members attempted to meet with him to understand the reasons for his arrest, but they were denied access by security forces. They did, however, meet with his wife, who informed them that he had not violated any rules. The goal of her husband's arrest was to keep him and other party members from participating in the freedom struggle (Khalid, 2011). Khurram Pervez is a human rights activist and the President of the Asian Federation Against Involuntary Disappearances (AFID). He was the one who revealed the truth about unidentified graves, missing and disappeared IOJK subjects. Following his findings, the international media and various human rights organisations put pressure on the Indian government to conduct an investigation. He had been the main target of security forces since that day. Eventually, they detained him at the airport under the PSA while he was on his way to Geneva to attend an important human rights conference.

It is not only Khurram Pervez who had been affected by these illegal laws, rather several other prominent political leaders and activists have also been affected. During the torture process, the brutal troops use both physical and psychological methods to cause severe pain. They also shock them and beat them with very hard instruments such as cables, chairs, stones, and other metal objects. Other techniques used against detainees include deprivation of sleep, food, and drink, as well as isolation from the rest of the world. The security forces cause them so much pain that they no longer want to live. As a result, detainees prefer death to life. Furthermore, it has been observed on numerous occasions that security forces pressurize detainees' families to pay a ransom for their release. In the Kulgam district, youngsters are frequently picked up in jail by the police, who demand at least Rs. 50,000 and then release them for between Rs. 20,000 and 30,000. Similarly, in Budgam district, the local SHO is known for taking ransom and releasing arrested people in exchange for payments ranging from Rs. 40 to Rs. 60 thousand. Political parties that advocate for the right to self-determination and fundamental human rights are unable to operate freely in the political structure of Indian-occupied Jammu and Kashmir.

Any political party that attempts to expose the criminal activities of the Indian armed forces would then face severe repercussions. The government classifies such parties as terrorists and radicals. Following the Pulwama attack, the central government declared Jamaat-i-Islami and the Jammu and Kashmir Liberation Front to be illegal organizations. More than 300 prominent party leaders and

close associates have been arrested by Indian forces under the Public Safety Act (Today, 2019). During elections in IOJK, the federal government of India always uses PSA to arrest candidates and voters in order to bring into power only those who are ambitious and have an alliance with the central government. Leaders who are truly interested in the development of the state and demand legal rights for the people are arrested in all cases by security forces prior to elections under the PSA (Khurshid, 2017).

In IOJK, rape is also used as a political weapon. In International Law, however, it is a punishable offence. On the other hand, in IOJK, the security forces are complicit in such heinous crimes. It is a well-organized strategy to stifle the freedom struggle at any cost. Section (1) of the PSA defines the central government's authority to declare any location in Jammu and Kashmir a "prohibited place" or "disturbed area." When the government declares a location to be a prohibited area, troops have the legal right under Section (4) of the PSA to search those who enter or exit such areas. When they are checking, if they find any women, they misbehave with them in front of their families. The security forces also commit gang rape against innocent young girls and women in IOJK whenever they conduct a search operation in any area. As a matter of fact, a group of security personnel can enter homes at any time and act inappropriately with women in front of their family members. And sometimes they bring them to camps, and after they have been abused, they kill them or abandon them in front of their homes (Bukhari, 2019). Everyone in Kashmir is being brutally subjugated, but women are the worst victims of the barbaric forces.

The Asia Watch organization published a report titled "Rape in Kashmir: A Crime of War." The report detailed numerous rape incidents in order to inform the international community about the plight of women in IOJK. Mubina was raped at her wedding in the May 1990s. In July 1990, Hasina was raped by uniformed officers (Mazari, 2018). A doctor was arrested under the PSA for publicizing the rape incident committed by the Indian armed forces, which included six women, one of whom was also a bride. Another incident occurred on July 20, 1992, during a search operation for the town of Haran. The town is close to Srinagar. Six soldiers went inside a house while passing by and misbehaved with women. One of the victims stated, "The first soldier slapped me and then pushed me to the ground, where I fell on a wooden stake and hurt my back." Both soldiers raped me. I fainted at some point, and when I regained consciousness, I discovered that my husband had draped a blanket over me." On October 1, 1992, a rape occurred in Gurihakhar. Women were raped by soldiers after they had been beaten (Kumar, 2002). The Indian government refuses to cooperate in the investigation process in order to punish those personnel involved in rape cases. Thirty years have passed, but they are still free to do their jobs, and nothing has been decided in those cases. These immoral cases do not happen as a consequence of uncivilized troops, but rather as a planned effort to create a sense of repression in the minds of the people. The Indian government wishes to keep women and their families out of politics (Kazi, 2010).

### **ECONOMIC IMPACT**

The existence of a massive army with special powers is the cause of the worsening economic situation in IOJK. Aside from other violations, the security forces' goal is to completely destroy Kashmiris' homes and deprive them economically by destroying their source of income. People are unable to start small or large-scale businesses due to the lack of security for their lives, businesses, and property. Aside from that, the Public Safety Act is used to arrest or detain mostly male



members of families. Women are also unable to leave their homes due to the brutality of security forces. The daily curfew and shutdown of communication networks is also a serious issue that has an impact on economic activity.

Rituparna Bhattacharyya writes in his article, 'Living with Armed Forces Special Powers Act as Everyday Life,' Whereas the shopkeepers' businesses are frequently impacted, homemakers remain concerned and pray for the safe return of their families. As one shopkeeper put it, whenever there is a disturbance (protests, bomb blasts, and crackdowns), we are usually the first ones to be targeted, so the best thing to do is close our shops, but this has an impact on our daily business. Apple production is regarded as a critical component of the IOJK's economy. The Kashmir valley's apple, in particular, is well-known and sold throughout India. It is also exported to a number of other countries. However, according to local sources, the apple industry has been severely harmed as a result of frequent lockdowns.

Tourism is another important industry in the state, but it has struggled for many years. In 1989, more than 500,000 visitors came to Jammu and Kashmir; today, only a few thousand people visit IOJK. According to state residents, "the state's local economy has completely cracked down" (Sharma & Waris, 2012). According to media reports, the economy has shrunk by 2.4 billion dollars since the nullification of Articles 370 and 35A (Dawn, 2019). Unemployment is most likely a ticking time bomb that could detonate at any time. It is extremely difficult to meet people's basic needs when the state is under lockdown and curfew. The state's private sectors have been closed because the state lacks the resources and benefits to operate them. Government jobs, on the other hand, are insufficient to meet the state's needs. In these circumstances, the IOJK's economic situation is deteriorating.

### **PSYCHOLOGICAL IMPACT**

The Indian security forces' lack of impartial investigation and accountability, as well as their extensive use of force, has had a significant impact, contributing to people's physical and mental disabilities. According to a report published by Kashmir Media Services on the psychological impact, over 17,000 women preferred suicide. In July 2016, the psychiatrist department of a hospital in Kashmir Valley reported that 100 patients had visited the hospital in the week preceding 1989. The number of patients is steadily increasing. Every day, at least 300 patients with mental illnesses arrive at the hospital (Mushtaq & Fatima, 2016). Each family has been the victim of horrific crimes, and as a result, they suffer from mental illnesses such as personality disorder, anxiety, memory problems, depression, fear, and the stress of living under a massive army with absolute power to suppress and subjugate them (Tamim, 2016).

Other consequences include more than 95,000 casualties, 141,739 people detained without evidence, 108,206 buildings destroyed (including houses, shops, schools, and hospitals), 22,850 women widowed, and 107,648 children orphaned. As a result, these state subjects are unable to live a normal life following such serious incidents. One poet expresses what it is like to live in Kashmir. "I feel the green of my garden has faded, as if it, too, is mourning; I feel the sparrow and cuckoo are silent, as if they, too, are sad" (Mushtaq & Fatima, 2016). According to a survey report conducted in May 2016 by Medicines Sans Frontiers, the majority of adults in IOK are mentally anxious.

According to the data, 45 percent of Kashmir's adults suffer from psychological anxiety, and one in every five adults suffers from traumatic stress disorder.

### **INDIAN REPRESSIVE LAWS AND INTERNATIONAL HUMAN RIGHTS LAWS**

On several occasions, the United Nations appointed a number of representatives to investigate the human rights situation in Jammu and Kashmir under the supervision of its subsidiary organizations. Following frequent public complaints, it appointed a commission in 2016. After a two-year investigation, it presented its first report in June 2018 and revealed the nature of human rights violations committed by the Indian Armed Forces. The commission demanded that the Indian government provide detainees with access to justice and a fair trial, as well as hold those involved in criminal activity accountable. The government must immediately repeal PSA and AFSPA. These laws have made the entire structure of the state vulnerable to violations of international human rights law. The right to life, along with all other basic needs, is a universally recognized concept. It is also the starting point for all IHRL.

The member states of major IHRL treaties have a responsibility to uphold these laws fully. They ensure that everyone's fundamental rights are protected without discrimination. Any government or its security institutions have no right to kill anyone for no reason. Despite universal recognition of the right to life, Indian repressive laws violate the IHRL's basic spirit. Section 4 of the AFSPA of 1990 authorizes non-commissioned officers to shoot and kill people not only on the basis of solid evidence, but also on suspicion. When the government declares a particular area to be a "disturbed" area of the region, people are not permitted to enter or travel in that area; otherwise, security forces are authorized to shoot them (Majid & Hussain, 2020). Article 3 of the Convention on the Rights of the Child forbids taking another person's life (UDHR 1948). It ensures life security by stating that "everyone has the right to life, liberty, and personal security."

People who were killed by security forces in IOJK while exercising their right to self-determination were freedom fighters. Shooting those who have struggled for their right to self-determination is a criminal act under the ICCPR. According to Article 1 of the International Covenant on Civil and Political Rights, "All people have the right to self-determination in so far as they freely determine their political status and freely pursue their economic, social, and cultural development." Article 6 of the International Covenant on Civil and Political Rights (ICCPR, 1966) states that "every human being has an inherent right to life." This right is legally protected. No one's life shall be taken arbitrarily." As a result, as a signatory to these two fundamental international treaties, the UDHR and the ICCPR, India is legally and morally obligated to protect the fundamental rights of the people of IOJK. According to Article 3(1) and (2) of the 1949 Geneva Convention, "the following acts are and shall remain prohibited at any time and in any place whatsoever violence to life and person, in particular murder of all kinds, mutilation, cruel treatment, and torture; taking of hostages; outrages upon personal dignity, particularly humiliating and degrading treatment; the passing of sentences and the carrying out of sentences."

Article 9 of the Universal Declaration of Human Rights (UDHR, 1948) states that "no one shall be subjected to arbitrary arrest, detention, or exile." Article (9)1 of the (ICCPR, 1966) states that "everyone has the right to liberty and personal security." No one shall be deprived of his liberty except on the grounds and in the manner prescribed by law." Amnesty International published a

detailed report on illegal detention. This report is based on interviews with detainees as well as their families. According to AI's findings, the government does not provide them with adequate facilities for a fair trial. The occupying forces also tortured them in order to apply pressure and obtain information from them (Kumar, 2019).

Torture, however, is not a legal or constitutional principle in international law. Torture, according to former UN Secretary-General Kofi Annan, is an atrocious violation of human dignity. It dehumanizes both the victim and the perpetrator. The pain and terror inflicted on another human being leave permanent scars: spines twisted by beatings, skulls dented by rifle butts, and recurring nightmares that keep the victims in constant fear. Torture-freedom is a fundamental human right that must be protected in all circumstances. According to Article 7 of the ICCPR, "no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment, in particular, no one shall be subjected to medical or scientific experimentation without his free consent." Even all instructions and principles regarding arrest, detention, and torture, that are similar to international protocol, are available in the Indian criminal justice system. However, IOJK legislation is biased and discriminatory, and it also violates international standards.

According to reports from various organisations, almost all cases of detention under the PSA are unlawful. PSA has been declared a "lawless law" by international groups working on the human rights situation around the world because it violates the provisions of the ICCPR and UDHR. In IOK, Indian forces also humiliate women, which is illegal under the UN Convention on the Elimination of All Forms of Discrimination Against Women. They are also the primary targets of these despicable Indian laws. The security forces have the authority to enter anyone's home at any time. Women who were raped more than three decades ago are still seeking justice. Because of the legislative changes, the courts were unable to provide them with justice. The covenant emphasizes the importance of each signatory state providing equal rights without discrimination.

According to the article 6 of Declaration on the Protection of Women and Children in Emergency and Armed Conflict; "Women and children belonging to the civilian population and finding themselves in circumstances of emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence, or who live in occupied territories, shall not be deprived of shelter, food, medical aid or other inalienable rights, in accordance with the provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration of the Rights of the Child or other instruments of international law." The definition of detention and arrest in the Public Safety Act is ambiguous. PSA does not provide a specific explanation for the age. As a result, approximately 700 minors have been detained under the PSA, and many of them have died in the custody of the police and army. So far, there has been no response from the government regarding these cases, and this silence demonstrates the state's complete disregard for its international moral and legal obligations. (Amnesty International, 2011)

## **CONCLUSION**

Laws are important for running a country's affairs properly because they differentiate the rights and duties of citizens and state institutions. If a state's legal system is based on the basic principles of international human rights covenants, it is considered the only way to protect the oppressed

from oppressors. The Indian repressive laws PSA and AFSPA were enacted to protect security forces from accountability and punishment, not the people of IOJK. Since the imposition of these illegal acts, the army has become the only dominant authority in the IOJK.

The IOJK's affairs are governed by methods that are both internationally prohibited and unconstitutional. After the implementation of the PSA and AFSPA, the perception of the rule of law has vanished in both spirit and reality. These laws give troops a broad shield to present themselves before any higher authority or court, even if they are involved in cases of rape, murder, or other inhuman actions. Because of these laws, security forces violate all fundamental rights enshrined in IHRL treaties. Many reports on these violations have been issued by the UN Human Rights Commission's office. The OIC, and the UN Human Rights Commission have also requested that the Indian government repeal draconian laws from IOJK on a priority basis because they violate IHRL, which are binding on UN member states.

### References:

- Agrawal, A. (1995). *Modern History of Jammu and Kashmir: Ancient times to Shimla Agreement*. New Delhi: Concept Publishing Company.
- Ahmad, J. (2017). *India an Apartheid State*. Karachi: AJA Publishers.
- Amato, D. (1982). The concept of human rights in international law. *Columbia Law Review*, 82(6),1110-1159.
- Amnesty International. (2011). A 'lawless law': detentions under the Jammu and Kashmir Public Safety Act. Retrieved from <https://www.refworld.org/pdfid/4d86f6292.pdf>
- Bhat, A. &. (2018). Impact of daily life stressors on mental health in armed conflict: A case study of curfew and restrictions in Kashmir. *Indian Journal of Health & Wellbeing*, 3-9.
- Bukhari, S. (2016, Aug 30). Why The 51-Day Curfew Will Change Nothing In Kashmir. *Business Today*.
- Cheema, P. I. (2016). State of HR violations by Indian Security Forces in IHK: Background and Current Situation. *NDU Journal*, 30(1), 15-20.
- David, S. (2016). Use of Pellet Guns for Crowd Control in Kashmir: How lethal is "non- lethal". *Indian journal of medical ethics*, 20, 10-17.
- Dawn. (2019, Dec 19). India-held Kashmir suffers \$2.4bn economic losses since lockdown. *Dawn News*. Retrieved from [HYPERLINK](https://www.google.com/search?q=India-)
- <https://www.google.com/search?q=India->
- Farooq. (2019, Aug 27). 'A storm has hit my life': the Kashmiri families torn apart by mass arrests. Retrieved Nov 15, 2020, from The Guardian <https://www.theguardian.com/world/2019/aug/27/kashmir-families-torn-apart-massarrestscontinue-india>
- Hannum. (1998). The right of self-determination in the twenty-first century. *Wash. & lee l. rev*, 55, 773.
- Haq, I. (2017). Arbitrary Detention in the Kashmir Valley. *Pakistan Horizon*, 70(3), 129-137.
- Jahangir, M. S. (2013). Status of human rights in democratic setup: <http://www.academicjournals.org/JLCR>, 1-3<http://www.academicjournals.org/JLCR>, 1-3
- Khalid, W. (2011). Detentions under the Jammu and Kashmir Public Safety Act. *Amnesty international*, 53-56.

- Khurshid, T. (2017). India Occupied Kashmir (IOK) Elections 2014: Future of Jammu and Kashmir Issue. Institute of Strategic Studies, Islamabad, 8-10.
- Kumar, A. (2002). Human Rights, Global Perspective. New Dehli: Roshan Offset, Delhi, pp-135.
- Kazi, S. (2010). In Kashmir: Gender, Militarization & the Modern Nation-State. South End Press, 38, 9-11.
- Khalid, W. (2011). Detentions under the Jammu and Kashmir Public Safety Act. Amnesty international, 48, 53-56.
- Khan, D. R. (2015). Kashmir Dispute: A legal perspective. NDU Journal, 34, 151-152.
- Kumar, A. (2002). Human Rights, Global Perspective. New dehli: Roshan Pub, Dehli,
- Majid, A., & Hussain, M. (2020). Kashmir: A Conflict between India and Pakistan. Contemporary South Asia, 16, 21-28.
- Mazari, S. M. (2018, Nov 29). Women in Conflict Areas: the case of Kashmir. The News. Retrieved from <https://www.thenews.com.pk/print/399515-women-in-conflict-areas-the-case-of-kashmir>
- Mushtaq, S., & Fatima, Z. (2016). Psychological Impact of Human Rights Violation on Kashmiri People. Indian Journal of Applied Research, 6(10), 449-451.
- Riyaz. (2020). 'Denial of right to self-determination cause of Kashmir dispute'. Retrieved 11 15, 2020, from Politics, Asia-Pacific: determination-cause-of-kashmir-dispute-/2019646
- Sharma, R.&Waris, V. I. S. (2012). Impact of peace and disturbances on tourism and horticulture in Jammu and Kashmir. International Journal of Scientific and Research Publications, 2(6), 1-7.
- Slater, J. (2018, Dec 23). 2018 is the deadliest year in a decade in Kashmir. Next year could be worse. Washington Post.
- Tamim, B. (2016). Kashmir's mental health crisis. Aljazeera, Retrieved from <https://www.aljazeera.com/indepth/features/2016/06/kashmir-mental-health-crisis-160620085520339.html>
- Widmalm, S. (1997). The Rise and Fall of Democracy in Jammu and Kashmir. University of California Press, 37(11), 10-21.

Date of Publication	May 20, 2021
---------------------	--------------