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## Issue Brief

# Indian Held Kashmir: A Challenge for Human Rights Activists

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The militancy and state terrorism has made the issue of immunity a challenge in the Indian Occupied Kashmir (IOK). It is a state where successive Indian governments have stationed an estimated 700,000 military and paramilitary personnel, with one soldier for every 17 civilians. The human rights record of the Indian security forces has been equally appalling. Unchecked, unpunished and legitimised in an environment of polarised society by decades of conflict, the question of self-determination is hugely embarrassing for the world community. Only a handful of cases have been brought to justice due to 'hard line' policy followed by India. The record of human rights violations by the security forces of India has been characterised by arbitrary arrests, torture, rape and extrajudicial killings. Human Rights Organisations such as Human Rights Watch and People's Union for Civil Liberties (PUCL) have extensively documented these atrocities.

According to Kashmir Media Service, there had been 94,323 total killings in Indian Occupied Kashmir (IOK) from the year 1989 to February 29, 2016, out of which 7,043 were custodial killings. About 133,387 civilians have been arrested and 106,055 structures burned or destroyed. About 22,810 women were widowed and 107,556 children were orphaned. The number of molested or rape cases recorded is 10,175. Nonetheless, New Delhi's response to the reports by various human rights organisations has been evasive. "Disappearances" and so-called "encounter deaths" are also reported commonly. According to one report, there are thousands of unmarked graves in the state's northern districts.

The Armed Forces Special Powers Act (AFSPA), imposed in all "disturbed areas" of India, provides the army and paramilitaries with total impunity, enabling them to arrest people without a warrant and on mere suspicion. The forces are also allowed to "fire upon or otherwise use force even to the causing of death." In July 2008, the European Parliament passed a resolution urging Government of India to investigate unmarked mass graves, but "no action has been taken on this resolution.'

AFSPA has been condemned by the UN as a law that has no place in democracy. International human rights watchdog, Amnesty International (AI) in its 2015 in-depth research in IOK based on interviews of 58 family members who were the victims of human rights violations has severely criticised the environment facilitated by section 7 of AFSPA. The Act denies permission or 'sanctions' to prosecute against members of the army or paramilitary. The AI report recommends that the Indian government withdraw AFSPA from IOK. It suggests inviting the UN Special Rapporteur and the UN Working Group on disappearances to visit IOK with unobstructed access.

The structure and the culture prevalent within the parameters of the Armed Forces authorities are considered responsible for the promotion of violence in the report. Their unlawful conduct belies Indian functional democracy. By refusing accountability, the institutional involvement of the Indian State is reaffirmed. The report also urges the international community and justice mechanisms to take note of the violence and the violation of human rights. Failure in doing so would amount to endorsing the violence of the Indian State. It demands the international community to exert economic and moral pressure on India to recognise the supremacy of the rights of the people of Jammu and Kashmir. India must respect the international humanitarian and human rights law.

The report recommends that the UN Security Council exercise its powers and refer the case to the Prosecutor of the International Criminal Court under Article 13(b) of the Rome Statute. The Security Council is obligated to act in order to maintain international peace and security. India is neither a signatory nor has it ratified the Rome Statute of the International Criminal Court. It is therefore not willing to investigate its forces in IOK.

It is also suggested in the AI report that the United Nation Human Rights Council should take cognisance of the findings, testimonies and documentary evidence presented in the report with regard to existence of grave, widespread and systematic human rights violations, and insidious structures of State violence in IOK. According to the report, a Special Rapporteur with specific mandate to investigate India's violence under international humanitarian law and international criminal law in IOK is required. A free and unhindered access to IOK must be allowed by both the government of India and the government of IOK. Protection and security must be ensured to the UN Human Rights Council following Special Procedures for carrying out investigations into the complaints received from the victims to:

- i. UN Working Group on arbitrary detention.
- ii. UN Working Group on enforced or involuntary disappearances.
- iii. UN Special Rapporteur on extrajudicial, summary or arbitrary executions.
- iv. UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.
- v. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association.
- vi. UN Special Rapporteur on the promotion and protection of right to freedom of opinion and expression.
- vii. UN Special Rapporteur on the situation of human rights defenders.

- viii. UN Special Rapporteur on the independence of judges and lawyers.
- ix. UN Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples' to self-determination.
- x. Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.
- xi. Special Rapporteur on freedom of religion or belief.
- xii. Special Rapporteur on violence against women, its causes and consequences.

The recommendations in the report are an evidence of the non-congenial environment to the fundamental rights in the Indian Occupied Kashmir. The circumstances are hard for spin doctors to fall back on the same old claim of Pakistan's involvement. Indian government has done everything to subvert, restrain, misrepresent, discredit, interpret, intimidate, humiliate, disgrace, purchase or simply execute the people of Kashmir and their rightful desire for self-determination. Kashmiri peoples' sullen silence cannot be considered acquiescence. Similarly, the world may think things are too complicated to address, but actually we have seen over the years in so many situations that addressing some issues too late creates even bigger problems.

Realpolitik 'pick and choose' approach with regard to IOK has not worked so far and it is not likely to work in the future. The deep reluctance of Western powers to criticise India for strategic, geopolitical and economic reasons tends to deepen the crisis.

When terrible things are happening you cannot simply look away – and that's what the United Nation's Security Council has done far too often in the past.