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Report – Roundtable

Torture in Indian Occupied Kashmir

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PICTURES OF THE EVENT



The Institute of Strategic Studies Islamabad (ISSI) hosted a Roundtable discussion on July 17, 2019 with reference to the latest report by Association of Parents of Disappeared Persons and Jammu Kashmir Coalition of Civil Society on atrocities in Indian Occupied Kashmir (IOK) titled, *“Torture: Indian State’s Instrument of Control in Indian administered Jammu and Kashmir”*. The keynote speaker at occasion was Chairman Kashmir Committee, Syed Fakhar Imam. Other speakers at the occasion included: Engr. Khurram Dastgir Khan, Member Kashmir Committee; Ambassador Inam-ul-Haq; Mr. Ahmer Bilal Soofi, President, Research Society of International Law; and Saiyyed Abdullah Gillani, Convener All Parties Hurriyat Conference (APHC). Prominent participants at the roundtable included: Mr. Altaf Hussain Wani, Chairman, Kashmir Institute of International Relations (KIIR); Mr. Ershad Mahmood, Executive Director, Centre for Peace, Development and Reforms (CPDR); Ghulam Muhammad Safi, APHC Leader; Ambassador Riaz Khokhar; Mr. Khalid Rehman, Executive Director, Institute for Policy Studies (IPS); Ambassador Syed Faiz Naqshbandi; Member Parliament, Barrister Muhammad Ali Saif and many others.

Ambassador Aizaz Chaudhry, Director General ISSI welcomed the speakers and participants, and raised a number of important points on the issue. He said that India’s heinous crime in IOK documented in this report presents a grim picture. He said that together with the erstwhile UN OHCHR report on Kashmir, its follow-up report and this present document, the speakers and the participants had an important agenda before them for discussion.

Mr. Majid Mehmood, Research Associate at ISSI gave a brief presentation highlighting the main arguments of the latest report. He said that this report released in February 2019 is the first ever comprehensive report on torture in IOK from 1990 onwards. The report examines 432 case studies of torture. It also explains the torture committed without any distinction to political affiliation, gender or age. It also brings out the legal instrument to rationalize torture and protect Indian security forces from prosecutions. Furthermore, the patterns of torture and locations of torture camps have also been explained in this report. He also highlighted the salient features of the second report of UN OHCHR on Human Rights Violations in Indian-Administered Kashmir which covers the period from May 2018 to April 2019. The second report notes that there has been no progress in the improvement of human rights violations in Indian held Kashmir since the

last reporting year. Around 160 civilians were killed in 2018, which is believed to be the highest number in over one decade, and the State of Jammu and Kashmir did not establish any investigations into civilian killings in last one year. Indian security forces continue to use pellet-firing shotguns in the Kashmir Valley as a crowd control weapon despite concerns about their use. So-called “cordon and search operations” continue unabated. The Armed Forces (Jammu and Kashmir) Special Powers Act 1990 (AFSPA) remains a key obstacle to accountability.

He also reflected upon Pakistan’s official reaction to UN OHCHR reports. “Pakistan welcomes the second report of the Office of the High Commissioner for Human Rights (OHCHR) on Jammu and Kashmir, which calls for fully respecting the right to self-determination of the people of Jammu & Kashmir as protected under international law.” Officials also appreciated the report’s efforts to document human rights violations in IOK, and have also reiterated that there is simply no parallel between the horrendous human rights situation in IOK and the prevailing environment in Azad Jammu and Kashmir and Gilgit-Baltistan. Unlike IOK, which is the most militarized zone in the world, AJK and Gilgit-Baltistan remain open to foreign visitors. He concluded by saying that both reports validate the human rights violations in IOK and also recognize the exact situation in the Valley.

Chairman Kashmir Committee Syed Fakhar Imam in his keynote address stated that the latest report is backed by dedication and commitment to document the horrific account of torture by the Indian armed forces in IOK. The solution to Kashmir issue lies in implementation of the UN resolutions which gives the right to Kashmiri people to decide their fate. He said that IOK is a highly militarized region of the world. Around 100,000 people have given their lives while fighting for the cause of Kashmir and around 13,000-15,000 women have been raped by Indian security forces. India being the 5th largest economy in the world should act more responsibly and it should cooperate with human rights machinery of the UN. This report is evidence-based and persuasive and constitutes a building block towards public awareness. He said that Kashmir Committee can play a major role in this regard. There are several members in the Committee from National Assembly, Senate and strategic think tanks who can propose a better idea for the resolution of the issue. Public awareness should spread about the sufferings of people of Jammu and Kashmir and we should never give up on our stance regarding Kashmir. Furthermore, we should not let India break the spirit of the people of Kashmir and support for their fundamental

right of freedom. Strategic institutions, Mr. Imam said, should work more efficiently for the cause of Kashmir.

Mr. Khurram Dastgir said that this report is most comprehensive and it has contributed a lot to the cause of Kashmir. After reading several accounts in this report, we are able to understand the pain and torture that the people of Kashmir have been facing since past seven decades. They have been humiliated and Indian forces are trying hard to dissolve the freedom movement. People of Kashmir are not free to talk about freedom and they are brutally tortured. He said that the Kashmir Committee has also organized a joint protest to highlight this extreme pain and torture. The whole territory of IOK has become a torture cell, and joint interrogation centers, police stations, government buildings, school and sometimes houses of the people are converted into torture cells. Today, we are witnessing the worst wave of torture. He demanded that India should give access to UN rapporteurs and NGOs for investigation instead of questioning the credibility of the reports. A formal UN Commission of Inquiry for Torture should be formed, although India is blocking such a move but this needs to be done. Moreover, India should be pressurized by Pakistan and other international allies to allow UN rapporteurs and NGOs to investigate and get more information. He said that India should repeal the armed forces act.

Barrister Mushahid said that the philosophy behind human rights law is very valid, provided it is properly implemented. Freedom is not possible without sacrifice. Torture has been used since time immemorial. World has seen the examples of Bosnia and Afghanistan, where widespread torture was used. India is signatory to the conventions that prohibit use of torture, but has not ratified it. Several requests were made by Office of the United Nations High Commissioner for Human Rights (OHCHR) to India to allow it to visit Indian Occupied Kashmir. But all such requests fell on deaf ears. This particular report is unique in a sense that it has been compiled by Kashmiris themselves, and therefore, it is bound to create an impact. Pakistan should keep up its efforts to create more awareness in the international community regarding this issue. Parliamentary Committee on Kashmir Affairs should get in touch with the parliamentarians of other countries and apprise them of the current situation in IOK.

Barrister Saif said that there are number of reports on Kashmir in the UN archives narrating human rights abuses in detail. He said that it is good to talk about human rights, but the reality is

different. In a realistic world, history always stands with the one who is more powerful. No nation can achieve its freedom only on the basis of narratives. Blood has to be spilled to achieve this noble cause. Recorded history shows that torture has always been an instrument of the mighty to silence the opposition. Torture has been widely used both in Kashmir and Afghanistan. The sufferings of the Bosnian Muslims at the hands of Serbs is another example of torture being used against innocent people. It was the resistance and perseverance of the Bosnian Muslims that helped them garner international attention. India has never accepted UN reports on human rights abuses, nor has it ever paid any heed to reports of UN Special Rapporteur on extra judicial killing or arbitrary executions. India is also signatory to international covenant against torture, but it has not ratified it. Laws like Public Safety Act and Armed Forces Special Powers Act gives immunity to security forces from committing any form of torture and killings or detention without any charges or trial. Today, ordinary Kashmiri is braving all these atrocities committed by Indian security forces. Pakistan should continue extending its support to the Kashmiri people in their struggle against brutality. Kashmiris should be facilitated to present their case in front of the UN.

Mr. Ahmer Bilal Soofi was of the view that this report is a very positive development on the legal front. It comprises of very well researched case studies and is not an emotional narrative. It is this unique feature of this report that convinced former UN Special Rapporteur on Torture, Juan E. Mendez to write a prologue of this report. There has been a debate whether Indian Occupied Kashmir is human rights paradigm or a humanitarian law paradigm. There is an international armed conflict at LoC and therefore, Geneva Conventions and international humanitarian law applies there. He questioned whether these laws also apply in occupied Kashmir? The use of torture has actually put an end to this debate. By using torture, India has violated the Law of Torture which has a very strong jurisprudence. Torture is forbidden under both human rights, as well as international humanitarian law. The terms used in this report indicate that the situation in Indian occupied Kashmir is a non-international conflict situation. This report is based on facts and therefore, it is bound to have its impact, at least in legal domain. He suggested that there should be more workshops on this issue in academic venues and think tanks.

Mr. Aurangzeb Khan Khichi suggested that this report should be translated in Urdu so that more and more people can become aware of the actual situation in Kashmir, and there can be a stronger national consensus on this very important issue.

Mr. Saiyyed Abdullah Gillani explained that Kashmiri people, regardless of their age or gender, have experienced or witnessed torture. He said that this particular report is a very good effort to highlight Indian atrocities on Kashmiris. While reading this report, one feels as if this is not the 21st century where human rights are upheld, but some ancient barbaric times. He said this is not the first report of its kind. A number of reports have emerged in the past also. However, international organizations, particularly the UN, are helpless in implementing their own recommendations. He highlighted the role international community can play in resolving this issue.

Mr. Syed Faiz Naqashbandi narrated the history of Kashmir dispute when India took the issue to the United Nations and made several commitments. But once it landed its forces and consolidated its grip on Kashmir, India started calling Kashmir its integral part. India has adopted a multi-dimensional strategy to crush the Kashmiri struggle. First of all, Kashmir was isolated from the rest of the world. Systematic and massive repressive measures were taken by the Indian army. Human rights abuses were so massive that the Indian government had to introduce certain laws that facilitate torture and other forms of abuses. Section 4 of Armed Forces Special Powers Act permits the security forces to shoot to kill which goes against article 6 of the International Covenant on Civil and Political Rights. He said that Chapter 8 of PSA also facilitates torture. A Kashmiri can now be detained in any part of India. Referring to the use of pellet guns by the Indian security forces, Mr. Naqashbandi said that more than one thousand people have lost their eyesight. Ambulances are being attacked. There was also an issue of mass graves where Kashmiris who were detained and tortured are now buried. Kashmiris have been used as human shields which is another form of torture and is against the Geneva Convention. Article 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment clearly states that torture is a criminal offence. This is precisely the reason why India is not ratifying the convention.

Mr. Ershad Mahmood stated that after 9/11, right of self-determination and human rights were the issues which were hardly discussed in diplomatic community, civil society, as well as in international community. Priority was given to the national interest. If we analyze the last two years, we received 5 or 6 spectacular reports on the issue. They documented the issue in a very detailed manner, but most encouraging thing is that now UN is again talking about the right of self-determination and people are talking about human rights at every forum. If we analyze both reports of UN, they have comprehensively covered the situation in Occupied Kashmir. He said that suggestions for formation of a Commission is very welcoming, as in recent past various commissions have been formed in Syria, Darfur and Gaza to resolve the conflict. This will be a good idea. Pakistan should play a significant role in materializing the Commission of Inquiry. Both India and Pakistan should allow the Commission to inquire in both regions. The deadlock over Kashmir issue should be broken and we should make a proper strategy to resolve the issue. Lobbies abroad and within country should be revived.

Mr. Altaf Hussain Wani said that APDP and JKCCS have released number of reports prior to this particular report. Taking advantage of Right to Information Act, data was gathered and reports were published. That is why, the UN report on Kashmir published last year has references to APDP, JKCCS and other NGOs throughout the report. He gave an example of the report titled "Structure of Violence" which was published by JKCCS. Another report was published when mass graves were discovered. This report was discussed in United Kingdom's parliament where India was asked to investigate the matter. Similarly "Alleged Perpetrators" is another report which details the crimes of Security Personnel from the rank of Major General to an ordinary sepoy. He said that the concerns raised in the report about Azad Kashmir are out of proportion. Pakistan should let the UN know all the positive developments that have taken place in Azad Jammu and Kashmir.

Ambassador Khalid Mahmood said that violation of the rights of Kashmiri people date back to pre-partition era. Indian security forces now can commit human rights abuses with impunity. He referred to the reports of *New York Times* and *Washington Post* describing the situation in Indian occupied Kashmir. Unfortunately, the response of the international community is not what it should have been. The martyrdom of Burhan Wani gave a new impetus to the Kashmir movement, so much so that for the first time UN Human Rights Office released a detailed report

in 2018. It specifically asked India to repeal draconian laws. It also asked for establishing a Commission of Inquiry. Meanwhile, reports on the situation in Indian Occupied Kashmir were also released by UK's All Part Parliamentary Group and EU Parliament also held a discussion. But this report has come from inside Indian Occupied Kashmir. The prologue by Former UN Special Rapporteur on Torture has added to its value and credibility. Kashmir is gradually coming to the center stage gaining increasing international attention. While pursuing the peaceful path for settlement of the Kashmir issue, Pakistan needs to focus on the state of human rights situation as a matter of urgency. Since UN resolutions do not lapse with the passage of time, Ambassador Khalid Mahmood hoped that India would cooperate as it aspires to emerge as a new global power. He hoped that India would allow not only UN bodies, but also other NGOs to visit occupied Kashmir so that factual reports can be compiled. He also hoped that India would desist from scrapping Article 370 and 35 A of Indian constitutions. International community must also not allow economic and commercial interests to override the human rights issue in occupied Kashmir.

Mr. Khalid Rehman stated that there is an increasing trend in Pakistan to vehemently highlight the colossal and horrific human rights abuses committed by the Indian forces in the Occupied Kashmir. While no words are enough to soothe the sufferings of the Kashmiri people, or to condemn the Indian brutality, it must be noted that the issue of Kashmir goes beyond human rights violation. The rapes, extra-judicial killings, kidnappings, and other kinds of torture are one aspect of it. Yet, as we all know, such or similar violations are happening in many other countries as well. We therefore need to always remind and emphasize that the whole issue of Kashmir is based on the denial of India to grant the primary right of self-determination to the people of Kashmir.

The denial of the basic right of self-determination by India separates the issue of Kashmir from all the other human rights violations in the world and internal issues of any other country. If Pakistan merely highlights the human rights violation by India in the Occupied Kashmir, then it creates room for India to confuse the issue with internal issues of Pakistan and overshadow the whole discussion about the unique position of Kashmir being on the UN agenda.

Ambassador Riaz Khokhar said that international community is not much interested to know what is happening in Kashmir. He emphasized the fact that Pakistan needs to further strengthen its national consensus on the issue since Pakistan's case is based on truth.

Summing up the debate, Ambassador Inam-ul-Haq said that Western countries never tire lecturing Pakistan on human rights, but what did they do? The land of Kashmir was sold by the British for only 75 lac nanak shahi rupees to Maharaja Gulab Singh. He said that torture of worst kind is being inflicted on the people of Kashmir since 1846 when Kashmir was sold to Gulab Singh. This current report is also only the tip of an iceberg. The number of people who have suffered torture runs in thousands. Torture is only one aspect of violation of fundamental rights, and is being used to break the will of Kashmiri people to resist Indian occupation. He said detentions, violence against peaceful protesters, use of pellet guns to blind youth, custodial deaths, use of gang rapes as weapon of war, and disappearances are all methods that are used to tell Kashmiri people that nobody will come to your assistance and we will break you come what may. This has been the policy of Modi for the past five years and will continue unless international community raises its voice. Ambassador Inam went on to explain international laws against torture which included Article 55 of United Nations Charter which uphold human rights and fundamental freedom, Article 5 of Universal Declaration of Human Rights 1948 which speaks against torture, International Covenant on Civil and Political Rights adopted in 1966, General Assembly Resolution 3452, International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which came into force in 1987. This last Convention was signed by India, but it has not ratified it. All these conventions and resolutions state torture as a crime. However, Indian security forces enjoy immunity from criminal charges if they indulge in crimes like committing torture. While referring to OHCHR request to both India and Pakistan to allow access to parts of Kashmir under their respective control, Ambassador Inam said that Pakistan has said it will allow only if India does the same. Pakistan needs to reconsider this. If these reports from the UN are to be continued, then Pakistan should give access to OHCHR to its part of Kashmir. Pakistan should let UN and other organizations come to Azad Kashmir, see for themselves and compare it with what is going on in Indian Occupied Kashmir. He said that the Kashmir Committee should focus more on civil society and other bodies to highlight the Kashmir issue. He also emphasized the fact that Kashmir struggle should not be equated with terrorism. Pakistan derives legitimacy as party to Kashmir from UN

resolutions. Not one UN Security Council resolution mentions about the instrument of accession. It only talks about the rights of the Kashmiri people to determine their own future under UN plebiscite.