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Report – Seminar

“730 Days of Hell: Kashmir Under Siege”

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PICTURES OF THE EVENT





India Study Centre (ISC) at the Institute of Strategic Studies Islamabad (ISSI) organized a Seminar on "730 Days of Hell: Kashmir Under Siege", on August 04, 2021. The event was aimed at analyzing the implications of the abrogation of Articles 370 and Article 35A of the Indian constitution for Kashmiris, Pakistan, as well as for the whole region.

Dr. Saif ur Rehman Malik Director ISC, in his introductory remarks, highlighted the importance of the event by saying that the episode of 5th August 2019 is identical to 9/11. He further stated that Modi government by revoking Articles 370 and 35A of the Indian constitution has changed the status of Kashmir. India has violated every norm of humanity and imposed a curfew across Kashmir amid Covid-19 and unilaterally changed the demography of Kashmir. Director ISC reiterated that although the centre provides various policies to the concerned departments, the events happened all across India but Kashmir is the main agenda of the ISC. Dr. Malik concluded his speech by following Faiz Ahmad Faiz's fascinating poetry:

قتل گاہوں سے چن کر ہمارے علم
اور نکلیں گے عشاق کے قافلے
جن کی راہ طلب سے ہمارے قدم
مختصر کر چلے درد کے فاصلے

While welcoming the guest speakers, **Ambassador Aizaz Ahmad Chaudhry, Director General, ISSI** expressed that by revoking Articles 370 and 35A India has a desire to create Hindu Rashtra cementing Hindutva ideology in which there will be little space for the minorities. DG ISSI posed three pertinent questions on the situation that happened in Kashmir in the last two years. Why did the Modi government take a move which they knew would be opposed by all Kashmiri people and across the world? Why assault the identity of Kashmir itself? How would the Modi government extract itself out of this messy situation that it has landed itself in? He stated that India and the whole international community know that this act is a violation of UN resolutions and the Simla Agreement both of which wanted there should be no material change in the status of Kashmir.

He further argued that Article 35A was a more lethal move by India that is about demographic changes in which non-Kashmiri are entitled to become a citizen of the state. DG ISSI raised the following three crucial points; firstly, the Modi government had no choice except to reverting the

statehood of Kashmir. Secondly, the Modi government had to talk to Pakistan and Pakistan made it clear it would not negotiate with India unless the statehood is returned back. Thirdly, India could create a distraction by conducting false flag operations blaming Pakistan. There is another unfortunate aspect that emboldens Modi's government is global geopolitics, where the US with its competition with China views India as a counterweight to contain China. Modi unleashes terrorism in Kashmir, Pakistan as well as in the whole region. If the Modi government is not prevented by the international community, there will be turbulence in South Asia, DG ISSI, added.

In a video message, Dr. Yousef A. Al-Othaimen, Secretary-General of OIC said the OIC always extended strong support to the people of Jammu and Kashmir in many decisions at the Summit and resolutions at the Ministerial meetings. Jammu & Kashmir is one of the oldest internationally recognized disputes on the agenda of the Organization of Islamic Cooperation (OIC) and the OIC has been following the situation in Jammu and Kashmir for more than 4 decades now.

These decisions and resolutions are an expression of the Islamic world's solidarity with the Kashmiri people in their struggle for the right of self-determination and the call for a peaceful settlement of the Jammu & Kashmir dispute in accordance with the United Nations Security Council resolutions. The most updated OIC position on Jammu and Kashmir is laid out in the most recent resolutions adopted by the Council of Ministers at its 47th session held in Niamey, the Republic of Niger on 27-28 November 2020. The two resolutions are No. 10/47-POL on Jammu and Kashmir Dispute and No. 11/47-POL on The Peace Process between India and Pakistan, Dr. Yousef added.

The Council of Ministers in Niamey rejected the illegal and unilateral actions by India on August 5, 2019, to change the internationally recognized disputed status of the Indian occupied Jammu and Kashmir; and demanded that India rescind its illegal steps. The Council of Foreign Ministers urged India to cancel the issuance of domicile certificates to non-Kashmiris and revoke all unilateral and illegal actions in the territory since 5 August 2019, including Jammu & Kashmir Reorganization Order 2020", "Jammu & Kashmir Grant of Domicile Certificate Rules 2020",

"Jammu and Kashmir Language Bill 2020" and amendments in land ownership laws, Dr. Yousef added.

Ambassador Rizwan Saeed Sheikh, Pakistan's Permanent Representative to OIC projected the significance of OIC and said that the OIC is the only organization that has a special envoy for the Kashmir issue. He said that there is a false expression going around that this OIC is doing nothing as far as the Kashmir dispute is concerned but the reality is that all 57 member states of the OIC are supporting Pakistan's side that peaceful settlements of Kashmir issue should be solved under the UN resolution. He further elaborated that it was India that took the issue of Kashmir to the Security Council in 1948 and after many debates; the international community decided that it was not about the territory whether it is part of India or Pakistan but it is about the self-determination of the Kashmiri people that was always neglected. He further mentioned that the issue of Palestine and Kashmir have a premise of rights to self-determination they have a common genesis and both are the part of OIC agenda.

In his remarks, he maintained that the Indian act of revoking Articles 370 and 35A not only violated the series of UN resolutions but also violated other international instruments like the International Declaration of Human Rights, International Convention on Economic and Culture rights etc. The people of Kashmir are considered as a majority prior to the India's action of 5th August 2019. Nevertheless, India is transforming it into a minority state by its unilateral action, whereas under UN resolution 122 such action by India is not admissible. He suggested that Pakistan has an opportunity; the 48 session of the OIC Council of Foreign Ministers is to be held in Pakistan next year in March. It is a great opportunity for us to make our homework done at least we have come up with resolution 2334 of the Security Council on Palestine that rejects Israeli settlements on the occupied territories, he added.

In his video message, **Mr. Arif Hyder Ali, Co-Chair, Dechert LLP, USA** presented the following four legal options that could be capitalized with the aim of holding India accountable for its atrocities in IIOJK.

Option 1: A claim before a Conciliation Commission pursuant to the Convention on the Elimination of Racial Discrimination (the CERD Convention).

The first option would consist of a claim before a Conciliation Commission pursuant to the Convention on the Elimination of Racial Discrimination (the "CERD Convention"), to which India is a party. A careful legal analysis of the Convention's requirements suggests that such a claim would stand a strong chance of success.

Option 2: Apartheid Convention Claim before the ICJ

In addition to or as an alternative to a claim before the CERD Committee, a second option for holding India accountable for its actions with respect to Jammu and Kashmir would be a claim before the International Court of Justice (the "ICJ") for violations of the Apartheid Convention—to which India is a party. India's inhuman actions against the Kashmiri people satisfy the elements of the crime of apartheid as defined in the Convention. India's actions have been taken for the specific purpose of domination and systematic oppression of one racial group—ethnic Kashmiris—by another—ethnic Hindus.

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Option 3: Claims before the ICJ for Discrete Human Rights Violations

A third option for holding India accountable would entail claims brought by a state partner of the Kashmiri people before the ICJ for discrete human rights violations in Kashmir based on the customary international law of human rights. Again, a careful legal analysis of the available evidence in light of the relevant legal standards suggests that such claims would also have a good chance of success. Customary international law includes the right to life, the right to physical integrity, the right to liberty, and the right to freedom of expression—as reflected in the Universal Declaration of Human Rights.

Key authorities have uniformly recognized that the rights to life, physical integrity, and liberty are part of customary international law. The weight of opinion further accepts that most or all of the rights in the Universal Declaration, including the right to freedom of expression, are part of customary international law.

Option 4: Investor-State Arbitration

A fourth option, which is perhaps not as obvious as the others that I have mentioned, involves the possibility of international arbitration against India under a bilateral investment treaty. It is quite likely that the Indian Government's actions in Jammu and Kashmir have directly violated the rights of foreign investors with investments in those territories. Such investors are likely to include Kashmiris now living abroad but who maintain close connections to the region, including business interests. If these investors in Kashmir can be identified, it may be possible to bring individual or collective investment arbitrations on their behalf against India for its ongoing unlawful conduct. A mass claim by a number of foreign investors in the Jammu and Kashmir territory could result in an international arbitral award against India for hundreds of millions or billions of U.S. dollars, in addition to resulting in various factual findings regarding India's actions in Jammu and Kashmir.

Mrs Mushaal Hussain Mullick, Human Rights Activist, while addressing the event, she expressed that when the heinous crime of abrogation of Articles 370 and 35A was committed against the Kashmiris, at that juncture, the global community condemned the Indian egregious act because it was an act of genocide against a self-less nation. She further expressed that it was our bad luck that in March 2020 there was a lockdown due to Covid-19 and the global focus shifted from the Kashmir issue to Covid-19. Discussing the abrogation of Articles 370 and 35A, she said that before 5th August 2019 there was an occupation of Indian forces, people were being killed and rape was used as a weapon of war and all sort of heinous crimes were being committed by them but the difference after 5th August 2019 was that now the Indian public marching into Kashmir and snatching away the property rights, ownership rights and the political rights from the people of Kashmir.

In the last two years over 4 million Indians were given domicile certificates. She expressed that despite it is a leaderless movement as the whole leadership of Kashmir is house arrested but the sentiment of freedom is deeply rooted in every Kashmiri no matter what would India do with us but cannot stop us from our genuine cause. We need to take the case to the international court of justice and international criminal court against the war crimes being committed in Kashmir by India, she added.

Mr. Jamal Aziz, Executive Director RSIL, Islamabad. Being an expert on international law, Mr. Aziz said that world politics is entering into a multipolar world where the rise of China is imminent. The domestic laws of the country have been weaponized and international law is becoming a central pillar especially in the case of Kashmir. He stressed that lawfare cannot occur in a vacuum and it has to be a part of a larger political-diplomatic strategy. He further argued that in Pakistan we expect that International law will act as a high court of the country which simply is impossible. He said that we lack institutions in international law; it is the need of the state to have such institutions to study the correct and appropriate methods to deal with such kinds of situations. The cause of Kashmir is a generational struggle, it is possible to create a legal battle on every international forum, all of this requires a technical legal capacity and a character, he added.

Ambassador Arif Kamal in his remarks expressed that the 5th August action by Modi's government was and will remain as an assault on Kashmiri identity. Modi's India has created new ground realities in Kashmir. The changes are driven by unilateralism bypassing even their own notions of bilateralism. Hindutva agenda has been well-known from the time of its electoral mandate so was the timing of the action. However, in the current scenario, we can read newer manifestations of Hindutva: it signifies the rise of Fascism in South Asia that is linked with best practices of Zionism. The assault on identity is one factor. It aims at the fragmentation of the land, demographic re-engineering, and "West Bank-ization" of Kashmir. Amb Kamal maintained that the Indian action was enormous in scale; it was unilateral sidestepping the international legitimacy and all notions of bilateralism. It ignored all the UN resolutions and bilateral agreements. Moreover, it provided glaring evidence of what are the emerging realities in the regional cartogram: the rise of fascism in Delhi and its destabilizing impact on a broader canvas.

He further argued that by recognizing Kashmiris as the principal party, we should give Kashmiris a voice that is supposed to be institutionalized. An umbrella organization for political action representing Azad Jammu and Kashmir, Gilgit-Baltistan and Hurriyat from the Indian side of Kashmir is worth considering. Let them have an infrastructure to establish a coordination mechanism among themselves and articulate their position to the wider world.

Dr. Sheikh Waleed Rasul, Director General, Institute of Multi-Track Dialogue and Diplomatic Studies by hilihting the different demographic trends, the speaker expressed his concerns that following August 5, 2019 action it will not take long when the Muslim and Hindu population will be the same and how the Muslim population is suppressed by the Modi government in no time. The 5th August action was in the BJP's manifesto of elections, it was not abrupt as they have planned already to change the status of Kashmir. He concluded his presentation by emphasizing that Pakistan has a very strong argument regarding Indian interventions and the resettlement in Kashmir. We need homework that ought to be based on the national and international framework.

Sheikh Rasheed Ahmed, Interior Minister of Pakistan the Chief Guest of the event in his remarks maintained that being a practical Kashmiri himself, I assure you all one day Kashmir and its people will certainly win the war against India, no matter what will be the situation in the world because Kashmiris are rendering sacrificing to their genuine cause. India is destabilizing Pakistan, under the current juncture, hybrid war is being unleashed against Pakistan by India and social media is one of the main sources of it. India even did not allow journalists to visit Pakistan that is quite alarming and we don't know what would be the real situation of IIOKJ. By praising the Kashmiri people, the minister said the people of Kashmir know how to do politics; they are handling the hard situations for the last 70 years and the power of Kashmiris cannot be underestimated. The current PTI government takes a keen interest in solving the Kashmir issue, Prime Minister of Pakistan Imran Khan has categorically expressed to the international community that without Kashmir resolution then there will be no dialogue with India.

In last, the event was attended by people from different walks of life. The event was concluded with the resolve that Pakistan will stand firm with the Kashmiri people in their just fight for their right to self-determination.