
THE EROSION OF HUMAN RIGHTS IN KASHMIR: AN INTERNATIONAL LAW PERSPECTIVE

Jisa Jos, LLB, Government Law College, Thiruvananthapuram

ABSTRACT

The protracted conflict in Kashmir presents a deeply concerning case study of the erosion of human rights within the framework of International Law. This article examines the alleged violations through the lens of key international human rights treaties and customary international law, analysing the obligations of the relevant state actors, primarily India, and the responsibilities of non-state actors. It delves into specific categories of violations, including the right to life, freedom from torture, liberty and security of person, freedom of expression and assembly, and economic, social, and cultural rights. Furthermore, it critically assesses the impact of domestic legislation, such as the Armed Forces Special Powers Act (AFSPA) and the Public Safety Act (PSA), on the human rights situation.

The analysis finds that these laws create a structure of impunity by shielding security forces from prosecution, thereby facilitating persistent violations and contravening international obligations. The article also considers the role of international bodies and the principle of universal jurisdiction in addressing these alleged violations. Ultimately, the article argues for a renewed commitment to international legal standards to ensure accountability and justice for the people of Kashmir. It concludes that the persistent accountability gap underscores the limitations of the current international system and highlights the urgent need for multilateral bodies to transcend geopolitical constraints. The article proposes that mechanisms such as universal jurisdiction and increased engagement by UN treaty bodies represent critical, though challenging, pathways toward achieving justice and upholding fundamental human rights norms.

Keywords: Kashmir Conflict, Human Rights Violations, International Human Rights Law (IHRL), International Humanitarian Law (IHL), Impunity, Armed Forces Special Powers Act (AFSPA), Public Safety Act (PSA), Universal Jurisdiction, Accountability, India, Non-State Actors

1. Introduction

The region of Kashmir, a territory contested between India and Pakistan since their independence in 1947, has been a persistent site of conflict and political instability¹. This enduring dispute has had a devastating impact on the human rights of the Kashmiri people, caught in the crossfire of geopolitical tensions, state security imperatives, and the actions of non-state actors. Allegations of widespread and systematic human rights violations have emerged over the decades, drawing the attention of international human rights organizations, legal scholars, and the United Nations². Understanding the complexities of the human rights situation in Kashmir necessitates a rigorous examination through the prism of international law, which provides the normative framework for the protection of fundamental rights and freedoms.

This article aims to analyse the alleged erosion of human rights in Kashmir from an international law perspective. It will delve into the relevant international human rights treaties to which India is a signatory, as well as principles of customary international law that are universally applicable. By categorizing the alleged violations and assessing them against these legal standards, the article seeks to provide a comprehensive understanding of the legal obligations of the involved state actors, primarily India, and the responsibilities of non-state actors. Furthermore, it will critically evaluate the impact of domestic laws and the challenges of ensuring accountability and justice for the victims of these alleged violations within the existing legal and political landscape. Finally, the article will consider the potential role of international legal mechanisms and the principle of universal jurisdiction in addressing the human rights crisis in Kashmir.

2. The Applicable Framework of International Law

A complex interplay of international and domestic law governs the protection of human rights in Kashmir. India, as the state exercising de facto control over a significant portion of the territory, is bound by the international human rights treaties it has ratified. These include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and Other

¹ Sumantra Bose, *Kashmir: Roots of Conflict, Paths to Peace* 23–45 (2003).

² U.N. High Commissioner for Human Rights, Report on the Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan, U.N. Doc. A/HRC/39/23 (June 14, 2018).

Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the Convention on the Elimination of All Forms of Racial Discrimination (CERD). While India has entered reservations to certain provisions, the core obligations to respect, protect, and fulfill human rights remain applicable. Beyond treaty obligations, principles of customary international law also play a crucial role. These norms, derived from the consistent practice of states accompanied by a belief in their legal obligation (*opinion juris*), include fundamental prohibitions against torture, genocide, crimes against humanity, and war crimes. These norms are binding on all states, regardless of treaty ratification.

Furthermore, the context of the ongoing conflict in Kashmir brings into play principles of International Humanitarian Law (IHL), also known as the law of armed conflict. While the exact classification of the situation in Kashmir remains debated (whether it constitutes a non-international armed conflict or another form of internal disturbance), IHL principles regulating the conduct of hostilities, the protection of civilians, and the treatment of detainees are relevant to assessing certain alleged violations. The principle of self-determination, enshrined in Article 1 of both the ICCPR and the ICESCR, is also a significant aspect of the Kashmir issue.³ While the scope and implementation of this right in the specific context of Kashmir are highly contested, the aspirations of the Kashmiri people for self-governance and the international legal framework surrounding this right cannot be entirely disregarded in the broader analysis of human rights in the region.

3. Categories of Alleged Human Rights Violations and International Law

The catalogue of alleged human rights violations in Kashmir, as outlined previously, can be systematically analysed through the lens of specific international legal obligations:

- **The Right to Life and Security of Person (Article 6, ICCPR; Customary International Law)**

The right to life is a cornerstone of international human rights law, guaranteeing that every human being has the inherent right to life, which shall be protected by law. Allegations of extrajudicial killings in Kashmir raise serious concerns under this provision. International law requires states to conduct thorough, prompt, and impartial investigations into all such deaths

³ International Covenant on Civil and Political Rights art. 1(1), Dec. 16, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights art. 1(1), Dec. 16, 1966, 993 U.N.T.S. 3.

and to hold perpetrators accountable. The use of lethal force by state security forces must be strictly proportionate and necessary to achieve a legitimate law enforcement objective. Allegations of staged encounters and reprisal killings, if substantiated, would constitute grave violations of the right to life. Deaths in custody also violate the right to life, particularly when they result from torture or ill-treatment, which the state has a positive obligation to prevent.

The high number of alleged enforced disappearances in Kashmir constitutes multiple violations of human rights, including the right to life (as the fate of the disappeared remains unknown and they are often presumed dead), the right to liberty and security of person, and the right of families to know the truth. Enforced disappearance is recognized as a crime against humanity under international law when committed as part of a widespread or systematic attack against a civilian population. Violence perpetrated by militant groups, including killings and hostage-taking, also constitutes serious human rights abuses. While the primary obligation to protect individuals from such violence rests with the state, international law also holds non-state actors accountable for egregious violations of fundamental human rights, particularly in the context of armed conflict.

- **Freedom from Torture and Cruel, Inhuman, or Degrading Treatment (Article 7, ICCPR; Convention against Torture; Customary International Law)**

The prohibition against torture is absolute and non-derogable under international law. Article 7 of the ICCPR and the CAT explicitly prohibit torture and other cruel, inhuman, or degrading treatment or punishment. The widespread allegations of torture by security forces in Kashmir, including physical and psychological abuse, constitute a direct violation of these obligations. The state has a positive duty to prevent torture, to investigate allegations promptly and impartially, and to prosecute those responsible. The alleged deaths in custody resulting from torture further underscore the severity of these violations. The psychological trauma inflicted on the civilian population due to the pervasive violence and fear also raises concerns under the prohibition of cruel, inhuman, or degrading treatment.

- **Liberty and Security of Person (Article 9, ICCPR)**

Article 9 of the ICCPR guarantees the right to liberty and security of person, prohibiting arbitrary arrest and detention. The widespread use of preventive detention laws like the PSA in Kashmir, allowing for prolonged detention without charge or trial, has been widely criticized

for its potential for arbitrariness and its deviation from international fair trial standards. International law requires that any deprivation of liberty must be lawful, based on reasonable grounds, and subject to judicial review. The high number of individuals allegedly detained arbitrarily in Kashmir raises serious concerns about compliance with these standards.

- **Freedom of Expression, Assembly, and Association (Articles 19, 21, and 22, ICCPR)**

These fundamental freedoms are essential for a democratic society and the realization of other human rights. The frequent imposition of curfews and restrictions on movement in Kashmir significantly curtails these freedoms. The alleged use of excessive force against peaceful protesters, including pellet-firing shotguns, not only violates the right to freedom of assembly but also raises concerns about the principles of necessity and proportionality in the use of force. The restrictions on the press and media, including harassment of journalists and internet shutdowns, directly impede the right to freedom of expression and access to information. Limitations on political activities and the detention of political leaders also undermine the right to freedom of association and participation in public affairs.

- **Economic, Social, and Cultural Rights (ICESCR)**

While the ICESCR recognizes the progressive realization of these rights, states have immediate obligations to ensure non-discrimination and to take steps towards the full realization of these rights. The ongoing conflict in Kashmir has had a significant negative impact on the economic, social, and cultural rights of the population. Restrictions on movement and security measures have disrupted livelihoods, access to education and healthcare, and cultural life. The alleged displacement of populations and loss of property also constitute violations of the right to adequate housing and other economic and social rights. The state must take measures to mitigate the negative impacts of the conflict on these rights and to ensure equitable access to essential services.

4. The Impact of Domestic Legislation and the Challenge of Accountability

Certain domestic laws in India, particularly those applicable in Kashmir, have been criticized for their potential to facilitate human rights violations and impede accountability.

- **The Armed Forces Special Powers Act (AFSPA)**

The AFSPA, in force in Jammu and Kashmir, grants broad powers to security forces, including the authority to search, arrest, and use lethal force with virtual impunity in areas declared as "disturbed." Section 6 of the AFSPA requires prior sanction from the central government for the prosecution of security personnel for alleged offenses committed while discharging their duties. This provision has been widely condemned by international human rights bodies as creating a significant barrier to accountability and fostering a climate of impunity.⁴ The lack of successful prosecutions of security personnel for alleged human rights violations in Kashmir is often attributed to the protection afforded by the AFSPA.

- **The Public Safety Act (PSA)**

The PSA allows for administrative detention without charge or trial for up to two years. It has been criticized for its vague provisions and its use to detain individuals, including political activists and journalists, without due process. The lack of effective judicial oversight and the potential for abuse under the PSA raise serious concerns about its compatibility with international fair trial standards.

- **Lack of Accountability and Impunity**

The low rate of prosecution and conviction in cases of alleged human rights violations in Kashmir is a significant concern. The reluctance of the government to grant sanctions for the prosecution of security personnel under the AFSPA, coupled with the challenges of investigating abuses in a conflict zone, has created a pervasive culture of impunity. This lack of accountability not only denies justice to victims but also undermines the rule of law and perpetuates a cycle of violence.

5. Conclusion

The enduring conflict in Kashmir serves as a sobering indictment of the profound inadequacies of both national and global institutions in safeguarding basic human rights and enforcing

⁴ U.N. Hum. Rts. Council, Report of the Office of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan, U.N. Doc. A/HRC/39/23 (June 14, 2018).

accountability. This analysis has demonstrated that the alleged violations—spanning the right to life, freedom from torture, arbitrary detention, and the suppression of civil liberties—are not isolated incidents but rather symptoms of a broader structure of impunity enabled by domestic legislation such as the Armed Forces Special Powers Act (AFSPA) and the Public Safety Act (PSA). These laws, while ostensibly designed to address security challenges, have effectively shielded perpetrators from justice and contravened India's obligations under international human rights and humanitarian law. The persistent accountability gap in Kashmir underscores the limitations of the current global system, where geopolitical considerations often override the consistent application of legal norms. Despite the availability of international legal frameworks—including universal jurisdiction⁵, UN treaty bodies, and mechanisms for monitoring compliance—the enforcement of these standards remains fraught with political and practical challenges. Non-state actors, too, have contributed to the cycle of violence, further complicating the pursuit of justice. Ultimately, resolving the human rights crisis in Kashmir requires a decoupling of the issue from geopolitical constraints and a renewed commitment to the primacy of international law. This entails the repeal or radical reform of laws like AFSPA and PSA, the initiation of transparent and impartial investigations into alleged violations, and the meaningful inclusion of Kashmiri voices in processes aimed at justice and reconciliation. The international community, particularly through multilateral bodies, must move beyond rhetoric and leverage mechanisms such as targeted sanctions, commissions of inquiry, and support for civil society to hold all parties accountable. Without such decisive action, the cycle of violence and impunity will persist, and the fundamental rights and dignity of the Kashmiri people will remain in peril.

⁵ The Princeton Principles on Universal Jurisdiction 36 (2001), *reprinted in* 41 I.L.M. 128 (2002).