

Hermeneutical Inquiry of Human Rights Violations in Kashmir: International Humanitarian Law Perspective

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ABSTRACT

Human rights are the basic rights of a human; if a human is deprived of his basic rights his survival is difficult. This research paper is aimed to dig out the human rights violations by India and its forces under the leadership of BJP led National Democratic Alliance (NDA) in Kashmir region. The violations of International Humanitarian Law (IHL) by India and its security forces in Indian Occupied Jammu & Kashmir (IOJ&K) has held India as responsible for violations of the Common Article 3 of IHL. The hermeneutical inquiry of Kashmir conflict under the prism of IHL has explained that India is intentionally trying to misinterpret the IHL to promote its RSS ideology. Indian forces actions against the civilians in Kashmir, is a pure act of aggression. The interpretation methodology by Dilthey, Nietzsche and Jergen Hebermas explains that India being largest democracy in the world, has now transformed itself as the key violator of International law. Moreover, the spillover effect of Modi's cantankerous policies is also visible within India.

Key Words: Human rights, India, BJP, RSS, Modi, IHK

Introduction

Kashmir became an enduring conflict between Pakistan and India soon after their independence in 1947. Both countries have fought three wars (1948, 1965 & 1999) over this territory; however the conflict remains active till date. This paper tries to examine and inquire about human rights violations by India and its army in Indian Occupied Jammu & Kashmir (IOJ&K). Indian security forces human rights violations will be examined and inquired under the methodology of hermeneutical inquiry given by William Dilthey, Fredrich Neitzcshe and Jergan Hebermas. In order to scrutinize the human rights violations in Kashmir, International Humanitarian Law (IHL) is used as a parameter in this research paper to evaluate as to how far India; being member of the United Nations and signatory to IHL has

violated the international obligation. Human Rights crimes conducted by Indian security forces involve use of pellet guns, rape as strategy of war, use of cluster bombs, extra judicial killings, abduction, lockdown and sordid human rights abuses. Because of the 1958 Indian Parliamentary Act, Armed Forces Special Power Act (AFSPA) and post 5 August 2019 abrogation of Article 370 & 35A of the Indian constitution. People of IOJ&K are living under a severe threat of the Indian Security Forces.

Under this scenario and draconian Indian laws draws attention towards certain questions that would be part of this research paper. Do International Humanitarian Law (IHL) have some ground existence and validity in the Kashmir conflict? How praxis¹ is under-estimated while interpreting IHL in context of human rights violations in Kashmir? How Modi regime and RSS extremist ideologies and policies support atrocities of Indian forces in Kashmir? These question will be extensively explained and answered with the help of reports produced by International Human Rights Agencies like United Nations Organization, Amnesty International, Human Rights Watch and other Non-Governmental Organizations (NGOs).

A hypothesis statement can be framed as A-prior knowledge² that Indian and its forces violations of human rights and International Humanitarian law in Kashmir is an approach to vindicate cult of Hinduism and negating the praxis of International Law. This A-prior knowledge will be tested under the methodological aspects of hermeneutical inquiry taking IHL as a parameter against India's actions in Kashmir.

Hermeneutical inquiry suggests that text³ and its analogues need to be interpreted in a dispassionate way, which should not be blanketed by false ideology and distorted meaning. They should be interpreted in a systematic manner to keep its coherence and relevance. In this paper the Articles and provisions of IHL will be interpreted as per the methodology and interpretation suggested by William Dilythey, Nietzsche and Jergan Hebermas. After the methodological interpretation, the provisions of IHL would be scrutinized with the current policies of India under the Modi regime that how far this regime's policies and its RSS run ideology has contributed towards violations of this particular law.

Theoretical framework

It is imperative to explain the actual meaning and definition of "hermeneutics", before applying it to a certain case study. Hermeneutics is a Greek word which means to 'interpret' and in derivation its meaning is 'interpretation'. Hermeneutics in a simple manner is defined as a "theory, methodology and praxis of interpretation whose ultimate aim is to re-define the actual meaning of a text

¹ "Praxis is a part of hermeneutics and concerned about the actual process of interpreting specific texts. In this paper praxis would help in distinguishing that how India and its security forces have misinterpreted the IHL in case of Kashmir conflict."

² "A-prior knowledge that is independent of all particular experiences."

³ Biblical or Literary Text

that is misinterpreted with the passage of time by culture, ideology and false perception” (Robin, 2014). The philosophers of hermeneutics explain that text, and text analogues that are not suitable in certain times and cultures or veiled by ideology and wrong interpretation; may seem contradictory, incomplete, chaotic and inaccurate. It is therefore important to interpret these texts in a systematic fashion to unveil their coherence and actual sense. (Vattimo, 1997). Hermeneutics has become a complex phenomenon due to its multiple layers of meanings, therefore for understanding of this aspect and its multiple layers the abovementioned definition needs to be bifurcated and explained. As per the definition hermeneutics revolves around three layers of definition and concerns i.e. theory, methodology and praxis (i) theory is about the epistemological validity and provides lens for interpretation (ii) methodology, revolves around the proper system of interpretation (ii) praxis; relates about the actual interpretation of text.

Contributions by Wilhelm Dilthey, Jergen Habermas and Fredrich Nietzsche will be applied, while interpreting the IHL and how it contradicts with policies and actions of India and its army in Kashmir.

Wilhelm Dilthey & Objectiver Geist

Wilhelm Dilthey was a hermeneutic philosopher, German historian and sociologist at University of Berlin. He emphasized on existence of combined consciousness which he referred as Objectiver Geist i.e. (literally unbiased cognizance). It is the summation of inter subjective products and human creations. According to him *Objectiver Geist* is the ultimate situation in which the human actions in a given time and period in this context and its understanding is significant for interpretation. As per Dilthey, reconstructive interpretation meaning is reconstruction of specific *Objectiver Geist* of given text. Dilthey accentuated that “Erlebnisse”⁴ are understandable by all humans of all time. His argument accentuates that all humans can experience erlebnisse in one way or another. Interpretation of a text is not valuable if the expression of life are alien. The inter-subjectivity and human experiences are reflected in a certain text while interpreting it from a particular lens.

Jergen Habermas theory of communicative action & universal practice

According to Habermas not all human actions and speeches are authentic. Human can deviate from their words/ statements as per his desire and strategic interests. Human actions and statements can be misled by insensible forces, like ideology, which have the ability to alter the linguistic approach of a human. Habermas proposed two ideas i.e. theory of communicative action and theory of universal

⁴ “Erlebnisse are experiences that are vibrating with life, like love, anger, oppression, revolution, beauty, pain, ambition, frustration and friendship.”

pragmatics (Meadwell, 1994). Theory of communicative action creates division between strategic and communicative actions. Communicative action is a process of communicating with the other person for reaching a real consensus. Strategic action is the desire to dominate, manipulate and subdue other person. Contrary to this, theory of universal pragmatics is used to filter the strategic actions and transform it into communicative actions. Habermas believed that it is very difficult to evaluate truth; because the type of communication as mentioned above cannot be judged on the criteria of true or false (Habermas & McCarthy, 1984, pp.3-7).

Fredrich William Nietzsche

Nietzsche's perspective theory of knowledge and genealogical method of interpretation has exerted much influence on the contemporary hermeneutics theories. (Hjørland, 2014). Perspective theory of knowledge looks towards knowledge and understanding formed by the human biases and assumptions of interpreter's mind. Nietzsche concludes that there is no such thing like "pure knowledge" and it is formulated as per the human biases. Furthermore, knowledge is produced by the perspective of interpreter's biases. Contrary to this, Nietzsche's genealogical method of interpretation seeks to distinguish past from present by emphasizing that past is different from present, present status of being stable, natural and legitimate becomes questionable. (Magnus, Brend & Higgins, 1996)

Integrated hermeneutical approach model

The above discussed hermeneutics approaches and interpretation models will be employed on the IHL and how India's policies in Kashmir negates the "Article 3 Common to the four Geneva Conventions of 12 August 1949" also referred as "Common Article 3". It is imperative here to explain the characteristics, the ground realities where India and Modi government interpreted the Common Article 3⁵ of IHL in a wrong direction to secure its political bias in favor of Hindutva ideology. IHL is set of rules which limit humanitarian effect of an armed conflict. It gives protection to those persons who are not party to hostilities and restricts means, modes and methods of warfare. IHL has three basic characteristics i.e. (i) presence of an armed conflict (ii) protection of those who are not party to armed conflict (iii) restriction on means (weapons) and methods (military strategies) of warfare (Bothe, 2013, pp.581-585).

Human Rights violations and atrocities by Indian Security Forces and policy makers for promotion of their jingoistic policies. As Dilthey explains that *Objectiver Geist* is eventual context of all texts and human actions in certain time and period, its understanding is important for interpretation. In 2010 Indian government used pellet guns against Kashmiris as a mechanism to control the

⁵ "Persons protected by Common Article 3 of the Geneva Conventions include all noncombatants, even if they have provided food, shelter or other partisan support to one side or the other, and members of the armed forces of either side who are in custody, are wounded or are otherwise hors de combat. If under these circumstances, such persons are summarily executed or die as a result of torture, their deaths are tantamount to murder."

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common crowd. In 2017 Amnesty International report, it was declared that since July 2016, pellet guns have injured around 6000 people including 782 eye damages. In 2016 “mass blinding” was associated with the Indian Forces for causing a huge number of pellet injuries. The New York Times reported over pellet guns injuries as “Epidemic of Dead Eyes” The case of use of pellet guns explains that interpretation of IHL was ignored, by Indian policymakers and civilians were targeted by Indian pellet guns (Barry, 2016).

As Nietzsche explained in his perspective theory of knowledge that looks towards knowledge and understanding shaped by human biases and assumptions of interpreter’s mind. During the Modi regime India and its forces undermined the second basic character of IHL where the means and methods of warfare were exploited by the Indian government. Indian forces used rape as strategy of war, abduction and kidnapping of people, using human as shield for protection, illegal use of their Armed Forces Special Power Act (AFSPA) and Public Safety Act (PSA) against stakeholders i.e. Omer Abdullah and Mehbooba Mufti by keeping them under house arrest. (BBC News, 2019). Modi regime’s interpretation and violations of IHL was quite visible in its Kashmir atrocities to emasculate the Muslim and their right of self-determination.

The third important character of IHL that Kashmir is an armed conflict between India and Pakistan and India cannot decide the future of Kashmir unilaterally fashion. As Habermas said that not all human actions and speeches are authentic. Human can deviate from its dialogue as per his desire and strategic interests. India deviated from the Simla Agreement of 1972 on August 5 2019, when it passed a unanimous Presidential Order and abrogated Articles 370⁶ and 35A⁷ declaring IOJ&K as part of the Indian territory. The Habermas hermeneutical interpretation is quite relevant here; that India under the Modi regime deviated from the Simla Accord, which explains that both sides will resolve their disputes bilaterally. India and Pakistan will resolve their issue by peaceful means and through bilateral negotiations. (Ashraf, 2007) Modi’s government decision of revoking Articles 370 and 35A unilaterally is against the spirit of the Simla Agreement between Pakistan and India.

International humanitarian law

This particular section of this paper deals with explaining some of the articles and provisions of IHL, those violated by India and its forces in the Kashmir region. IHL comprises of International Treaty Law and Customary Rules and is meant to resolve the humanitarian issues during armed conflict, of international and non-international nature. International humanitarian law prohibits use of force against

⁶ “Article 370 of the Constitution of India is a ‘temporary provision’ inserted on 17 October 1949 which gave special powers to the state of Jammu and Kashmir, lawfully authorising it to have its own constitution.”

⁷ “Article 35A of the Indian Constitution was an article that empowered the Jammu and Kashmir state’s legislature to define permanent residents of the state and provide special rights and privileges to those permanent residents.”

innocent civilians. It restricts using military methods that are lethal in nature and against humanity. It also prohibits means and methods of warfare, (i) which fails to create distinction between civilians and combatant (ii) cause unnecessary suffering (iii) sever means and long term damage to the environment of that area (Henckaerts, 2005).

IHL consists of two branches: “Law of Geneva” which deals with protection of victims during armed conflicts, such as military personnel (wounded combatants and prisoners of war) and civilians who are not party to the conflict. “Law of Hague” establishes rights and obligations to conduct war and limits the methods and means of warfare (Friedman, 1972, pp.241-246). There are seven fundamental rules supporting the “1949 Geneva Conventions and Additional Protocols of 1977 & 2005.” (i) People who are not party to any hostility should be protected both morally and physically and treated humanely in all respects. (ii) It is banned to kill any enemy who wants to surrender. (iii) The wounded and sick should be protected by the party who is in power in the conflict. (iv) Combatants and captured civilians under the authority of adversary have the right to be respected for their life, dignity and personal rights and beliefs. Civilians should be protected against any kind of violence. (v) Everyone has the right to get judicial guarantee. No individual should be held responsible for the crime he or she has is not responsible for. (vi) Corporal punishment and physical or mental torture are not allowed under the IHL. Parties to the conflict are not allowed to use any kind of warfare means in an armed conflict. (vii) Conflicting parties should differentiate between civilian population and opponents to secure civilians and civilian property rights (ICRC, 1983, pp.2-9).

International armed conflicts (IACs)

In International Armed Conflicts (IACs) states use armed force against other states. The rules defined in international armed conflicts are also applicable during: armed conflict between two states or international organization, national liberation wars and occupation. The rules are applied to a certain international and non-international conflict. International armed conflicts are set of rules explained in the four Geneva Conventions and Additional Protocol I and II. They are further explained in Article 3 Common to four Geneva Conventions and Additional Protocol II (Meron, 1989, pp. 17-19).

Common Article 3

The Common Article 3 refers to armed conflicts not of an international nature occurring in territory of one the High Contracting parties⁸. It also includes an armed conflict in which one or more than one armed groups are involved. Additional Protocol II is applicable to those armed conflicts which takes place in the territory of a High Contracting Party between its armed forces and local armed forces and other organized armed groups, who exercise control over a certain part of the territory enabling them to carry out constant military operations for implantation of this Protocol.⁹

The customary law is applicable to all type of conflicts; either international or non- international armed conflict. Treaties pertaining to weapons are also applicable, albeit the nature of armed conflict. Existence of an armed conflict and application of International Humanitarian Law depends upon the ground realities of the conflicts. IHL is applicable as the armed conflict arises. This means when the first protected citizens is under the grip of the conflict, the first segment of territory is brought under occupation or launch of the first attack, in international armed conflict; it means when the level of violence is reached to a certain limit (Bothe, 2013, pp. 183-185).

Human Rights Violations and International Humanitarian Law (Ihl)

In Kashmir, India and its Security Forces are involved in massive human rights violations. Kashmir conflict between India and Pakistan is an international armed conflict. India has violated and breached all the obligation entailed under the IHL. In this section several human rights violations conducted by the Indian Armed Forces in Kashmir will be discussed under the parameters identified in the IHL and misinterpreted by Indian policy makers under the Modi regime. The major human rights violations by Indian forces includes rape as a strategy of war, use of pellet guns against civilians, torture against civilians, use of cluster bombs, use of human shield, lockdown of Kashmir and communication blockade. (Majid et al., 2019). These human rights violations by Indian Forces will be discussed in the subsequent section.

Rape as strategy of war in Kashmir

International Covenant on Civil and Political Rights (ICCPR), a multilateral treaty adopted by the United Nations General Assembly (UNGA) on 16 December, 1966 and enforced on 23 March 1976; prohibits torture and other cruel and inhuman treatment with individuals (Joseph & Casten, 2013, pp.130-133). India is signatory to ICCPR and has also ratified it. It has also ratified the 4th Geneva Conventions of

⁸ “Common Article 3, paragraph 1 of the Geneva Conventions.”

⁹ “Article 1, paragraph 1 of Additional Protocol II.”

1949. Rape is also prohibited under the Common Article 3; it constitutes both cruel treatment and outrage on human dignity.

Indian security forces involvement is using rape as weapon in Kashmir emerged after government crackdown in January 1990. Despite the fact that Indian Army Personal and security forces are involved in rape, a very few incidents were investigated by the governmental authorities. In May 1990 Mubina Ghani was raped and detained by Border Security Forces (BSF) soldiers, on the way to her husband's home (Haq, 2017).

Rape¹⁰, gang rape¹¹ and mass rape¹² are systematically used by Indian Forces as weapon of war to punish, humiliate, threaten and coerce the local people. From January 1989 to September 30, 2016, there have been 10,717 rape and molestation cases reported in IOJ&K. (Abid & Ashfaq, 2016). According to a Kashmir Observer report more than two molestation and rape cases are reported in Kashmir every day in the last 24 years, but there is a continued increase in these cases which creates a situation of dismay.

Frequent cases of gang rape also took place in which Indian Security Forces were involved. Chief Minister Omer Abdullah once stated that 5,125 rape cases and 14,953 molestation cases have been registered in the state during last 24 years (Business Standard, 2013). Through such incidents Indian Security Forces not only violating international humanitarian law and human rights law, but are also in violations of their own country's law. Indian troops in Kashmir have reached to 700,000 in recent times which were 150,000 in 1990 (Mohiuddin, 1997). From January 1989 to November 2019 Indian security forces are involved in killing almost 9,471 people in IOJ&K (Kashmir Media Service, 2020). 7,135 are the custodial killings, 158,339 civilians were arrested, 109,450 were tortured, 22,910, women were widowed, 107,780 children were orphaned and there were 11,175 reported cases of molestation and gang rape of women (Ahad, et al., 2109). The number of increased human rights violations post 2014 and primarily during the Modi regime has clearly signaled that India being signatory to human rights and international humanitarian law is making its obligation as obsolete, null and void in the contemporary age.

Torture against civilians

In Kashmir, torture is regarded as the most underrated and underreported human rights violations by India. The presence of Indian Security Forces (650,000-750,000) is to exercise control over the population. Use of torture is torture against civilians that is employed to suppress the people's will. Torture is a crime that remains hidden form the media, unless a victim is dead, because of his/ her injuries (Mayerfeld, 2008). Other forms of torture used in Kashmir includes

¹⁰ "Rape is the sexual assault against any person".

¹¹ "Rape of a single victim by two or more violators"

¹² "Mass rape is also known as wartime sexual violence is rape or other forms of sexual violence committed by combatants during armed conflict, war, or military occupation often as spoils of war; but sometimes, particularly in ethnic conflict"

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stripping detainees' naked, beating with iron rods and wooden sticks or leather belts, roller treatment, water boarding, hanging from ceiling, electrocution, heading in water, heaters or cigarette butts, sleep deprivation and rape as stated by the Amnesty International. Torture is a normal routine in Kashmir and for those people who get arrested.

India is signatory to United Nations Convention against Torture (UNCAT) since 1997, but has not ratified it yet, because in India torture is accepted as open secret and such treatment is used to provide justice in certain communities. In all three UPRs (Universal Periodic Review) conducted by UNHRC in 2008, 2012 and 2017, it was recommended that India should ratify this convention, but India still lacks behind such ratification. After killing of Burhan Wani in July 2016, Kashmiris have witnessed gross violations of human rights in form of extra-judicial killings, illegal detentions, torture, sexual violence, disappearances, arson and vandalism by India and its Armed Forces.

Use of pellet guns

In 2010, Indian government introduced pellet guns as non-lethal weapon to control the crowd. However, things turned against Indian government, because they considered it as their right to blind and disfigure the Kashmiri's by using pellet guns. Narrative of referring the pellet gun as non-lethal in nature was highly criticized by the International Human Rights Organizations such as Human Rights Watch and Amnesty International. Amnesty International called these weapons as lethal and halted Indian Forces to use such weapons. Amnesty International in 2017 reported that pellet guns have injured 6000 people including 782 eye injuries. Pellet guns were called as non-lethal weapons but, the life of pellet guns victim is more miserable like a living dead body (Zia, 2019).

Use of cluster bomb

Indian forces illegal use of cluster ammunition, which are banned under the Geneva Convention killed two civilians and wounded 11 in Kashmir. The images of cluster bombs used by Indian forces on July 30 and 31 2019 along the Line of Control (LOC) were released.(TRT World, 2019). Photos of 4 years old boy, killed and wounded by the cluster bomb were released by Inter Service Public Relations¹³ (ISPR). In a tweet DG ISPR Maj General Asif Ghafoor said; "Use of cluster bombs by Indian Army violating international conventions is condemnable" (Pakistan Today, 2019). Indian Army denied such allegations of using cluster bombs along the LOC saying that "such responses are only against military targets and infiltrating terrorists who are supported by Pakistan Army"(India Today, 2019). Meanwhile Pakistan Foreign Minister Shah Mehmood

¹³ "Pakistan Army's Media Wing"

Qureshi also tweeted and condemned the blatant use of cluster bomb in Kashmir “Strongly condemn the blatant use of cluster ammunition by Indian Security Forces targeting innocent civilians along the Line of Control. This is clear violations of the Geneva Convention and International Laws” (Qureshi, 2019).

Lockdown and Communication blockade

The August 5th 2019 decision by Indian government under the Modi regime, revoking the Articles 370 and 35A of Indian Constitution, provided legitimate right to Kashmiris to have their own constitution, while the 35A provided special rights and permanent rights to the citizens of Kashmir. Revoking Articles 370 and 35A brought a humongous number of social, political and economic challenges for the Kashmiri people (BBC News, 2019). Indian government under the Modi regime and its forces did massive human rights violations after the abrogation of Article 370 and 35A. Kashmir has brought under a lockdown and strict media censorship and communication blockade is imposed on the people of Kashmir.

Human Rights Watch (HRW) raised concerns about the communication blockade in IOJ&K. “The access to communication is the right of Kashmiri people, to talk with their loved ones, hospital and essential supplies, but what is visible is none of them” said Meenakshi Ganguly in her interview to Al Jazeera (Al Jazeera, 2019).

India is the world’s largest democracy and global leader in internet shutdown. When India imposed clampdown on internet under the excuse that this temporary shutdown is to avoid a massive and permanent loss of life in the later 2019. Four reporters from the United Nations also condemned this move warning that the “Kashmir shutdown is “inconsistent with the norms of necessity and proportionality” (Kumar, 2019). The media censorship and communication blockade in Kashmir is described as a “gag” on the functioning of Journalists demanded the Indian government for early restoration of mobile and internet connectivity (Haq, 2019) In spite of all his deliberate and jingoistic moves Prime Minister Modi of India defended his fascist decision of revoking Article 370 at 73rd Indian Independence Day in New Delhi by saying that he ensured the idea of “one nation, one constitution” to his people to foster growth in the disturbed region. He tweeted “We do not believe in creating problems or prolonging them. In less than 70 days of the new government, Article 370 has become history, and in both Houses of Parliament, 2/3rd of the members supported this step. We want to serve Jammu, Kashmir, Ladakh: PM” (Modi, 2019).

Indian Draconian Laws (AFSPA and PSA)

Armed Forces Special Powers Act (AFSPA) and Public Safety Act (PSA) are more or less the draconian laws of the Indian Parliament, whose aim is not to create stability rather creating instability and chaos. The Armed Forces (Special Powers) Act-(AFSPA) was passed on September 11, 1958 and its aim is to assist

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the Indian Army to embark upon the people in the disturbed areas of Northeast India. In 1990, AFSPA was implemented in Kashmir amid increase in the insurgency.

AFSPA is a draconian law which gives extra powers to the Indian Armed Forces for maintaining rule of law in disturbed areas, primarily in Kashmir and nowadays in the Nagaland (Livemint, 2019). Armed forces have the right to prohibit the gathering of five or more than five persons in an area. However in some of the case like IOJ&K the forces have the right to open fire on the civilians after giving warning. Under this law any suspect can be arrested prior to warrant. Armed forces have the privilege to search any house without warrant (Singh, 2019).

AFSPA is a key obstacle to accountability of Indian Forces. The Section 7 of AFSPA prohibits the trial of security forces unless it is permitted or sanctioned by Indian government. In the last three decades there has been no trial of the Indian Armed Forces over IOJ&K, neither allowed by the Indian government. Indian Army also remains skeptical in providing final reports of the Armed Personnel accused of such heinous crimes under AFSPA. Those who found guilty were later acquitted and released by the higher military officers (OHCHR, 2019).

Public Safety Act (PSA) of 1978 is also called as Jammu and Kashmir Public Safety Act and it extends to the whole IOJ&K. In order to maintain the brevity of this paper the clauses of PSA relevant to this paper are explained. According to PSA the government has the right to take action to prevent the entry of unauthorized person, government can declare any area as prohibited for the people. If any person is found at a prohibited place the police officer not below the rank of Sub Inspector has the authority to cordon him/ her off from that prohibited area. Any police officer also have the authority to search and a person and his belongings, who is trying to enter or seeking to leave the prohibited place (J&K Public Safety Act, 1978)

Indian authorities in IOJ&K use it as an arbitrary detention targeting the protestors, political and other social actors. OHCHR was informed that the Indian authorities in IOJ&K detain people with imposing PSA orders before the suspects leave prisons. Later on in July 2010 the section 10 of PSA was amended by Jammu and Kashmir government, confiscating the prohibition on detaining permanent residents of IOJ&K outside the state (OHCHR, 2019).

A magistrate in Kashmir interviewed by AFP news agency on condition of anonymity stated that around 4000 people were arrested in IOJ&K and held under the controversial Public Safety Act (PSA) which allows the authorities to detain someone for two years without trial (Al Jazeera, 2019). Post the abrogation of Articles 370 and 35A veteran political leaders such as Farooq Abdullah, Omer Abdullah and Mehbooba Mufti were detained and arrested under the Public Safety Act. This was also confirmed by the Indian Union Minister Amit Shah in his

interview to India Today. “They [Mufti and Abdullah] are still in detention under the Public Safety Act” (Scroll. In, 2019)

Rashtriya Swayamsevak Sangh (RSS) ideology and Modi’s fascism

RSS is a Hindu fundamentalist organization promoting the ideology of Hindutva.¹⁴ RSS replicates the fascist ideology adopted by Hindus for their national objectives. The Nazi symbols and emblems are the key part of RSS structural formation. Both Nazism and RSS works on the same tool of propaganda and referring themselves as the supreme race. The Savarak’s 1923 pamphlet “Hindutva: Who is a Hindu?” and Goebbel’s 1926 German pamphlet “Der Nazi Sazi”. Present Modi government under the BJP in India is considered as the political face of RSS. The Bhartiya Janta Party (BJP) draws inspiration and instructions from the RSS ideology. RSS proclaims Islam as an evil religion and promotes evil ideology. Henceforth, Muslim are being lynched and atrocities against Muslims are remained quite visible from 2014 till date in Indian and IOJ and K.RSS also has some serious reservations with the Indian constitution even RSS rejected the constitution when it was passed on 26 November 1949. Indian Express quoted on 16 March 2016 that RSS has registered highest number of members in the year 2015 to 2016, since it is formed (Indian Express, 2016). The Times August 23 2019 Issue it was reported that extremist Hindus in India are offering food, money and alcohol to different groups for killing Christians. More than 200,000 Muslims including men, women and children were killed by RSS in 1948 in Hyderabad. In the year 2002, 2000 Muslims were killed in state of Gujrat by RSS activists on the demand of the then Chief Minister Narendra Modi (Mehdi & Qureshi, 2019)

India under the Modi regime is more encouraging to promote the RSS ideology and the notion of Akhand Bharat.¹⁵ Since 2014 India under the BJP rule has imposed different kind of sanction over the minorities. Muslims are primality the most affected minorities of India under the BJP rule. Modi has been accused by the international organizations and international leadership including the foreign media for his tumultuous policies towards minorities in India. India is involved in massive human rights violations not only in Kashmir but in India as well, but as stated above India under the BJP rule is misinterpreting the norms of international human rights law.

Cult of Hinduism & spillover effects of human rights violations in Kashmir

The continuous human rights violations and misinterpretation of International Humanitarian Law under the Modi regime is to promote the “cult of Hinduism”. It

¹⁴ An ideology seeking to establish the hegemony of Hindus and the Hindu way of life.

¹⁵ “Akhand Bharat is an irredentist term meaning “Undivided India” in Sanskrit and encompassing those nations or regions of South, East, and Central Asia that were once part of pan-Indian empires or influenced by the spread of Hinduism and Buddhism”

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is imperative to explain what cult stands here. Cult in its literal meaning is a “system of religious beliefs directed towards a particular figure or an object”.¹⁶ The cult of Hinduism is being utilized and interpreted by the Modi government to secure his vote bank and political orientation of BJP. Hindu religion is being used as the dominant force to manipulate the Hindus against the minorities in India. Use of force and torture against the Muslims, Christian and others is an attempt of the BJP government to vindicate themselves under the veil of Hinduism. The believers of cult are of the view that human creates his own destiny by his thoughts and interpretations. Cult of Hinduism is promoted to project Modi as the authoritative leader and BJP as the last resort for political power in India. The cult of Hinduism is attained through political and structural violence against the minorities.

Conclusion

Kashmir has always remained a linchpin for the India- Pakistan conflict. Three major wars were fought on the Kashmir issue, however the scenario in Kashmir was totally changed when BJP came to power in India in 2014. BJP was quite inclined towards its Hindutva ideology and was inspired by RSS. India once used to be referred as the largest democracy and secular state, however after 2014 when Modi and his party came to power, the largest democracy turned into a fascist autocratic government. Modi’s religiosity and Hinduism came to the fore front when the Indian forces under the Modi regime increased its atrocities in Kashmir during his first term. Humans were used as shield in Kashmir, one of the important events in which Major Gogoia of Indian Army tied a Kashmiri citizen on his army car and used him as shield. Later on India tried to legalize the inhuman pellet bullets which were used against innocent civilians in Kashmir. Rape has always remained a weapon of war in Kashmir, the victims of rape were not only women but the male counterparts were also sodomized. The inhuman torture under the law of jungle AFSPA and PSA permits the Indians to do whatever they want.

International law is the law which governs the states, however in case of India there is no concept of international law and morality. The India’s decision on unilateral revocation of Articles 370 and 35A of the Indian Constitution are an attempt to obstruct the Kashmiri peoples’ lawful exercise of their right to self-determination. The war crimes committed by India are not only war crimes, but these are also individual crimes over which India is responsible individually. The Indian vandalism in Kashmir has accused India of violating international law and the United Nations Charter as well. The first Article of UN Charter deals with the concept of human rights and equality. Modi’s fascist ideology has breached the basic notion of UN Charter.

Modi is trying to vindicate himself by breaching the international law and promoting and supporting the cult of Hinduism and Hindutva. The wars between

¹⁶ Cambridge Dictionary Meaning, Available at: <https://dictionary.cambridge.org/dictionary/english/cult>

Catholics and Protestants were ended with the Treaty of Westphalia in 1648, however in the current India these wars are reinvigorated by the BJP government. This time the war is between Muslims and Hindus over their right to life, property and liberty. As Samuel P. Huntington as claimed in his Clash of Civilizations in future civilizations will clash and Muslim will emerge as dominant force. In South Asia, the clash of civilizations has been brought into practice with Modi's National Register of Citizen (NRC) and Citizenship Amendment Act (CAA). Pakistan and international community must lobby for imposition of sanctions on India, especially with European Union (EU) Member States and within the United Nations General Assembly (UNGA) accusing India of violating the international law.

India and its forces belligerence and violations of Common Article 3 of IHL, use of force against the civilians, use of pellet bullets, lockdown and communication blockade have created a situation of unrest in Kashmir. India being the largest democracy has negated the basic obligation of a democratic state, and is involved in a series of human rights violations. Indian policies in Kashmir has brought back the question to debate that Is International law a true law? International law and international obligations are binding on all the United Nations member countries, however India under the Modi regime has interpreted the international law as per their own terms and ideology.

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