

Salient Points of the Report ‘Structures of Violence: the Indian State in Jammu and Kashmir’

The International Peoples’ Tribunal on Human Rights and Justice (IPTK) and the Association of Parents of Disappeared Persons (APDP), constituents of Indian Occupied Jammu and Kashmir based Jammu Kashmir Coalition of Civil Society (JKCCS), have released a report on 9 September 2015 about human rights violations committed by Indian security forces in Indian Occupied Jammu and Kashmir. Earlier in 2012 IPTK and APDP released a report *Alleged Perpetrators* which identified 500 alleged perpetrators responsible for 214 cases of human rights violations in IOK. In 2009 IPTK/APDP report *Buried Evidence* investigated the phenomenon of unmarked and mass graves in North Kashmir in IOK.

Prepared over the period of two years, the report holds Indian security forces for the disappearance of 8000+ persons, 70,000+ deaths, 6000+ unknown, unmarked and mass graves, and countless cases of torture and sexual violence in Indian Occupied Jammu and Kashmir. Overall the report documents the extra-judicial killings of 1080 persons and enforced disappearances of 172 persons and numerous cases of torture and sexual violence. The report, while illustrating the patterns of violence through individual case studies, is directly concerned with identifying the structure, forms and tactics of violence of the Indian State in IOK.

While explaining the term ‘structure of violence’ the report says, “The structures of violence in Jammu and Kashmir (*IOK*) are a complex interplay of army camps, intelligence agencies and numerous other armed groups. While there is ample evidence of the violence suffered by citizens of Jammu and Kashmir (*IOK*) in the last three decades (including in reports produced by JKCCS), we believe it is necessary now to understand such violence not as sporadic and occasional but as the consequence of an infrastructure which, in this report, we have termed the structure of violence”.

While analyzing individual cases of human rights violations the report concludes that in each and every case there is a connection between different parts of the larger apparatus, i.e., structure of violence, and the individual victim/crime. It says, “the torture of a civilian in a camp by army personnel is not disconnected from the army hierarchy, and nor is it disconnected from the other forces and agencies operating in the area”. The report claims that it is a beginning of an effort to understand the structure of violence and how it operates.

The report holds the larger structure responsible for violence by individual officials and says that “International criminal law does not limit responsibility to only the physical perpetrators of crime. The principles of individual criminal responsibility are based on the notion that those who do not physically commit the crime in question are still liable for other forms of participation. This could include, for example, ordering, instigating, or even inciting.” It therefore concludes that, the responsibility for the crimes in IOK must not be limited to the individual forces personnel who physically committed the acts and the structure behind must be held responsible under international law.

The report says that in the larger quest for political control, the land and people of Indian Occupied Jammu and Kashmir have been subjugated at all costs and with absolute impunity by Indian security forces. While pointing out the culture of impunity in IOK the report observes that ‘the institutions and procedures of rule of law in Jammu and Kashmir (*IOK*) have been subverted to function within the larger culture of institutionalized impunity and violence’. The report calls the cases documented in it as ‘crimes of Genocide, Crimes against Humanity and War Crimes under international law’.

The report claims that ‘in no other context of warfare have military personnel operated with the absolute impunity that has been seen in Jammu and Kashmir (*IOK*) where troops are supposedly operating for peace keeping duties’. It reveals how India armed and used Kashmiri civilians (*Ikhwans*) to combat the armed struggle which was also aimed at fragmenting the society along ethno-religious, linguistic and regional lines adding further that ‘having served the interests of the Indian State many of these operatives were neutralized and killed’.

It also says, “India’s claim of being a functional democracy, and demand for a permanent seat in the United Nations Security Council, is belied by its unlawful conduct in Jammu and Kashmir (*IOK*) and refusal to allow accountability. It reminds that in July 2008 the European Parliament passed a resolution urging Government of India to investigate unmarked mass graves ‘but no action has been taken on this resolution’.

Chapter 1 of the report lays down the structure of the Indian army and the BSF from the highest level, army headquarters and Director General, BSF, all the way down to the Brigade/Sector level in the case of the army, and Battalion level in the case of the BSF. This chapter also estimates the strength of the Indian armed forces in IOK between 656,638 and 750,981 and observes that the military deployments in Afghanistan, Iraq,

Libya and Palestinian occupation of Israel are far less than the level of militarization in IOK.

Chapter 2 understands operation of the State's structure of violence through five specific spectacles of mass violence and concludes that 'the violence, obfuscation and impunity at every step illuminates the system at work and reiterates the argument that there can be no justice from the same judicial system that is a part of the larger apparatus of occupation and employs mass violence as a strategic tool of political control'.

In the words of the report, 'Each of the five instances of mass violence documented in this chapter explores a gamut of spectacular brutality mass rape and torture in Kunan-Poshpora, massacre in Sopore, Sailan and Chittisingpora, 'fake encounter' in Pathribal, killing by the State created and managed Ikhwan in Saderkoot-Bala, and killing as a result of firing at a protest in Brakpora. The five mass crimes described and analyzed in this Chapter, represent only a fraction of the total number of such events that have occurred with terrorizing frequency in Jammu and Kashmir. They have been selected not for their exceptionality, but because of the availability of enough information gathered slowly over years of litigation and interaction with survivors, to present a well corroborated and detailed narrative'.

Chapter 3 highlights a mechanism that specifically supports the military structure of violence i.e., court-martial. It concludes that 'Court-martial in Jammu and Kashmir (*IOK*) is found to be opaque, impossible to access, against principles of natural justice, and biased. In its functioning, result and impact, it serves as a tool for the armed forces to protect their own. Given the Indian army history of interference and abuse of the civilian judicial process, there can be no expectation from the opaque court- martial process.'

Chapter 4 of the report has described 333 cases of human rights violations with 198 case studies on extra-judicial killings (amounting to a total of 415 persons killed) and 73 case studies on enforced disappearances (amounting to a total of 89 disappeared persons). Case studies cover cases of sexual violence and torture also.

After analyzing 333 case studies of human rights violations the report comments that 'the Indian State narrative of human rights violations being mere aberrations is not substantiated'. It further adds that 'The structures of the Indian State, including the Government of Jammu and Kashmir (*IOK*), must be accused of not just standing by while human rights violations have taken place, but they carry a far higher culpability. They

must be accused of willfully putting in place structures specially meant to carry out these crimes'. From the 333 cases the report identified a list of 972 individual perpetrators, which include 464 army personnel, 161 paramilitary personnel, 158 IOK Police personnel and 189 Government gunmen (Ikhwan). The designations of some of these alleged perpetrators points to a deep institutional involvement of the Indian State in crimes in IOK. Among the alleged perpetrators are one Major General and seven Brigadiers of the Indian Army besides 31 Colonels, four Lieutenant Colonels, 115 Majors and 40 Captains. It further identified following officials: a retired Director General of the Jammu and Kashmir (*IOK*) Police, a present Additional Director General of Police, two Inspector Generals, two Deputy Inspector Generals, six Senior Superintendents of Police, and three Superintendents of Police.

While urging the international community to respond to the evidence presented in it, the report claims that 'the continuing denial of justice from the Indian State is a reason for appealing to the international community and justice mechanisms as domestic remedies have conclusively failed the people of Jammu and Kashmir (*IOK*)' adding that 'ignoring this evidence is endorsing the violence of the Indian State'. It appeals the international community not to ignore the evidence presented in it and urges it to 'bring to bear moral and economic pressure on India to recognize the paramountcy of the rights of the people of Jammu and Kashmir (*IOK*) in this armed conflict, and its obligations to them under international humanitarian and human rights law'.

Following are some recommendations the report makes:

- i. Given India's continuing non-signing/ratification of the Rome Statute of the International Criminal Court, and its unwillingness to investigate human rights violations by its forces in IOK, the UN Security Council should exercise its power to refer the situation in IOK to the Prosecutor of the International Criminal Court, under Article 13 (b) of the Rome Statute, acting under its obligation to maintain international peace and security.
- ii. The United Nation Human Rights Council should take cognizance of the findings, testimonies and documentary evidence presented in the report with regard to existence of grave, widespread and systematic human rights violations, and pervasive structures of state violence in IOK, and appoint a Special Rapporteur with a specific mandate to investigate India's violations

under international law, international humanitarian law and international criminal law in IOK.

- iii. Government of India ensure that material witnesses and individuals with knowledge of the occurrence of such violations, including military, police and administrative officials and victims receive protection against threats and intimidation.
- iv. Government of India and Government of IOK allow free access to IOK, to the following Special Procedures of the UN Human Rights Council for the purpose of carrying out investigations into allegations mentioned in the report, and receiving submissions from victims:
 - a. UN Working Group on arbitrary detention
 - b. UN Working Group on enforced or involuntary disappearances
 - c. UN Special Rapporteur on extrajudicial, summary or arbitrary executions
 - d. UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment
 - e. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association
 - f. UN Special Rapporteur on the promotion and protection of right to freedom of opinion and expression
 - g. UN Special Rapporteur on the situation of human rights defenders
 - h. UN Special Rapporteur on the independence of judges and lawyers
 - i. UN Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples' to self determination
 - j. Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence
 - k. Special Rapporteur on freedom of religion or belief
 - l. Special Rapporteur on violence against women, its causes and consequences