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**HUMAN RIGHTS VIOLATION IN KASHMIR WITH SPECIAL REFERENCE TO WOMEN**


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**GAZALA SHARIF**

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**Abstract:** Recent years have seen a resurgence of violence all over the world. While scholars disagree over its reasons, it is generally agreed that the major victims of violence happen to be the excluded and marginalized social groups, in particular, women. Kashmir has been described as the most militarized corner in the world due to the presence of more than half a million troops. Since 1989 there has been an active militant insurgency backed by a popular sentiment of 'Azadi' in Kashmir. According to a Human Rights Report compiled in 2005, there were in the valley 35 lacs troops posted in the valley, whereas the population there was about 57 lacs. In other words, there was a soldier against five to seven civilians. Increasing evidence show that women experience conflict in a different way to men, something that is confirmed by those working in the field. Almost every instance of an armed conflict undoubtedly affects the entire society, but not to the same measure. Since women are particularly vulnerable, they tend to suffer more than men in almost every instance of armed conflict. Unfortunately, Kashmir has seen a lot of violence in recent years, and while it continues to affect all the people of Kashmir, women bear the scars of violence deeper than men. While scholars have been trying to understand the nature of violence in strife-torn Kashmir, they have made very little effort to unravel the impact of violence on women. My work makes a small effort in that direction, and seeks to reveal how the incessant and ever-increasing violence in Kashmir has changed the lives of women forever. It also makes an effort to draw out the experiences of the female victims of violence in the state -- their pain, sorrows and sufferings.

**Keywords:** Human Rights Violation, Rape, Armed Conflict

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**Introduction:** If the data provided by Uppsala University, under its 'conflict data program', is to be trusted, about one-sixth of India's citizens live in areas of armed conflicts. The Uppsala university conflict data program defines armed conflict in the following words:

*"An armed conflict is a contested incompatibility that concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths in one calendar year"*

Kashmir has been described as the most militarized corner in the world due to the presence of more than half a million troops. Since 1989 there has been an active militant insurgency backed by a popular sentiment of 'Azadi' in Kashmir. According to a Human Rights Report compiled in 2005, there were in the valley 35 lacs troops posted in the valley, whereas the population there was about 57 lacs. In other words, there was a soldier against five to seven civilians. Since 1995 Indian armed forces have armed and trained local auxiliary forces made up of surrendered or captured militants to assist in counter insurgency operations. These forces do not wear uniforms and operate outside the normal command structure of the Indian Army and other armed forces. Nevertheless they are considered agents under international law. They are generally referred to as renegades or third force. The Indian army, and its local agents, have committed, and sponsored/supported widespread human rights violation in Kashmir.

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One reason why women are the 'prime targets' in instances of violent conflicts is that they are viewed as markers of community identities, and in targeting women, the perpetrators, actually target the community as a whole, its honour, its symbols and prestige. In Kashmir, the media and the human rights bodies have brought to light instances of large scale molestation and rape of women by both the security forces and the militants. There have also been instances where the family and/community have 'eliminated' women who had been molested in the armed conflict. For women, therefore, it is not just the state and the militants, but also the community and members of the family who are potential perpetrators of violence against them. Besides rape and molestation, instances have come to light where women were faced with enforced prostitution, sexual slavery and impregnation or termination of pregnancy without, of course, the protection of the rule of law. In almost all such instances, the state has

been a mute spectator, failing to provide any sense of protection to women.

Where women are not direct victims of violence, they are still affected by it, nonetheless. Violent conflicts in Kashmir have led to the destruction of many homes, and for many women, the loss of the bread earner in their families. Kashmir has seen, since the resurgence of violence, a proliferation of female headed households. Owing to deaths in the conflict but also occasionally as a result of desertion and abandonment by men, the number of female headed household is regularly increasing in Kashmir. Forced by circumstances, these women are thrust into new responsibilities, and are forced to sell their labour to sustain their children. The resurgence of violence in the last several decades has turned many married women into widows and, worse still, half-widows.

It is a known fact that in the present, decades old conflict, in Kashmir, both the both security forces and armed militants have systematically used rape as a weapon to punish, intimidate, coerce, humiliate or degrade their enemies. During 1990's rape by Indian Security forces often occurred during crackdowns, cordon-and search operations which were followed by forcing the civilians to suffer collective punishments in which the security forces assaulted residents, destroyed their homes and raped/molested their women. According to SwarnaRajagopalan, in recent years, wherever security forces have been deployed in south Asia, one has heard stories of soldiers raping local women. Regardless of the veracity of every charge, and the issue as to which party to the conflict is more blameworthy, what matters is that such abuse appears to be accepted as part of the war. A study done by Medicins frontiers in Mid-2005 reveal that Kashmiri Women are among the worst sufferers of sexual violence in the world. It further mentions that since the beginning of the armed struggle in Kashmir in 1989, sexual violence has been routinely perpetuated on Kashmiri women, with 11.6 per cent of respondents saying they were victims of sexual abuse.

According to a report prepared by Jammu Kashmir Coalition of Civil Societies (JKCCS), rape has been routinely used as a war weapon in Kashmir. Documented cases have shown evidence of mass rape during cordon and search operations by security forces. There have also come to light several cases of abduction of women and their subsequent rape within Army facilities and a complete disregard for age, health and disability in the perpetuation of sexual violence. Mass rape of Kashmiri women by the security forces was first documented in the Chanapora (Srinagar) mass rape incident on in March 1990. This was followed by another grave incident in KunanPoshpora which allegedly witnessed the mass rape of women during a cordon- and - search

operation in February 1991. It is alleged that the troops raped the village women all though the night. Eleven year old girls, pregnant women, to 60 year old grandmother were raped. In raping them the security forces were punishing and humiliating the entire community. In 1996 in BomaiSopore, in, when the people were holding protest demonstrations against the excesses of army personnel, several girls were dragged to paddy fields where the security men open their garments, bruised their faces and raped them. There are several incidents where the security forces entered houses, one after the other and sexually assaulted women. In one village, reportedly there were complaints of Army Personnel stripping themselves in front of womenfolk of the village.

In looking at why women become special targets in a situation of war it seems that rape as a war weapon has been often used to punish the civilians following any militant attack. Women in such attacks have been chosen randomly. For instance in 1993 a large number of women were raped during a search operation after a peaceful demonstration against Hazratbal siege was fired upon in Bijbehara in Anantnag and over 60 people were killed. Thus women often become the targets like other civilians assaulted or killed, simply because they happen to be in the wrong place at the wrong time. Rape has been used as a means of targeting women whom the security forces accuse of being militant sympathizers; in raping them the security forces were attempting to punish and humiliate the entire community. This is exemplified by an incident (among many) in which two sisters of a militant were raped by the Rashtriya Rifles, men of the Indian army in 1997 at village Hakura in District Anantnag. In 2005, the BSF troops raided the house of one Abdul Jabbar Malik of Vailu Village in Kokernag, Anantnag and raped his two sisters. Shopian rape and murder case refers to the alleged abduction, rape and murder of two young women in mysterious circumstances between 29th and 30th May 2009 at Bongam, Shopian district of Jammu and Kashmir. Two women who were sisters-in-law went missing from their orchard on the way home on 29th June 2009. Next day morning their bodies were found both one kilometer apart. Later it got cleared that both the women were gangraped and murdered by the men in uniform. Neelofar Jan, age 22, wife of Shakeel Ahmed Ahangar and mother of two-year-old son, Suzzane.Aasiya Jan, age 17, daughter of Abdul GaniAhangar. She had secured distinction in her matriculation exams in previous year and was pre-medical student of New Greenland Higher Senior Secondary School in Alialpora, Shopian. Neelofar was Aasiya's sister-in-law and both were resident of Bongam in Shopian. The process was followed by commissions, reports, protests, undeclared curfew but to no avail. At last, the officials

declared the rape and murder as a case of drowning and closed the file, with the family of victims still waiting for justice.

Cases have been documented where a group of soldiers allegedly molested women, refusing to spare even the ones who were pregnant. In one case study, by Independent Women' initiative for Justice (IWIJ) , Uma Chakarvarthi, has rightly pointed out that the graph of rapes in Kashmir compared to other Right abuses is very low, but this is because most of the rape cases are not reported by the victims and their families. The victims do not come forward in most of the cases because of the social stigma attached to a rape victim. Besides, most of the rapes occur in remote areas which have little access to media or the human rights groups . Crimes against women in Kashmir exist in many other forms too.

One such crime is the shameful sexual harassment often verbal harassment and molestation which erodes any sense of security for women in the valley. Kashmiri women are often subjected to humiliating body searches by the security men. Kashmiri women, on way to their college or office, are often subjected to body searches. This is what happens to a well-off, educated woman in Kashmir, needless to say that poorer women's sufferings are much dreadful . In order to enquire on the matter, many women were asked if they were ever sexually harassed by the armed forces and 6 out of 10 women replied in the positive .One woman mentioned that, she stopped working in the agricultural fields, because the armed forces were continually harassing her with verbal abuses. This Woman was above 45 years of age and one could easily guess how difficult it must be for the younger women to venture out.

**Rape and Harassment by Militant Groups:** Twelve major militant organizations, and perhaps dozens of smaller ones, operate in Kashmir. Militant organizations operating in Kashmir have committed grave violations of human rights and international humanitarian law. A number of these groups have executed civilians, including Muslim political leaders and civil servants, prominent Hindus and other civilians they have accused of being government informers. Militants have also thrown grenades at buses and government buildings and have detonated car bombs, killing and wounding civilians. While militant threats to women were reported as early as 1990, most frequently by groups reportedly seeking to enforce their interpretation of "Islamic" culture in Kashmir, reports of rape by militant groups were rare in the conflict's early years. A July 1990 report cited frequent threats to women by one group, "warning the women that severe action will be taken if they do not maintain purdah (or burqa -- clothing which entirely conceals the body)." Such threats have continued, and women who have challenged the

militants have been attacked. On May 13, 1993, members of the women's organization, Dukhtarane-Millat (Daughters of the Nation) issued warnings to women in Srinagar not to come outside without wearing burqas. The militants sprayed paint on women who defied the order. Four students were hospitalized with eye injuries from the paint. Reports of rape by militant groups in Kashmir have increased since 1991. The reasons for this are not clear, but the increase coincides with a rise in other violent crimes against civilians, including kidnapping, extortion and murder. In some cases, women have been raped and then killed after being abducted by rival militant groups and held as hostages for their male relatives. In other cases, members of armed militant groups have abducted women after threatening to shoot the rest of the family unless she is handed over to a militant leader. The fact that local people sometimes refer to these abductions and rapes as "forced marriages" gives some indication of the social ostracism suffered by rape victims and code of silence, and fear, that prevents people from openly condemning such abuses by militant groups. Some incidents of rape by militants appear to have been motivated by the fact that the victims or their families are accused of being informers or of being opposed to the militants or supporters of rival militant groups. One of the earliest such cases involved a staff nurse at the Saura Medical Institute, SarlaBhat, 27, who was kidnapped from the institute on April 14, 1990. Her body was found four days later. A note found near the body stated that the JKLF took responsibility for the killing and accused Bhat of informing the security forces about the presence of a number of wounded militants in the hospital. The post-mortem report concluded that she had been raped before she was shot dead. Rape by militant groups is a violation of international humanitarian law under Common Article 3 of the Geneva Conventions, which prohibits murder, torture and ill-treatment of non-combatants by both government and militant forces. As we noted above, in both conflict and non-conflict situations, the central element of rape is power. Both security forces and armed militants have used rape as a weapon: to punish, intimidate, coerce, humiliate and degrade. The fear of rape has reportedly been a factor in the flight of Muslim families from Kashmir. However, cases of rape by militant groups are difficult to investigate because most Kashmiris are reluctant to discuss abuses by the militants out of fear of reprisal. According to one report, the increasing number of rapes has led to an increase in abortions in Kashmir, resulting in one case in the murder of a doctor who complained about having to perform them. Militants from the Hezb-ul Mujahidin and Al Jihad reportedly accused the doctor of being an informer.

**The Applicable Law:** The International Covenant on Civil and Political Rights (ICCPR) prohibits torture and other forms of cruel, inhuman and degrading treatment. The Government of India has ratified the ICCPR. India has also ratified the four Geneva Conventions of 1949. Common Article 3 of the Geneva Conventions, which applies to internal conflicts, prohibits murder, torture and ill-treatment of non-combatants by both government and militant forces. Rape is clearly prohibited by Common Article 3; it is customarily understood to constitute both cruel treatment and an outrage on personal dignity. While the conflict in Kashmir does not currently meet the conditions necessary for the application of Protocol II to the Geneva Conventions, which also governs internal conflict but of a different character, we believe that Protocol II provides authoritative guidance for interpreting Common Article 3's prohibition on "outrages upon personal dignity." Protocol II outlaws "outrages upon personal dignity, in particular humiliating treatment, rape, enforced prostitution and any form of indecent assault." The commentary of the International Committee of the Red Cross explains that this article "reaffirms and supplements Common Article 3 because it became clear that it was necessary to strengthen the protection of women who may also be victims of rape, enforced prostitution or indecent assault. Although the line between cruel and inhuman treatment and torture is not well defined in either humanitarian or human rights law, rape also violates the ICCPR and Common Article 3 prohibitions on torture. The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as:

*any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of with the acquiescence of a public official or other person acting in an official capacity.*

When any party to an armed conflict, internal or international, uses rape, or acquiesces in the use of rape by its combatants, with the intention of inflicting severe pain or suffering and for the purposes of coercing, punishing, or intimidating, or to obtain information or a confession, it constitutes torture.

**Criminal Law (Amendment) Act, 2013:** The law commission had examined the entire law relating to rape and sexual assault in IPC and suggested a complete overhauling of the law. Bill, drafted by Ms

Kirti Singh advocate and legal convener of AIDWA, is based on 172nd report of the Law Commission to amend the laws relating to sexual assault in Section 375, 376, 354 and 509 IPC and the relevant sections of the Code of Criminal Procedure 1973 and the Indian Evidence Act 1872.

Recent changes in different laws for example – the law on marriage, inheritance, rape, domestic violence, sexual harassment, and more – have all come about as a result of campaigns conducted by women's groups across the country. However, by and large, participation in these campaigns has been limited to women – most men have kept away, seeing these as 'women's issues'.

**Conclusion:** As India moves ahead and establishes herself as a prominent state actor the fact remains that grave human rights abuses are taking place in Kashmir. The group most vulnerable to the violence is women. Women in Kashmir are the victims of grave crimes against humanity. Using rape as a weapon, perpetrators go unpunished. The non-existent judicial system is far from a deterrent. Women are also victimized in their own communities after being abused as the stigma attached to being a raped woman. If a woman survives the rape they are shunned by their community. Women are viewed as being "dirty" and therefore are not marriage material. Currently, these are the conditions affecting women in Kashmir. The solution to the problem is in adopting an integrated approach to the problem.

No person who has committed rape should escape punishment, the women who become victims of rape should not be harassed during the course of investigation and trial in the court and the trial of the persons charged with the rape should be speeded up, to ensure that the police discharge efficiently and promptly the manifold and complex problems that confront them in rape cases, and to assure the free movement of women by giving them protection when they move out, as also to the inmates of women's lodgings and hostels. The real challenge, therefore, in dealing with the problems of rape and its horrors lies in raising public consciousness against it and in preventing the publication and exhibition in any form of that trash material, which only corrupts the minds of the youth and of the depraved. Existing laws should be implemented properly. Crime against women in Kashmir is increasing and thousands of women bear it silently. Unfortunately, most of them are reluctant even to lodge complaints owing to the social stigma perceived being attached to it. A sizeable chunk of them don't want to register their complaints to avoid legal hassles and other cumbersome procedures.

Human rights violations in Kashmir are in direct disregard of the principles of international human rights and humanitarian law and no attention has



been paid towards the women having been victims of such crimes. During past two decades, Kashmir is witnessing unprecedented crimes against women which may attribute to the ongoing political turmoil. Besides incidents of rape, molestation have seen a dreadful upsurge, What aggravates the situation is that many such incidents go unreported, thus guilty get no punishment. Even if reported due to low

(negligible) conviction rate, criminals dare committing crimes unabashedly because they know stringent action will not be taken against them. More than 10,000 cases of rape come in the court for hearing annually. To get the crime graph down, laws should be implemented properly and stringent actions should be taken against the guilty.

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Gazala Sharif/