

# Indian-occupied Kashmir?

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Most Indians are very familiar with the term “Pakistan-occupied Kashmir” (PoK). It has been used to collectively denote the area comprising Gilgit-Baltistan and Azad Kashmir since the ceasefire declared between India and Pakistan by the United Nations on 31 December, 1948. Hardly a day goes by without the PoK being mentioned in the newspapers; it dominates international news and foreign policy debates in India. “Chinese-occupied Kashmir” is also a term that is fairly familiar, yet less so than PoK.

The term “Indian-occupied Kashmir” has a jarring tone that tends to resonate particularly harshly with the ear. The gut reaction among the general public is to dismiss the term as one that is used by Pakistan to promote its “propaganda” of claiming all of Kashmir. At the time of partition, the Maharaja of Kashmir had the choice of acceding to either India or Pakistan, and it chose to sign the Instrument of Accession to India (Lapierre & Collins, 1976). To the Indian mind, the logical conclusion would be that Kashmir can be called an integral part of India, and any claim that Pakistan lays on Kashmir has no legal grounds or precedents.

Although this narrative is far from the full story, it is not the fault of the average Indian for holding such a biased view of the Kashmir conflict. It could be due to nationalistic fervour, as much as to the manner in which the issue is framed in history and geography textbooks in India. The fact that Kashmir is and has always been an *integral* part of India is driven into the mind, both through the telling of history and, more importantly, through visual geographic depiction. Generations of Indians who went to school after 1948 have seen a map of India that includes territories that have not been in its control since 1948. Again, one cannot squarely put the blame on the makers of the textbooks *per se*; if they did depict a truer and internationally recognised map of India, they would be risking legal prosecution, as it is illegal to print a map of India that differs from what is depicted in the *Survey of India* (The Criminal Law Amendment Act, 1961).

This paper refers to *Inshallah, Kashmir: Living Terror*, a 2012 documentary film by Ashvin Kumar, which highlights the dire situation of the Kashmiri civilian, who is caught in between the Kashmiri liberationists, the Pakistan-backed *jihadi* Islamic fundamentalists (collectively grouped as ‘militants’) and the troops from the Indian Armed Forces. It is a collection of testimonies from Kashmiris, each narrating their personal stories and experiences. The film tries to bring out the human rights abuses carried out both by the militants and the Indian state, which have been taking place regularly in Kashmir ever since the rise of the anti-state insurgency in 1990. The conditions were far from stable before this, but the escalation of the conflict in terms of mobilisation of troops in the Kashmir Valley (and not on the border) and the effect on the everyday lives of the Kashmiri people can be traced to 1990 (Kumar, 2012).

Right at the outset, one may view this paper as trying to implicate the Indian state. However, it would be more prudent to use different, less accusatory terminology. The aim of this paper is to bring out the attitude of the Indian state towards Kashmir through an assessment of its policies on Kashmir since partition, and its human rights record since its “occupation” of Kashmir. Drawing from the documentary, this paper elaborates on the extra-judicial killings, torture of prisoners, disappearances and rapes that the Indian Armed Forces have been accused of, and tries to find reasons as to why the situation has developed in the manner that it has.

### History of Kashmir

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In order to fully understand the nature of Kashmir and the Kashmir conflict, it is imperative to delve into history; the former's is rich with culture and heritage, and the latter's is rich with war. Kashmir has historically been geographically and culturally isolated from its neighbours. Buddhism was practised vibrantly during the period of Ashoka. Today, fifty per cent of the population of Ladakh follows a form of Tibetan Buddhism (BBC News). There also existed a healthy Hindu community, with many holy Hindu shrines being located in Kashmir even today – the most important of them being the Amarnath cave *lingam*. There was a period of Muslim rule from the fourteenth century after a series of foreign invasions. The rule of the Kashmiri Sultanate from 1346 to 1586 is considered the first and last rule by an ethnic Kashmiri. The Mughals conquered Kashmir and wrested control, but did not follow a particularly oppressive regime. In fact, it was Akbar who anointed the Hindu Brahmins of Kashmir as *Pandits*, owing to their great knowledge. Following this, there was a brief period of British rule, before the Dogras of Punjab purchased it from them and embarked on an oppressive regime. The Hindu rule over a Muslim-majority area resulted in droves of Muslims living in poverty while the Hindu minority were given preferential treatment. The Dogras appointed the Kashmiri Pandits to prominent positions (Kumar, 2012). This can be cited as the reason for the Pandits being an influential class at the time of partition in spite of comprising less than five per cent of the population of the Kashmir Valley.

The partition of the British Indian Empire into the two dominions of India and Pakistan is where the conflict in the erstwhile Princely State of Kashmir and Jammu began. The Maharaja of Kashmir Hari Singh, a Hindu ruling over a Muslim majority, had to choose between acceding either to India or to Pakistan. Since he wanted to pursue his own goals of remaining an independent state, he delayed the accession decision as long as he could. It was only when the Pakistan Army invaded soon after partition and was on the verge of reaching Srinagar (having captured Baramulla) that the Maharaja came to India with a plea for help and signed an Instrument of Accession (Lapierre & Collins, 1976). The Indian Army proceeded to counter the Pakistani attack before approaching the United Nations, which enforced a ceasefire, the outcome of which we today know as the Line of Control (LoC). It is important to note that this was in no way a final conclusion to the Kashmir problem. The agreements were negotiated until a final resolution to the conflict, mandated by the United Nations or otherwise, was reached.

The UN recommendation was self-determination through a plebiscite. However, repeated efforts to implement the plebiscite have been in vain. The plan has failed to the extent that most parties agree that a plebiscite is irrelevant in today's context. Moreover, the Indian side is averse to involving third-party mediators in the conflict, as a result of the disastrous diplomacy move in 1957 when V. K. Krishna Menon delivered an eight-hour speech on the issue at the United Nations, and India was accused of filibustering. This non-involvement was agreed upon formally in the Simla Agreement of 1972, where the aim was to limit the involvement of the United States in the conflict (Simla Agreement, 1972). Such a policy poses a major hindrance to the operation of international human rights groups such as Human Rights Watch and Amnesty International in the conflict-ridden region.

### Genesis of the Indian Offensive in the Valley

Differences aside, their relative isolation from the rest of the world led the Kashmiris to develop a sort of common brotherhood, popularly called *Kashmiriyat*. *Kashmiriyat* espoused a common social consciousness despite ethnic, cultural and religious diversity. Wajahat Habibullah, the former Commissioner to Kashmir, cites *Kashmiriyat* as the reason for the resistance of the Kashmiris to Pakistani accession, despite the common religion. While there are certainly larger reasons than this, one cannot downplay the importance of *Kashmiriyat*: a vivid blend of Sufi Islam and Hinduism. When one makes the argument that *Kashmiriyat* is the reason Kashmir did not openly join Pakistan, it is important to note that on these grounds, it is equally difficult to group Kashmir with India; the same laws of resistance apply. Furthermore, Kashmir was always *temporarily* a part of India – never *integral* to India. The provision of a unique status to the state of Jammu and Kashmir by the Indian constitution under Article 370 bears testimony to this fact (Basu, 2011).

Ashvin Kumar traces the origin of the Indian offensive in the Kashmir Valley to the state legislative assembly elections in 1987. This was the first time that democratic elections were taking place in the state. Once a functioning government was in place, the state could act in accordance with its own constitution and pass laws with its own legislature. The only domains where laws passed by the Indian Parliament were extendable to Jammu and Kashmir

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were defence, foreign policy and communication. This provision has been revised over time to extend the jurisdiction of the Supreme Court to Kashmir.

The 1987 elections resulted in the coalition of the National Conference and the Congress achieving a landslide victory against the Muslim United Front. However, doubts have been raised about the transparency of the election process. There have been allegations against the Indian state of rigging the elections so as to avoid giving power to the Muslim United Front, which was considered to be secessionist and fundamentalist. The National Conference, on the other hand, was pro-India. In his interview with ex-militants from the Hizbul Mujahideen, Kumar finds out that it was this denial of constitutional freedom that instigated the Kashmiri Muslims to cross the border into PoK and secure training in order to fight and fend for themselves against the Indian state. The Pakistani side, both the official Inter-Services Intelligence (ISI) and terrorist groups like the Lashkar-e-Taiba, was only too glad to add fuel to the fire by providing arms and training to the militants. In this process, the difference between the pro-*azadi* elements and the pro-Pakistani elements was blurred. Pakistan also had a role in creating this convergence, as it did not impede the functioning of the camps in PoK; rather, it funded the camps itself (Kumar, 2012).

The immediate cause for the deployment of troops was the Gawakadal massacre of 20 January 1990, where between 35 and 280 civilians were killed in firing by the Central Reserve Police Force (CRPF), allegedly in defence. This added to the already unsteady situation that was prevailing in Kashmir. Rumours were spread that the Kashmiri Pandits were responsible, and decades of *Kashmiriyat* seemed to crumble as calls were made for the Pandits to leave the Valley. In the aftermath of the violence of 1990, there was a mass exodus of the Pandits, many of whom still languish in refugee camps in Jammu and Delhi. The seeds of the communal rift which had been sowed by the Dogras were ripening. However, some critics argue that the mass exodus was orchestrated by the Indian state so that it could unhesitatingly proceed with a large-scale crackdown on the Kashmiri militia. Many question the 'pressing' need to leave the Valley in droves at the time, and ponder whether it may have been legitimately possible for them to have remained. Recent surveys revealing that over eighty per cent of Kashmiris want the Pandits to return to the Valley are indicative of the needlessness of the knee-jerk reaction.

### Human Rights Abuses

It is from 1990 onwards that serious allegations of human rights abuses of various kinds have been made against the Indian Army. An assessment of the situation in Kashmir reveals that most of the rights as listed in the Universal Declaration of Human Rights (UDHR) are absent there. The extension of the draconian Armed Forces (Special Powers) Act, which considerably compromises on the civil rights of the people, has raised a furore in international human rights organisations including Human Rights Watch and Amnesty International. However, there is virtually no scope for these organisations to enter the field, especially after US President Barack Obama's attempt to appoint Bill Clinton as his representative in mediating the Kashmir conflict (Klein, 2008) was gruffly shot down by both sides (Lamont & Kazmin, 2009). There is an entrenched understanding that the conflict will be resolved only through bilateral dialogue and reconciliation. Therefore, the most that the international human rights organisations can do is publish reports that reveal the state of human rights in Kashmir.

There is a systemic violation of the citizens' civil and political as well as economic, social and cultural rights. The government offensive has significantly curtailed the people's ability to assemble for peaceful demonstrations. Their everyday freedom of movement is curtailed as they have to frequently cross army checkpoints. The last Indian garrison at Zangli in the Lolab valley, just a few kilometres from the Pakistan border, shuts its gates in the evening, leaving entire villages out of reach until dawn the next day. In this manner, there has also been a failure of the Indian state to provide the Kashmiri populace with basic necessities and a means through which they can earn. Most of the victims of the economic, social and cultural 'abuses' are the poor Muslims who reside in the remote villages. Left with little choice, these civilians are forced to turn to militancy, which they view as a source of money, more than anything else. In this sense, the Kashmiri insurgency has almost become a proxy war (Kumar, 2012).

While ample human rights abuses are also conducted by the militants, one must make the distinction between terrorist organisations and a sovereign state. A state cannot justify abuses by saying that the other side is also indulging in similar practices. Yet, the army personnel and police subject the militants to such brutal interrogations,

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that they almost always result in permanent impairment of some sort, often leading to death. Kumar conducts extensive interviews with the ex-militants, collecting first-hand accounts of the kind of torture conducted by the soldiers during interrogation; he even manages to convince Chief Minister Omar Abdullah to listen to the horrific accounts first hand. While nearly every army in the world is accused of similar abuses – for instance, the United States in Guantanamo Bay – this does not serve as a justification for the kind of crimes committed. The Indian Army has also been accused of coercing the converted militants into working for the Army and creating a state-sponsored militia à la Salwa Judum.

Cases of disappearances are abundant. Estimates suggest that nearly 8,000 Kashmiris have been 'disappeared' by the Indian Army. When interrogations using third-degree torture result in death, the Army refuses to acknowledge that the victims were even captured. This has resulted in thousands of 'half-widows', mothers and children who do not even know whether their husband, son or father is alive or not. As Vrinda Grover argues, all that the Association of Parents of Disappeared Persons (APDP) is asking for is for the state to tell them the whereabouts of the missing persons. It is not demanding that the state return them. Yet, the state hides behind a veil, as it is unwilling to reveal the fact that deaths occur in captivity. In a surprising turn of events, on 21 August 2011, the State Human Rights Commission (SHRC) acknowledged the existence of mass graves in Kashmir with 2156 unmarked bodies. Not all the bodies are of militants. Many civilians have also been subjected to this unholy end.

Rape is another form of abuse that surfaces very often. The most gruesome case was the mass rape in the village of Kunan Poshpora, in Kupwara district, where a crackdown was enforced to look for militants in the village. The army entered all-women houses and gang raped the women repeatedly through the night. Estimates suggest that at least 53 women were raped on the night of 23 February 1991. A report formulated by Wajahat Habibullah advising the government to conduct further enquiry into the incident was manipulated by the government to omit that recommendation. Habibullah resigned from the Indian Civil Services in protest.

The list goes on to project a seemingly endless trail of rape, torture and murder. Innocent villagers' houses have been burnt down in anger, as retribution. The sheer number of massacres that have been reported numbs the mind. After Gawakadal, there were massacres in Zapoora and Tengpora in 1990, Bijbehara and Sopore in 1993, and a rape and murder case in Shopian in 2009. During the Kashmir unrest in 2010, accusations were made of the Army killing teenagers who were protesting against India. It is for these reasons that the idea of being "Indian" has been so hard for Kashmiris to accept since the partition. Kumar points out that for the present generation, India is a man with a gun. In defence to all the allegations and accusations made against the Indian Army in its operations in Kashmir, General V. K. Singh responded by saying that ninety-five per cent of the allegations and accusations were fabricated ('95% HR violation cases against Army in J&K false', 2010), as subsequent enquiries have claimed. However, the quality of the enquiries is highly suspect, with the Indian police acting as the saviour and defending the Indian Army.

India has positioned over half a million soldiers in Kashmir (Kumar, 2012), making it one of the most militarised zones in the world. What is remarkable about this is that the troops are positioned in what India claims to be its own territory. The guns are pointed at people whom it claims its own citizens. In Kashmir, it is thus "normal" to have soldiers patrolling the streets, cordoning off areas, disbanding gatherings and scrutinising the activities of the layman. It is "normal" for every family to lose a member or two in cross-firing. In the quagmire of the larger conflict that Kashmir wrestles with, the Kashmiri civilian's quality of life is severely decreased. In the words of James Buchan, "In the years since 1990, the Kashmiri Muslims and the Indian government have conspired to abolish the complexities of Kashmiri civilisation" (Guha, 2007). Scant attention has been paid to basic human rights and little has been done to acknowledge and even littler to rectify this fact. The role of Pakistan in perpetrating the constant violence from the militants has also been well documented.

### Conclusion

The scope for humanitarian intervention, as highlighted earlier, is absent, as India is an emerging economy and it would not be advisable for any nation to get on its wrong side. In fact, it would be detrimental to do so. Therefore, no country has even tried to interfere with the actions of the Indian state in Kashmir. The international conventions and the United Nations also cannot play a major role in the conflict. The biggest advocates for a withdrawal remain the

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international human rights organisations, who do not have the mandate to implement what they recommend. Local human rights organisations like the Jammu and Kashmir Coalition of Civil Society (JKCCS) and the Jammu and Kashmir Council for Human Rights (JKCHR) repeatedly try to bring up these issues in the media but garner little response in terms of actions taken by the state. The acceptance of the buried bodies by the SHRC is, in fact, a marked (and welcome) departure from the usual policy of the state. Yet, the change stopped at mere acceptance. Nothing has been explicitly mentioned about the disappearances or the extra-judicial killings.

The situation is not unique to the case of India and Kashmir. Similar narratives can be woven for most civil wars around the globe. The state is bound to have a significant role in facilitating, if not carrying out, the human rights abuses. But in most of these cases, there is international furore, as it were, over the actions of the oppressor. Sri Lanka, for instance, has been heavily criticised from all quarters of the globe for its targeting of Tamilian civilians in the war that eliminated the Liberation Tigers of Tamil Eelam (LTTE) (Macrae, 2011). There exists an international consciousness about the violations and considerable pressure on Sri Lanka to justify itself, or institute an unbiased reconciliation commission of some sort. The same can be said for most cases of civil war in the world. What is unique to India is how little the rest of the world, or even the rest of India, knows about the violations that are taking place. The average Indian is oblivious to the abject situation which the “fellow Kashmiri brethren” are mired in.

Based on the current situation in Kashmir, it is unlikely that the final resolution of Kashmir will be achieved. The only other way in which the state can be made accountable for its actions is through the people from the rest of India. That, in a sense, is the ultimate purpose of *Inshallah, Kashmir*: to sensitise the rest of India to what is happening. If this is achieved, the term “Indian-occupied Kashmir” might cease to inspire the acrimony that it does today.

The Indian state's outlook toward Kashmir must change completely as well. The Pakistan equation needs to be studied carefully and efforts must be made to maintain the *status quo* on the LoC *without* affecting civilian life. While this not the easiest of tasks, the current policy does nothing to limit the civilian casualties, and this problem must be rectified.

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