

Human Rights NGOs in Jammu and Kashmir with special reference to Amnesty International

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Abstract

The Political landscape of Jammu and Kashmir took a radical turn in 1947 after the partition of the sub-continent into the two independent countries that is India and Pakistan. With the accession of the state with the Indian republic in October 1947, the government of India acknowledged the peculiar political situation in the valley and separate ethnic identity of the people and granted the “special status to the state” under Article 370 of the Indian constitution. However, the people were not satisfied with the accession to the Indian union which resulted in the dissatisfaction of the people with the Indian union. This discontentment gradually led to the alienation of the people. The armed conflict broke out in the year 1990 which was dealt with the heavy handedness by the Indian state. This resulted in the large scale human rights violations in the valley. There is not a single individual in the valley that has not been affected by the conflict eventhough directly or indirectly which paved the way for the NGOs to play a leading role in the conflict ridden state. As a result of huge human rights violation in the state large number of international and national NGOs turned their attention to this region. As far as the protection and promotion of human rights are concerned NGOs play an important role. NGOs play a significant role in articulating and implementing the international and national human rights instruments. The NGOs in Kashmir region have played an important role in highlighting the cases of human rights violations and the most prominent among them is the Amnesty International. As such the main objective of this paper was to analyse the role played by the Amnesty International in the valley.

Key Words: NGOs, Human Rights, India, Pakistan.

Introduction

The Political landscape of Jammu and Kashmir took a radical turn in 1947 after the partition of the sub-continent into the two independent countries that is India and Pakistan. In the backdrop of the tribal attack in the princely state of Jammu and Kashmir, war broke out between India and Pakistan in October 1947. The Maharaja fled from the state and shifted to Jammu and as such the government of India proclaimed Kashmiri leader Sheikh Abdullah as an interim head of the state in October 1947.¹ Sheikh Abdullah was of the opinion that the identity of Kashmiris as a distinct group could be better protected within the secular fabric of Indian polity rather than the country which has been created under the religious basis. With the accession of the state with the India in October 1947, the government of India acknowledged the peculiar

¹ Alastair Lamb, “Kashmir: A disputed Legacy”, 1846-1990, Oxford University Press, Karachi, 1991, pp.183-184.

political situation in the valley and separate ethnic identity of the people and granted the “special status to the state” under Article 370 of the Indian constitution. The article restricts the power of Indian parliament to only three subjects’ i.e defence, communication and foreign affair. It also has a provision that in order to make other constitutional provisions applicable to the state, it needs the concurrence of the state government including the ratification by the state constituent assembly. In the year 1951, elections were held for the state legislature in which N.C led by Sheikh Abdullah won by sweeping victory. As such a kind of democratic government was established undermining the autocratic rule of the dogras.² After the land reforms, which were carried out during this period, it was mostly the Hindu landlords who were mostly affected particularly in Jammu as they lost large proportion of their land. It was at their behest that the communal Hindu organizations in Jammu demanded the abrogation of the article 370 which they thought was the main hurdle in the merger of the state with the Indian union. The rise of communal politics in Jammu could not even get stopped by the secular Nehru which raised fear among many Kashmiris. It was out of this fear that Sheikh Abdullah at the party headquarters on July 10, 1952 said that if the central government led by Nehru could not control communal politics in Jammu then that time is not far away when Kashmiris will have to say goodbye to the secular India. It was this speech which gave rise to the suspicion in the minds of the Indian leadership about the possible separatist movement and this was the speech which was taken as the reference point to dismiss him out of the power on 8th August 1952.³

After the dismissal of the Sheikh Abdullah, the separatist politics took its birth with the launching of plebiscite movement in 1953 for the right of self-determination for Kashmiris.⁴ After the year 1953, the government of India allowed only those politicians to come to power who were in favour of merger of Jammu and Kashmir with the Indian Union. Some of those politicians were G.M. Bakshi (1952-63), G.M.Sadiq (1964-1971) and Mir Qasim (1971-1975). It was particularly during the tenure of these chief ministers that most of the provisions of Article 370 were diluted and left Jammu and Kashmir at par with other states of India. Another step of the government of India which led to the further alienation of the Kashmiris was the dissolution of the National Conference and its merger with the All India Congress party as its branch. This act was seen as a measure of suppression of political dissent in the state. However, after the year 1974, the central government led by the Indira Gandhi realized that the state of Jammu and Kashmir could not be controlled by the weak and unpopular leaders, so it decided to enter into negotiations with plebiscite front leaders led by Sheikh Abdullah. The result of these negotiations led to the signing of famous “*Kashmir Accord*” in 1975. It was this accord which directly paved the way for Sheikh Abdullah to re-enter the politics of the state on 24th February, 1975. This step of Sheikh Abdullah proved detrimental to the sentiments of Kashmiris who wanted to part way from the mainland India. After the accord of 1975, the

² M.J.Akbar, “India: The Siege Within Challenges to a Nation’s Unity”, Penguin Books Ltd, England, 1985, pp.242-243.

³ M.J.Akbar, Op.cit., p.246

⁴ Rekha Choudhary and Nagendra Rao, “Kashmir Elections 2002: Implications for the Politics of Separatism”, Economic and Political Weekly, Vol. XXXVIII, No.1, 2003, PP. 15-20.

plebiscite front was dissolved and most of its leaders joined the mainstream politics. After the death of Sheikh Abdullah, the lust for power in Jammu and Kashmir of Congress party which was kept out of power since the 1975 accord made it to encourage defection within the National Conference led government under Farooq Abdullah. The defection of members from National Conference led to the dismissal of Farooq Abdullah in 1984. The dismissal led to the further alienation of Kashmiris and they became disheartened with the Indian Government.⁵ However, against the popular wishes of the common Kashmiris, the National Conference led Farooq Abdullah entered into the league with the congress led by Rajiv Gandhi in 1987. This gave a new life to the extremist and secessionist tendencies within the valley. This agreement also had a great impact on its popularity within the valley. One of the direct results of this agreement was strengthening of the new political party created by the educated but rather disgusted and disappointed youth. This new party was named as Muslim United Front (MUF). The popularity of this party was so much that Congress-NC led alliance had to resort to large scale rigging in the elections so as to capture power in 1987 elections. This proved a watershed development in the political history of the valley and gave rise to the armed struggle in the valley the brunt of which the people of the state of Jammu and Kashmir are still facing. The armed conflict got intensified after the year 1990 which was dealt with the heavy handedness by the Indian state. This resulted in the large scale human rights violations in the valley. There is not a single individual in the valley that has not been affected by the conflict eventhough directly or indirectly. This led to the further alienation of the people from the Indian Political System.

Introduction to the concept of Human Rights

Human rights are those rights which are entitled to all human beings of the world irrespective of race, sex, colour or creed and there is no discrimination in enjoying these basic rights, which are equal to all. Human rights are interrelated, inalienable and indivisible though these characteristics are contested ones. Human rights include political, social, economic, cultural rights. The civil and political rights are referred to as first generation rights and social and economic rights are referred to as the second generation rights. In the recent past there has emerged a third generation of rights which include environmental rights. The concept of human rights was given a practical shape by the United Nations through the adoption of the “*Universal Declaration of Human Rights*” (UDHR) on 10th December, 1948, the day which is celebrated as the world human rights day across the world. The instrument of UDHR consists of a preamble and 30 articles which has the provision of civil, political, economic and social rights.⁶ The main motive behind the adoption of this instrument was to ensure the protection as well as the promotion of human rights and to make governments responsible for the protection of human rights mandatory. There was also an another important content for the adoption of UDHR and that is holocaust perpetuated in Germany under the authoritarian regime of Hitler

⁵ Mushtaqur Rahman, “Divided Kashmir: Old Problems, New Opportunities for Indian, Pakistani and Kashmiri People, Lynne Rienner Publishers, U.S.A, 1996, p.142

⁶ Human Rights, A Basic Handbook for UN Staff, Office of the High Commissioner for Human Rights, United Nations p.10

and the vast human rights violations that took place in the backdrop of the second world war. At present times human rights violations has become a global phenomenon even though there are several mechanisms for preventing human rights violations and protection and promotion of the same. But inspite of all these mechanisms the cases of human rights violations have been increasing throughout the world. There have emerged several regions which are characterized as conflict zones where the cases of Human Rights Violations have been on increase like the region of Palestine, Chechnya, Xinjiang, Syria, Yemen and the state of Jammu and Kashmir comprises one of those conflict zones where the human rights violations has reached its peak particularly after the armed conflict in 1989. Kashmir which was once one of the most peaceful regions of the world lost its glory when the armed conflict erupted in the valley. The level of Human rights Violations has received an unprecedented growth in the recent years owing to the rise of new generation of militancy particularly after 2008. As per the report of Amnesty International (1995), *“Since the October 1989, more than 40000 Kashmiris were killed by security forces, over 5000 women both young and old have been raped, thousands have been injured and thrown into jail without any access to legal aid or assistance. There are the large number of Kashmiris who have been detained arbitrarily under the draconian laws like AFSPA, POTA, TADA and JKPSA. These laws have provided unprecedented powers to the security forces in the valley to illegally detain, torture or kill with impunity”*.⁷ The notorious law JKPSA called as “Lawless Law” has been extremely used by the government machinery to curb the unwanted activities including the peaceful expression of views. The law provides the security forces to detain any person for upto one year without trial. Another law called AFSPA gives the extensive powers to the security forces particularly army. The act was applied to the state on 10th September 1990. Under the provisions of this act the governor can declare any part or whole of the state as disturbed area. As such Kashmir was declared disturbed area which proved disastrous as far as the human rights situation in the valley was concerned. The law empowers the security forces to enter into houses and villages, shoot the unarmed civilians with impunity, arrest people without warrant etc. The Indian forces claim that they are fighting for the security and defence of the people and the country as a whole while on the other hand, the militant groups claim that they are fighting for the independence of their motherland from the so called Indian occupiers. However, at last it is the common people of Kashmir who are facing the brunt of this conflict. The Indian army and other security agencies have been responsible for the heinous human rights violations in the state. The most common forms of human rights violations committed in the state are Torture, Extra-judicial killings, disappearances and rape against women.

⁷ Amnesty International Annual Report, AI Index: pol 10/0001/95, Retrieved from <http://www.amnesty.org/en/documents>.

Non-Governmental organizations

As per the World Bank, NGOs are

'private organizations that pursue activities to relieve suffering, to promote the interests of the poor, to protect the environment or undertake community development. In wider usage, the term NGO can be applied to any non-profit organization which is independent from government'.⁸

NGOs include a wide range of groups and institutions that are entirely or largely independent of the governments and characterized by humanitarian or cooperative, rather than the commercial objectives. With the emergence of the new phenomenon of globalization, the role of state has declined which has directly resulted in the increasing role for the NGOs in all the sectors of the society. Since the last decade of 20th century there has been the mushroom growth of NGOs. Though emergence of NGOs is a global phenomenon, but they have seen an unprecedented growth in the developing countries particularly in Asia, Africa and South America. NGOs have become the main driving force in the social change and economic development in those countries. NGOs are active in almost all the fields today like human rights, environmental protection, developmental issues, health and education.

As far as the protection and promotion of human rights are concerned, NGOs play an important role. NGOs play a significant role in articulating and implementing the international and national human rights standards. One of the important points to be taken into consideration is that the development of national and international has gone hand in hand with the growth of NGOs world over particularly in the field of human rights. The governments all over the world and particularly those which violate the human rights of their citizens and are non-serious in ensuring their protection make every effort to render the human rights norms weak. However, NGOs counter this attitude of the governments by naming and shaming such governments at national and international forums forcing them to comply with the basic human rights standards.

In India, NGOs have been playing an important role in the protection and promotion of human rights. The NGOs in India became more active in the area of human rights particularly after the imposition of emergency in 1975 by the Indira Gandhi regime. Since then they have been playing a significant role in articulating the human rights norms and in pressurizing the governments to comply with the human rights standards. There are a number of conflict zones in India and one such is the state of Jammu and Kashmir. The state has been witnessing the conflict since the partition of the country which became more intense and violent after 1989. As a result of huge human rights violation in the state large number of international and

⁸ Carmen Malena, "Working with NGOs: A practical Guide to Operational Collaboration between The World Bank and Non-Governmental Organizations", Operations Policy Department, World Bank, March 1995P.13

national NGOs turned their attention to this region. The NGOs in Kashmir region have played an important role in highlighting the cases of human rights violations for which they have to face a large number of problems. In Kashmir, the human rights NGOs have an ample scope for activism. In the first instance the human rights NGOs are required to make a report on the human rights situation so as to ascertain the nature and extent of the human rights violations taking place which are submitted to the international human rights monitoring bodies.

Amnesty International and its working in Jammu and Kashmir

Amnesty International India section works on all major campaigns in India as well as in other countries of the world. Amnesty International members in India campaign on behalf of individual victims of human rights violations around the world, such as prisoner of Conscience in Indonesia, a torture victim in Iran or a death row prisoner in the United States.⁹ Over the years Amnesty International has produced dozens of reports on Kashmir covering the issues such as torture including rape, deaths in custody, extra-judicial killings the use of the death penalty and the legislation that allows human rights violations as well as thousands of case studies. These have formed the basis of letter writing and other forms of campaigns urging the Indian government and opposition groups to end human rights abuses. During the year 1969, Amnesty International adopted substantial number of prisoners detained under preventive detention laws in the state of Jammu and Kashmir, for advocating right to self-determination.¹⁰ On February 13, 1979, Amnesty International wrote a letter to the president of India, Neelam Sanjiva Reddy, asking him to reconsider his rejection of an appeal for clemency for Maqbool Butt, a journalist and a member of Jammu and Kashmir Liberation Front (JKLF)¹¹ who was sentenced to death for the murder of an intelligence officer under enemy agent's ordinance. However, there was no response from the government to the appeal. Amnesty International on December 31, 1981, wrote a letter to the Prime Minister, Indira Gandhi expressing its concern over the continued use of preventive detention in India and to ensure the release of members of opposition parties who were arrested for demanding hill status of a town in Jammu and Kashmir, under the Jammu and Kashmir Public Safety Act.¹² On October 26, 1983, Amnesty International wrote to the Chief Minister of Jammu and Kashmir to inquire into the killing of about an estimated 50 prisoners arrested in late August and September following several violent incidents. However, there was no response to the report from the state government. Amnesty International also expressed its concern over the detention of members of National Conference after the dismissal of Farooq Abdullah as the Chief Minister of Jammu and Kashmir

⁹ Amnesty International Report, "Amnesty International and India", March 1996, AI Index:ASA 20/005/06, Retrieved from <http://www.amnesty.org/en/documents>, p.4

¹⁰ Amnesty International Annual Report, 1970, AI Index: pol 10/001/1970, Retrieved from <http://www.amnesty.org/en/documents>, p.7

¹¹ Jammu and Kashmir Liberation Front (JKLF), founded by Amanullah Khan and Maqbool Bhat, is a Kashmiri nationalist organization founded in Birmingham, England on May 29, 1977.

¹² Amnesty International Annual Report 1981, AI Index: pol 10/001/1981, Retrieved from <http://www.amnesty.org/en/documents>, p.212-215.

by his successor G.M.Shah.¹³ In April 1986, Amnesty International appealed on behalf of the four members of opposition parties (members of the Jamaat-e-Tulba) who were detained under the public safety Act for demanding the holding of Plebiscite in the state of Jammu and Kashmir.¹⁴ In the year 1989, National Front Government headed by V.P.Singh came to power. The new government pledged to ensure institutional accountability and protection of human rights and review the political prisoner cases in Punjab. As a result of the armed conflict in the state of Jammu and Kashmir, Punjab and North –Eastern states, there was an unprecedented growth in the human rights violations, perpetuated by both security forces and armed opposition groups in these states. Amnesty International launched an urgent action campaign against the human rights violation taking place in North-Eastern States, Jammu and Kashmir and Naxalite affected states. Amnesty International also made a statement to the United Nations Commission on Human Rights (UNCHR) about the violations taking place in India.¹⁵

In the state of Jammu and Kashmir, Amnesty International found rape to be systematically practised as part of attempts to humiliate and intimidate the local population. On February 1991, during a raid on a village in the Kupwara district, Kunnan Poshpora, 23 women of all ages were allegedly raped by the security forces. Amnesty International condemned the incident and raised its concerns with the government to bring perpetrators to justice.¹⁶ Government responded to the appeal and reiterated that the commission has been constituted to enquire into the incident. In April 1993, Amnesty International released a report, “*India: Sopore-a case study of Extra-Judicial Killings in the State of Jammu and Kashmir*” in which it detailed the several cases of human rights violations in Sopore village of Jammu and Kashmir. In October 1993, Amnesty International asked the government to conduct an investigation into the killings by the border security Forces (BSF) of 51 people in Srinagar and Bijbehara towns of Jammu and Kashmir.¹⁷ The organization also requested the government to release the Syed Ali Shah Geelani, Abdul Gani Lone and Shabir Shah, adopted by the Organization as the Prisoners of Conscience who were detained under the Public Safety Act. As such Syed Ali Shah Geelani and Abdul Gani Lone were released on 30 September and Shabir Ahmad Shah in October 1994. In January 1995, Amnesty International published a report, “*India: Torture and Deaths in Custody in Jammu and Kashmir*” which contained the details of over 700 deaths in custody since 1990 and recommended the government to establish a commission for the protection of detainees in the state of Jammu and Kashmir and strengthen safeguards against torture and deaths in

¹³ Amnesty International Annual Report 1985, AI Index: pol 10/0002/1985, Retrieved from <http://www.amnesty.org/en/documents>, p.209-213.

¹⁴ A.G.Noorani, “Amnesty International Annual Report”, Economic and Political Weekly, Vol. 21, No. 46, November, 15, 1986, Retrieved from <http://www.jstor.org/stable/4376318>.

¹⁵ Amnesty International Annual Report 1990, AI Index: pol 10/0003/1990, Retrieved from <http://www.amnesty.org/en/documents>, p.116-119.

¹⁶ Amnesty International Annual Report 1991, AI Index: pol 10/0001/1991, Retrieved from <http://www.amnesty.org/en/documents>, p.115-116.

¹⁷ Amnesty International Annual Report 1994, AI Index: pol 10/003/1994, Retrieved from <http://www.amnesty.org/en/documents>, p.159.

custody.¹⁸ However, government rejected all the recommendations as a result Amnesty International published an analysis of government's response to the January report and criticized the government attitude towards the Human Rights. In November 1995, Amnesty International Published another report, "*India: Torture continues in Jammu and Kashmir*", Amnesty International recommended the government to order impartial and independent enquiries into the allegations and provide the immediate rehabilitation to the victims of torture in the state.¹⁹ In April 1996, Amnesty International sent an open letter to all political parties of India contesting elections and expressed its human rights concerns in India. Amnesty International also made a special appeal to the security forces and armed opposition groups in the state of Jammu and Kashmir and called for human rights to be respected during election period. In July 1996, Amnesty International delegates visited India to conduct research and held talks with government officials, members of the National Human Rights Commission (NHRC) and human rights activists. Amnesty International published the report, "*India: Human Rights Abuses in the Election Period in Jammu and Kashmir*" which was submitted to the Indian government during their visit. It laid down the detailed report of the abuses committed by the security forces renegades (former militants) and armed opposition groups particularly torture and kidnappings. Amnesty International submitted a number of recommendations in the report and one of the important recommendations was to disarm and disbanding of renegade groups. The government responded to the report and criticized it as containing baseless and absurd allegations.²⁰ In the February 1991, Amnesty International released a report on the growing number of the disappearances in the state of Jammu and Kashmir, "*India: If they are dead tell us, Disappearances in the Jammu and Kashmir*", which detailed various cases of disappearances in the state and provided a fourteen-point formula for the prevention of disappearances in Jammu and Kashmir which were altogether rejected by the government.²¹ On March 20, 2000, 36 members of the Sikh community were killed by the unknown gunmen in the village of Chattisinghpura, Jammu and Kashmir. Amnesty International conducted the research into the incident and released a report, asking the government to order a judicial enquiry into the incident and bring perpetrators to justice.²²

In the state of Jammu and Kashmir, new coalition government headed by Chief Minister, Mufti Mohammad Syed issued a common minimum programme in October 2002 and promised to investigate all reports of human rights violations. Amnesty International welcomed the decision of the new government and urged the government to make public and act on the findings of various commissions appointed by previous

¹⁸ Amnesty International, January 1995, "*India: Torture and Deaths in Custody in Jammu and Kashmir*", AI Index ASA 20/001/95.

¹⁹ Amnesty International Report, November 1995, "*India: Torture Continues in Jammu and Kashmir*", AI Index: ASA 20/033/1995, p.1-11.

²⁰ Amnesty International Report, "September 1996, "*India: Human Rights Abuses in the Election Period in Jammu and Kashmir*", AI Index: ASA 20/039/96, P.179-180.

²¹ Amnesty International Report 1999, AI Index: ASA 20/002/99, Retrieved from <http://www.amnesty.org/en/documents>, p.74.

²² Amnesty International Report, "*India: A trial of unlawful killings in the Jammu and Kashmir-Chattisinghpura and its aftermath*", AI Index: ASA 20/024/2000, p.12

governments to investigate the cases of human rights violations in the state.²³ In the year 2003, the decision of state government of Jammu and Kashmir to assimilate the special Operation Group (SOG) into the regular police was appreciated by the Amnesty International as positive sign towards the protection of human rights in the conflict ridden state. However, the organization remained concerned over the continued human rights violation committed by the security forces, paramilitary forces and renegades. Amnesty International also criticized the government over the non-implementation of the promises made in its common minimum programme and sent an open letter to the chief minister on December 2, 2003. In its letter Amnesty International urged the government of Jammu and Kashmir to abide by its commitments to restore the rule of law and protect the human rights of population of the state as promised in its common minimum programme of November 2002.²⁴ In March 2011, Amnesty International published a report, “*Calling for an end to administrative detentions and for the repeal of Public Safety Act (PSA) in the state of Jammu and Kashmir*”. Following this, the state authorities proposed to amend the PSA to limit the period of detention and the state Juvenile justice law to ban the detention of anyone below the age of 18. Several children were also released following the intervention on part of the organization. Amnesty International also issued an urgent action for the release of 17 year, Murtaza Manzoor who was detained under PSA following this he was released in May 2011.²⁵ In other public statement, Amnesty International urged the state government, in addition to the fair trial of those detained under the allegations of stone pelting, to order the independent and impartial enquiry into the killing of 120 youth during the summer of 2010 unrest.²⁶ In July 2015, Amnesty International published a report on the human rights violations in the state of Jammu and Kashmir and highlighted the several cases of deaths in custody and disappearances. Amnesty International made a fresh appeal to the Indian Government to repeal the AFSPA, ratify the “*Convention against Torture*” and also urged the government of Jammu and Kashmir to ensure justice to the victims of human rights violations in the state.²⁷

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²³ Amnesty International Annual Report 2003, AI Index: pol 10/0001/2003, Retrieved from <http://www.amnesty.org/en/documents>, p.126.

²⁴ “Open letter to the Chief Minister of Jammu and Kashmir on the failed promises of Common Minimum Programme”, AI Index : ASA 20/033/2003, Retrieved from <http://www.amnesty.org/en/documents>, p.7

²⁵ Urgent Action: 115/11, AI Index: ASA 20/024/2011, Retrieved from <http://www.amnesty.org/en/documents>.

²⁶ AI Index: ASA 20/023/2014, Retrieved from <http://www.amnesty.org/en/documents>.p.3

²⁷ Amnesty International Report, July 2015, “DENIED: Failures in Accountability for Human Rights Violations by Security Force Personnel in Jammu and Kashmir”, AI Index: ASA 20/1874/2015, Retrieved from <http://www.amnesty.org/en/documents>, pp.66-68.

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