THE STATUS OF HUMAN RIGHTS IN KASHMIR: AN INTERNATIONAL LAW PERSPECTIVE

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TO

MY FAMILY AND ESPECIALLY MY FATHER (Late)
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All praises are for Allah almighty Who has bequeathed upon human being the crown of creation and has endowed him with knowledge and wisdom. After Allah Almighty, is the Last Prophet Muhammad (S.A.W) Who brought for us revelation and unlimited knowledge and civilized the barbarian human being?

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Abbreviations

ACHPR: African Charter on Human and Peoples Rights
ACHR: American Convention on Human Rights
ADRDM: American Declaration on the Rights and Duties of Man
AFSPA: Armed Forces Special Powers Act
AHRC: Asian Human Rights Commission
AI: Amnesty International
AJK: Azad Jammu & Kashmir
AML: All India Muslim League
APDP: Association of Parents of Disappeared Persons
APHC: All Parties Hrriyat Conference
CAT: Convention Against Torture
CFL: Cease-fire Line
CS: Civil Society
ECHR: European Court of Human Rights
EIC: East India Company
EUP: European Union Parliament
FGC: First Geneva Convention
FHPC: First Hague Peace Conference
GC: Geneva Convention
GGI: Governor General of India
IACHR: Inter American Court of Human Rights
ICCPR: International Covenant on Civil and Political Rights
ICJ: International Court of Justice
ICRC: International Committee of Red Cross
IHL: International Humanitarian Law
ILO: International Labour Organization
IPO: Indian Public Opinion
IPTF: International Police Task Force
ISF: Indian Security Forces
JKDAA: Jammu and Kashmir Disturbed Areas Act
JKLF: Jammu Kashmir Liberation Front
JKPSA: Jammu and Kashmir Public Safety Act
JSC: Joint Select Committee
KAC: Kashmiri American Council
KCA: Kashmir Constituent Assembly
KMC: Kashmir Media Service
KSG: Kashmir Study Group
KWI: Kashmir Watch International
LoC: Line of Control
MC: Muslim Conference
MC: Magna Carta
NCSA: National Commission for Social Action
OAS: Organization of American states
OIC: Organization of Islamic Conference
POTA: Prevention of Terrorism Act
POTA: Prevention of Terrorism Act
POW: Prisoner of War
RUF: Revolutionary United Front
SHRC: State Human Rights Commission
TADA: Terrorist and Disruptive Activities (Prevention) Act
UDHR: Universal Declaration of Human Rights
UN: United Nations
UNAMIR: United Nations Assistance Mission for Rwanda
UNCIP: United Nations Commission for India and Pakistan
UNCRM: UN Covenant on the Rights of Minorities
UNHRC: United Nations Human Rights Commission
UNSC: United Nations Security Council
WGEID: Working Groups on Enforced or Involuntary Disappearances
WW: World War
Abstract

Kashmir dispute which is a permanent and grisly issue between the two atomic powers India and Pakistan in South Asia which may become the cause of 3rd world war. Kashmir Dispute is creation of the Indian partition when British government had decided to leave India. Since that the people of Kashmir are being the victim of human rights atrocities by the Indian armed forces under the occupancy of Indian government but unfortunately, the international community is failed to pay its attention over it. There are serious issues of human rights in Kashmir which attracts the norms and principles of international law and international humanitarian law. India is signatory to the major human rights instruments through treaties and conventions but unfortunately no regard has been given by it so far because several administrative and legislative steps which are taken by the Indian government in the state of Kashmir, are against the international human rights law. It is urgent need of the time to focus on this disputed territory and the prevailing situations of the human rights in the valley of Kashmir. The Charter of the United Nations and other human rights instrument must be enforced in true spirit for the implementation of human rights in Kashmir.

The purpose of my research was to focus on the status of human rights in Kashmir under the legal framework given by the international law for the protection of human rights. For this purpose different reports have been collected which showed the worse conditions of human rights in the Indian occupied Kashmir. Through this research it has been observed that there several draconian laws which are against the standard of international human rights law. The efforts have also been made to point out the different kinds of international law which are being violated by the Indian government and its armed security forces in Kashmir. It has also been focused in this research to attract the attention of international community, International bodies and other human rights activists regarding their role and responsibility for the protection of human rights in Kashmir. The stress has also been given on the United Nations and other world organization to put pressure on Indian government to stop the violations and to recognize the right of self determination for the people of Kashmir.
Summary

Kashmir valley is a blessing of God in its prettiness. It has glorious climate and elegant scenery. The valley of Kashmir is very eminent for the striking lakes. Kashmir is very affluent in heritages, poets and philosophers. It is also place of tombs, Sufi’s, Mosques, Temples and Churches. Islam is the main religion of Kashmir. It has been the foremost center for the languages of Persian and Sanskrit. The valley of Kashmir which is no doubt the blessing of the God in the world and it has no substitute in its exquisiteness. The inhabitants of this valley had been very ardent and self made. The meticulous study of the history of Kashmir shows that there had been Muslim rule for hundreds of years. This land remained very thrive and lush not only for the local residents but also for the tourists or who settled in Kashmir from outside.

The miseries of the Kashmiri Nation started when the treaty of Amritsar was signed in 1846 between the British government and Maharaja Gulab Singh. It was a great slave’s trade which was done by the British government. Although the English people had very prolific history for the propagation human rights in the world as it has been the largest Empire from east to the west. The momentous document named as Magna Carta, which was concluded in 1215 by the British Society was ultimately the first instrument for the recognition of human rights in the western society. But unluckily the government of Britain forgot its value able efforts for the development of elongated history of human rights and made the sale of Kashmir. This sale had been condemned by all the scholars, historian, jurists and other sects of all the walks of life.

Although the violations of human rights had been the part of Kashmiri society like the other societies of the from world from the first day it beginning but any recorded document for mayhem of human rights can be found from the Treaty of Amritsar 1846 which was agreement for the slavery of people of Kashmir. The Maharaja Gulab Singh proved himself the actual owner over the Kashmiri society because he ruled the Kashmir like the slaves. There was no record for the regard of human rights in Kashmir. The entire society was being oppressed under the ferocious acts and taxes on the daily life of the people. There were horrifying examples which have been reported from beginning to end different sources regarding the human rights atrocities
on the inhabitants of Kashmir. Even though on several junctures he was warned by the
British government and its different officials when they visited the valley but the fate of
the people of Kashmir was not ready to change its path.
The British government had decided to carve up the India into two parts namely India
and Pakistan and for this purpose partition plan was given on 3rd June 1947. According
to the criteria of this plan, the princely states were given the option to accede with any
newly established state either Pakistan or India. The Maharaja of Kashmir did not
decide timely the accession of Kashmir because he was expecting the hope that the
state of Kashmir might become an independent state without accession, that's why he
was reluctant to accede with any state. On the other side the Muslims who were
majority in Kashmir were willing to join with Pakistan as they had bitter experience with
the Dogra Raj in Kashmir because they were mainly victimized. The upheaval was
started in Kashmir against the Maharaja and he was pushed back to Srinagar by the
freedom fighters with help of Tribesmen came from Pakistan. At the same time
Maharaja requested the military assistance from India which was accepted with the
condition of signing the instrument of accession. In fact the Maharaja was blackmailed
by the Indian government because India perceived that there is no chance for
Maharaja except to sign the accession. The same was done by him and India landed
her forces at Srinagar. During this time some parts of Kashmir were liberated which is
now called Azad Kashmir. The Muslim conference established its government.
The matter was referred to the United Nations by the India. The complaint was filed by
the government of India against Pakistan. After hearing the parties, the resolution was
passed by the United Nations in which it was demanded from both the parties the
withdrawal of forces instantaneously and auxiliary the future of the state will be
decided through the free and detached referendum which is egalitarian process.
Several resolutions were passed by the United Nations for the resolving of the issue of
Kashmir but yet no development has been made in this regard. The people of Kashmir
are continuously suffering the atrocities of their basic fundamental rights due to the
cruel attitude by the government of India. The voices of the Kashmiri people are
although hitting to all the international organizations and super powers but no progress
has been noted so far.
The research of this thesis mainly is focusing the status of human rights of the Kashmiri people in the scenario of international law. The laws and other acts of the Indian government which are implemented in the occupied Kashmir have been examined before the standard of international human rights instruments and the norms of international law. This thesis is comprised on seven chapters.

The first chapter deals with the historical background of the valley of Kashmir. In this chapter the origin and primitive history is discussed initially. Then Muslim rule in Kashmir has also been discussed in detail. This period shows the glory of the Muslims in the valley of Kashmir. The valley was very fertile and proper during this period. Then Sikh period was started in Kashmir which was the period of miseries for the Kashmiri people because the inhabitants of this land were maliciously exploited by the Sikh rulers. The Treaty of Amritsar is also discussed in this chapter. This treaty was an agreement between the Maharaja Gulab Singh and the British government which was signed in 1846. This agreement was basically slave trade by the British government. It was the time when the slavery of the Kashmiri people started. The entire Dogra period is discussed in this chapter including their bad and prejudiced administration towards particularly the Muslims. The partition of India and the basic controversy regarding Kashmir is also discussed in this chapter. The role of the United Nations is also made part of the first chapter.

The second chapter deals with the history and origin of international human rights law. The basic instruments for the implementation of human rights are also discussed in the light of international law. The human rights implementation structure is also made part of this chapter. This chapter gives sufficient knowledge regarding the prevailed standard of international human rights law.

The third chapter deals with the human rights atrocities in the valley of Kashmir. Different reports have been mentioned which are issued from the different sources. These reports are issued from the national and international media, human rights activists, organizations, NGO's and other international bodies which are working for the implementation of human rights. The reports have gathered very carefully and have been made part of this research after the verification of their authenticity from various sources.
The fourth chapter deals with the draconian laws which are implemented by the Indian government in Kashmir. These laws have been examined before the standard of international human rights law and the principles of international law. The Constitutional law of India was also made the checker on the black laws implemented by the government of India in the valley of Kashmir. It has been observed that these draconian laws are contradicting the various provisions of the international human rights law and the norms of international law. This chapter gives comprehensive knowledge about the so called black laws about the credibility before the human rights principles.

The fifth chapter is about the right of self determination for the people of Kashmir. The right of self determination is very important in the case of Kashmir conflict. This right basically gives the right for the people of the state to decide their political status. The same right is also available for the people of Kashmir. The different resolutions which were passed by the United Nations have also been part of this chapter. The right of self determination is discussed in detail in the scenario of international law and charter of the United Nations. The different examples have also been included in this chapter regarding the enforcement and recognition of the right of self determination. The case of the countries where this is recognized by the international community is also discussed in this chapter.

The sixth chapter deals with the case studies on human rights violations and the response of international community. There are different countries in the world like Zimbabwe, Bosnia, Rwanda, South Africa Argentina etc where similar violation were committed and international community responded quickly for the protection of human rights but no such response from international community has been shown so far against the human rights violations in the case of Kashmir.

The last chapter deals with the concept and the implementation of international humanitarian law and its enforcement in the valley of Kashmir. The principles of international humanitarian law have been discussed which can be enforced in the freedom war of Kashmir because the freedom war is being fought between Indian armed forced and the people of Kashmir. The violation of various principles of the
international humanitarian law which being committed in occupied Kashmir by the Indian forces are also made part of this chapter.

Finally the conclusion and recommendations are also made part of this research. Several recommendations have been suggested in this research thesis before the international community for the protection of human rights of the people of Kashmir. The suggestions are also given for the peaceful settlement of the dispute of Kashmir which is flash point between the two atomic powers in South Asia namely India and Pakistan. The purpose of this research was basically to draw the picture regarding the status of human rights in Kashmir in the scenario of international law and to attract the attention of the international community for the settlement of Kashmir dispute.
Chapter 1

Socio Political History of Kashmir

1.1 Introduction

The state of Jammu and Kashmir is situated in the heart of Asia. It is geographically bounded with Pakistan in West, North by China, and in the east by India. The area of this state is 85806 square miles. Administratively the state of Jammu and Kashmir is comprised on 36 districts, 22 are in the occupied Kashmir which are administered by the Indian government, 9 are in Azad Kashmir and 5 are in Gilgit Baltistan which are administered by Pakistani government (Sufi, 1948).

Kashmir is a land of natural beauty and full of romance by nature. It has magnificent climate and gorgeous scenery. The valley of Kashmir is very famous for the beautiful lakes. Kashmir is very rich in heritages, poets and philosophers. It is also place of tombs, Sufi’s, Mosques, Temples and Churches. Islam is the major religion of Kashmir. It has been the main center for the languages of Persian and Sanskrit (Syed, 1991).

The valley of Kashmir geographically links with Central Asia and Southern Asia for the purpose of trade and has significant value for the neighboring countries. This state was divided into three divisions namely two provinces Jammu and Kashmir, and the other areas Gilgit and Laddakh which are frontier areas of Kashmir. The frontier areas of the valley consisted on long series of mountains. There are also many passes and tunnels. The hilly areas are covering almost three-fourth area in total of the state.

Kashmir was separated from Jammu province by the Pir Panjal range of mountains and it links all the very important roads and crosses along with the border of Punjab. Jammu goes along the Jehlum, Gujarat, Gurdaspur and Sialkot in Punjab. The land of the Jammu has not been very fertile for the purpose of agriculture because of its hard soil, although it is watered by the most important three rivers of the region like Ravi, Chenab and Jhelum. This province has rich sources of coal, iron, copper zinc and precious stones in mountains (ibid).
As the whole valley is mountainous, the communication among all the provinces is very difficult. This valley is very rich in forests which makes more difficult by roads to connect these areas.

1.2 The Name of Kashmir

There are different theories regarding the name of Kashmir. One theory is that there was old race which was called Kash who were founded now a days in the cities of kash. In this scenario, the origin of the word Kashmir has been derived from the Kash, a name of race which was living there. This valley had been called in the name of Kashmir throughout its history. This name has been used frequently both by the local inhabitants and the foreigners (Sufi, 1948).

1.3 Primitive History of Kashmir

The history from various sources indicates that the first settlers in the valley of Kashmir have been the people known as aborigines. These people spread over the all parts of India before the arrival of Aryans. History is not sure about the early civilization of of the inhabitants when they entered in Kashmir (ibid).

After the aborigines, the Aryans came in the valley of Kashmir. They invaded from the northwest of India. Some writers are on the view that Aryans and aborigines formed one people. The Aryani people have developed their own civilization.

1.4 Earliest Known King of Kashmir

In the earlier history of Kashmir it has been found by the historian that Gonanda I was the first ruler in Kashmir. His period is estimated that it was 20 years before the Mahabharata war. Gonanda I was succeeded by his son Damodara I. He attacked on Karishna and was killed during the war (ibid).

1.5 The Pandu Dynasty
History shows that 35 kings came after one and other during this dynasty. Harandeva was the first ruler of this dynasty; he had killed the old raja and founded a dynasty in his own name. The second ruler of this dynasty was Ramadeva, who was known as famous king, he brought the whole India under his sway from the Arabian Sea up to the Bengal. He has also introduced some revenue reforms in that time (ibid).

1.6 The Maurya Dynasty

In the period of this dynasty, Asoka was very famous emperor. His reign was from 272 B.C to 231 B.C. His government was extended from Bengal to Hindi Kush. He was a Budist and he has created many religious institutions along with religious tolerance and patronization of all religions. Asoka was succeeded by Jaluka. He might be called as the native king of Kashmir. Jaluka was a very famous hero and was a worshiper (Saraf, 1979).

The pages of history show that there were number of dynasties in the primitive history of Kashmir before Islam like The Kushana Dynasty, The Gonanda Dynasty, The Karkota Dynasties, during the period of these dynasties Kashmir was made a powerful territory and developed its political structure. Its government was spread over to almost all the adjacent territories (ibid).

1.7 Spread of Islam in Kashmir

Islam has taken its way to Kashmir by peaceful means not by power or threat. It spread over by the gradual conversion due to the frequent arrivals of the adventurer in the valley of Kashmir.

The first ruler who came in sub continent was Muhammad Bin Qasim who defeated Raja Dahir in 712 A.C. After this defeat Dahir’s son Jaisia went to Rai of Kashmir along with Hamim , a Syrian person. The Rai of Kashmir had assigned him one indepceni known as Shakalah. Later on he died there and Hamim succeeded him. Hamim founded Masjid there and got much respect from the people and got soft
corner in the heart of King of Kashmir. This Hamim was known as the Muslim arrival in the valley of Kashmir. Islam has never changed the political structure and its cultural conditions in Kashmir.

History shows that Sultan Sadr-ud-Din Rinchan was the first Muslim ruler in Kashmir. He was contemporary to Edward III of England. Sultan Rinchan was basically Ladakhi and also called Tibetan. This Sultan had close relations with Shah Mir a Muslim scholar but he actually converted to Islam by Sayyid Bilal known as Bulbul in the beginning of fourteenth century. Bulbul shah had visited first time in the period of Raja Suhedeva, he predecessor of Richan. Due to the value able efforts of Bulbul shah, people started to be converted in Islam. During this thousand embraced Islam. After Bulbul shah a chain of Muslim preachers were started to enter in Kashmir. In true sense the revolution of Islam in Kashmir came by the Syed Ali Hamdani who was also called Shah Hamdan. Dr. Allama Iqbal was very impressed from the efforts of Ali Hamdani for the preaching of Islam in the valley of Kashmir (Sufi,1948).

Syed Ali Hamdani travelled the whole world for three times and accompanied several saints. In the last days of his life he visited to Pakhli (1) and then Kunar where he breathed his last at the age of 72 years.

1.8 The Period of Sultans of Kashmir

The period of sultans in Kashmir is comprised between (1320-1555). The first sultan of this dynasty was Sultan Shams u Din. His decedents was known a Shah Mir, exercised the sovereign powers in Kashmir without any external pressure, because the period of Shah Mir was very fertile for Kashmir Valley. The period of Shah Mir brought in Kashmir peace and strong system of government. His period in Kashmir is known very prosper era because he ruled in the valley on liberal principles. Sultan Shams-Ud-Din was died on 1342 A.C, his tomb is at Andarkot and it was declared as protected monument in 1941 A.D (Saraf,1977).

1. Pukhli was district of Punjab in ancient times. Now it is situated in the province of Khayber Pakhtune Khah. The habitants of Pukhli speak the language of Pashtu.
1.8.1 Sultan Ala Ud Din

Sultan Ala ud Din had assumed the title of sultan after defeating his brother Sultan Jamshaid in 1342. He ruled for the period of twelve years in Kashmir. His period in Kashmir is known as the period of peace and internal reforms in all walks of life. He tried to provide the relief to the valley after the horrible atrocities and destruction by the Duleha and Achala’s incursions. The king helped out the people from all walks of life. He introduced social and economic reforms for the prosperity of the people of Kashmir valley (Ibid).

He was passed away in 1354 and was buried in Ala ud dinpor.

1.8.2 Sultan Zain-Ul-Abidin

The period of Sultan Zain ul Abidin is from 1420-1470 A.C. He was considered a noble person in the early age of his life. Soon after the accession he appointed his brother Muhammad Khan as Prime Minister of the state. Sultan Zain ul Abidin was very keen in providing justice and he retained the office of Chief Justice with him till he found suitable person for this post named as Qazi Jamal ud Din (Sufi,1948).

Sultan Zain al Abidin was no doubt Shah Jahan of Kashmir because his working for Kashmir is unforgettable. He has constructed many buildings, Mosques and tombs in the valley which are still evident for his abilities and qualities. He was very kind to the people and was very caring for the basic rights of the citizens of Kashmir.

Sultan Zain also raised the standard of trade and for this purpose he called many crafts man, mechanics and artisans from different countries like Iran, Turkistan and India. During this period the products of Kashmir were highly appreciated not only in sub continent but also in the foreign countries as well (Saraf,1977).

He has also established very good relation with the foreign countries and introduced the Kashmir culture and custom in the whole world. He used to send ambassadors and messengers to the different foreign countries.
During the era of Sultan Zain Al Abidin, there was complete and undeniable freedom of religion in the valley of Kashmir. The Muslims and Hindus were living in very peaceful and friendly environment. There was no disturbance in the ordinary way of preaching the religion.

Sultan Zain Al Abidin was also known as the first law giver of the valley of Kashmir. He has given the set of laws in different subjects. He introduced well trained system of administration and police. He was very good administrator. He has also introduced the department of Jail and prisons. He was very hard worker and often personally supervised all the works of construction in the valley. The entire roads were reconstructed and he connected all the cities with each other by roads. The system of communication in his reign was satisfactory (Bose, 2003).

Although he was not contemporary but his works with limited sources was very remarkable. He in true has established the Muslim dynasty in Kashmir.

Sultan Zain Al Abidin passed away in 1470 after the long ruling period which was consisted on 52 years in Kashmir.

After the period of Sultan Zain different Sultans came in the valley of Kashmir. Hassan Shah one of them revived the practices of his grandfather Sultan Zain Al Abidin which were declined during the period of Haider shah. He was very hard worker and introduced new reforms in the valley of Kashmir.

1.9 Kashmir and Mughal Rule

During the reign of King Akbar, the state of Kashmir was attached and the Mughals made the local ruler known as Yousaf Shah Chak. He was married with Queen Haba Khatoon, she got liberation from him and used to live away from Yousaf Shah. She was well known poet in the history of Kashmir (Saraf,1977).

Kashmir enjoyed unique prosperity during the period of Mughal era. The world’s famous gardens and monuments are witness about the proper rule of Mughals in the valley of Kashmir. The administrative setup was same during the periods of Mughals and Afghans in the state of Kashmir.
In 1589, The King Akbar visited the valley of Kashmir. He was very happy to see the land of beauty and he spent few months there in order to visit the famous streams and places. But it does not mean that this was only a pleasure trip in the valley by the Akbar. During this tour he respected the feelings of the people and ordered to his soldiers to remain away from the modesties of the citizens (Khan, 2001).

During this visit Akbar directed to build many gardens and other historic places in Kashmir which should enhance the beauty of the valley. These constructions made the attractive charm in the natural glance of the country. Akbar had traveled many visits in Kashmir and introduced many reforms in the valley. He has also enforced the tax reforms in Kashmir (Sufi, 1948).

After the King Akbar, Shehen shah Jahangir travelled to Kashmir and he paid almost eight visits to Kashmir. He was lover of beauty and nature, that’s why he was very passionate to Kashmir. He traveled along with his lover Queen Nur Jahan which made his visits to Kashmir very romantic and they went very close to the beauty of the valley of Kashmir. He praised the beauty of Kashmir in very open words. Many historians have explained those romantic days in their own words with different styles and showed the loyalty and interest of Jahangir with the valley of Kashmir. The reason of such passionate with Kashmir for the king was the hot weather of India which fires the body of the king Jahangir which became the reason for the frequent travelling to Kashmir (ibid).

It seems that the frequent visits of the Mughal kings in the valley of Kashmir become the reason for the good administration in the valley, because the state was succeeded to attract the attention of the kings. The people were very living in prosperity and in peace loving environment. The king Jahangir did not neglect the welfare of the state of Kashmir and he often taken the notice of the violation of human rights especially of the women because in Hindu society there was tradition to burn the young girls alive, so king Jahangir forbidden such events in very harsh words (Saraf, 1977).

After the King Jahangir, Shah Jahan visited the valley of Kashmir almost four times during his ruling period. He has appointed nine governors in Kashmir during his reign. He has also paid special attention to the valley and developed the administrative structure which was satisfactory for the people of Kashmir (Yazdani, 1995).
Contrary to the predecessors, King Alamgir visited Kashmir only in once. He was accompanied by the Princes Roshan Ara. The journey of Alamgir was not remained very happy because due to the difficult roads and ways his envoy got accident and few women were killed. He tried to improve the trade of the people of the valley and introduced some reforms for the purpose of business. The reign of Alimgir was almost spread over fifty five years but he stayed only for three months in Kashmir (ibid).

The late Mughal emperors mostly remained engaged in fighting with each other for the sake of kingship. During this time the main incident in Kashmir which happened, the revolt of Raja Muzaffar khan Bamba in 1713 A.C. It cannot be denied that the personal characters of the emperors were also there but as far as the administration of the Mughal emperor is concerned they have paid special attention to the valley for the development of socio economic conditions of the Kashmir people. The people became very prosper. They have tied their business links with the foreign countries as well. The architects of the Kashmir were well acquainted outside the Kashmir. It was the sincere effort of the Mughal rulers that they had haven the weitage to the valley. During their reign no significant revolt has been reported in Kashmir which is evident that during Mughal era Kashmiri people were living in peaceful environment. The Kashmir people have also made strong ties with the people of India as well during this period (Saraf, 1977).

1.10 Entrance of Sikhs in Kashmir

Muhammad Azeem khan has established his dominancy over the Kashmir, but he has committed negligence in the Nazrana. Due to his violation of commitments with the Maharaja, troops were sent by Maharaj to reprimand Muhammad Azeem khan in Kashmir.

The invasion by the Ranjit Sing was proved fruitless for many efforts. He was defeated for many times in order to occupy the Kashmir. Ranjit Sing although had strong commitments to conquer Kashmir. Finally he invaded on Kashmir with some support from the local inhabitants and conquered the great valley. This victory was celebrated
for many days in Lahore because it was the success of the long standing dreams of the Ranjit Sing (Yazdni, 1995).

Although Sikhs were succeeded to occupy Kashmir but initially they could not subdue the Muslims in the Kashmir valley. But after long resistances in the Muzaffarabad and in other parts of the valley the forces of the Ranjit Sing succeeded to get the control over in Kashmir. There is no doubt to historians that the forces of Ranjit Sing were supported by the British government while invasion on Kashmir valley (Lamb, 1996).

The Sikh rule in Kashmir remained only for the period of twenty years and went down its dawn with the signing of infamous treaty of Amritsar in 1846. The entry of Sikhs in Kashmir resulted in broken the law and order situation the valley. It is although difficult assess exactly what actually happened one can imagine from the invasion that every soldier of Sikh army was conserved himself as he is the master of the situation and was dealing everyone according to his own choice. The frequent looting by the senior officers of the Sikh army resulted the miserable living conditions of the people of Kashmir. The valley was looked as if hordes of hungry vultures had descended upon the land. It was hardly difficult to trace out any Muslim house which was not suffered due to the brutal invasion over Kashmir by the Sikhs. The victory of Sikhs in Kashmir ought to be great victory but on the other side it was great defeat and decline of Muslim civilization and society. It was the not less than death warrant for the Muslims in the valley. Every Muslim was crying when the Sikhs were celebrating the victory in Lahore and Sirinager (Brecher, 1953).

The economy of the valley was badly ruined by the attacks of Sikhs. The heavy taxes were imposed on the people and it was the discretion of the Governor to impose the taxes. By the end of Sikh rule the valley and its inhabitants were badly demolished and demoralized. The ancient glories of Kashmir were brutally vanished by the Sikhs.

The Muslims were thrown out from the government employments and almost all the Muslims became jobless because they were being victimized by the Sikhs. All the religious institutions of Muslims were closed down. The Jamia Masjid Sirinagar and other great mosques were closed down. The famous and glorious masque of at Sirinager which was built by the Queen Nur Jahan was converted from Mosque to grain store. The famous mosque which was constructed by the Bulbul was also closed
down by the leaders of Sikh. They had not left any door for the exploitation on the Muslims in the valley of Kashmir (Haroon, 1995).

Cow killing was also made forbidden and declared the offence as punishable to death. Several respectable citizens were hanged out due to the suspect of cow killing. The Muslims were never given any opportunity to be heard and they were often hanged without any trial (Sufi, 1948).

Those who were granted Jagirs from the Mughals and Sultans were deprived from their Jagiris by the Sikh. In fact every governor was of the view that if he would left any chance of looting the innocent Kashmirirs then he might be deprived from his seat. The governors were more corrupt and cruel than the other officials of the Sikh government in the valley of Kashmir.

There was no system of complaints where grievances were to be filed because the Governor and Raja were one eyed. There was no use to complaint of the atrocities because it was a realm of darkness everywhere. There was no way of reliefs for the innocent Muslims because the Muslims were the main victim of the Sikhs (Saraf, 1977).

The Sikh entrance in Kashmir was the wave of atrocities of human rights. They had never respected any human right, the women and children were badly destroyed. We can say that the entrance of Sikh rule in the valley was in fact the commencement of human atrocities which started by the Sikh rulers.

1.11 The Sale of Kashmir

The East India Company came in sub continent for the purpose of trade and business and had never left any chance to opt money in India. On other side Maharaja Gulab Sing was indeed in greed and never left any occasion to suppress tyrannies on the people of Kashmir.

The Governor General was also wanted to earn money because the Sikh treasury was without any money because of the theft and looting done by Maharaj Gulab singh few years earlier. In order to satisfy the demand of the army and administration, it was need for the Governor General to earn some money. For this purpose secret deal was
done between Governor General and Maha Raja Gulab Sing to transfer the control of Jammu and Kashmir to the Gulab Singh for the sum of seventy five lacs of rupees (Nanakshahee) (Yazdani, 1995).

Kashmir was sold in the treaty named as “Treaty of Amritsar 1846.A.D” which was great blunder and atrocity on the Kashmiri people. The Kashmiri nation which was never remained slaved in the history, it was sold by the great democracy of the world named as British government (Syed, 1991).

In this treaty it was also agreed that the territory of Kashmir will be transferred to Maharaja Gulab Singh as reward because he is very loyal towards the Lahore Darbar.

1.12 The Sale Deed

There is no doubt that this treaty was black spot on the face of the British government forever in history. The Amritsar Treaty which was signed between Mr. F. Currie and Brevet-Major Henry Montgomery Lawrence on behalf of Lord Hardinge and Gulab Singh in 1846 A.D (Bazaz, 1979), is reproduced as under;

“ Treaty between the British government on the one part and Maharaja Gulab Singh of Jammu on the other, concluded on the part of the British government by Fredrick Currie and Brevet-Major Henry Montgomery Lawrence, acting under the orders of the right Honourable Sir Henry Hardinge, G.C.B., one of her Britannic Majesty’s most Honourable Privy Council, Governor general of the possessions of the east India Company, to direct and control all their affairs in the East Indies and by Maharaja Gulab singh in person”.( Saraf, 1977).

The detail provisions of the Treaty are as under;

- Article 1:
  That the British Government hereby transfers the possession of Jammu and Kashmir to the Sikh Leader Maharaja Gulab Singh and to all his male family members, all the hilly and mountainous areas along with dependencies situated in the state of Jammu and Kashmir.

- Article 2:
That the eastern boundary of the Jammu and Kashmir will be indicated by the commissioner who will be appointed by the government of British and Gulab Singh for the demarcation of boundaries of the sold territory.

- **Article 3:**
  That in pursuance of this agreement, Maharaja Gulab Singh will pay to the British Government seventy five lakhs of rupees (Nanakshahee) as consideration of the agreement. Fifty lakhs will be paid at the time ratification of the agreement and the rest of the amount will be paid on 1st October of the current year.

- **Article 4:**
  That the territorial boundary will not be subject to any change by the Gulab Singh without any prior consent of the British Government.

- **Article 5:**
  That in case of any difference in opinion or dispute, the matter will be referred by the Gulab Singh to Arbitration of the British Government. The award of the British government will be considered as final decision between the parties.

- **Article 6:**
  That Maharaja Gulab Singh will be bound along with his heirs to provide military aid to the British government when it is engaged in any military conflict adjoining areas of Kashmir or in hilly areas.

- **Article 7:**
  That Gulab Singh will not engage any British, European or American subject in service without the prior consent of the British government.

- **Article 8:**
  That Gulab Singh will regard the provisions of this agreement in true spirit with all its contexts.

- **Article 9:**
  That in case of any external invasion on Kashmir, the British government will be bound to provide its aid to the Maharaja Gulab Sing.

- **Article 10:**
  That in order to acknowledgement of the dominancy of the British Government, Gulab Sing will be bound to present annually one horse, twelve shawl goats of approved
breed and three pairs of cashmere shawls to the British Government. This condition was for every year (Saraf, 1977).

There is no doubt that after this sale huge number of agitations were started in and outside the domain of British government because this was a great atrocity regarding the human rights. Such example had never been found throughout the history of mankind. In fact the British government had sold the people of Kashmir not the particular territory in the sub continent. This agreement was almost condemned by the international community because it was basically the violation of Magna Carta 1215, which was signed by the King John. The British history is evident that it has been the main preacher for the dignity of man but we wonder why such blunder of human rights was committed by the British government in the shape of Amritsar Treaty 1846 as it was against the dignity and modesty of man (Wirsing, 1994).

When Lord Hardinge was called for explanation by the House of Commons, he wrote many letters and taken the plea that Gulab sing had never fought against the brutish government in India and he has been always loyal to the British crown. The reply of the Lord Hardinge showed its miserable financial conditions of Sikh treasury. He was of the view that he want to recover the war indemnity from the maharaja Gulab Singh because during the invasions of Sikhs, they have looted lot of valuable property from the Kashmirir people. Even if it was the justification of Lord Hardinge, it was against the dignity of man and was bare violation of human rights because the there was no justification regarding the sale of the fate of the people of the Kashmir. The mistake of one cannot be indemnified to punish the other. This was the trust of the lord Hardinge over the Sikhs (Victoria, 2000).

Maharaja had not paid rupees fifty lacs at the time of ratification of the treaty but he has only paid 25 lacs to the British Government. He had taken the plea that 15 lacs rupees which the British government has recovered from his brother Suchet Sing at ferozepure should be adjusted. It was very surprising that Lord Hardinge had not only adjusted the rupees 15 lacs but also he ordered that further claims will be adjusted in future if made by the Gulab sing. It seems that Lord Hardinge was very kind to the
Maharaja Gulab Singh and that's he has rewarded the territory of Kashmir with the plea that he was very loyal to the British government (Saraf, 1977).

1.13 Events in Kashmir after the Amritsar Treaty

After the sale of Kashmir the main thing was the possession of Kashmir by the Maharaja Gulab Singh. Gulab Singh was obviously nervous to get the possession of the sold territory. Definitely the person, who got the success against the money, was expecting easily safe possession.

- **Sheikh Imam-Ud-Din**

  Sheikh Imam-ud-Din was the Governor in charge of the valley of Kashmir after the Maharaja Ranjit Singh. He was looking the affairs of state. According to one writer Sheikh Imam-ud-Din was the best well dressed and well mannered Person in Punjab. He was much disciplined person. It has been reported that Maharaja Gulab Singh offered him the employment as governor on the basis of salary (Wirsing, 1994).

  The Muslims of the Kashmir were showing strong reaction and agitations on the substitution of Sikh by the Dogras because it was the first experience of political change and the deterioration of social, economic and political scene of the Kashmir. There was a strong apprehension of strong religious persecution. The Muslims of the Kashmir had not expecting any better from the Dogras. They had experience about the brutalities of the Gulb Sing in Poonch and Kishtawar. The Muslims had already got bitter experience with Gulab Singh (Syed, 2009).

  The sale of the Kashmir valley was strongly condemned by the media of India. All the people belong to different school of thoughts were agitating this dealing of slave trade. Even the British people were also agitating against their own country because this act was against the norms of the humanity.

  The Kashmiri residents were not expecting from the Englishmen because several Englishmen travelled to Kashmir as tourist and they have found them very cooperative. The local people behaved with them in very good manners in respectable way. They do not know that the English men would be so senseless and reckless and
they would improve themselves as careless people that they will sell them in a very ruthless manner forever.

The British architect Mr. Lawrence observed that it was grievous injury which was inflicted on the back of the Kashmiri inhabitants. Sometime Kashmiri think that perhaps Lord Hardinge has done in hurry or on confusion but they do not know they have been sold for many centuries (Saraf, 1977).

Now there full disappointment for the Kashmiri people from the end of Lord Hardinge. The Kashmiri have addressed three petitions to the Governor General against the Treaty of Amritsar 1846 A.D. One petition was sent from the Hill-chief who expressed in his petition that if sale is not annulled then they have no other option beside the fighting (Bazaz, 1979).

In another petition it was expressed by the manufacturers, inhabitants and pundits that if sale is not set aside then they all will run away including great and small collectively. Sheikh Imam ud Din had no personal obligations because he was appointed by the Lol Sing. On the other side Gulab Singh had given the offer to Sheikh Imam-ud-Din that he would be allowed to work on the same seat in the same position against the salary of one lac per annum. Gulab Singh imposed a condition along with the salary offer that he should manage and protect the country (ibid).

According to some historians Imam ud Din had some alternatives which are as followings mentioned below (Sufi, 1948);

1. On option was to him that to accept the offer of Maharaja Gulab Singh and to carry on the same post with the offered package.
2. The second option was available to him was to oppose to the Gulab Singh against its transfer.
3. The third option was to him that to buy the state of Kashmir over to Maharaja Gulab Singh from the British government and succeed to become the sole ruler of the Kashmir valley.

It was doubt on the credibility of the Sheikh Imam ud Din that he was a indeed a selfish man and was just trying hard to control his assets. On the other it was also difficult for him, to trust on the Maharaja Gulab Sing because his past never supports that Gulab Singh was trustable person (Saraf, 1977).
This also quite acceptable to believe that during this period Sheikh Imam ud Din might have offered bargain with the British government on the valley of Kashmir. It has also been reported that he has approached to Lord Hardinge about the purchase of Kashmir and offered him thirty five lacs (ibid).

But his offer was not given any window in the wall because Lord Hardinge was throwing the gold into the hands of Maharaja Gulab Singh. He immediately tried to evacuate the valley from the possession of Imam ud Din because it was great apprehension for them that Imam ud Din may create problems for the Gulab Singh(ibid).

It was claimed by the Maharaja Gulab Singh that Sheikh Imam ud Din approached to the Lord Hardinge the Governor General. It is doubt what response was given to him because Gulab had been met to Governor General more than once. One should not forget that he was the Governor General who took the main step in order to sell the people of Kashmir as slaves in the hands of Maharaja Gulab Singh. He had accommodated Gulab Singh with open heart and even he awarded him with the title “His highness the Maharaja of Jammu and Kashmir.” (Korbel, 1966)

Maharaja Gulab Sing expressed openly that Lord Hardinge is his friend even after the six months after the completion of the treaty of Amritsar 1846 A.D.

After that Gulab Singh started preparation for the possession of the purchased valley of Kashmir. He prepared strong force to with joint command of Wazirs of Lakhpat to take the possession by force.

When he reached near Srinagar then he demanded possession, he was blatantly refused by the Sheikh Imam ud Din on the ground that he could not do so without the prior information from the Darbar of Lahore (Sufi,1948).

During this time he number of local inhabitants gathered along with the forces of Governor under the leadership of Mirza Faqir Ullah. Mirza Faqir Ullah tried his best to get permission from the Governor to attack on the invaders but unfortunately it was declined by the Governor (Woolpert,2011).

It is difficult to imagine the real intention of the Governor because at the same time Wazir came in Srinagar and their entry was neither denied. It was also very interesting that the Private secretary of the Governor General, the son of the Lord Hardinge soon
came in Srinagar. There was question raised by some scholars that the visit of Charles the private Secretary was not ordinary movement in Kashmir. He came with planning and might be sent by the Governor General in order to facilitate the possession of Gulab Singh on the valley (Noorani, 1964).

It is pertinent to mention here that soon after the arrival of Charless Hardinge, Sheikh Imdad not only surrendered the possession to Maharaja but also he opened all the doors to the Maharaja Gulab Singh. So there should not be any hesitation to say that the peaceful possession of the sold valley was only due to the arrival Charless Hadinge, that's why not a single glass was broken on the arrival of Maharaja’s forces on the valley.

The friendship of Lord Hardinge was very close friend and kind to Maharaja Gulab Sing that there was remained balance of treat of Amritsar which was not paid even till the retirement of Hardinge. He had never shown any hard word for the recovery of this remaining amount from Gulab Singh. Not even a single measure was adopted by the British government for this purpose (Saraf, 1977).

We are not hesitating to say that this huge blunder and atrocity of human rights was not by chance by the British government they have all done deliberately with conscious.

Soon after the departure of Sheikh Imam ud din when he handed over the possession to the Gulab Singh, revolt was started in Kashmir under the leadership of different local inhabitants, Mirza Faqir was the main fighter for the freedom of Kashmir. He resisted well against the forces of Dogras in Kashmir (ibid).

The Dogra forces were defeated in Srinagar by the troops of local inhabitants because there was strong anguish against the Dogra forces and their leader Gulab Singh.

The defeat of Dogra forces in Srinagar was not ordinary incident but it was a climate where opposition against Gulab Singh was increasing. People were fully revenged against Gulab Singh due his tyrannical history. In this scenario Roop Lal played very important role in opposition of Gulab Singh. He was Governor of Jasrota, and he advised to the people that not to vacate the field against the Maharaj Gulab Singh. He also advised the people to seek their relief from the Henry Lawrence. He also handed
over all the stores and other war ammunitions to the rebels in order to fight with Gulab Singh (Tahir, 1995).

1.14 British Intervention for Gulab Singh in Kashmir

There is no hesitation to say that Sheikh Imam-ud-Din was cowardice and had no bone to fight for the people of Kashmir. In order to provide all kind of assistance to Maharaja Gulab Singh Herbert Edward was deputed to remain with the Gulab Singh and keep informed all the matters to the Governor General regarding the situations in Kashmir.

It is evident from the official record that the British government assured in all aspects to the Gulab Singh for secure transfer of possession. For this purpose they took all the possible steps. On the other side Sheikh Imam ud Din was also trying to make hurdles before the possession of Kashmir to Maharaja Gulab Singh. It was perceived by the British Government that Imam ud Din is writing letters to the rebellions to continue resistance against the transfer of Kashmir into the hands of Gulab Singh (Saraf, 1977).

In this state of affairs, real role was played by the Maharaja Lal Singh; He resisted lot before the possession to Gulab Singh. He wrote many letters to Sheikh Imam ud Din. These letters were kept in the hands of British government. After these letters the British government decide to hold a trial against Raja Lal Singh who was at that prime Minister of the Sikh kingdom (Lamber, 1996).

Lal Singh had taken several steps against the Dogra Possession over the Kashmir. It has already been noticed that Rani Jidan who was strongly opposing the sale deed of the Treaty of Amritsar and was against the transfer of Kashmiri people as slaves to the hands of Maharaja Gulab Singh (Sufi, 1948).

In view of the facts, Rani Jindan was on the opinion that the sale of Kashmir and its transfer to the maharaja Gulab Singh was an arbitrary act on the side of Governor General. It was denying act from the norms and principles of the constitution and morality in the Britain Society (Victoria, 2000).
The British government holds thorough trial against the Lal Singh, several persons were called as witnesses and they were examined and cross examined in the court room. Finally after the lengthy trial he was declared guilty and consequently removed from the Wazarat. He was died in 1867 in internment.

The treaty of Amritsar 1846 indeed was the commencement of the violations of human rights in Kashmir. This was first step towards atrocities of Kashmiri people which taken by the British government (Niazi,1990).

This treaty and the sale of Kashmir were obviously against the norms of English Society because this English society struggled long in history for the restoration of human rights and basic fundamental rights. They succeeded after the long human rights movements and signed first charter for the protection of human rights which is known as Magna Carta in 1215.

The Magna Carta was written against tyrannical acts of the King. It was a document where basic rights like right to life and property were protected. It was precise instruments which gives way to stand under the umbrella. This umbrella provides many practical matters and reliefs against the British feudalism.

In this historic document, there were two main principles mentioned under the Magna Carta:

"No freeman shall be taken, imprisoned, diseased, outlawed, banished, or in any way destroyed, nor will We proceed against or prosecute him, except by the lawful judgment of his peers or by the law of the land."

"To no one will We sell, to no one will We deny or delay, right or justice."(Syed,1991)

These two principles are very important for history of British people in order to realize them their commitments regarding the protection of human rights. It is very important to note that Treaty of Amritsar 1846 is bare violation of the above said principles that no one will be sold.

It is also very famous principle of English common law that " No one will be deprived from liberty ,life and property unless due process is adopted". It is very clear from the
contents of the history of the above said treaty that it was signed arbitrarily between the persons namely Lord Harding and Maharaja Gulab Sing without the prior permission of the British parliament. The principle of due process of law was not adopted in the case of Treaty of Amritsar 1846 (Saraf,1977).

It is very pity that the liberty and life of the people of Kashmir was sold arbitrarily by the British government. The history could not ignore the value able efforts of English society for the protection of human rights but unfortunately they forgot the whole commitments, efforts, its constitutional covenants, in the case of Kashmir.

The sale of this valley was not on the faire principles of law, it was initially a violation of fundamental rights. That’s why Maharaja had started to vindicate the human rights and daily routine life of the innocent Kashmiri people.

On 9th June 1847 Col. Henry Lawrence and Taylor had written a letter to the Maharaja Gulab Singh and it was complained that:

- Anguish of Kashmiri on the basis of high prices
- There is a frequent exercise of few cases of Satti
- Heavy imposition of taxes on Kashmiri Muslims just for the religious activities of non Muslims (Hussain,1990).

These allegations were very strong leveled on the Maharaja Gulab sing by the British government. Apart from these several foreign visitors have visited to the valley of Kashmir and formulated their observations and impressions that Kashmiri people are being deprived from their basic human rights.

According to one tourist, Mrs. Hervey, who observed that heavy taxes were everywhere in the valley of Kashmir. Every person whether he is a professional or belongs to labour is being oppressed by the unreasonable taxes (Sufi,1948).

In fact these tyrannical acts by the Gulab sing were just revenge from the inhabitants of the valley because he was on the view that he has purchased the Kashmiri people as slaves and their human status is not more than slaves.

When Lord Hardinge was replaced by Dalhousi, at that time Gulab Singh was very upset in order to make contact with the new Governor General because it had been the habit of the Gulab Sing to make personal friendly relations with the high profile
personalities of the British government. Due to these links he earned lot and the gift of Kashmir was the reward of such friendship by the British government (Khan, 2001).

The contemporary press in India also raised their voices on the human rights atrocities in the valley of Kashmir. According to the “Indian Public Opinion” described the situation in Kashmir on 23rd November, 1866, that One who has not visited the beautiful valley of Kashmir, cannot imagine the tyranny and oppression of the giant revenue in the name of custom” (ibid).

It has been observed that the Dogra Government not only imposed the taxes on land but also on the daily life the people also. They breathing in the valley against money, the one who don’t pay heavy tax, has no right to live.

Soon after the sale of Kashmir the British government had admitted that their wrong and violation of human rights, Sir Robert who was Governor of Punjab, visited the valley. He holds several sittings with the Maharaja on the imposition of heavy taxes and other economic exploitations on the people of Kashmir. The express purpose of the meeting with maharaja by the Sir Robert just to convince him that he should reduce the human right violations (Saraf, 1977).

Sir Robert while admitting said that although we have sold the valley of Kashmir to the Maharaja Gulab Singh but it does not mean that we have sold its people into slavery. He further said that the human rights violations which are now Kashmir had never been even in the worst days of human slavery in the world. He also said that we should be responsible for the immoral and tyrannical acts of the maharaja Gulab in Kashmir and we should be responsible for the stern evils which are arising from the great barbarous system of bad governance in Kashmir (ibid).

Similar observations were also expressed by the Lt. Torrens, while during the visit to the valley of Kashmir, he stated that Kashmir was no doubt under the auspices of British government but unfortunately that was transferred to the tender mercies of the Gulab Singh (Haroon, 1995).

The Muslims were the main target before the maharaja Gulab Singh; they were not allowed to perform any act freely. The Muslims even were not allowed to hunt the fish and to kill the cow. They were also not allowed to visit the mosques on their own will
because many religious institutions were ruined by the revenging mind of Gulab Singh in the valley.

Similarly Lt. Robert Thorpe visited the valley during the period of Rambir Sing and he noted that the whole valley was full of sorrows and maladministration. He observed that the Muhamdans were being oppressed by the Hindu officials terribly and horribly. The Hindu officials were busy in sucking the life blood of the innocent Kashmir people. There was no remedy for the exploited people by the Dogra administration in the valley of Kashmir. The farmers were paying the heavy taxes from their agricultural product from the land. He further noted that the Dogra government had made special force whose duty was to collect grain from the Zamindars. The farmers were getting nothing from the products. He said that no example of atrocities can be found as he seen in the valley of Kashmir (Baza, 1979).

Mr. Thorpe realized in his mind that the Kashmiri people are facing the oppression and exploitations just because of Treaty of Amritsar 1846 which was the product of the British government. He made determination that he would try to raise the voices of the atrocities before his government. He started to collect information about the tyrannical acts of the Gora administration and the sufferings of the Kashmiri people after his visit to Kashmir. These collected informations were supplied to the British government and to the Indian press. He showed the sympathies with the Kashmiri people and tried to highlight the human rights issues before the international community because these human rights violations were against the norms of the international law and the law of human rights (Brecher, 1953).

He was the first foreigner outside the India who raised the voice for the freedom of Kashmiri people. He was also buried in Srinagar. The question is that why he was showing sympathies with the people of Kashmir because he was the son Kashmir Muslim mother. His father done love marriage with the Kashmiri girl who belonged to the Muslims royal family.

It is no doubt that that there was system of forced labour during the period of Dogra administration. Many foreign tourists termed the labour which was being taken from the Muslims as Forced labour. But in fact this was worse than the forced labour which
was imposed on the Kashmiri Muslims. The dilemma of discrimination was that all the non Muslims were given exemption from the forced labour.

There was great destruction of the norms of the Muslim society. The Kashmiri nation had strong social and economic status but unfortunately in 1889 the state was bankrupt. The fertilized land was become uncultivated. The farmers were hesitating to bow something in the agricultural land. The army was engaged in forcing the villagers to bow the crops in the agricultural land. According to the Lawrence the taxes were unprecedent heavy than the financial level of the Kashmiri people (Saraf,1977).

It was also very interesting to note that the Dogra government had imposed the tax on the Muslim marriages. If any Muslim contracted any marriage then he was supposed to pay the tax. The purpose of this tax was just to stop the population of the Muslims in the valley of Kashmir. Such types of taxes were direct attack and limitations on the faith of the Muslims. All the possible measures were being adopted by the Dora Government in order to make hurdles for Muslims for the performance of their religious obligations and activities in lawful manners.

Due to heinous tyrannies by the Dogra government, the Muslims after the fifty years from the Treaty of Amritsar started to move from Kashmir to Punjab. But it was difficult to reach to the Punjab due to some reasons because there was Sikh government in Punjab. The Muslims were not expecting different attitude by the government of Punjab as they are being treated in the valley of Kashmir. The other reason was that all the roads and passes were blocked by the Dogra administration in order to stop the frequent movements of the inhabitants of the state of Kashmir to the Punjab. The Muslims in Kashmir for the first time were requiring the exit from the valley to the other land of Punjab due to oppressions by the Dogra government.

But the situation was entirely changed after the British rule over the land of Punjab. Now the living conditioned were changed to some extent for the people who have migrated from Kashmir to Punjab.

There British government realized that the Muslims of other inhabitants of the valley are being exploited just because of the mistake committed by the Governor General Lord Hardinge.
There should not be any hesitation to say that the effects of the Treaty of Amritsar 1846 had lasted for the long period on the lives of the Kashmiri people particularly the Muslims because they were the main target by the Dogra administration. The valley which was very fertile in its resources and cultural traditions was reined after the possession taken by the Maharaja in the consequence of the sale of Kashmir. The above said treaty brought a horrible and terrified wave of the human atrocities over the inhabitants of the Kashmir valley. Such violations had never been reported in the history of Asia and across the world.

We can say that the treaty of Amritsar was the start of the violation of international law and its norms. The slavery and the sale of the human being was already prohibited by the international community where British government and its society was the main preacher against the human sale and slavery but unfortunately they forgot all those covenants, treaties and promises with the international community. They forgot that they had established the system of common law which addresses the grievance of the people in the sense that nobody should be punished unless heard. The question arises here that whether when the British government made its intention to sell the Kashmir valley and its inhabitants whether they had taken the version of the Kashmiri people over the sale.

We should not forget the equitable principles which were settled down by the English chancery courts that No wrong without remedy. This principle was based on equitable remedy and was settled long before the Treaty of Amritsar 1846. One can ask to the British government why they forgot this principle. The sale of Kashmir was no doubt wrong committed by the British government but they had not provided any remedy to the people of Kashmir.

The British government remained silent spectator over the miseries of the Kashmiri people. They never said any word over the exploitations of the Maharaja Gulab Singh which he enforced on the inhabitants of the Kashmiri people especially the Muslim community living in the territory of Kashmir valley.

The silent mountains of the valley enquire to the British government for the answer of the norms and principles of the common law. The people of Kashmir are raising this question continuously to the English society before its slogan that British had the
oldest democracy in the world. Although, the British Society had strong and the oldest democracy but they failed to enforce the democratic norms in the case of Kashmir which was huge violation of human rights of inhabitants of the valley.

1.15 The Formation of Muslim Conference

After the long and historic exploitation over the people of the valley of Kashmir, they need a strong political forum where they would be able to raise their voices for the violation of the human rights. In 1932, the decision was taken by the Muhammad Saeed Masoodi when he was in jail. He had taken the decision with Sheikh Mohammad Abdullah and it was decided that the name of the party will be Muslim conference. For this purpose committee was made in order to enhance the working of the Muslim Conference. This committee had decided the final name of the Muslim conference as “All Jammu and Kashmir Muslim Conference” (Saraf, 1977).

On the other side All India Muslim League was also struggling to get rid from the Hindu oppressions and exploitations. Due to the long lasting efforts, Allama Iqbal had given the map of Pakistan that the North western areas should be liberated for the purpose of establishing the state of Pakistan. For the pursuance of this dream, Pakistan resolution was passed in 1940. It was also new hope for the Kashmir Muslims that they might be able to get freedom from the Dogras.

1.16 The Princely States

At the time of partition of India, there were 562 princely states in India. The total population these princely states was more than ten crores. These princely states were bound to the Britain Government through treaties. Before 1957, the policy regarding the princely states was implemented by the Wellesly and Dalhousie. The system was introduced that the acceding states will give undertaking that they will neither involve themselves in war or in any agreement with any state without the prior permission by the company. The further limitation was imposed that the bigger states will have
permission to form force and the senior officer would be from company. The small states are required to pay tribute to the Company. In this regard the doctrine for the annexation of states was given Dalhousie (Sufi, 1948).

**Accession Under 1935 Act**

The Act 1935 provided constitutional relationship between the Indian states and British India on the basis of federation. It was decided that the accession of princely states will be voluntary. For this purpose Joint Select Committee was formed which has given the reasons that the accession of princely states would not be possible unless consent is given by the rulers of the states (Hussain, 1990). Unfortunately, the most astonishing thing under this act was that the rulers given the right of accession only. It was the pure discretion of the rulers of the princely states to accede or not. According to the section 6 of the Indian Act of 1935, it was declared that the state would accede only when its ruler will signify his acceptance and will sign the instrument of accession. It was further mentioned under the Act that accession will not be valid unless the instrument of accession is executed by the by the ruler of that state himself.

The congress ministries resigned from the government after the promulgation of the war in the world (Lamb, 1996). Now the British government showed its intention to seek the support of the Indian leaders. For this purpose treaty was signed with the rulers of the princely states. After the Japan’s victory in South East Asia, was a threat to the British government and that’s why it sought the active cooperation from the rulers of princely states and from the other political parties (Noorani, 1964).

For this purpose, Sir Stafford Crips came in India in 1942. He contacted with the Indian rulers and leaders of the political parties and he discussed his proposals regarding the constitutional reforms. He has given long term plane for the constitution making body to frame the constitution for Indian Union. The provinces which were not prepared to accept the new constitution were asked to draft their own constitution. If the states
would be willing to become the part of the federation then they will nominates the representatives for the constitution making body (Sharif, 1998).

The proposals of Sir Crips were not given any regard by the political parties. It was rejected by the Congress on the demand that there should be immediate transfer of power. His proposal was also rejected by the All India Muslim league on the ground that it did not clarify the idea of Pakistan. On the other side the princes of the princely states were happy that the mission of Sir Crips is badly failed and is not entertained by the Indian people (Soharwardi, 1983).

Then Cabinet mission was announced and reached in India in 1946. This mission holds the different meetings with the different political parties about the future of the India. It was again revised that the rulers of the princely states will be free to decide on their own behalf about the states (Saraf, 1977).

1.17 Partition of India and the Kashmir Dispute

Finally the British government decided to leave India in 1947 and for this purpose the partition plan was introduced. The Partition plan was announced on 3rd June 1947. According to this plan there would be creation of two states namely India and Pakistan. The map of Pakistan was designed that the Muslim majority areas will be transferred to the newly established state named as Pakistan (Syed, 2009).

The princely states were given choice to accede with any new states India or Pakistan as per the majority of the population of the inhabitants of that princely state. In order to strengthen the partition plan, the Indian Independence Act 1947 was also passed which empowered the princely states for accession with any state (Wolpert, 2011).

The Kashmir conflict was directly the result of Indian Independence Act 1947 and the partition plan which was given by the British Government. In order to decide the issue of accession by the princely states including the state of Kashmir was following points was to be considered:

1. The geographic location of the state with the newly established states India and Pakistan.
2. The choice of majority of people for the purpose of accession.
The Maharaja Hari Singh who was the ruler in the valley of Kashmir, failed to decide the accession of Kashmir timely on 15 August, 1947 along with some other princely states. He was living in dreams and was in hope that the delay in accession might bring some better for him (Saraf, 1977).

Mount Batten who had become the Governor General asked to the Muhammad Ali Jinnah that the state of Junagarh is basically geographically linked to the India that’s why it has been acceded to the India (Bazaz, 1979).

The government India sent its forces to the Junagarh in order to ensure the situation of law and order. And then India hold referendum in the state of Junagarh and according to the government of India the majority of the population of Junagarh have decided to affiliate with India (Jackson, 1975).

Similar case was in the state of Hyderabad, where the ruler was Muslim but the majority population was belonged to Hindu community. The ruler of this state was willing to accede with Pakistan. Lord Mountbatten intervened and advised to the ruler to affiliate with India. After the huge pressure, the Nizam of that state refused to accede with India. The prime Minister of India asked to Mountbatten to insist the Nizam for affiliation. Due to the threats from the Indian government, the Nizam decided to file appeal before the United Nations. But on the other side Indian government sent its military troops to the state of Hyderabad before the appeal could be taken in the United Nations. This state was also occupied the Indian government against the will of the majority because the majority was Muslim and intended to accede with Pakistan (Wirsing, 1994).

There was same case of the state of Jodhpur, The ruler of that state was also willing to join Pakistan but he was pressurizes by the Lord Mountbatten not join Pakistan but to join India on the ground that otherwise it would negate the principle of partition of India as laid down by the British government. Due to the heavy instructions and threats, the Maharaja joined India contrary to the will of the people (Hussain, 1998).

It has been seen that the ruler of mostly princely states wanted to get accession with Pakistan but they were stopped by the Mountbatten and the Indian government by force against the principle of violation of partition.
In the state of Kashmir there was majority of Muslims who were more than 93 percent in the valley at the time of partition. There were multi factors which advocated that the state of Kashmir should accede with Pakistan. In Pakistan the majority population was also Muslims, so one important factor was religion. The Kashmiri Muslims were very upset from the Hindu attitude and treatment, so they were not willing to afford again to live in the society where Hindu should rule the government (Bamzai, 1982).

The other factor for the demand of accession with Pakistan was that the valley of Kashmir was closely linked with the West Pakistan. The communication system was passing through Pakistan. The state was accessing to the world through the Pakistani territory because the only road and rail was passing from Pakistan via Rawalpindi and Sialkot.

The postal and Telegraphic system was also passed through the land of Pakistan which the main source of communication at that time. The major source for the purpose of communications and lot of other essential items was only Pakistan. All the daily usages were passing through Pakistan. The Jhelum valley in this regard was playing vital role in the region. Kashmir was very loosely linked with the land of Pakistan on religious basis because there had been more than three hundred years, the rule of Muslims in Kashmir and similarly in Punjab majority was also Muslim and they have strong ties with the people of Kashmir on the basis of religion (Saraf, 1977).

The most important factor was the tourist entry into the Kashmir that was also linked with Pakistan because the only way which was attracting the tourist was started from Rawalpindi. The tourism was the main source of income for the valley of Kashmir, so that weigh was necessary to be given to the facilities available for the tourists to enter in Kashmir.

Kashmir was one of the princely state which was to decide its future with any state because the valley was never been the part of the British empire in the sub continent throughout its history. The history is witness that before the partition plan, the Maharaja was tried to be convinced to accede with India by different sources. For example, the President of Congress visited the Kashmir valley, before two months of the partition plan in order to convince Maharaja for the joining of constituent assembly but he was refused by the Dogra ruler. Similarly some other rulers of the different
princely states like Maharaja of Faridkot, and Patiala also tried to mold the maharaja of Kashmir to join the constituent assembly but they could not succeeded in this purpose (Engineer, 1991).

Lord Mountbatten had also visited in June 1947 to Kashmir. The purpose of his visit was also to convince the Maharaja for the purpose of accession and definitely he might had given some suggestions for the decision of accession with India or Pakistan. It seems that the Maharaja was intended to accede to India soon after the announcement about of partition plan because in October, 1947 he had given direction to all the Muslims to deposit the arms which are under their possession. All the arms were collected from the Muslims because the purpose behind was to disarms the Muslims in the valley, so that they should not be able to fight or revolt in case of any disturbance due to the accession of Kashmir.

During this period trouble started in Kashmir, because the Muslim community got annoyed from the act of the Maharaja. Almost 70000 guerillas from the Poonch came forward for the help of Muslims. All these guerillas had been the retired soldiers of British army. They had lot of experience to fight, it was great alarm of danger for the maharaja of Kashmir (Gupta, 1967).

After this revolt against Maharaja in Kashmir, the people of Poonch were asked forcibly to leave from their homes and the area. Their houses were burned by the Dogra forces, a new chapter of oppressions was started on the Kashmiri Muslims due to the mismanagement by the British government (Khan, 2001).

When the Maharaja's forces engaged in Kashmir, at the same time he called for assistance from the Hindu and Sikhs from the surrounding areas of India. They rushed quickly to the Kashmir on the request of Maharaja (Saraf, 1977).

When this news was reached to the Pathan tribes from tribal areas in Pakistan, they also quickly rushed to the valley of Kashmir in order to help their Muslim community against the Dogra forces. The help of these tribes men was natural just because to help their religious brothers against the brutalities of the forces of maharaja in Kashmir (Tahir, 1995).

When Dogra forces were pushed back to Srinagar by the Muslim freedom fighters, then Maharaja called immediately the assistance from India because the capital of
Kashmir was being threatened by the freedom fighters. On 24 October Maharaja had appealed to the government of India for assistance. Hen this appeal was received to India, V.P Menon was soon deputed the responsibility to look into the matter. He immediately came in Kashmir in order to study the situation (Bazaz, 1979).

According to the statement of Menon, the Maharaja was nerved because the situation in Kashmir was very bad. The freedom fighters pushing back the forces of Maharaja back to the camps. The Dogra forces were becoming helpless due to the strong reaction by the Muslim fighters (Mujahid, 1997).

On perceiving the situation, the Maharaja rushed to the Jammu from Srinagar along with his family and other value able equipments. Now the Maharaja was becoming very nerves due to the defeat of his forces. He was feared that soon the whole state of Kashmir will be captured by the freedom fighters (Syed, 1991).

He wrote a letter on 26 October, 1947 to the Governor General of India, Lord Mountbatten for the quick military assistance. This was golden time for the Indian government to get the opportunity of accession of Kashmir with India because eat this Maharaja was too upset and had no option except to be blackmailed by the Indian government. The Maharaja quoted to the Indian government that in the present situation, it is a matter of great emergency and he has no other option except to take assistance from the Indian government (Yazdani, 1995).

On 27 October, 1947 Lord Mountbatten sent a reply to the Maharaja that India will give assistance only in the case if Maharaja accepts the instrument of accession. He further told to maharaja that in the present situation in the valley it is necessary to accede with Indian government in order to get rid from invaders and when territory of Kashmir will be liberated from the disturbance, the future of state will be decided as per the wishes of the people (Messing, 1992).

In pursuance of the wish of the Lord Mountbatten, on the same day the Indian forces landed at Srinagar in order to help the Maharaja of Kashmir. When this news spread in all over the Kashmir, Many tribesmen from Pakistan and Poonchis came forward for the help of Kashmiri people. These all troops were those who have been served in the British army, having experience to fight (Saraf, 1977).
Before few days, the Muslim conference, had announced the establishment of Azad Kashmir in the areas which were liberated from the forces of Maharaja because the Muslim conference had been earlier passed the resolution that the accession of Kashmir would be with Pakistan.

After some time, the Governor General of India and Pakistan met in Lahore over the issue of Kashmir. In that meeting Jinnah strongly objected the presence of Indian troops in Kashmir and said for the free and fair referendum, the presence of Indian army there would raise questions on the validity of referendum (Bamzai, 1982).

The prime minister of India Nehru sent a telegram to the Liaqat Ali khan on 30th October for the purpose of assuring the commitment of holding referendum in Kashmir soon after the restoration of peace and order in the valley. He further affirmed that Indian government that the future of the Kashmir people will be decide only through their choice to whom they want to live whether to India and Pakistan (Hussain, 1998).

1.18 Whether Kashmir is a Disputed Territory?

The issue of Kashmir which was left unsolved by the British government because of their main flow of interest was towards India. The Indian Government has alleged on several occasions that Kashmir is an integral part of India and there is no question of dispute between India and Pakistan. If we define the word Dispute then it means that it is disagreement between the parties on the point of law or fact. The great jurist of law Mr. Kelsen defines the term agreement that “the dispute exists when one party makes claim and other party denies it” (Akhtar, 1991).

As far as the dispute of Kashmir is concerned, there is no doubt that it is disagreement between India and Pakistan on the point of law and fact. For instance, there is a difference between Pakistan and India on the instrument of accession between maharaja and the government of India, the presence of military troops in the occupied Kashmir, the entry of Tribesmen in the liberated parts of Kashmir, there is also question on the holding of plebiscite. So there are lot of points of law and facts on which both the countries have different opinion and stance.

There are different statements by some leaders which also propagates the issue of Kashmir as proper dispute. For example Lord Mountbatten wrote letter to the
Maharaja that the dispute has arisen between India and Pakistan over Kashmir and the question of future disposal of Kashmir would be decide by the free and impartial plebiscite which will be conducted in Kashmir when the peace will be restored (Lamb, 1968).

It was also accepted by the Indian Prime Minister through telegram message that there is dispute between Indian and Pakistan regarding the accession of Kashmir. It has also been noted that Nehru had also reported on different occasion the issue of Kashmir as dispute. It is very important to mention here that if Kashmir was not dispute then why India went to the door of United Nations. The complaint was initially filed by the government of India against the Pakistan. The Indian government alleged that a dispute has been arisen between India and Pakistan over the accession of Kashmir. Apart from this the security council had also reported in the resolutions that the dispute of Kashmir would be solved through the democratic process which is free and impartial holding of referendum in the estate of Kashmir (Hussain, 1998).

There are several documents and statement which proves that the difference between India and Pakistan over the accession of Kashmir was dispute and that’s why the military troops landed in the valley of Kashmir.

1.19 The Issue of Kashmir at the United Nations

On 1st January 1948, after the establishment of Azad Kashmir and possession of Indian troops in Srinagar, India brought the matter of Kashmir before the United Nations and lodged formal complaint against Pakistan in the Security Council (Sherwani, 1986).

India filed a complaint against Pakistan under article 35 of the charter of the United Nations which is about the pacific settlement of disputes. In this complaint India leveled allegations that Pakistan was providing assistance to the invader who attacked in Kashmir, All the invaders reached in Kashmir through the territory of Pakistan. The Indian government requested to the Security Council to give direction the government of Pakistan to stop the assistance to the invaders in the territory of Kashmir (ibid).
The Indian government had requested before the Security Council to call upon the government of Pakistan that;

1. The Pakistani Government should prevent the assistance which is being provided to the invaders to disturb the peace of the Jammu and Kashmir.
2. That to call upon the other citizens of Pakistan to prevent themselves from participating in any manner in the fight in the state of Kashmir.
3. That the Pakistani government should deny to the fighters from
   a. To use its land against the operations in Kashmir
   b. The military assistance and other aid to the invaders
   c. Beside the above all other kinds of assistance which might be hurdle in maintaining the peace and order in Kashmir (Saraf,1977).

The representative of Indian government also claimed that the India should be allowed to exercise the right of hot pursuit on the land of Pakistan in order to stop the invasion and to capture the invaders into the Indian land. It has further charged on Pakistan that it has also violated the provisions of Standstill Agreement. The Indian government also reaffirmed that when the law and order situation in Kashmir is restored, the Kashmir people would be free to decide their future status through the democratic process which free and impartial method of referendum. For the purpose of ensuring the impartiality, the referendum might be hold under the supervisions of the international patronage (Summit,1999).

After the long series of allegations leveled by the Indian government against Pakistan in the Security Council, Pakistani government replied with the version that she is trying to discourage the tribesmen to participate in the disturbance in the state of Kashmir (ibid).

The government of Pakistan although accepted that some tribesmen might have provided their assistance in Kashmir but the Indian allegation on Pakistan for providing base for operation to these freedom fighter is entirely beyond the facts and Pakistani government is ensuring further to control the frequent entry in Kashmir.

The Pakistani government further argued its case that the Pakistan is still in shortage of its military equipments because Indian government had not provided its due share which was agreed in the partition plan. As far as the military equipments available to
the tribesmen are concerned, it has reminded that the tribesmen have arranged all the weapons on their own behalf as they are well known in keeping the big storage of deadly weapons as per their traditions in the subcontinent (Hussain, 1998).

The government of Pakistan also raised several allegations on the government of India under the charter of the United Nations. According to the article 35 of the charter, the Indian government is engaged in the commission of genocide against the Muslim community in Kashmir just to avail the opportunity for the possession over the land of Kashmir. The government of India had got the instrument of accession with fraudulent means from the Maharaja as the instrument was signed under compulsion (Saraf, 1977).

The government of Pakistan further requested to the Security Council to ask the Indian government to stop such activities which are creating hurdles for the holding of free and impartial plebiscite in the valley of Kashmir because as per the partition policy, the people of Kashmir should be given free environment to decide their future. In the circumstances which are created by the Indian government after the landing of its military troops in the valley, it will be difficult for the exercise of choice of future status for the Kashmiri people because they might have threat of force from the presence of military forces. The Indian government should be asked immediately to withdraw their military troops from the territory of Kashmir in order to maintain the peace and order. The whole disturbance was created due the landing of military troops from the Indian government. The freedom fighters are reaction of military troops and the instrument of accession which was got signified under pressure (Bazaz, 1979).

Pakistan further pleaded that in order to maintain peace and order in the valley it is necessary that all the troops which came from the outside of the Kashmir should be sent back immediately including the Indian troops and tribesmen troops.

The president of the council sent immediately telegram to the both India and Pakistan with the request that to refrain from taking any step which otherwise would be violation of the charter of the United Nations. The assurance was given from both the governments in this regard but the fight could not stop in the valley. The Indian delegation was headed by Mr. N. Gopalaswami Ayyenger and the Pakistani delegation
was headed by Ch. Muhammad Zaafurullah Khan the foreigner minister of Pakistan at that time (Victoria,2000).

Mr. Zafarrullah has pleaded the case of Kashmir excellently and advocated with more logical arguments. It was the success of the Pakistani delegation that, Pakistan was not asked to vacate the part of Kashmir. The agenda was also changed in the 22 January 1948 meeting in the United Nations where it was placed as the “the India Pakistan Question” which was strongly protested by the Indian delegation (Saraf,1977).

The Security Council then comprised on five permanent members and six members who were elected for the period of two years. Russia and Ukraine remained neutral but china showed its interest with the Indian claim. The other members in the Security Council adopted fair and impartial attitude in this case (Wolpert,1984).

After these debates the Security Council adopted three two resolutions, one was passed on 17 January 1948 in which both the governments were asked to improve the situation in the valley and to refrain from any kind of aggression (Lamb,1968).

The second resolution was passed 20 January 1948 in which commission was established for the case of Kashmir composed on five members. The main mandate for the commission was to play its role as mediatory (Hussain,1998).

On 28 January, 1948 the president of the Security Council presented the submitted resolutions by the both India and Pakistan. Pakistani government submitted in its draft that;

1. The fighting troops including Indian army and tribesmen should immediately withdraw along with other groups which are creating disturbance whether they belong to Pakistan or India.
2. The rehabilitation of all the Kashmir peoples which had left their home due to the disturbance in the valley or who were completed to leave from their homes.
3. There should establishment of impartial interim government for the administration of the valley.
4. Plebiscite must be held in order to ascertain free and impartial desire of the Kashmiri people with a view that whether they want to affiliate with India or Pakistan (saraf, 1977).

The draft which was presented by the Indian delegation that was contrary to the promises. The government of India made following proposals;
1. That the fighting in Kashmir must be stopped along with the withdrawal of tribesmen and other Pakistani national.
2. After the end of fighting peace will be restored and the law and order situation will be maintained in the valley.
3. The government of India claimed the responsibility of defense of Kashmir. It offered to withdraw some forces but some forces will be deployed in Kashmir in order to ensure the protection from any external aggression.
4. Sheikh Abdullah will continue to work as prime minister of Kashmir.
5. The commission to proceeded the valley of Kashmir to supervise the termination of military oppression.
6. The administration of Sheikh Abdullah will elect the members of National Assembly.
7. After the elections in the valley national government will be constituted.
8. The new government will hold referendum in the valley of Kashmir under the observation of United Nations.
9. After that the national Assembly will frame new constitution of the state of Kashmir (ibid)

The above said proposals show that the government of India was not sincere in resolving the issue of Kashmir. There were lot of lacunas were given in the proposals which were not justified. These proposals were strongly rejected by the government of Pakistan. The Indian proposal was also unfavorable by the members of the Security Council.

On the other side the government of Pakistan was wanted any agreement which can assure the free and impartial referendum in Kashmir. It was also difficult to make unarmed the people who were armed just for the cause of plebiscite where they could exercise their will to accede with any newly established state.
General McNaughton of Canada who was the president of the Council for that month has presented draft resolution on 6 February 1948 with the consultation of other members. The draft resolution which was presented is as under;

1. There should be withdrawal of all the irregular forces and other fighting troops from Kashmir
2. The establishment of law and order in the valley must be followed by withdrawal of regular armed forces.
3. There should be return of all the refugees who migrated after the disturbance arose in Kashmir.
4. The interim setup of administration should be established which is acceptable for the Kashmiri people.
5. The plebiscite should be held under the authority of the Security Council in order to determine the free will of the people regarding accession (Bazaz,1979).

The Indian government had rejected entirely the resolution because it was not acceptable for the India. She does not want to change the administration of Sheikh Abdullah.

1.20 The Basic Resolutions of the United Nations on Kashmir

The meeting of the Security Council started again on 10 March, 1948 after the adjournment which was demanded by the Mr. Ayyenger the head of the Indian delegation. The Security Council after its lengthy arguments adopted a resolution in which it was laid down that;

1. That the issue of accession of the Kashmir will be decided through the democratic process which is free and impartial referendum.
2. That Pakistan should call back its tribesmen who entered in Kashmir for the fighting.
3. That the Indian government will withdraw its troops but some forces will remain there in order to support the civil power.
4. The recruitments made from each district will serve for the purpose of law and order in the valley
5. That the major political groups are to join the government.
6. The Secretary General of United Nation will nominate the administrator for the holding of plebiscite in Kashmir.
7. That there should be complete protection of basic fundamental rights in the valley of Kashmir.
8. That the Indian Nationals will be withdrawn other than permanently settled there in Kashmir.
9. The all those citizens who had left the territory of Kashmir due to arising of disturbance should be called back to settle in their homes.
10. That it will be the duty of the commission to certify the impartiality of the plebiscite conducted in Kashmir (Saraf, 1977).

This resolution was strongly opposed by the Sir Zafarullah Khan and he pleaded that this resolution has violated the principle which was settled in the earlier meetings of the Council before the adjournment. He further argued this resolution is showing unfairness towards Pakistan. This objection raised by the Sir Zafarullah was not considered by the members of the Security Council. Although this resolution was unfair and inadequate but even then Pakistani government decided to accept under protest (Parker, 2003). The Indian government had also raised some allegations on the resolution but it has also accepted it generally.

1.21 The United Nations Commission for Plebiscite

The commission which was appointed in the resolution which was passed on 21 April, 1948 had its first meeting on 15th June in Geneva. It was tragic in the sense that the commission was appointed in April but it had taken 11 weeks to hold its first meeting. During this time it was bonus time for India to become more offensive in Kashmir. Due to the offensive strategy of Indian Army, the Pakistani forces were deployed in Azad Kashmir in order to defend its security (Hussain, 1998).
The commission reached in Karachi on 5th July, 1948 and had meeting with Sir Zafarullah who told the commission about the circumstances in which Pakistan has deployed its forces in Azad Kashmir. Although it was again made issue by the Indian government that this deployment was not intimated to the Security Council but it was clarified by Sir Zafrullah that it was just a defensive position (ibid).

The commission had several meeting with India and Pakistan which were held in new Dehli and Karachi. The commission had also visited Azad Kashmir and Srinagar. The commission had finally adopted a resolution on 13th August 1948. This resolution was very important on the case of Kashmir which was based by the United Nations.

The commission concluded that;

1. That there should be cease-fire immediately after the acceptance.
2. Pakistan and India should refrain from steps aimed at augmented the military potential of their forces.
3. There should be appointment of military observers which should observe the cease fire.
4. The Pakistani government should withdraw the tribesmen and the other nationals of Pakistan which are engaged in fighting.
5. The territory which is left by Pakistani troops should be administered by the local authorities.
6. After the withdrawal of Pakistani troops the India will withdraw its bulk of forces from Kashmir.
7. The human rights should be protected in Indian occupied Kashmir which was observed by the commission that there is a frequent violation of human rights.
8. Both the governments should reaffirm the free and impartial exercise of referendum in Kashmir (Saraf,1977).

Finally the proposals were accepted by both the governments which were included in the resolution known as the January 5, 1949 UNCIP which provides the followings;

1. That the question of accession of the valley will be decided through the democratic method which is free and fair plebiscite.
2. That the cease-fire will take effect immediately.
3. That the administrator for the conduct of plebiscite will be appointed by the Secretary General of the United Nations.

4. That when the peace is restored then soon after in consultation with India the disposal of forces will be settled down.

5. All the inhabitants of the valley, who left their homes due to disturbance, will be called upon to return to their homes.

6. That all those who entered in Kashmir after 15th August by unlawful means will be required to leave immediately the state of Kashmir.

7. That all the prisoners who were arrested on political grounds will be released with immediate effect (ibid).

On February, 1949 the commissioned returned back and hold several meetings with India and Pakistan for the implementation of its resolution. Mr. Korbel who was member of the commission resigned on his personal reasons. He was appointed a member on the Indian side but remained very positive played its role very fair. The commission had come in this time for the implementation of its resolution. The main thing which was to done that the demilitarization the valley of Kashmir from the forces. The Indian government was reluctant to implement the resolution in order to prevent the holding of free and impartial referendum. Despite numerous efforts by the commission in order to solve the issue of Kashmir, the matter was not progressed due to Indian negative response (Parker, 2003).

In 1952, the resolution was passed by the Security Council in which it was demanded that both the countries India and Pakistan should reach on the negotiations in order to reduce the size of military forces in the occupied Kashmir. This resolution was accepted by the government of Pakistan but as per routine it was rejected by the government of India (Hussain, 1998).

On the side Sheikh Abdullah had established the Kashmir Constituent Assembly which was consisted on 73 members; all these members were elected without any contest. It was great example of dictatorship by the Sheikh Abdullah. This constituent assembly made its constitution in autonomy was given to occupied Kashmir except foreign affairs, defense and communications.
In August 1952, The Prime Minister of Kashmir Sheikh Abdullah was taken into custody and he was put in the prison. He was remained in jail without any regular trial of the court. He wrote a letter to the Security Council when he was in jail and stated that he is in custody because he asked the Indian government to act upon the resolutions of the United Nations. He was released in 1958 and when he came out from the prison he stated in press that he asked the prime minister of India in meeting that to act upon any option which was the independence of the whole state or to hold the plebiscite in the valley of Kashmir (ibid).

Sir Owen Dixon was appointed as single mediator, who was a judge of Australian High Court. He was appointed in April, 1950. He firstly went to the head quarter of the United Nations and then came in Subcontinent. He hold many meetings in Karachi, New Dehli and in Srinagar with different leaders. He concluded that in his first proposal that Pakistan is withdrawing it regular forces from a named date and after few days there should be cease-fire for the purpose of demilitarization the valley of Kashmir (Saraf,1977).

His proposal was rejected by the India and it was accepted by the Pakistan. The excuse which made in rejection the proposal was that there is possibility of military attack by the Pakistan army.

India further contested that the local authority which was mentioned in the resolution of 13th August, 1948, that means the authority of Maharaja. So in this regard Sheikh Abdullah should administer the government in the valley of Kashmir. This interpretation was very illogical and based on confusion. But in fact the term local authority was used for the liberated part of Kashmir. So it was meant the de facto government in the liberated part of Kashmir which was known as Azad Kashmir (Mian,2012).

Sir Dixon then proposed the option of single government in the whole valley of Kashmir with the possibility of coalition government which should be comprised on Sheikh Abdullah and Ghulam Abbas. The second option which was given by the Dixon to form the government on persons from outside of the politics and those should be chaired by the person nominated by the United Nations. The members of this government should be divided equally in Hindus and Muslims. This office was to
established six months prior to the holding of referendum. Third his option was to form
government whose officials should be entirely from the representative by the United
Nations (Bazaz, 1979).
This proposed plane by Sir Dixon was also rejected by the Indian government and it
was a great disappointment for the Dixon. He pointed out the Indian attitude in the
words that India would never be agreed on the militarization the occupied Kashmir.
Dixon was losing his patience and he finally proposed in the meeting with both the
Prime Ministers that whether the state of Kashmir should be decided on the following
parameters;
1. That the areas in Kashmir on which there was doubt should go the one country
   or the other hand,
2. That the plebiscite only should be conducted in the other areas of the valley of
   Kashmir (Hussain, 1998).
This plan was rejected by the prime minister of Pakistan because according to
Pakistani view the entire state should decide its fate through the impartial plebiscite.
But on the other side Mr. Nehru had taken some time over this plan. After the
consideration he came with amended plan which was also not acceptable for Pakistan
(Gidvani, 2008).
Mr. Dixon left Pakistan in August, 1950 with the disappointment as he could not got
any solution after several meetings with Pakistan and India. He further recommended
that there military observer appointed by the United Nations who should stay on the
cease-fire in the valley. It was very sad that such a well known jurist failed to give any
solution except to say the United Nations to leave the issue of Kashmir and the parties
should be left alone to decide the fate of Kashmir (Chen, 20110).
Lord Mountbatten made his last effort to resolve the issue of Kashmir in the days of his
office because he departure back to his home on May, 1948. He said in his words that
although he had different meetings with the prime ministers of Pakistan and India but
could not reach on any possible solution. He hoped that in the resolution which will be
passed in the end of May, solution might come. Several resolutions came but no result
could be achieved even by the efforts of the united Nations (Syed, 1991).
In 1949, both the states were divided on the interpretations of the resolution of the UNCIP with regard to the demilitarization in the valley of Kashmir. The dispute was aroused by the India in order to avoid from the implementation of the resolution regarding the demilitarization. It was India which had prolonged the dispute. It was very strange that the commission had interpreted the resolution over India but even then India was not ready to listen over the issue of withdrawal of forces from the occupied valley of Kashmir. The commission had further suggested that they may be sent to the arbitration and the difference may be resolved. This was also accepted by the Pakistan but it was rejected by the government of India (Saraf, 1977).

Now the situation regarding the concept of commonwealth was becoming critical and common wealth was being criticized too much in Pakistan because of the issue of Kashmir. In fact in Pakistan people were on the opinion that the conflict of Kashmir is the creation of British government deliberately. They are supporting the Nehru without any justice. Lord Mountbatten showed on lot of occasion his interest with India not with the people of Kashmir and it was looked as it was pre understanding between the government of India and British government over the accession of Kashmir. The issue of the accession of Kashmir was not resolved as it ought to be resolved like the other princely states at the partition of India (Hussain, 1998).

The British government was looking towards the India because of many reasons. One was the biggest size of the territory of India and secondly for the purpose of business because it was in the attention of many British traders who used to trade in India. The market of India had very extensive market in the Asia. The other reason was that India was more famous than the other common wealth countries in the world. The leaders of India like Nehru and Gandi were well known in the world.

Mr. Philip the secretary of the common wealth countries stated that the Kashmir issue is a grave and greatest issue of the International nature.

In 1951, there was conference of common wealth countries where the prime ministers of all the countries were gathered. Mr. Liaqat Ali participated from Pakistan. He attracted the attention of the Prime Minister of England that if the issue of Kashmir is discussed in the conference then he will boycott the conference. Normally the territorial issues were not discussed in the conference of common wealth countries. In
this occasion the Kashmir issue was discussed in the conference because of the threat imposed by the Prime minister of Pakistan. This question was very burning in Pakistan that if Kashmir issue is to be discussed in the conference of Common wealth countries then what is benefit of the conference and it loses its importance (ibid). Due to the efforts of the Australian Prime Minister, the issue of Kashmir was placed on the agenda of the conference. The Kashmir issue was discussed in detail in the said conference and it was proposed by the Australian prime minister that for the purpose of the solving the issue of demilitarization joint force of India and Pakistan or either a common wealth force may be deployed by the administrator of the Plebiscite (Lamb,1968).

This proposal was well supported by all the prime ministers of the common wealth countries. It was also accepted by the Pakistan but unfortunately it was again rejected by the Indian government. The record of the acceptance of these proposals by the Pakistan and the rejection over these proposals by the India was placed by Liaqat Ali Khan before the English Media. In those days Nehru was attending the Session of United Nations in Paris. He was much questioned over the Indian attitude towards the rejection of proposals (Bose,2003).

In 1953, Muhammad Ali Bogra had meeting with Nehru in London where they were present to attend the meetings of the Common wealth leaders. Both the prime ministers were agreed to hold further discussion over the issue of Kashmir and to reconcile their opinions on the interpretation of the resolutions of the UNCIP (Bazaz,1979).

In 1957, the question of Kashmir was again placed in the agenda of the Security Council. The resolution over Kashmir was passed in which the right of self determination was recognized in order to decide the future of the inhabitants of Kashmir (Hussain,1998).

1.22 Tashkent Agreement

After the war of 1965 between Pakistan and India, very important development took place when Russia tried to play its role as mediator in the Kashmir dispute. The
leaders of both India and Pakistan were called for conference at Tashkent by the Russian government.

The conference was started in January 1966. This conference was much highlighted in the media. Hundreds of press reporters went there in Tashkent and special arrangements were made for the coverage of the conference. In the inaugural session Mr. Kosygin welcomed to both the leaders from Pakistan and India and highlighted the agenda. India protested on the meeting of agenda that the Kashmir issue was on the top of the list. The conference continued without the formal agenda but Kashmir remained the main point of discussion (Schofield,2000).

The meeting was continued for few days and finally with the valuable efforts of Mr. Kosygin, submit was concluded because Mr. Played mediatory role very carefully and in a very plan language. The obligation of the parties was reaffirmed that both the parties will resolve their dispute under the charter of the United Nations. It was further agreed in the agreement that there will withdrawal of armed forces immediately and the prisoners will be repatriated. The provisions were also made in the agreement for the development of trade and economic growth (Akhtar,1991).

In this agreement, the issue of Kashmir was not discussed in detail and the solution was of the conflict was not proposed. The Indian delegation avoided to use the name of Kashmir in the summit. It has just generally discussed the territorial disputes. The world was thinking that might be there would be great break through but Indian government avoided to include the issue of Kashmir on solvable measures (Saraf,1977).

This declaration had disappointed all the people in all over the world. Several demonstrations were held in different cities of Pakistan. In this declaration the pro Indian policy of Russia was disclosed.

1.23 Kashmir Dispute and the South Asian Security

Kashmir dispute is great question mark on the relations of the both atomic states India and Pakistan in the South Asia. This issue has been become the central point the peace and security of the reign.
The international community has played its role to some extent in the beginning of the conflict but no solution came out due to the Indian attitude on the point of demilitarization from the valley of Kashmir. This conflict attracted the attention of world community especially after the nuclear tests conducted by both the countries. Pakistan and India had been fought three wars on basis of this issue. The Kashmir conflict is a big barrier before economic and trade opportunities between the two countries. The tension is increasing day by day on both sides (Haider,1992).

There are different opinions on both sides on the issue of Kashmir. The Indian government pledges that after the Simla agreement Pakistan cannot demand the plebiscite in the valley of Kashmir. The Indian side further argued that after the resolutions of the United Nations, there were several elections were held in Kashmir in all the elections the people of Kashmir participated which mean that they have accepted the Kashmir as it is the integral part of India. It is further argued by the Indian representatives that if the demand of Pakistan over the Kashmir conflict is accepted and the plebiscite is conducted in Kashmir then it will amount the partition of of India on second time which is attack on the national security of the Indian state. The further contended that India cannot afford more partitions on the basis of religion because the Muslims as a whole are in minority not in majority (ibid).

Unfortunately, no progress has been made over the issue of Kashmir especially after the Simla agreement because in that agreement it was suggested that the cease-fire will amount permanent international Fortier which was not acceptable but the government of Pakistan because it has ignored the rightful demand of the Kashmir people which is right of self determination.

The freedom movement had been started in Kashmir after 1980 which has raise several protests against the military oppressions in Kashmir. Pakistan has been again charged by the Indian government that this freedom movement is supported by the Pakistan. But the same has been denied by the Pakistani government. Because Pakistan is only in position to support them on political grounds not on military grounds which Pakistan does not afford. Pakistan considers its duty to bring the Human rights atrocities which are being done by the Indian armed forces in Kashmir before the international community on moral and political grounds (Syed,2009).
As per partition plan and the policy of accession for the princely states, the accession was to be made purely on the basis of the will of the majority inhabitants of that princely state. But this rule unfortunately was not followed by the Maharaja the rule of Kashmir at that time and the Indian government got the opportunity at the spot when maharaja was under pressure by the Muslim community as they revolted against the expected desire of the maharaja on the issue of accession of Kashmir.

In fact the first violation was committed by Maharaja and then violation was committed by the Indian government when Indian government sent its armed troops in Srinagar.

The reaction by the Pakistani government was not against India but it was on the principles of the accession under which India was bound to follow.

The peaceful environment between Pakistan and India can only be created if the dispute of Kashmir is resolved by amicable means. The state of Kashmir had been the circle of the revolts against the Dogra rules because the Dogra rule had left many examples of oppressions on the people of Kashmir. The Dogra government had made its target the Muslim community which was the majority population in the valley of Kashmir. Due to the horrible exploitations by the Dogra Raj in Kashmir the Muslims of the valley were quickly making their mind to join the newly established state of Pakistan as per the partition criteria laid down by the British government in 1947. But on the other side Hindu Ruler was hesitating about the decision of accession of Kashmir either with India or Pakistan. He was expecting the hope that he may establish the valley of Kashmir as an independent state. So he trying mold the people according to his own wishes but people had started revolt against him. This was the base of the dispute between India and Pakistan because Maharaja had signed the instrument of accession under the pressure of India. This accession was not based on the free will of the people even of the Maharaja of Kashmir. This accession was a de facto accession which has no legal status in the eye of international law before the international community. After that India tried to take the steps in order to change the status of the state of Jammu and Kashmir by unconstitutional control over Kashmir.

In 1952, India had given the special status to the state of Kashmir in its constitution with the inclusion of Article 370. This article limits the powers of the parliament
regarding the making of laws in Kashmir. Under this article six special provisions were included for the state of occupied Kashmir. These are as under:

1. Under the article of 370, the state of Jammu and Kashmir was given permission to make its own constitution.

2. Indian Parliament was restricted to make the legislation over the Kashmir except for three subjects like, defense, communication and foreign affairs.

3. In case of the other provisions if included then prior permission was to be acquired from the government of Kashmir.

4. Such concurrence if included then it must be ratified by the constituent assembly of Kashmir.

5. The final authority regarding the concurrence was given to the constituent assembly.

6. This article granted the powers to the president to allow the amendments but such permission will subject to permission from constituent assembly (Noorani, 2011).

The purpose for the inclusion of article 370 was just to convince the people of Kashmir that the Indian government is worry about their future. It was a temporary arrangement in the constitution of India.

In fact the issue is prolonged due to the non observance and the implementation of the resolutions of the United Nations. If these resolutions are acted upon by both the states India and Pakistan then the Kashmir conflict may be resolved peacefully. The precedents regarding the implementation of the resolutions of the United Nation can be found in East Timor where the resolutions of the United Nation were obeyed in true spirits and the conflict was resolved. The case of the Kashmir valley is similar with the case of East Timor.

The dispute of Kashmir is internationally recognized dispute, now it is not a bilateral issue between the India and Pakistan. The whole world is looking on the Kashmir and demanding its peaceful settlement because now this dispute is danger for the peace of whole Asia. This dispute is still registered at the forum of the United Nations and the Indian government cannot go far from the existence of the dispute. It is still active as it was in 1947 at the time when India filed complaint in the United Nations against Pakistan.
As far the role of Pakistan is concerned over the dispute of Kashmir it is stressing the peaceful dialogues between the two states because the negotiation is the main instrument for the settling of issues. In pursuance General Musharaf had visited India in 2002 for the purpose of negations on the issue of Kashmir but that was mission was failed because of non serious attitude from the government of India. It was a sincere effort from the Musharaf the president of Pakistan and he invited with open arms the prime Minister of India to come and resolve all the disputes by peaceful means through dialogue, obviously the conflict of Kashmir was on the top priority. But it is very unfortunate that India did not replied positively.

The present government of Pakistan is also trying to convince the government of India for resolving the major issues including the dispute of Kashmir through peaceful manners. Because this issue remains unsolved then it may result the commencement of atomic war in south Asia which is not affordable for the international community by all means.
Chapter 2

**Enforcement of Human Rights Law**

### 2.1 Introduction

According to the new international Webster's comprehensive dictionary of English Language Encyclopedia Edition, literally the word "Right" means anything done in accordance or conformable to ethical law or some standards of righteousness, equitable, justice, righteousness and accurate.

Human rights are essential part of our society and each of us is entitled for the full and free enjoyment of human rights.

Usually, it is argued that the human rights struggle was started in the western world, when “Magna Carta” was signed in 1215. It was an agreement between King Jon and public. Magna Carta enjoys the status of miles stone in the history of human rights (Shelton, 2005).

### 2.2 Human Rights and UN Charter

The United Nations was established on 24th Oct, 1945, when 51 member countries ratified the UN Charter. The preamble of the charter is based on the protection of human rights. The preamble reaffirms faith in fundamental human rights, in the dignity and worth of human person, in the equal rights of men and women and of nations large and small (Muntaqim, 2009).

The purpose of UN as stated in article 1 is to develop friendly relations among nations based on respect for the principal of equal rights and self determination of peoples. Article 1 also imposes duty on the United Nations to take all appropriate means to strengthen universal peace and to achieve international cooperation in solving the problem of social and humanitarian character. It is the primary duty of the United Nations to encourage all the member states for human rights respect and fundamental
freedom without any distinction of race or sex. The charter invites only those states for its membership which are peace loving and accept the obligation of the charter (Simma, 2002).

United Nations play also as advisory services for human rights. In 1955, General Assembly incorporated program of advisory services in the field of human rights seminars, regional training courses, fellowship and advisory services of experts, were made part of this program. This program was designed to give governments an opportunity to share experiences and to exchange knowledge about the promotion and protection of human rights (Lawson, 2005).

The bodies which were most closely concerned with the question of human rights have been the commission on human rights created by the Economic and Social Council and the office of Higher Commissioner for Human Rights which has taken the responsibility from the division of human rights of United Nations secretariat. In addition to that, there is also Commission on the status of women. The commission on human rights has created two sub Commissioners; the Sub Commission on Freedom of Information and the Press and the Sub Commission on the Promotion and Protection of Human Rights (Brownlie, 2007).

There are also some specialized agencies associated with United Nations which are also concerned with human rights; International Labor Organization (ILO) is the most important for the protection of human rights. The specialized agencies make periodic reports on human rights. These reports are regularly sent to the Commission and the other bodies which are working for the protection of human rights by the UN Secretary. (Alston, 1992).

In 1994 1st human rights Commissioner was appointed. The High Commissioner has the rank of under Secretary General and is the principal UN official responsible for the promoting of human rights in the whole world. The United Nations Human Rights Commission (UNHRC) is the principal charter based human rights organ (Shelton, 2005). It establishes policy and organizes activities for the promotion of human. It also supervises the operations of a number of procedures and agencies.
2.3 **Universal Declaration of Human Rights 1948 (UDHR)**

The Universal Declaration of Human Rights (UDHR) was proclaimed on December 10, 1948 by the United Nations General Assembly. The Declaration was accepted for the purpose of common standard of achievement for all peoples and nations. The basic principal was set out, upon which the human rights activities of the United Nations system is based. Since its adoption, it has made its influence upon governments, and other institutions everywhere. It has also made conscious, to every man and woman of every piece of land for their rights and freedom recognized and accepted by the world, the declaration focuses not only on the development of the rights of individuals but also of people of different races, cultures, languages, religion and social backgrounds (Lawson, 2005).

The declaration was not only committed to impress legal obligations on states, but rather to establish aims for states to work towards the regard of human rights. Mr. Roosevelt stated in the General Assembly that the Declaration was the first and foremost a declaration of the basic principles to serve as common standard of all nations. It might well become Magna Carta of all mankind. She considered that its proclamation by the general assembly would be of importance and it is comparable to the proclamation of the declaration of rights of man 1776, the declaration of the rights of man in the declaration of independence of the United states of America 1789 and similar declarations made in the other countries (Robertson, 2005).

The Universal Declaration of Human Rights 1948 provided a legal standard for the protection and enforcement of human rights in the world. (Sohn, 1968). It has been made the basic part of fundamental rights which are adopted by the several countries in their constitutions along with regional human rights instruments and charters.

2.4 **European Convention on Human Rights**

The European Convention on Human Rights is the first international treaty which provides for the collective enforcement of a number of human rights and fundamental
freedoms. This convention defines rights and freedoms and also establishes regional machinery to supervise their implementation in the shape of the European Court of Human Rights (ECHR). The convention identifies its main concern in its preamble that it was concluded in order to take the first step for the collective enforcement of certain rights mentioned in the UDHR (Robertson, 2005).

The states which adopted the convention in 1950, have initiated a legislative process which is clearly still continued. The convention gives full security in its Article 1, to all the individuals who are living in the jurisdiction high contracting parties and it imposes strong obligations on parties to secure everyone within their jurisdiction the rights and freedoms as defined in the convention. This obligation of state is not only extends to its nationals but also extends to all persons within the jurisdiction, whatever is their nationality and legal status. There are many rights and freedoms are defined in the convention. In many articles the sentence or paragraph contains a general affirmation of the right, often based on the text of UDHR along the limitations to which that right may be subjected. For example the right to liberty can be restricted after conviction by competent court or in the every of lawful arrest or detention. There are also some rights like freedom of expression, freedom of assembly and freedom of association may be limited in the interest of national security, public safety and protection rights and freedoms of others (Shelton, 2005).

These rights are although secured by the contracting parties with undertaking but even then the institutional guarantee is provided in the shape of European Court of Human Rights and the European Commission of Human rights.

The European Court of Human Rights contains also 30 judges which are working with full independence for the protection of human rights. The court’s jurisdiction extends to all cases regarding the interpretation and application of the convention. The case which can be the subject of jurisdiction of European court, are sent by the commission. Under Article 21 of the convention, any state party may refer to the commission through the secretary general of the council of Europe. According to Article 25 of the convention, the commission may receive petition from any person, non-governmental organizations or group of individuals claiming to be the victim of any violation by one of
the state parties. If matter is not resolved by the settlement, then commission may also refer the matter to the European Court of Human Rights. This court is considered as an important institution for the protection of human rights in the international community and its working is satisfactorily so far. The process and procedure for the complaint in the court is also easy and can be disposed of within short time. The mechanism is also very effective and value able for the promotion of human rights (Shelton, 2005).

2.5 **American Convention on Human Rights (ACHR)**

The American Convention on Human Rights itself was adopted in San Jose, Costa Rica, on 22 November, 1969. It is the most important human Rights instrument in Inter-American system. Out of 36 member states of organization of American states, twenty four states are parties to the convention.

The American Declaration on the Rights and Duties of Man 1948 (ADRDM) and American Convention on Human Rights are only the instruments adopted with the OAS that contributes to the promotion and protection of human rights. However the convention itself was complimented in 1988, by the Additional Protocol (Schutter, 2010).

The American convention is very close to the charter of United Nations, because most of the rights are similar to the rights protected in the International Covenant on Civil and Political Rights, than to European Convention. If we compare American Convention with the European convention and its protocols, reveals that the principal rights which are included in the American Convention are not in the European Convention. The American Convention covers in its article 1, the free and full exercise of the rights to all the persons subject to jurisdiction. They also stresses to its parties to make legislation and other measures in their domestic law for the protection of rights. There are 26 rights and freedoms included in the convention and 21 out of them are included in the International Covenant on Civil and Political Rights (ICCPR) but the provisions in the UN Covenant on the Rights of Minorities (UNCRM) has no counterpart in the American Convention (Fleck, 2008).
The American Convention of Human Rights provides two organs of control like European Convention. These two organs are the Commission and the Court, but there is difference in their powers and functions of both the above said Conventions. The Commission represents all the members of Organization of American states (OAS) and members sit in a personal capacity in order to ensure their independence. All members have right to propose their candidates and may casts vote in the election of the General Assembly of Organization of American States (OAS). The term of the office of the commission is 4 years and may be re-elected for further term of 4 years. The first election of OAS was held in 1979 (Robertson, 2005).

As far as the procedure of complaints is concerned, the commission has power to deal the applications of individuals against the violations of the American Convention. Article 48 of the convention gives the procedure with regard to the disposal of cases. Once it is decided by the commission that case is admissible then it will establish the facts. After thorough investigation, the commission will try for the friendly settlement of the case. This procedure is similar to the European convention. If no friendly settlement is made then commission will make its recommendations (Brownlie, 2006).

The Inter American Court of Human Rights (IACHR) was created under the convention with the power to decide the cases if the case is referred by the contracting party after the examination of commission with its expressed opinion.

As far as the composition of the court is concerned, it consists of seven judges, and those are elected in individual capacity, from among the jurists who have the qualification for the highest judicial officer. The judges are elected for the term of 6 years and may be re-elected for the further term of 6 years but only. As far as the procedure of the court is concerned, state parties and the commission are only competent to submit case in the court. The powers of American Court of human rights are extensive than the European court of human rights in many cases. The court gives only advisory opinion (Hillman, 2004).

2.6 International Court of Justice (ICJ)
Prior to the establishment of International Court of Justice, there was Permanent Court of Justice instituted by the League of Nations. The ICJ is an integral part of UN Charter for the provision of justice in the world. The Headquarter of the ICJ is at the Hague. All the UN member states are parties to the statutes of ICJ (Robertson, 1996).

According to the Article 38 of the statute, its jurisdiction is over such disputes which submitted to it by the international community. Its primary responsibility is to deliver justice on fair trial basis (Selby, 1987). The court applies following sources in its working;

1. International Conventions
2. International Custom
3. the General principles of law
4. Judicial decisions
5. Juristic work/ opinions of jurists

There are total 15 judges of International Court of Justice and they are elected for the term of 9 years. These judges are elected by the General Assembly and the UN Security Council from the list of eminent jurists and legal experts of the world. (Schutter, 2008).

The judges of ICJ may deliver joint judgment or give individual judgment /opinions. These opinions or judgments are given on the basis of majority (Churchil, 1997).

The court remains permanently in session except vacations. The registry is the administrative organ of the court and registrar is the head of the admin.
Chapter 3

Human Rights Atrocities in Kashmir

The valley of Kashmir which is suffering in territorial dispute since 1947 by the emergence of two states India and Pakistan in South Asia. It was the failure of United Kingdom which could not decide the fate of the Kashmir at right time. Although the people of Kashmir were facing the cruelties from the Dogra government since they were sold by the British Government to Maharaja Gulab Singh for 75000 Nanak Shahi. This sale deed is known as “The Treaty of Amritsar 1846”. It was the beginning of injustice to the residents of the valley of Kashmir which has no exemplar of its beauty in the world (Puri,1993).

After the partition of India, Kashmir dispute was created between India and Pakistan. Freedom movement was started by the Muslim Mujahideen by the help of Tribal areas of Pakistan and resultantly some areas of Kashmir were occupied by the Mujahedeen which is known as Azad Jammu & Kashmir and the rest of the area was occupied by the Indian forces with the consent of Maharaja who was the ruler of Kashmir at that time. it was strongly protested by the Kashmiri Muslims but India denied their freedom and right of self determination which is recognized by the international law (Saraf,1977).

Freedom movement was started in occupied Kashmir by the Kashmiri Muslims in order to get liberation from the Indian occupation. During freedom struggle the Indian forces started to stifle the voices of Kashmiri Muslims by force. For this purpose, the Indian forces used all means of violence against the innocent Kashmiri Muslims who were demanding their universally accepted right which is known as right of self determination.

These violations of human rights by the Indian forces were condemned by the international community and personalities from time to time and forced the Indian government to stop the violations of human rights in the state of Jammu and Kashmir (Fergosan,1961).
The voices of the Kashmiri people have been raised at different international forums by the different sources where the violations of Indian forces were condemned by the international community and personalities. Several resolutions have been passed by the United Nations for the recognition of the right of self determination for the people of Kashmir but unfortunately those resolutions are still ineffective.

There are different reports are being received from different sources about the violation of human right in the occupied Kashmir. The detail of the reports on the atrocities on human rights is as under;

3.1 **Kashmir Watch International (KWI)**

Kashmir Watch international is Britain based international global organization for the protection of human rights. It has showed strong condemnation over the killing of young Kashmiri Muslims in Hyderabad. The chairman of Kashmir Watch International Mr. Muhammad Siddique Khawaja and his colleagues expressed condolence to the family of these deceased young boys. The organization urged urgent action from the law enforcement agencies and demanded immediate arrests of persons who are involved in this sad incident.

The chairman of Kashmir watch demanded from the international community to focus on the low standard of the human life and the violation of basic fundamental rights in the Kashmir valley (The Nation, 2013).

He further added that particularly youth is targeted by the Indian forces not only in Kashmir but also in the states of the India.

3.2 **Local Media**

"Kashmir Wala” a monthly review reports that India is failed to provide justice to the persons whose rights are violated by Indian state machinery in the valley of Kashmir since the armed conflict of rebellion erupted twenty years ago. The UN special report on human rights violations named as “ Margaret Sekaggya” visited Kashmir on
January 19, 2011. She was appointed by the Geneva based Human Rights Council. She deserved that every section of society including children and women have suffered at the hands of forces. Almost more than half million Indian troops are presented and they are not providing justice to the Kashmiri peoples. It is further stated that the rulers are very harsh towards civil society. Public is banned on the freedom of expression. Threats are continued to those who are resisting for the provision of basic fundamental rights. Brutal laws are introduced against the basic rights (Wala, 2011).

This report was published in 1996 by human rights watch and stated that the conflict in Kashmir is entered in seventh year with the little hope of coming elections in March 2012 whether it will bring peace or chaos in the valley. This election is boycotted by all the militant organizations fighting for freedom in Kashmir. It is further explained that the violation of human rights and humanitarian law by the regular security forces have confined. These violations include the arbitrary killings of those who are detained by the security forces. Such killings are being reported by the all the human rights groups and press reporters (Human Rights Watch, 1996).

Indian Security Forces (ISF) are administering continually torture systematically in order to reveal the informations about the freedom fighters. There are different methods of torture being used like beating, electric shocks, crushing the leg muscles with a wooden roller and burning the different parts of body (Sanghatana, 1995).

3.3 Kashmiri American Council (KAC)

US State Department confirms the human rights atrocities in Kashmir and explains that there are lot of different reports about the human rights violations committed by Indian forces and paramilitary forces in the territory of Kashmir, but these violations are not being raised openly by the US administration because it may disturb the commercial and military relations with India (Fai, 2011).

The report of Us state department further says that the police and Security forces are the main human rights problems like abusing, extra judicial killings, Torture and Rape. On July 2, 2012, an interim report on the mass graves, was submitted to the Jammu
and Kashmir State Human Rights Commission. The report was leaked to the press and was not made public. The media reported that there are 2156 bodies in unmarked graves at 38 different sites in districts. Unfortunately, these 2156 graves are in addition to what Mr. Pankhaj Mishera well known Indian scholar wrote in the UK based Daily Guardian on August 13, 2010 that “once known its extraordinary beauty, the valley of Kashmir now hosts the biggest bloody and also the most onscreen military Occupation in the world. In addition to that the report further points out that Armed Forces Special Power Act (AFSPA) is main bloody tool with the Indian forces. Under this act forces can shoot any suspected person without informing him the reasons and surprisingly this act of forces is not challengeable in court of law (Jamil, 2012).

In another report an elite group of Kashmiri American has proposed UN Secretary General Mr. Ban Ki Moon to appoint Rights activists Bishop Desman Tutu as head of a UN effort to stabilize Kashmir where 2700 unmarked graves were discovered in last month. They also warned that Indian Soldiers are responsible for semi genocidal Campaign in the disputed territory (Fai, 2012).

3.4 United Nations Reports on the Status of Human Rights in Kashmir

United Nations News Center;

India is duty bound to use global influence to speak out on human rights. In March 2009, high UN official has targeted the Indian Democratic and legal institutions as Indian claims that they have world’s largest democracy. The official stressed on Indian Government to repeal dated and colonial era laws and to speak out human rights violations, particularly in Kashmir. This was urged on the occasion of visits of Navy Pillay to South Asian states (UN News Service, 2012).

UN Report Mentioned Disappearances in Kashmir

A serious concern is shown by the Un working group on human rights on the allegations of enforced disappearances and the presence of mass graves in occupied Kashmir and same report is submitted in UN general Assembly. The report covers the
violations of human rights between 1989 and 2009 in Kashmir. This report is prepared by (WGEID) Working Groups on Enforced or Involuntary Disappearances. The report covers almost all the findings of civil society groups discovering 2700 graves between April 2008 and November 2009 in these districts, Baramula, Kupwara and Bandipura. It has also shown serious concern, over the extra judicial killings/ executions of non-combatants. The whole responsibility was imposed on the Indian government and the local authorities in Jammu & Kashmir. It was regretted that no response was shown by the Indian Government on the raised allegations (Hassan, 2012).

It has been reported by the UN that India should scrap a brutal and black law which is called AFSPA. This law gives absolute power to security forces for the purpose of arrest and shoot people. The human rights groups said that AFSPA is a draconian law which gives arbitrary power to Indian Security Forces in order to violate the human rights. After 12 day visit to India Chritof Heyns, the UN reporter, urged the New Dehli to repeal law. He further expressed his views that such type of law has no role to play in a democracy (Hindustan Times, 2012).

Another report has been published about the visit of Ban Ki Moon to India. His statement regarding human rights violations welcomed by the Hurriyat Conference. Ms. Ban Ki Moon hoped that India will act upon the UN resolutions regarding Kashmir. He also urged New Dehli that it should tackle own human rights challenges through legislation, policy and action to protect citizens from the abuses of draconian laws (Jamil, 2012).

3.5 European Union Parliamentary Reports

A resolution was passed by the European parliament with regard to the ad hoc delegation following its visit to Kashmir in December, 2003 and January, 2004 and report in 2007 about the status of human rights in Kashmir. A serious concern was shown about the discovery of hundreds of graves since 2006 in Jammu & Kashmir. In this resolution stress was given on Indian government to stop the human rights violations in Kashmir (EU Resolution, 2007).
In another report about human rights, is the demand of European Union Parliament (EUP) that India must improve the standard of human rights, in Kashmir in order to start free trade with India. Mr. Phil Bennion a liberal member of European parliament said that there is no doubt that the proposed trade agreement must not be started immediately unless India improves the standard of human rights in Kashmir. He urged that EU should pressurize the Indian government in this regard ( Dw.DE,2012).

**Reaction of Norwegian Parliament**

The issue about the existence of mass graves in Kashmir is strongly raised by the foreign minister of Norway in Norwegian Assembly. Mr. Jonas Ghar Store the foreign minister called upon the chief minister of Jammu & Kashmir to create a special commission for truth. The question was raised in the Norwegian parliament about the status of human rights in Kashmir (Norwegian Parliament,2011).

**Protest of EU on Draconian Law in Kashmir**

ALDE Deputy Chris Davies, who is member of European Parliament, has appealed to the EU to challenge the draconian law which is Public Safety Act and its misuse in Kashmir. He was addressing in 2010, to a news conference in parliament. He said that as India claims a largest democratic state but this law is a black spot on its face. The laws introduced in Kashmir especially such type of laws are clearly the violations of International norms and standards of human rights. He further explained that Public Safety Act is great violation of Human Rights Law and its obligations on the states (Hassan,2012).

3.6 Reports by Amnesty International on Human Rights Atrocities

**Amnesty International Cites Human Rights Abuses in Kashmir**

Amnesty International blames on Indian forces about the human rights violations in Kashmir. The protest by the Amnesty International was on the law which gives power to the Indian Forces to detain the prisoners without trial. The Public Safety Act allows security forces to detain even upto two years. It is further further reported that
hundreds of new prisoners are being detained under this law each year (Amnesty International, 2008).

- **Thousands Last in Kashmir Mass Graves**
  It has been reported by the Amnesty International on April 18, 2008 that hundreds of an unidentified graves re discovered, believing to contain victims of unlawful killing, enforced disappearances and torture in Indian administered Kashmir. The Amnesty International urged that the Indian Government should investigate the matter thoroughly. It is also called by the Amnesty International that the Indian government should stop immediately disappearances in Kashmir and to ensure prompt and fair investigation (Mushtaq, 2008).
  Enforced disappearances, unlawful killings and torture are bare violations of all the international human rights instruments, treaties and conventions. These acts are also called international crime.

- **Amnesty International on Rare Visit to Kashmir**
  A team of amnesty International was allowed to visit Kashmir by New Dhli in 2009. The purpose of this visit was to assess the human rights status in Kashmir. They were reported by the officials that more than 47000 peoples have been killed since 1989 (ibid).
  Government forces are held accused by locals of killings innocent people in fake battles. This team met with different groups and their visit was appriciated. The Tean was informed by all the groups about the violations by the Indian forces.

  The report of Amnesty is welcomed by the UK based Tehreek-e- Kashmir when it is condemned the black laws enforced in India.
  It is strongly urged by Amnesty International to repeal those draconian laws which are clear violations of human rights and international humanitarian Law (Qutab, 2011).

- **Amnesty International Call for Trial of Indian Troops**
A report is issued by the London based human rights organization about the Indian army personnel facing the charge of human rights violations in Kashmir and further said that the alleged soldiers must face the trial. The Amnesty International while arguing its report referred the decision of India’s supreme Court order Feb,4 2012, where it is stated that the Indian army should not exercise the Armed Forces Special Powers Act to avoid the prosecution of eight officers, who are charged for the killing of 2000 Kashmir villagers. The verdict of Supreme Court is warmly welcomed by Amnesty International said by its official that all the involved army personnel should be tried without any prior approval (Kashmir Global, 2012).

- **Jammu & Kashmir Hundreds Held Each Year Without Charge or Trial:**
  A report is issued on March 21, 2011 by the amnesty International that hundreds of people are holding without trial, charge or any procedure of law. Public Safety Act is being used badly and arbitrary for the purpose of securing long term detentions of individuals against whom there is insufficient evidence for a trial. Such type of detentions are estimated over the past two decades around 20000 out of those hundreds of people are being held on specious grounds with many exposed to higher risk of torture (Amnesty International, 2011).
  The report further explains that the authorities of Jammu& Kashmir are using Public safety Act as a tool for the detentions for those which cannot be convicted through proper legal channels. The detainees include political leaders and activists, suspected members or supporters of armed opposition groups, lawyers, children. Amnesty International acknowledges the right of every citizen of India to be protected from all sorts of torture or other illegal means and this must be done by the Indian government as it is the obligation of the international law (Amnesty International, 2011).

- **Documents not Enough Repeal the PSA 1978:**
  A report is issued by the amnesty International on May 2, 2012 that India must repeal PSA 1978 in order to ensure the protection of the rights of Kashmir People.
  It has been noted by the Amnesty International that bare and open detentions are daily routines of Indian forces in Jammu & Kashmir under Public safety Act 1978. This report reveals that those young boys who are over 18 years and having separatist
view are frequently detained by the Indian forces. The Amnesty International urges to Chief Minister Jammu & Kashmir to release the detainees immediately without any delay (Amnesty International, 2012).

- **Jammu & Kashmir Authorities Urged to End Detention of Lawyers**
  Amnesty International issued its report on 22 July 2010 about the detention of lawyers in Jammu and Kashmir. In this report it is urged that Jammu & Kashmir government must release the detained lawyers who are the leaders of Kashmir High Court Bar Association. These detentions are arbitrary under the PSA 1978. This Act allows detentions up to two years without any charge or trial. The report further reveals that this detention of Bar Leaders is an attempt to stifle the legitimate protest by the lawyers community in Jammu & Kashmir (Haris, 2012)

- **Protect Children in Jammu & Kashmir**
  It is the duty and obligation of every state under international law to protect and treat the children who are minor or below the age of 18 years from arbitrary detentions but situation is quite different, police in Jammu & Kashmir is frequently detaining the adults, this report is issued by the official of Amnesty International that although India has reformed its juvenile law but this amendment is not sufficient to be inconsistent with UN conventions on the rights of the child. This law is still not updated in the Jammu & Kashmir (Service,2012).

- **One killed 150 injured as Protests Continue in Jammu & Kashmir following Rape and Murder of two Young Women;**
  A report is issued by Amnesty International on June10, 2009 that protests on large scale continued due to the rape of two young women committed by Indian Central Reserve Police Force (CRPF). These two young women were killed after sexual assault on May 30, 2009 in shopping. These protests were evidence about the failure of Indian government on the commission of serious human rights violations, said by Director of Amnesty International Asia pacific. Local human rights organization has informed to the Amnesty International that attempt s were made to suppress the
sexual assault report. The stress has been given by the amnesty International to repeal the law which gives the impunity to security forces in Jammu & Kashmir (Times,2012).

- **Amnesty International: 1224 Fake Encounters in India in 15 Years**

  Amnesty International said that over thousand people were killed in fake encounters in India between 1993 and 2008. Amnesty International said that that “Impunity for past violations in Kashmir including the disappearance of thousands of people since 1989 during the armed conflict in Kashmir continued”. The report further said that it is daily routine of Indian forces to opened the on the protesters in the valley of Kashmir (Frontline Kashmir,2011).

3.7 **Reports by the State Human Rights Commission in Jammu & Kashmir**

- **INDIA: Action must follow the report discovering mass graves in North Kashmir**

  A report was issued by the Asian Human Rights Commission (AHRC) on August 25, 2011 regarding the abuses of human rights and the steps taken by the State Commission of Jammu & Kashmir Human Rights. In this State Human Rights Commission was appreciated for efforts taken for independent inquiries against the human rights violations. The Commission special Investigation Team issued very lengthy report consisted on 17 pages and it pointed out that there 2730 bodies are discovered without any identification. A serious concern was shown that there could be lot of other disappearances and killings in the state which are not on the face of the record. (Asian Human Rights Commission,2011).

- **In Kashmir, Killing Ebbs, but Killers Roam Free**

  A report is issued by the State Human Rights Commission (SHRC) about the free killing in Kashmir. The commission confirmed the existence of unmarked graves in Jammu & Kashmir. The Commission also urged that state machinery come forward
and should make independent inquiry committee for the investigation of the existence of unmarked graves. The commission has also recommended that there should be amendments in the existing laws enforced in Jammu & Kashmir which gives immense power to the Indian armed forces and also provide the immunity to the soldiers for their acts of violence. The commission also has shown serious concern over the increasing incidents about the violations of human rights in the valley by the Indian forces (Haris, 2012)

- **J&K Human Rights Commission's SIT Confirms 2,156 Unidentified Bodies in ‘Mass Graves’**

  The report of Jammu & Kashmir State Human Rights Commissioned opened the eyes of the world while revealing that there are 2156 unidentified bodies are discovered in mass graves. It has been demanded by the commission that DNA test should be conducted of these bodies in order to identify their blood relations in Kashmir. But the same has not been openly admitted by the state minister of Home. “These were claimed to be the bodies of unidentified militants by the police and handed over to local people for burial in various unmarked graveyards of north Kashmir,” said the report given by the 11-member SIT. Out of these unidentified bodies 17 were identified and those were sent to their native towns (Times, 2011).

  The SIT report further revealed that “It is beyond doubt that unmarked graves containing dead bodies do exist in various places in North Kashmir,”. The bodies have marks of bullet wounds which shows that these persons were killed frequently and blatantly (News, 2011).

### 3.8 Human Rights Reports of 2011: India

The report reveals that the Indian government and its law enforcement institutions are committing arbitrary extra judicial killings especially in the area of disputed territory Jammu & Kashmir.
The Enquiry Report of Unmarked Graves in North Kashmir which was submitted by the Jammu and Kashmir State human rights commission and it was leaked to the media in August 2011 (Haris,2012).

The report further reveals that the main reason of extra judicial killings in the valley is the draconian law which is Armed special Powers Act 1978 because in this black law vast powers are given to the armed forces and their acts under this law have immunity before the courts. This law is against the international norms and instruments of human rights. The Indian government is violating the international law frequently whereas India is bound to follow the law of nations. Under this law Indian government can declare any area as “Disturbed area” and the security forces can arrest and fire any person. The more interestingly there is no record of such act committed and done under this black law. When pressure increased on the state government then it claimed that this law cannot be revoked by the state government and this power is only available to the Central government. The state law minister declared that only central government can repeal or amend the law (Wala, 2011)

- **In Kashmir, Families of Missing People Move Human Rights Panel**

After the shocking news of unidentified mass graves in Jammu and Kashmir, the families of more than five persons have files a petition for DNA test before the state human rights commission of Jammu and Kashmir. But unfortunately Indian government has denied carrying out any DNA test of the unidentified bodies found in the mass graves. But Chief Minister of the state agreed to some extent and tried to satisfy the human rights activists and the families of missing persons to give the blood samples in order to identify the dead bodies. Strangely, the burden of proof for the identification of dead bodies found in the mass graves was shifted on the families of missing persons and after that government will exhume the graves but that is denied by the families (Fai, 2012). This denial by the government of India pushed the families of dead bodies to move the cases for the DNA test in order to identify their loved ones missing persons. In Kashmir a huge number of people are missing from the last years and many of them have been killed in extrajudicial killings by the Indian armed
forces. It has been apprehended by the relatives of missing persons that out of those many may be found in the mass graves keeping in view the brutalities of Indian forces. These act by the Indian state are against the principles of international law. The human rights activists urged the international bodies to force India for the protection of human rights in the valley of Jammu and Kashmir (Masoodi, 2012).

- **Human Rights Panel Asks J&K Govt. to Open Two-Decade-Old Mass Rape Case**

  It has been the common practice by the Indian Personnel of forces to commit the rape and sexual assault to young innocent girls of the valley. In this report it has been demanded by the state human rights commission from the state government to start the fresh investigation in the cases of gang rapes committed by the Indian Armed forces in kupwara districts 20 years ago. These gang rapes were committed in 1991 and onward (Sanghatana, 1995). It is further urged by the state Human rights Commission that special investigation Team should reinvestigate the matter.

  The report of the then magistrate reveals that after the medical examination of 31 women it is proved that these women have been gang raped because the symbols of atrocities were very clear from the medical report. He further said that “In the course of hearing the case, statements of 18 women were recorded and during which they testified that they were subjected to the atrocity,” (Trust of India, 2011).

- **Human Rights Violations In Jammu & Kashmir**

  The report is issued by the Independent peoples Tribunal about the violations of human rights in Jammu and Kashmir on the basis of testimonies of more than 37 victims. They have reported been reported by these victims about the human rights atrocities in Kashmir by the Indian armed forces. The Tribunal observed that there was injustice and disappointment on every face who have made statement. The peoples were very confident and emotional which convinced us to believe on those statements as true statements. The victims have testified that there are large number of violation in the valley and they been severally and brutally degraded in human rights in the last
two decades. The statement show that the steps taken by the government in the shape of compensation is too inadequate and insufficient which cannot fill the wounds of those victims in the valley of Kashmir. The Tribunal demanded the answer from the Indian government for bad attitude and deficiencies.

Serious reservations have been shown on the Armed Forces Act (1958) that it is misused on several occasions by the Indian law enforcement agencies. In these circumstances, we should not hesitate to say that this draconian law is the great source for the grave violation of human rights in the state of Kashmir. The misuse by the armed forces is amount to offence of criminal law. This misuse should be properly investigated by the independent and impartial team. This has been demanded by all the testimonies of the alleged victims. On the other side if we see the criminal justice system of India then it is very clear that is has been failed because the human rights commission, judiciary, executive and legislature is unable to prevent the arbitrary detentions, extrajudicial killings and torture of innocent people of Kashmir valley (Tribunal, 2010).

The report of the tribunal further refers to the international law and international humanitarian law under which the Indian state is bound to obey and respect. The report reveals that Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearances says that” the prohibition” of “disappearances” is absolute and no State can find an excuse. Article 7 says, “no circumstances, whether a threat of war, internal political instability, or any other public emergency may be invoked to justify” such type of violations (Madan, 2008). The state cannot be allowed to act arbitrary and commit the acts of violation of human rights such as disappearances, extra judicial killings and torture.

The Tribunal found that:
1. There are lot such examples of crimes have been received by our sources. These crimes and acts are the violations of Indian penal code, civil law and the various provisions of Geneva conventions. The law enforcement agencies have barely flouted the law of the state, laws of war and the international Humanitarian law.
Due to this lot civilians are being killed including women and men, especially the young girls are being raped and illegally harassed by the forces in the valley. The ten ages are also being rapped frequently by the forces.

2. Several enquiries are ordered by the government following the pressure of media and human rights activist against the unlawful acts of armed forces but those are completed and their findings are opened to the public. Similarly FIRs are also not registered by the police and resultant counter FIRs are registered against the families of the complainants. The State Human Rights Commission has been failed to facilitate the people for the justice in the valley. The general trends is that the state and the central government often ignores the recommendations and findings of the commission.

3. The example of heinous rape can be given which was received from the testimonies that in February 22, 1991, when the army rapped more than 20 women from all the ages in front of their young children and brothers. This act left the severe impact on the minds of the women and their families. This is the worst violation of human rights in the world.

4. The people have been the victim of indiscriminate firing. A lot of cases have been reported that where Indian forces fired on the innocent Kashmir peoples and resultanty they fell in physical disability. Unfortunately no steps have been taken by the state machinery for their rehabilitation. The testimonies reveals that the disabled persons were totally shocked and shattered (Tribunal, 2010).

3.9 US State Department Annual Reports on Kashmir

- 2010 Human Rights Reports: India - U.S. Department of State

This report was issued in 2010 by the US state Department on Human Rights in India. The report reveals that a thorough discussion was made on the status of different human rights. It has been reported that the Indian government and its law enforcement agencies have committed serious human rights violation in Indian occupied Territory of Kashmir including arbitrary or extrajudicial killings of suspected and innocent persons on large scale. In September the state government reinstated the four police officials...
allegedly involved in the May 2009 killing of Neelofar Jan and Asiya Jan in the Shopian district of Jammu and Kashmir. On June 28, Shakeel Ahmad Ahangar, Neelofar's husband and Asiya's brother, filed a petition to reinstate inquiry into the killings of the two women. The petition remained pending before a Srinagar court at year's end. Relatives and police discovered the bodies of Neelofar and Asiya in a stream, and local residents and examining doctors alleged that Indian Security Forces gang-raped and killed Neelofar and Asiya. In addition to that several government officials stated that police involvement in the killings could not be ruled out. In July 2009, the High Court ordered the arrest of four police officers on charges of suppressing and destroying evidence in the case. In September 2009 the court granted bail to the officers, and the Central Bureau of Investigation (CBI) took charge of the case from the Special Investigation Team. In December 2009 the CBI submitted its report to the High Court, concluding the women died of drowning and ruling out foul play. The report prompted renewed protests and a general strike in the state. The CBI formally concluded its investigations into the incident, dismissing charges against police (State, 2010).

The report further explains the status of human rights in Kashmir that In June security forces opened fire on the Muslim protestors in Kashmir and resultantly four person were killed. Similarly it has been further reported that there were lot case came to knowledge about the disappearances and arbitrary killings in the state of Kashmir.

- **U.S. State Department Report Confirms Human Rights Atrocities in Kashmir**

This report was issued on 2011 by the US State Department a voluminous report entitled “Country Reports on Human Rights Practices for 2011”. This report mentions that there are lot human rights violations are being committed by the Indian military forces in the disputed valley of Kashmir. The report reveals that the main problem for the safety of human rights is police and military forces because they are freely committing extrajudicial killings, rape and torture, poor prison conditions, arbitrary arrest and detentions in Kashmir. The most astonishing thing in this is that the impunity available to the armed forces under the draconian law enforced in the state of Kashmir. The report pointed out that the Armed Forces special Powers Act is the main
problem for the violation of human rights because the government can declare any area at any time as disturbed area and the police and other military forces are invited for lengthy unlawful detentions and these forces gets impunity for their acts. The example of police encounters is given report that in August 2011 a senior Police officer Abdul Majid along with others took a mentally disabled civilian to the forest and killed him their just for the sake of reward in cash. A lot of such examples are also given which are even not reported in the press (Fai, 2012).

- **India State Forces Committed Human Rights Abuses in IHK: US**

  The report is issued by the US State Department that there are lot of cases of arbitrary killings in the disputed area Kashmir. The report declared that Indian forces are responsible for these killings because they are doing unlawful acts frequently in the occupied valley of Kashmir. The report is relied on many evidentiary examples where Indian armed forces have committed on various occasions extrajudicial killings of innocent citizens and suspected criminals. The US State Department has declared such acts as bare violation of human rights in the valley of Kashmir. The Institute for Conflict Management declared that there were 1,616 fatalities in as of October in the country – including members of security forces, individuals classified by the government as terrorists, and civilians. In March, a number of media outlets reported that in response to a Right to Information (RTI) request the National Human Rights Commission (NHRC) provided data indicating that 1,224 of the 2,560 police encounter cases reviewed since 1993 had been staged by security forces. Several reports have been made in March 2011, that in response to right to information request the National Human Rights Commission (NHRC) provided data indicating that 1,224 of the 2,560 police encounter cases reviewed since 1993 had been staged by security forces (Times, 2011).

  The National Human Rights declared that all the police encounters were fake and beyond the rules and regulations. These acts of investigation agencies cannot be declared as that they followed the law and they have openly committed the human rights violation. The report has shown serious concern over these extra judicial killings in Kashmir.
• **US Report Cites Police Abuses, Extrajudicial Killings in India**

The US State Department cites the report of human rights in India and especially the valley of Kashmir. The report points out that the Indian law enforcement agencies are deliberately involved in the violation of human rights, these violations are in different shapes which includes the extra judicial killings, disappearances and physical torture to the innocent Kashmir peoples. The most serious problem of human rights violations is the unlawful acts of police officials. The Indian police is habitually committing rape with the Kashmir women of every age. Another human right problem is the disappearance at wide level in all parts of Kashmir. The reports further cites that the prison conditions in the valley are in a very miserable conditions. A serious concern is shown by the US state department on such violations of human rights in the valley of Kashmir and also declared that these violations are against the norms of international law (Times, 2012).

• **2008 Human Rights Reports: India**

This report is issued in 2008 by the US State Department regarding the human rights situation in the India and particularly the valley of Kashmir. The reports shows serious concern over the gross violation of human rights in India. It has been further mentioned in the report that a high rate of police encounters are being reported by the Indian forces in the Assam and Kashmir. There are several cases of disappearance have been reported but police of the state is silent and even failed to provide the data of these disappearances in the valley. Torture and other in human treatment by the armed forces is great violation of human rights in the valley of Kashmir. The report refers to the law of the state which strongly prohibits the torture and other such type of methods which are used in order to extract the confession. The methods of torture which are being used, those are the electric shock, beating, rape, striping, pins under nail, not providing of food and water, denial of medical treatment and the threats of their children are the famous methods of torture being used by the Indian forces in the Indian occupied Kashmir. Arms forces often used the torture like to sever the arms, figure, hands, foots and other parts of human bodies. Due to this type of torture
thousands of kashmiri’s have been become disabled both physically and mentally as well. The report further explains on behalf of APHC that peoples are being tortured often by the police and the prison authorizes. The reasons behind this type of torture is bribery, to extract the judicial confession and to withdraw the slogans of right of self determination. Many are died during the torture by the police at police stations or other torture cells. The marks of torture have been shown on the dead bodies which are evident of such inhumane treatment by the Indian armed forces. The report lastly highlighted the prison conditions in the valley and declared those as violation of international law and other convention signed by the Indian Government on different occasions. Prisons in jail are just like animals, they have adequate food and other necessities of life. They being dealt by the authorities in very inhuman manners (State,2008).

3.10 Reports by Kashmir Media Service (KMC)

- **Geneva Seminar Highlights Situation of Human Rights in IHK**
  A seminar was conducted on Sep 22, 2012 by the Islamic Human Rights Commission with the coordination of International Muslim women about the human rights status in the Indian occupied Kashmir. A documentary film was also produced by the Kashmir Center London on human rights atrocities in Kashmir. The important point of this seminar was that it was addressed by the All Parties Hurriyat Conference Chairman Mir Waiz Umer Farooq and human rights activists. One of the speakers of this seminar highlighted the idea of humanitarian intervention in the presence of the crucial incidents like mass graves and huge number of disappearances in the occupied Kashmir. He impose the whole responsibility of the Indian forces. He also urged and requested to the international community to focus and recognize the intensity of degrading treatment of human rights in Kashmir. He hoped that the culprits will be soon brought before the international tribunal for human rights violations.

The other speakers of the seminar also highlighted the human rights violations in Kashmir and stressed to the international community to take the notice of human rights atrocities in the Indian occupied Kashmir. They also raised the voice for the elimination
of draconian and black laws in the territory of Kashmir. The scholars also urged that the international community should acknowledge the social, political, economic and religious status of Kashmir peoples living in the valley (Service, 2012).

- **Kashmiris Await Justice**

The people of Kashmir are still awaiting justice even after decades of war. The residents of this territory are still deprived from their basic human rights like social, economic, cultural, political and religious development. The Indian forces are misusing the laws in Kashmir and their every act is pleaded as immunity from the court proceedings. Several petitions have been filed in the courts but the persons who are disappeared by the Indian law enforcement agencies are still not recovered in the courts of law. This a great dilemma for the international community to take action for the gross violations of human rights in Kashmir (Harris, 2012).

- **1681 Unidentified Graves in Poonch, Admits DC**

The report has been issued by the District administration of Poonch that there are 1681 unidentified graves are recovered from the border area but human rights watch dog identified more than 1681 graves. This report has been submitted to the human rights commission. The report is prepared on the basis of FIRs registered at the different police stations regarding the missing persons since two decades.

The Association of Parents of Disappeared Persons (APDP) and International Peoples Tribunal on Human Rights and Justice in Kashmir had raised this issue and filed complaint before the human rights activists regarding the unidentified graves in Kashmir (Service, 201).
Chapter 4

Draconian Laws in Kashmir and International Law

The occupied Kashmir which is administered by the government of India, it has introduced several black laws which provide the immense powers to the Indian law enforcement agencies. These agencies are using these laws as tool to stifle the popular demand of Kashmiri people, the right of self determination. These notorious laws are against the basic norms of fundamental rights and international law. These laws are violating various principles of international human rights law and the international humanitarian law. The detail analysis of the said laws is as under;


This Act was enforced in 1978 in the territory of Kashmir. The Public Safety Act is one of the most repressive measures to victimize the innocent Kashmiri people. The origin of this act is basically links to Defense of India Act which was implemented in India by the British Government during their rule. Many leaders of India especially Mr. Mahatama Gandhi was made victim of that black law. The Public Safety Act is happened more brutal and punitive law than the defense of India Act. Public Safety Act taken the place of DIA in 1967 and introduced as Jammu and Kashmir Public Safety Act 1978. This Act has been much criticized by the legal experts and other human rights activists at both national and international level (Chattah, 2006).

There are lot of legal lacunas in this act which are against the norms of international law and the criminal justice system of the world. The Act is badly failed to fulfill the norms of justice like principal of equality, right to fair trial, immediate appearance before magistrate, access to lawyer, right to appeal and protection from the principle of double jeopardy (Robertson, 2005).

The Act was enforced in 1978 in the state of Jammu and Kashmir with vast powers to the state machinery. This Act empowers the law enforcement agencies to detain a person for two years even without trial under the umbrella of peace and order in the
state. This provision has been frequently used by the police and other agencies which is a against the principle of natural justice. The said act was amended in 1990 and extended its operation from the state of Kashmir to the whole India empowering the law enforcement agencies to keep the detainees in any jail in India (Hashmi, 2007). According to section 22 of the said act, if any act is done in good faith by the official then no legal proceeding can be started against them. This law is a brutal weapon to tyrannize the guiltless citizens and politicians in the valley. Under this act detainees are not informed the reason for arrest and they are kept in custody for unlimited period without any justification. The detainees are deprived from all the legal rights during the arrest like to meet with relatives and lawyers because right to access to counsel is universal right which cannot be snatched away in any circumstances. Amnesty international reports that detainees are tortured during prison and they are held more charges than PSA with the orders of the court. If anyone is ordered to be released on bail then his detention is secured by the enforcement agencies under the Public Safety Act. In fact illegal presumption is created that the individual may commit any offence in future and he is detained merely this presumption under the PSA (Mian, 2012). Such types of actions can not be allowed at any cost under any law ad en there s no law in the world which authorizes the state machinery to detain someone on presumption based on future acts This type of presumption is also against the international law the international instruments of human rights. The lawyers in Kashmir have challenged the Public Safety Act severally but government has ignored all the time the orders of the courts and disregarded the authority of the courts. This also weapon to pressurize the politicians in Kashmir and many detained by the government while acting by revenging attitude. Amnesty International called the government to including the political leader and those who are raising the voices against the violation of human rights in Kashmir under Public Safety Act (Chattah, 2006).

Human Rights watch in one its report points out that many persons have spent their lives in prison under Public Safety Act. They further maintain that Shabir Ahmed Shah who was human rights activists had spent 22 years in jail under PSA and he leveled the charge for campaign against the violations of human rights in the valley of Kashmir.
Many provisions of the Public Safety Act are against the international and human rights instruments. Universal Declaration of Human Rights 1948 (UDHR) declares in its article 3 that everyone has right to life and liberty but Public Safety Act (PSA) is arbitrary detention instrument which restrict the liberty of individuals at any time without any reason. According to article 5 of the said declaration that no one shall be tortured and inhuman treatment but PSA is empowers the law enforcement agencies against the this article. Law enforcement agencies are frequently violating the provisions of this article and detainees under this act are often treated against the dignity of man (Bose, 2003).

According to article 9 the International Covenant on Civil and Political Rights (ICCPR), no person shall be deprived from the right to liberty and security of person. This article further ensures the individuals from the arbitrary interest and detention. But unfortunately the Public Safety Act authorizes the law enforcement agencies to arrest someone at any time in any circumstances and he can be detained in prison without any justification. Furthermore sub article 5 of the Article 9 also mentions the compensation for illegal arrest and detention. If someone is arrested without any charge or allegations then it is the duty of the state to compensate that detainee because he is deprived from right to liberty and free movement which is the violation of basic fundamental rights (Shelton, 2005).

It is very surprising to see that Public Safety Act has no provision for compensation of such illegal detentions or if any act is committed by Indian law enforcement agencies then no action can be brought against them and even no compensation or any remedy is available for the victim of illegal detention. The Indian constitution ensures the safety and guarantee of fundamental human rights. It further ensures that no law can be made which is against the fundamental rights of citizens but unfortunately this aspect is badly ignored while legislating the law of Public safety Act of Jammu and Kashmir. This PSA is also bare violation of Indian constitution as well. The supreme Court of India is the custodian of the constitution and it is the duty of this apex court to make sure the proper implementation of the provisions of the constitution and the safety of human rights but unfortunately the role of Indian supreme Court is not satisfactory in this regard because no action has been taken so far against such type of black laws
implemented in the state of Jammu and Kashmir. It has been repeatedly pointed out by the amnesty International that Public Safety Act is a violation of basic fundamental rights and it should be repealed as soon as possible but Indian government has not given any worth against such type of voices from the different human rights activists (Noorani, 2001).

The Public Safety Act is also the violation of United Nation’s Convention Against Torture (CAT) which prohibits all types of torture to the individuals. The CAT demands from all the states to declare torture as illegal and to make it punishable. Each state is under obligation under this convention to train its law enforcement agencies to combat with the torture of any form. Special rules are framed for the elimination of charter (Victoria, 2000). In spite of this convention Indian government has not changed its position regarding the implementation of laws which are clear violations of fundamental rights of the citizens of the state of Jammu and Kashmir.

To sum up, we can say that Indian forces are bound to obey the respective provisions of all the International Instruments for the security of human rights. Human rights law forbids all the kinds of extra judicial killings, arbitrary arrests, detention and mistreatment. States are bound to lodge investigation against the all types of violations of human rights.

4.2 Jammu & Kashmir Disturbed Areas Act, 1990 (JKDAA)

The Jammu and Kashmir Disturbed Areas Act 1990, is also the form of draconian laws which are enforced in the state of Kashmir. This Act gives vast powers to the law enforcement agencies which are arbitrary. Under this act the whole part of Kashmir can be declared as disturbed area. Any police officer or even head constable of police can use extensive force like shoot. He is authorized to kill someone without any justification. This Act gives extraordinary powers and police can use arbitrary these powers under the umbrella of the said law. The extra judicial killing has been one of the major crime which is committed by the Indian forces under the different laws. Similarly Jammu and Kashmir Disturbed Act, 1990 authorizes to the law enforcement agencies for the extra judicial killings of innocent citizens of Kashmir valley. This law
also gives immense power to the police to destroy the property of anyone without legal justification. The section 6 of the this Act provides immunity to the persons who are using the powers are doing any act under the shadow of the said Act. No legal proceeding can be started against any official except with the previous sanction of the government. All the acts done under this law are justified and can not be called in question in any court of law (Puri,1993).

There are various provisions of this are contradictory with the international human rights law. The Universal Declaration of Human Rights declares in its Article 3 that everyone has the right to life ,liberty and security of person but unfortunately Jammu and Kashmir Disturbed Areas Act,1990 is against the this provision of article 3 of UDHR. The same right to life is also safeguarded in the constitution of India as well. The life of anyone can not be snatched at any cost without due process of law if death penalty is awarded after the criminal trial. As we observed the various provisions of Jammu and Kashmir Disturbed Areas act 1990 which authorizes from Head constable to onward any police officer to shoot without any justification. No law in the world can be implemented which gives the licenses for the killing of Humanity. This is also termed as genocide crime which is being committed by the Indian forces. According to the article 2 of the convention on Genocide, the following acts are termed as genocide; killing the member of any group and Causing serious mentally and physical harm to any member of that group. All the states are held responsible if any act of genocide is committed and Article 5 of this convention further imposes the responsibility of genocide on the rulers and state official who are involved in the genocide. Keeping in mind the various provisions of the Convention on Genocide the Jammu and Kashmir Disturbed Areas Act 1990 is against this convention because it is authorizing the law enforcement agencies what is prohibited in the Convention of Genocide (Robert,1998). According to Article 6 of the International Covenant on Civil and Political Rights (ICCPR), every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. Further Article 9 of the ICCPR mentions that everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
There are many provisions of the Jammu and Kashmir disturbed Areas Act 1990 are contradictory and are the violations of various articles of ICCPR. Indian government is responsible to respect the international covenants and to follow the international law but it is very strange Indian government had violated barely the international instruments of human rights. The above said article 6 gives guarantee of right to life but Jammu and Kashmir Disturbed areas act gives powers to the law enforcement agencies to deprive someone from life art any time without any justification, they can shoot when they thinks fit. Security of life is also badly disturbed under this black law in Kashmir. Article 14 sub section 2 of ICCPR, further gives protection to the accused against the criminal charge that Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. It means that no one should be convicted unless he is proved guilty and he should be provided reasonable opportunity to be heard. It is the general principle of law that on one should be condemned unless heard and all the accused should be dealt as an innocent person unless proved guilty. Practically Jammu and Kashmir Disturbed Areas Act is a great tool to hold on the opinions of the Kashmiri peoples. They are not allowed to make opinions and agitations; if they do they are shoted by the law enforcement agencies under the above said Act. As article 19 gives protection to individuals that everyone shall have the right to hold opinions without interference. But the provisions of Jammu and Kashmir Disturbed Areas Act 1990 did not allow the citizens to hold opinions and they are interfered frequently because if they think out against the government policies then they are shoted by the police. They completely deprived from the right of freedom of speech and expression (Behera, 2006).

Furthermore the Jammu and Kashmir Disturbed Areas Act is against the article 13 of the Constitution of India which is about the equality before law. According to this article every citizen must be dealt equally before law. There should be no discrimination among the citizens and equal treatment should be given to all (Johnson, 2005). Equal protection before law does not mean that every person should be treated equally in any condition but it means that the acts of state should not be discriminatory. The concept of equal protection of law means that no one shall be denied the similar
protection of law which is available for the other citizens of the state. It should be for all
the classes of community on the same manners regarding their life, liberty and
property. The principle further enshrines that different laws can be made for different
sex of people for different persons and for persons in different ages, different taxes
may be levied from classes of persons on the basis of their income but cannot be
treated on discriminatory measures at all.

India Supreme Court has adopted a new approach regarding Article 14 of the Indian
Constitution in the following words that the concept of equality has dynamic concept
from many aspects. In Maneka Gandhi V. Union of India the Supreme Court of India
ensured the fairness and equality of treatment. The version of INDIAN Supreme Court
is very clear that every citizen has a right of equality and state should ensure the
protection of the principle of equality. The Indian government is under obligation not to
make any law which is forfeiting the fundamental laws citizens. It is the basic duty of
state to treat all the citizens equally (Lamb, 1997).

In nutshell we can say that the Jammu and Kashmir Disturbed Areas Act is against
the basic fundamental rights and the is contradictory with the international law of
human rights.

4.3 The Armed Forces (Jammu & Kashmir) Special Powers Act, 1990 (AFSPA)

The Armed Forces (Jammu & Kashmir) Special Powers Ordinance, introduced in July,
1990, was later enacted by the Parliament of India and enforced on 10th September,
1990. When certain areas are declared to be “disturbed”, the army and paramilitary
forces are granted sweeping powers under Section 4 (C) of this Act. Under this Act the
Armed Forces can be used for the assistance of civil authorities at any time when their
assistance is required for the purpose of law and order in the valley. The armed forces
were given immense powers to aid the civil authorities and non commissioned officers
were authorized to kill any person, to search any place, to search any vehicle, to enter
into any house or residency and to arrest any person mere on suspicion. The forces
enjoyed unlimited powers regarding illegal detention and arrest and the destruction of
property of civilian without any justification. The extra judicial killings are frequent done under this law by the Indian armed forces. It is the law that the arrested person should be handed over to the police immediately but is not being done by the armed forces. According to the constitution of India if someone is arrested by the law enforcement agencies then he must be brought before court and under the criminal procedure code the time for bringing the accused before the court is 24 hours. He must be brought before the court within prescribed period. It is mandatory for the country who has signed the International covenant on Civil and Political Right because the provisions of article 14 of the covenant has a particular wide scope. In addition to the usual guarantees of an independent and impartial tribunal, public hearings, the presumption of innocence and rights of the defense, it also provides for protection against self-incrimination, the right to appeal, and compensation for miscarriage of justice, and lays down the principle that no one may be tried twice for the same offence (Robertson, 2005).

The most objectionable part of the AFSPA is Section 4 which gives powers to armed forces that he can open fire on any person who is according to him is doubtful that he is carrying any weapon. The trooper can arrest any person who seems that he has committed any cognizable offence without warrant. Under the AFSPA any member of armed forces can enter into house at any time for the purpose of search of property without obtaining the warrants from the courts (ibid).

It is very unfortunate for the big democratic country which has violated its own procedural law because under the Indian Criminal Procedure Code that law enforcement forces should seek the warrants in order to search any house or any property. But unfortunately the section 4 of the Armed Forces Act is a violation of Indian Criminal Procedure Code. The section 4 of this act is no occurs in any form of democratic. It has been aptly called a ‘license to kill’.” Besides these unbridled powers, section 6 of AFSPA provides protection to troopers: “No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the central government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act”. This is also violation of International Covenant on civil and Political Rights. According to article 14 of ICCPR
All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law (Wirsing, 2003).

The press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children. This article ensures that all persons must be treated equally before all the courts and tribunals. No one is granted any immunity before the law and against any wrong done by any person. Article 14 of the Indian Constitution also ensures the equal treatment every person. The plea of discrimination is maintainable even in the absence of rules frame able for the purpose. Absence of rules does not mean that there would be no question of rules being discriminatory or of breach (AIR, 1982).

As stated by the subsection 2 of the article 14, no one can be presumed guilty unless he is given reasonable opportunity of being heard but the provisions of AFSPA are totally against this principal. The armed forces are fully authorized to shoot anyone when they presume him as suspected person. It is very astonishing for the minds that support the democratic norms. India claims the largest democracy of the world but law made by it for the state of Kashmir is totally negating this claim. The armed forces do not need any special power when the state is under external attack and they will perform their duty to fight. Such special powers are not required for the armed forces when there is no external attack. There was no need to delegate some special powers to the armed forces under the AFSPA. Under this act some areas are declared as disturbed areas. Even there is no need to grant ant special power to any armed force in the case of any civilian insurgency under the Geneva Convention and specific rules and stipulations are framed. We should not forget that India is a signatory of Geneva
Conventions and it is legal and moral duty of Indian government to follow the this convention (Human Rights Watch, 1996).

No international convention or human rights stipulations allow disproportionate use of force. The Fourth Geneva Conventions of 1949 and their two Additional Protocols of 1977 are the principal instruments of humanitarian law. Chapter IV of the basic rules of Geneva Convention specifically relates to “Protection of Civilian Persons and Populations”. In fact Geneva Convention mentions that in any conflict even the Environment itself must be protected against widespread, long-term and severe damage (Bukhari, 2009).

The AFSPA is also violation of Article 16 and 17 of the International Covenant of Civil and Political Rights which ensures that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, or to unlawful attacks on his honour and reputation (Shelton, 2005).

It is the duty of Indian government not to violate the constitution of India and the other prevailed laws in India. In Kashmir all these conventions and international laws have been thrown to winds and a virtual war has been declared on the civilian population protesting peacefully. It is only for these types of anti-civilian operations that people are clamoring for retaining various draconian legislations. The Government of India will have to make a choice. Would they prefer to retain AFSPA and other draconian legislations or Kashmir itself? Ultimately, they will have to give up AFSPA if they want to retain Kashmir otherwise the present policy of brutal suppression may cost Kashmir itself (Diebert, 2007).

In fact the security forces are committing atrocities on the Kashmiri without informing the civil administration. The State government has proved ineffective in controlling the Indian security forces, who have unleashed a reign of terror in occupied territory. The Act legitimizes barbarism in the State, as under Section 7, the security forces are given immunity from prosecution for any act committed by them (Ashraf, 2010).

The AFSPA has violated the various principles of international human rights law such as right to life, right to remedy, right to escape from arbitrary detentions and right to escape from torture and inhuman treatment.
4.4 Unlawful Activities (Prevention) Amendment Ordinance 2004

This ordinance was promulgated in 2004 and subsequently taken the shape of Act. It provides also extraordinary powers to the law enforcement agencies. The powers are provided under this ordinance are almost same as provided in the POTA. The Act was further amended in 2008. In December 2008, Unlawful Activities (prevention) Bill were introduced and that was presented for discussion in the parliament. It was passed without any debate in the parliament. Although it was demanded by some members of the parliament that the bill must be refereed for discussion to standing committee but it was ignored by the government and it was passed impulsively. One can judge the authenticity of any law which is passed without any debate at the floor of parliament and passed without any review.

Unfortunately this Act is also derived from the previous anti terrorists laws and the same idea is drawn which about the unlimited powers to law enforcement agencies. The definition of terrorist acts is very controversial and is against the provisions of various articles of human rights instruments. According to section 2 clause (O) the unlawful activity (Ganai, 2009) is defined as;

“unlawful activity”, in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),-

This definition is very controversial and is contradicting several provisions of International human Rights Law. It restricts the voices of people for their fundamental rights like self determination because the right of self determination is a such right which cannot be derogated at any cost. The right of self-determination is a basic norm of democratic society which is recognized universally and it provides choice to the certain individuals to decide about their future according to their own wishes. But this right is completely being denied by India, in South Asia (ibid).
The concept of self-determination is enshrined under article 2 of UN Charter. The principle basically permits the peoples to choose freely their political status and to determine their own social, economic and cultural status. International law is very clear on this principle, the Article 1 of the UN charter pertains the right of self determination. Earlier it was included in Atlantic Charter and the Dambarton Oaks which evolved in the UN charter. The inclusion of this principle in the UN charter makes universal its recognition in order to maintain peaceful and friendly relations among the member states (M.G, 1975).

Right of Self Determination has particular importance in ICCPR (International Covenant on civil and Political Rights) . According to article 1 “ All peoples have the right of self-determination. The inclusion of this principle in the both above said covenants strengthened the legality of right of self determination before the international community. The most important feature is that the covenants define the right of self determination widely to all the peoples not only the people of colonized or oppressed people (Shapiro,2009).

If we further interpret the common Article 1 of the covenants , it gives the right of free determination of political status to all the people along with free enjoyment and exploitation of their natural economic resources and wealth.

In the light of the above, the definition restricts the individuals and associations not to raise any voice for the right of self determination which is the violation of the above said international instruments. This Act was passed in order to deprive the people of Kashmir from the movement for freedom.

4.5 Terrorist And Disruptive Activities Act (TADA)  1985

The Act was implemented on 1985 and amended in 1987 in order to provide extra ordinary powers to the law enforcement agencies for the use of force. The amendment of 1987 made more hard law and provided un accountable powers to the police. This act is violation of international laws which gives powers to the Indian law enforcement agencies to commit frequently the human rights abuses in the occupies territory of
Kashmir. According to this Act the involvement of any individual in the disruptive activities amounts to strict punishment. Under the TADA “who knowingly facilitates the commission of any disruptive activity or any act preparatory to disruptive activity shall be punishable with imprisonment for a term which shall not be less than three years and shall extend to life imprisonment and shall also be liable to fine”. The disruptive activities is defined in the act as; “Whoever commits or conspires or attempts to commit or abets, advocates, advises, or knowingly facilitates the commission of, any disruptive activity or any act preparatory to a disruptive activity. (2) For the purposes of sub-section (1), "disruptive activity" means any action taken, whether by act or by speech or through any other media or in any other manner which is committed (Zutshi,2003).

This definition covers widely the activities and is very harsh definition. This definition is against the norms of basic fundamental rights defined in the Indian Constitution. The constitution of India provides to the citizens of state full freedom of speech and to express their opinions frequently. According to the article 19 of the constitution of India “All persons shall have right of Freedom to speech and expression” This is the basic and fundamental duty of Indian state to protect and provide the free environment for the exercise of basic rights which are guaranteed in the constitution. As mentioned above it is the duty of the Indian to make sure the free and fair enjoyment of freedom of speech and expression (Refworld, 2013).

Under the aforesaid law thousands of Kashmir are arrested and are detained usually more than a year. Normally the people are picked up from the market, bazaars, working places and streets who are subjected to interrogations by the means of torture at the torture cells. It is again the responsibility of the Indian Government not to make any law which is against the fundamental rights. Because according to the Article 13 of the Indian constitution “All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void”. This article prohibits the legislature of India from making any law which is against the basic rights of the citizens living in India (Chattah,2007).
The TADA is also the violation of article 13 of the Indian constitution because this Act is against the fundamental rights such as freedom of speech and freedom of expression. Furthermore, the TADA is also against the article 14 of Indian constitution. According to the Article 14 “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”. It is again the responsibility of Indian Government to provide equal protection to all the residents of state (Asraf2010). The individuals can’t be treated on discriminatory measures while making the laws in the country.

The TADA is gigantic example of discriminatory law against the people of Kashmir. As the valley of Kashmir is under the dominion of India, the whole responsibility lies on the Indian government to provide equal protection to all the citizens.

TADA also enhances the punishments extraordinary in such a scale which curtails the basic and fundamental rights of the accused. Under this law the bail is prohibited and the accused can not avail the opportunity of bail. Further the burden of proof is shifted on the accused under this law. TADA authorizes the police authorities to record confession of the accused which is against the natural justice and the prevailed criminal justice system in India. Because according to the Indian Criminal procedure the confession is recorded only by the judicial magistrate not by the police. If any confession is recorded even in the presence of the police by the magistrate then it will be defective confession and such confession can not be based any conviction. It is very interesting that the confession is allowed to be recorded by the police authorities under the TADA. This law is also evident that how police is powerful under the TADA. The police is authorized to arrest any person under suspicion with bringing him before the court of law. The detention powers given to the police are being used abusively and unjustly under this draconian law (Haris,2012).

The TADA also fails to fulfill the criteria of international law and the international standard for the protection of fundamental rights. The criterion which has been established by the international community for the protection of basic fundamental rights is badly ignored while legislating the TADA.
The detainees are deprived from the fair trial under this Act which is violation of International instruments of human rights. According to the article 9 of the Universal Declaration of Human Rights “No one shall be subjected to arbitrary arrest, detention or exile”. Its mean everyone should have immunity from arbitrary arrest and detention and the provisions included in the TADA are against this article because under TADA police has wide powers to arrest or detain anyone for up to one year without presenting the accused before the court of law and can detain without any charge sheet. This also empowers the law enforcement agencies to detain Kashmir citizens without ever being obliged to say that the arrested person is in their custody (Tribunal, 2004).

Further article 10 of the Universal Declaration of Human Rights declares that;

“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”.

The above said article describes further that;

1. Every citizen should be assumed as innocent until offence is established against him and he must be given full opportunity of being heard.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed (Mian, 2012).

The above said both articles are stressing the fair and impartial trial for the accused but unfortunately TADA is contradicting with the both articles barely because under TADA there is no concept of fair trial. The accused is detained without any justification and is not produced before any court. This law, no doubt is clearly against the natural justice. Furthermore according to article 20 of the UDHR “Everyone has the right to freedom of peaceful assembly and association”. This article ensures the frequent exercise of the right of peaceful assembly and association. No one can be deprived from the exercise of this right. But unfortunately the TADA is restricting the exercise of
this right and the kashmiri people are being deprived from peaceful assembly and association. If anyone one is involved in any peaceful assembly then he is victimized under the umbrella of TADA by the law enforcement agencies. Almost all the provisions are against the spirit of Universal Declaration Human Rights. The Indian government has arbitrarily ignored the various provisions of UDHR while legislating TADA (Gidvani, 2008).

Under the ordinary law the period for the detention is normally for fifteen days but unfortunately the period for detention under this law up to sixty days which against the norms of justice. This has enhanced the police powers for the purpose of torture to any one at any place with inhumane treatment.

Further under the Tada the person who is detained is not required to be produced before the magistrate as it is required in the ordinary procedure of Indian code. But that person may be produced before the executive magistrate who is not a judicial officer but he is an officer of the administration.

This act also gives powers to the police to keep the record of witness secret and his address should not be disclosed which is again the source of conducting the fake trials beyond the courts. Under this Act the burden of proof is held on the shoulders of the accused, he has to prove that he is not guilty. This is very astonishing which violation of international standards of criminal justice system because the burden of proof is always on the prosecution. It is the prosecution which has to establish its case not the accused in the court of law.

As far as the proceedings of the criminal courts are concerned under this Act, the trials will be conducted at secret places not in the open court. This is again the violation of international standard which is due process of law.

India is also signatory of International Covenant on Civil and Political rights and signed in 1978 by taking the responsibility to ensure the protection of rights of the citizens which are guaranteed by the various provisions of ICCPR. All the rights which are guaranteed under the ICCPR must be protected and respected during the time of peace by all the member states. Some rights provided by the ICCPR are respected by
the member states even in the time of war and emergency. TADA is also against the various provisions of International Covenant on Civil and Political Rights (ibid).

But under the TADA a person may be arrested and detained for a period of one year without any charge sheet. This power of detention of any one is violation of article 9 of the ICCPR. According to the article 9 “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”. TADA is barely violating the provision of article 9 of ICCPR. It very unfortunate that TADA is being used weapon for victimizing the Kashmiri people in order to suppress the voices for freedom. The government of India as is party to the ICCPR but not fulfilling its responsibility towards complying the provisions of ICCPR and other International instruments of International human rights. Whenever India is asked to comply the provisions of ICCPR then India makes excuses that this policy matter for the valley of Kashmir. This shows the discriminatory attitude of Indian government. Further article 14 of the ICCPR ensures the rights of the accused that every accused should be presumed innocent unless proved guilty but unfortunately TADA gives the powers to the police to detain someone up to period of one year without any charge which is huge violation of International instruments of human rights (Noorani,2001).

International Humanitarian law not only applies to the armed conflicts in the time of war but it also applies to the internal conflicts as well. The laws of war which are in discussion are the laws of Geneva Convention which applies between the government and the insurgents. Common article 3 of the Geneva Convention basically deals the relation of state with the insurgents (For human Rights, 1993). The primary purpose of the Common article 3 is that to make sure the friendly and fair treatment of those who are not the part of conflict and also those who are sick and wounded during the conflict. This article further ensures the fair treatment with those also who are in custody. It also states in clear words that the purpose of the provisions is not to change the legal status of the parties in the conflict. Unfortunately the Indian
government is denying all these principles of the Geneva convention regarding the rights of the people during the conflict or disturbance (Mujahid, 1997).

Whenever India is asked by the international community to follow the provisions of ICCPR then plea is taken by the Indian Government is that there are certain provisions which can be derogated during the state of emergency. But in reality there are only few articles which may be derogated during the state of emergency and not others. The articles under ICCPR which cannot be derogated even in emergency or where the state is under threat are the following:

1. the right to life (article 6),
2. the right not to be tortured (article 7),
3. freedom from slavery (article 8),
4. right from imprisonment failing from contractual liability (article 11),
5. right to recognition as person before law (article 15),
6. right to freedom of religion (article 18).

The procedure which has been laid down in the covenant if any state wants to derogate the rights then it has to inform to all the state parties to the covenant through the secretary of UN.

Similarly the principal 11 of the UN Body of principals for the protection of all persons under any Form of Detention or imprisonment mentions that;

1. a person who is arrested or detained will not be held responsible unless he is given full opportunity of being heard by the judicial officer or other authority.
2. If anyone is detained or arrested along with counsel will be immediately informed about any order of detention with all the reasons.
3. The judicial authorities will be authorized to review the order of detention" (Goldston and Gossman, 1990)

As far as the domestic law of India is concerned, Criminal procedure of India authorizes the police or other law enforcement agencies to detain someone for up to
period of 15 days and then the detainee is sent to judicial lockup. Whereas under section 20 of TADA this is extended up to 60 days without any formal charge. This period of detention cannot be beyond the elements of torture by the police authorities. The detainee is not presented to the judicial authorities and he can only be presented to executive magistrate who is not judicial officer (ibid).

The trial procedure provided by the TADA violates the international standard of human rights and the trial process of the accused before any judicial forum. Although the right to fair trial is guaranteed by the ICCPR but that is not complied under the TADA. All the proceedings Under TADA shall be brought at any place under secrecy rather than ordinary place of trial or any other proceedings.

According to article 14 of the ICCPR; All the individuals are equal before the courts of law. Everyone will be entitled for fair and open trial whenever any charge is leveled against him and for this purpose fair and impartial tribunal will be established (Diebert, 2007). The public and press may only be excluded from the process if the matter is of public order, national security and reasons of morals. This can only be done if courts think the disclosure of any matter would prejudice the national interest of the country.

It is very interesting that the government of India has been failed to justify till now that why the right to public trial is suspended under the TADA. What are the circumstance where this can be suspended and whether this type of circumstances are there in Kashmir for the suspension of this right. Furthermore, the courts for the cases under TADA have been formed too away from the residencies in order to deprive the detainees to have frequent access to their families.

Under the TADA the names of the witnesses are kept under secrecy, their identification is not opened to public whereas this is again contradictory to the provisions of ICCPR.

This act also authorizes any police officer to record the confession other than the judicial magistrate. The police officer can record the confession on simple paper or on any mechanical device which can be used against the accused as substantive
evidence. It is the basic principle of law of evidence that the confessions are only recorded by the Judicial Magistrate.

The rights of the accused cannot be derogated at any cost because this is his inherent right that he should be informed about all the proceedings and he should be present in the court. It is also basic requirement of Indian criminal justice system that the list of witness must be presented to the accused within seven days before starting of the criminal trial. But unfortunately under TADA the accused is deprived from this basic right which is against the international law of human rights.

TADA places the burden of proof from the prosecution to the accused. It is the obligation on the accused that he has to prove that he is not criminal. In fact under the Indian domestic law and International law, it is general rule that they should be presumed innocent unless proved guilty. But under TADA the burden of prosecution is shifted on the accused which is against the norms of natural justice. TADA amends the Cr.P.C and Evidence Act in the case of confession because Under TADA confession can be recorded by the police and that confession is considered as valid confession. But Under Cr.P.C and evidence Act confession can only be recorded by the judicial magistrate and if confession is recorded by the police or even in the presence of police that confession can be considered for the purpose of conviction or acquittal (Malik, 2002).

It is general thinking of the people of Kashmir and the international community that the TADA is used to enquire the Kashmiri people not to raise slogans for freedom where as the slogan for the freedom is basic fundamental right of the citizens.

According to the article 1 of the UN which emphases the encouragement and promotion of the fundamental rights of the people but unfortunately TADA is being used as weapon against the right of self determination. According to the article 1 of the ICCPR; all the people are entitled for the free exercise of the right of self determination. They may determine the their political status under this right (Bose, 2007).
Further all the persons are entitled to utilize freely their economic and natural resources without any external pressure. The people can be deprived from the using means of their subsisting in any case. The states which are parties to the International of Civil and Political rights shall promote the free exercise of the right of self determination. The states will also be bound to respect the provisions of the charter of the United Nations (ICCPR, 1966).

This article ensures and guarantees the right of self determination whereas the TADA is victimizing the kashmiri people against the right of self determination.

In various reports the Amnesty International reports declared that the TADA is purely violation of international human rights law. There is no guarantee for freedom of expression and freedom of speech. Such law cannot be declared as compatible for human rights at any cost.

There are lot of provisions in TADA which are gross violation of international law of Human right and Geneva conventions. The international community should make the stress of the Indian government against such type of law. As claims it the largest democracy but acknowledgment of this claim can be given in the presence and legislation of the laws like TADA.

In this highly civilized world the kashmiri should be given all type opportunities in order to live them as civilized nation and to live basic rights of the life. This issue should taken into consideration on humanitarian grounds and laws like TADA should not be implemented on the people of Kashmir.

4.6 Prevention of Terrorism ACT 2002 (POTA)

The Prevention of Terrorism Act was passed in 2002 in the joint session of Indian Parliament. It was apparently for the whole country but specifically for the Indian occupied Kashmir. This law was equipped with extra powers awarded to the police. If any act was committed by lethal weapon was to be declared terrorism act. POTA is considered a revised version of TADA. The definitions given under POTA are vague
and are not clear what actually they mean. For example, section 3 (5) of the present Act is vague while defining the terrorist gang or terrorist organization. According to section 3 (5);

“Any person who is a member of a terrorist gang or a terrorist organization, which is involved in terrorist acts, shall be punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lacs or with both” (Wolpert, 2011).

As a general principle of law the proof is required in order to convict someone under the law but this section does not require proof that person is involved in any terrorist gang. It is very strange that POTA hold responsible merely on the communication or association with the terrorist organizations. If someone expresses his opinions without any criminal intention then he is held responsible. This section clearly violates the Article 22 of the ICCPR (ibid).

According to Article 22; every person shall be entitled for the establishment of his business and trade and he can be member of any trade union in order to protect his interest. There will not be any restriction before the exercise of this unless it is prohibited by the express provisions of law for the time being. Further this article will also be imposed on the members of armed forces with lawful restrictions (Shelton, 2005).

The above said article ensures the right of association but unfortunately this right is denied by the POTA. Under the POTA if someone has information regarding the terrorist gang then he is bound to provide information. In case of failure of such information the person shall be punishable for up to three years. Under any law no one can be punished for mere possession of informations (Mian, 2012). This is against the standard of international human rights law.

Similarly under section 4 of POTA if a person is in the possession of unauthorized arms, then he will be held for link with the terrorists. This is against the basic
provisions of international human rights that no one can be presumed guilty unless proved guilty (The Nation, 2013).

There is much debate on POTA that whether it fulfills the requirements of international human rights standard or not. It is very important to mention that India is signatory to the both Universal Declaration of Human Rights and International Covenant on Civil and Political Rights.

The UDHR is a universal document of human rights which was enforced by the UN and it is binding on the member states of UN including India. The other Instrument is ICCPR which also implemented and brought to make the obligation laid down in the UDHR. The ICCPR was implemented through the Geneva based human rights committee (Solis, 2010).

Under POTA immense powers have been granted to the law enforcement agencies with regard to detention. According to section 48 of the said Act, if any person is arrested then he may be detained for a period of up to 90 years and this period further may be enhanced up to 180 days by the special approval of special court. This provision is strictly against the section 167 of criminal Procedure Code of India which authorizes the police to detain any individual for maximum period of 15 days. According to the Indian constitution every arrested person must be brought before the judicial authorities within period of 24 hours (Parker,2003). The POTA is contradicting with the several provisions of Indian domestic law. The legislature had ignored while making the law of POTA.

As far as the powers of detention are concerned the POTA is a contradictory with the provisions of ICCPR. According to the article 14 of the ICCPR;

“In determination of any criminal charge, every one shall be dealt with out any delay” (Liebenberg,2000).

This article stresses the state parties for speedy trial but unfortunately the POTA is authorizing the police authorities to detain the accused for up to 90 days which is bare
violation of international standard of human rights and the norms of international law. Further article 9 of the ICCPR states that; If someone is arrested then he must be brought before the judge or other officer who are authorized to exercise the judicial powers. The trial of that will be conducted in reasonable time without any delay. The arrested persons should be released on bail if their trial is taking long time (Hillman, 2004).

This article makes it compulsory, on speedy production of arrested person before the judicial authorities because it is against the natural justice to deprive someone from the access to justice. If accused is remained in police custody with any authorization of court or the stipulated legal period as mentioned under the Cr.P.C then it is unlawful act and equal to deprive someone from liberty and personal security which is constitutional right for residents in India (Hussain, 2002).

POTA also does not allow the public hearing of trials. According to section 30 of the POTA;

“Notwithstanding anything contained in the Code, the proceedings under this Act may, for reasons to be recorded in writing, be held in camera if the Special Court so desires” (Asraf, 2010).

This is against the norms of justice because it is the basic right of the accused that his proceedings should be public and trial should be conducted publically. Although there are some circumstances where trial is not conducted publically due to national security, or the interest of the public lives otherwise trial should always be conducted open in public. In spite of this keeping in mind the democratic norms the trials should always be conducted publically. Everybody should have free access to the proceedings of the court (ibid).

Another extraordinary power which is given to the police authorities is recording of confession by the police rather than court. According to section 32 of POTA that also authorizes any police officer to record the confession other than the judicial magistrate. The police officer can record the confession on simple paper or on any mechanical
device which can be used against the accused as substantive evidence. It is the basic principle of law of evidence that the confessions are only recorded by the Judicial Magistrate (Chattah, 2006).

This section is totally against the norms of justice and it cannot be allowed in any democratic country because the confession recorded by the police is no confession. Under section 164 of Indian criminal procedure code it has been stated that the confession must be recorded in the court and even the presence of the police while recording the confession is not admissible (Harris, 2012)

The POTA in this regard is against the domestic law and the basic norms of justice. It is very unfortunate that POTA is not respecting this principle.

According to the section 48 of the POTA the accused is responsible to show himself that he is innocent but in the ordinary procedure of law it is the responsibility of the prosecution to establish his case. Under the ICCPR this is against the rights of the accused. According to the section 14 of the ICCPR (Fleck, 2008);

“Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law”.

It is a general principal of natural justice that the accused should be dealt as innocent person unless proved guilty because the burden of prove is always on the prosecution in criminal justice system..

Furthermore article 11 of the Universal Declaration of Human Rights contradicts the section 48 of the POTA. According to article 11 of the UDHR;

“Everyone charged with a penal offence has the right to be presumed innocent until proved guilty” (Shelton, 2005).

This article ensures that the accused should be presumed innocent unless proved guilty. The section 48 of POTA also contradicts the provisions of Principle 36 of The
Body of Principles for the Protection of All Person Under Any Form of Detention or Imprisonment (ibid).

POTA thus establishes special courts in the Jammu and Kashmir. The creation of these special courts undermines and decreases the independence of the judiciary. These special courts are the source of using the discretion to hold the trial at secret places in order to prejudice the rights of the accused of fair trial. The special courts are also authorized to hold the charge against the accused under the criminal Procedure if that offence is linked with the POTA. The special courts can also draw the adverse inference from the denial of the accused from giving finger prints, samples of handwriting and photographs.

It is also very interesting that under the POTA summary trial can be conducted of the offences which have punishment up to 3 years. This contradicts the Code of Criminal Procedure of the India because summary trial is conducted of only those offences which have punishment up to 6 months (Gardam, 2004).

Under the POTA the special court can conduct the trial of the case even in the absence of the accused or in the absence of his lawyer. The special court is fully dominant over the trial process. The special courts have all the powers which can deprive the accused from the right of fair trial. The trial can be conducted in camera and the witness information can be kept in secrecy. All the measure are adopted by the special courts which are prejudicial to the rights of the accused (Gidvani, 2008).

There is special immunity to all the persons acting on behalf of the government in good faith and they may be protected from the punishments. Their acts will not amount to offence if they have acted under the POTA. There is no requirement for the registration criminal case like First Information report (FIR). Further it is not necessary for the police to get remand from the court for the accused arrested under the POTA. The accused may remain unaware about the reasons for his arrest for a period up to 90 days or unless he is presented before the court (Tribunal, 2004).
The element of torture under POTA cannot be ignored because the long detentions are dangerous in this regard. According to the section 56, the immunity is provided to the police authorities from their acts. In the presence of this section the police has no fear from the courts for their unlawful acts and they may use the torture to the detainees as they wish. The torture will not be challenged in the court by any person against the police. The police may take the plea that they have acted in good faith. The term “in good faith” is not clearly defined under the POTA (Mian, 2012).

In short the POTA is tool against the freedom movement of kashmiri people. It is also failed to fulfill the requirements of natural justice and the principles of international. POTA can not give the guarantee for the protection of human rights as stated under the international human rights instruments. It is the necessity of the time that international community must come forward and should play its role on the eradication of such types of law in the Occupied Kashmir.
Chapter 5

Right of Self Determination and Kashmir Dispute

5.1 Introduction

The state of Jammu and Kashmir is known as Kashmir comprising on the area of 218,957sq. Kilo meters. This valley is situated in the North of Indo Pakistan subcontinent. The history shows that Kashmiri people have been under the rule of nasty rulers without their will. In 1846 fate of Kashmiri peoples was sold to Maharaja Harri Sing by the British Government which is known as the world’s largest democratic nation, for the sum of seventy five lacs in an agreement, called “Treaty of Amritsar”.

At the time of Partition of India, the British Government had decided to divided the India into two parts namely Pakistan and India. All the princely states were given option to affiliate with any new country and it was made compulsory for them because they were not allowed to declare as independent state. The Secretary of State of India Lord Lishtowel clearly announced in British House of Lords: “We don't recognize any state as separate international entities” (Burke, 1973).

With the partition plan Mr. Lord Mountbatten had suggested some guideline for the princely states in order to accede with India or Pakistan especially keeping in mind the geographical situations of the sub continent (Sarwar, 1960).

All the princely states were asked to act upon the guide lines of partition and the Partition plan of British Government, it was declared to them that otherwise their action would be illegal. The state of Kashmir was expected to decide as per the guideline given by the Lord Mount batten. Apart from the religious factors the valley was closely linked with the Pakistan. Geographically the only way which connects the Kashmir with the world is only Pakistan. The whole communication system of Kashmir was closely connected with the Pakistan. As far as the culture is concerned the Kashmiri people have similar culture as it is in Pakistan. The family system is also
emerged with Pakistan. The telegraphic system of Kashmir was also linked to Pakistan (Abdullah, 1965).

Unfortunately the Maharaja of Kashmir failed to decide correctly the accession and he acceded the state of Kashmir with India while ignoring other factors. The majority population of the valley was Muslim and their wish was to accede with Pakistan but contrary to their wishes of Kashmir majority people. It was also the violation of principle of partition of India which was set by the British government. Government of India blackmailed Maharaja and due to this he had acceded with India. When Maharaja had signed the instrument of accession and soon after Indian forces landed at Srinagar airport. Actually Maharaja was afraid from the mujahedeen that they will occupy on his government.

In reaction to the accession by the Maharaja, freedom movement was started comprising on mujahedeen's in Poonch on those especially who served in the British Army. In order to punch the guerilla forces of Mujahidin’s , a new chapter of harsh pains was opened by the Dogra forces on the Muslims. In order to save the Muslims in Kashmir , Pathan tribes reached in Kashmir from Pakistani tribal areas (Lamb, 1968).

Several discussions have been made on the instrument of accession signed by the Maharaja with the Indian government. The question arises about the validity and competency of Maharaja regarding the accession. When instrument was signed at that time there was no effective control of Maharaja over the Kashmir Territory because a lot of districts have been gone under the control mujahedeen and Maharaja lost his administrative control over these areas. Here we can recall the case of Hungary Government that where question was raised whether Hungary government was competent to call the assistance of foreign forces. In This case it was declared that at that time Hungary government was not proper government so it was not competent to call the troops of Russian for assistance (Mian, 2012)

It is the generally presumption that if government is in firm possession of the state even it is not recognized, it cannot speak for the government.
Many jurists are on the view that the Dogra government was not effective government and it was failed to control the territory administratively due to the freedom movement by the mujahedeen and in these circumstances this government was not in position in position to decide the fate of the Kashmiri people without their consent.

5.2 Historical Development of the Right of Self Determination

The concept of self determination can be traced out from the Roman period when this concept was enshrined. This concept was actually applied on Soviet Union states. According to the article 72 of the Soviet Constitution, each constituent republic has right to split (Hussain, 1998).

The right of the self determination is closely linked with the theory of Social Contract of John Lock and Rosue. The concept of self determination in Europe was recognized in 19th century. It was also originated by the Lenin in 20th century when Russian revolution came and it was widely agreed. Right of self determination is very important addition in the human rights law. It is very good tool to protect the rights of the minorities (Chen, 2010).

The principle of self determination was also the part of address of American President Wilson on 8 January 1918 and he included this concept in his fourteen points. It was stressed that the interest of colonies must be secured for the purpose of peace settlement.

The concept of self determination further recognized during the time of World War II when decolonization movements were on peak.

The right of self determination was also made part of Atlantic Charter which was used during World War II. At the time of drafting of the Charter of United Nations, a Belgian representative had tried to oppose the principal of the right of self determination but at the last moment he waived this objection due to the strong criticism from the developing countries. In fact this was clash of interest between the western countries and the developing countries and it was the wish of the developing countries to get the ray of hope of their new era. But Western countries were hesitating to go in completely
in favour of this principle because they were afraid that if the right of self determination is used frequently by the developing countries then their dominance might be infringed at large. On the other side they have admitted the recognition of the right of self-determination to some extent and resultantly protection was given to this principle in the charter of the United Nations (ibid).

According to the article 2 of the charter of UN

“To develop friendly relations among the nations based on respect for the principle of equal rights and self-determination of peoples (Walzer,2000)”

The concept of right of self-determination was clearly made part of the charter. Further article mentions the role of principle of self-determination for the purpose of stability. The article 55 says that “With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples (Theodor,1998), the United Nations shall promote:

1. higher standards of living, full employment, and conditions of economic and social progress and development;
2. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
3. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”

The strain was given under article 56 of UN Charter, to all the member states for the cooperation of achieving the purpose of the United Nations mentioned under article 55 of the Charter (Fleck,2008)

The inclusion of the principle of self determination was better improvement for the projection of this right. It was the success of the principal that it had found place in the international documents and it was universally accepted by the international
community. In fact this right was established in order to provide sovereignty to the colonies. Since the establishment of this in the charter of UN the numbers of colonies are decreased gradually.

In 1960, the General Assembly adopted the Resolution 1514(XV) that called Declaration on the Granting of Independence to Colonial Territories and Peoples. It said that;

"all peoples have the right to self determination; by virtue of that rights they freely determine their political status and freely pursue their economic, social and cultural development" (Keegan, 1993).

Under this declaration, right to free determination of political status of the people living in territory was acknowledged and stress was given on all the states to pay respect before this right.

The Declaration on Principles of International Law Friendly Relationships and Cooperation among States in Accordance with the Charter of United Nation which was adopted by UN assembly in 1970 (hereinafter "UN Resolution 2625(XXV)"). This declaration was another important development for the recognition of the right of self determination. The resolution states that;

“by virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter" (Arnold, 2008)

Under this resolution it was determined that the freely express of the political wish of the people may be fruitful in order to end the colonial system with in minimum time. This resolution further stated that denial from the exercise of wish for political status of the people is basically violation of internal law and its different principles which international community cannot afford (Chen, 2010).
The Declaration of 1970 is actually recognizing the rights of the peoples in the state who are oppressed or being victimized due to political, economic, religious or social factor.

According to the International Commission of Jurists which has expressed the various paragraphs of the above said declaration that;

“the most authoritative statement of the principles of international law relevant to the question of self determination and territorial integrity, under different paragraphs” (Jamil, 2012)

Under the first paragraph, it has been described that the right of all peoples to freely determine their political status. This paragraph has been supported by the United States and United Kingdom also.

Under the second paragraph, it has been declared that every state is under obligation to take steps for the realization of political rights and self determination of peoples. When state exploits, subjugates or dominance the equal right and self determination then it will amount to violation of general principles of international law (Hussain, 1998).

The paragraph 3 of the same declaration mentions that the states are bound to take essential measures for the promotion respect and dignity of basic fundamental rights. Programmes should be designed for the projection of human rights. It has been further emphasized that the NGOs should come forward for the assistance of state for the protection of international human rights (Hassan, 2012).

The paragraph 4 gives further steps for the exercise of right of self determination and these options are for people who want to choose their political status (ibid).

Under the paragraph 5, the states have been asked to refrain from using the use of force against those who chooses to expertise the right of self determination. In this regard if any force is used against those people then they might seek the assistance against such use of force. The international community will be bound to support such exercise of right of self determination (M.G, 1975).
The paragraph 7 mentions that the theme of the declaration is not to encourage the people to disintegrate the sovereignty of state, the sovereignty of the state can never be compromised but right of self determination can also be denied by the international community (Masoodi, 2012).

The right of self determination was made first time the part of International Covenant of civil and Political rights under its Article 1. According to the article 1 of the ICCPR;

“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development” (Fleck, 2005).

The article 1 of this important treaty declares the right of self determination available for all the people. At the time of drafting the European countries opposed that self determination is principle and it can be declared as right. The concept of Soviet Union at the time of drafting was that every people and every nation should have the right of self determination (Parker, 2003).

The African Charter of Human Rights and Peoples Rights also recognizes the principle of self determination. According to its article 20 that every state has full right to determining their political status and they can exercise the right of self determination in order to pursue their social and economic development. The right of self determination is their inherent right which cannot be subjugated in any circumstances. The colonies have full right to get the liberation from the dominant states. It has been further declared under this article that the international community should present charter of the liberation of the politically dominated and oppressed peoples as keeping in mind it is their universal right of fundamental human rights (Leibnberg, 2000).

According to article 21 of the same above said charter it has been stated that all the people shall have the right to utilize their natural resources and in this regard they should be supported. The natural resources and wealth should be freely disposed of by them without any external interference (ibid).
While doing comparison it is very clear that the above said provisions are similar and compatible with the article 1 of the International Covenant of Civil and Political Rights.

The right of self determination also has been incorporated in the article 1 of the International Covenant of Economic and Social Rights ICESR. It has been declared under this article that this right is inherent for all the people. The right of self determination has got the common acknowledgment from the international community (Theodar, 1998).

The right of self determination has been declared as principal of customary international law under the advisory opinion of Namibia case.

From the discussions of the above said historical documents relating to the right of self determination, it is quite clear that the right of self determination which was started as political right had taken subsequently the status of legal right during the decolonization process. In these circumstances India cannot deny the applicability of the right of self determination.

5.3 United Nations Action on Right of Self-Determination in Kashmir

After the partition of India and the emergence of two states India and Pakistan, the princely states were given choice to accede with any newly emerged state. The Maharaja of Kashmir had signed the instrument of accession with India because he was losing his control from the government in Kashmir due to the freedom movement started by the Mujahedeens in Poonch and other parts of Kashmir. After the instrument of accession with India, the Indian forces entered in Kashmir at Sri Nagar Air Port.

Pakistan had filed complaint in reaction, against the government of India and stressed that the entry of Indian government is against the principle of accession. The involvement of United Nations was started when Pakistan had filed complaint in 1947-48. This was the period of decolonization which was started by the British government in South Asia. The representatives of both the countries leveled allegations on each other. During this time the leaders of Pakistan and India had reached on an agreement
that the issue of Kashmir will be decided by the wishes of the Kashmir people. At the same time India reaffirmed in numerous statements that the fate of the Kashmir people would be on their exercise of the right of self determination.

Security Council of the United Nations established UN Commission for Kashmir. The commission had passed several resolutions that the issue of Kashmir will be resolved through the free and fair plebiscite. The United Nations had also appointed plebiscite administrator in Kashmir.

The United Nations process focused on trying to defuse these armed confrontations, by implementing a cease fire, by then establishing a truce and a military withdrawal, and finally to carry out the plebiscite. Admiral Chester Nimitz (United States) was named arbitrator of the truce plan. The cease-fire took effect on January 1, 1949, and the Security Council immediately established the United Nations Military Group for India and Pakistan (UNMGIP) along the cease-fire line (now referred to as the “line of control” or the “LOC”) which is still in place today. India refused to accept arbitration over the truce plan in spite of strong pressure from United States President Truman and United Kingdom Prime Minister Atlee, and to date the truce plan has not been accepted (Parker, 2003).

The government of India in 1950 backed out from the holding of plebiscite and argued that it has conducted the election in Kashmir. The purpose of this election is to choose the representatives who could decide the fate of the Kashmiri people. This version of Indian government was rejected by the United Nations and said that this type of elections cannot be based that the members could decide any state issue because this election was not free and it was under military election.

Unfortunately, the administrator could not manage to conduct the plebiscite in the disputed territory of Kashmir due to the non serious attitude of Indian government. The last plebiscite administrator left his responsibility to hold the plebiscite in Kashmir in 1955-56 and returned back. After that no one appointed as plebiscite administrator in the valley of Kashmir.
5.4 Right of Self Determination and Kashmir Conflict

As far as the issue of Kashmir is concerned, it is claimed by the Indian government that Kashmiri people have used their right of self determination at the time when Kashmir constituent assembly had given the approval of instrument of accession. India further claims that the demand of plebiscite was automatically waived when the constituent assembly of Kashmir which elected through election had unanimously approved the accession with India. This claim of India needs to be investigated especially in the light of international law and international human rights law.

A complaint was filed before the Security Council at the time when the session of constituent Assembly of Kashmir was called, on the ground that the constituent assembly is the violation of United Nations Resolution which was passed on August, 1948 and in 1949. According to these resolutions it was urged by the United Nations that India should facilitate free and impartial plebiscite in the valley of Kashmir in order to determine the future of the residents of this territory. When India was asked to clarify why the session of constituent assembly of Kashmir is called then Mr. Benegal Rao said before the United nations that the purpose of this session is to frame the constitution of Kashmir (Hussain, 1998).

When the Council has shown dissatisfaction over the assurance of Indian representative about the constituent assembly at the same time British representative Sir Jebb had justified the version of Pakistan regarding the constituent assembly.

The British representative had drawn conclusion from the Indian representative’s remarks that the question of the accession of the Kashmir had been solved and now the Kashmiri people of the Kashmir should mend themselves that they should live with India as the Kashmir is a part of India. The permanent representative of India had repeated on several occasions the convening session of the constituent assembly of Kashmir is basically to make opinion on the future constitution of Kashmir but they cannot bound the assembly that it should not discuss the matter of accession. And if Assembly expresses its opinion on the accession then Indian government would not stop them (ibid ).
The Kashmir issue was remained out of the screen till 1957 and it was handled by the United Nations representative, Pakistan and India. During this time the Kashmir constituent assembly convened its session and declared that the state of Jammu and Kashmir is part of India and will remain part of India as an integral part. This was pointed out by permanent representative of Pakistan in United Nation and this conflict was placed before the United Nation for discussions. By the efforts of Pakistani representative the Kashmir issue was again taken by the Security Council and it was further declared by the council that the constituent assembly of Kashmir would not decide the fate of the Kashmir as the its mandate is only to frame the future constitution. It was further reaffirmed that the issue of Kashmir will be decided through free and impartial plebiscite. It was clarified by the Council that any act of the constituent assembly would not deprive the Kashmiri people from the exercise of the right of self determination (Gidvani, 2008).

The right of self determination is pure political and legal right which has been safeguarded by the various instruments of the international law of human rights. The most important was the resolution of the United Nations regarding plebiscite.

As far as the status of the election of the members of the constituent assembly was concerned that was fake and few percent voters have casted their votes. This election was boycotted by the opposition. The Muslim conference which was the majority party of the Muslims had also boycotted these elections. So we cannot say that this election was fair and free consent of the people of the Kashmir and the members were representing truly the mandate of the Kashmir people.

The question is raised here by the different jurists that whether the constituent assembly had mandate to decide the matter of accession? It is very clear from the speeches and clarifications of the Indian representatives before the international community that the constituent assembly had not the mandate to decide the issue of accession and it had only mandate to frame the future constitution of Kashmir. They had not any authority to decide the right of self determination of the people of Kashmir. The Security Council had also refused in its resolutions passed in 1951 and 1957 that the constituent assembly of Kashmir cannot decide the question accession. The UN
Security Council had shown serious concern on the method of election of the constituent assembly that it was not satisfactory and reliable process (Parker, 2003).

5.5 **Kashmir Accord of 1975**

The Kashmir Accord which was signed in 1975 by the Sheikh Abdullah with the government of India. The purpose of this Accord was to acceptance of instrument of accession by the Sheikh Abdullah and to consider the Kashmir as part of the Union of India (Hussain, 1998).

The question arises that whether Sheikh Abdullah was in position to give the acceptance of the instrument of accession. Although there was not the resolution of United Nations Security Council at that time, even then he was not authorized to subjugate the right of self determination of the people of Kashmir.

The right of self determination is s right of people not the right of government or any individual. It has been defined by various jurists and even internationally it is recognized as the right of the people. In modern international law, self-determination is considered a collective "peoples' right." It is generally defined as the right of the people not only to preserve its language, cultural heritage and social traditions, but also to act in a politically autonomous manner and - if the people so decide - to become independent when conditions are such that its rights would otherwise be restricted (Bose, 2003).

Slovenia, Croatia, Bosnia and Herzegovina, Montenegro and Kosovo exercised self-determination by seceding from Yugoslavia. Ireland achieved self-determination by revolting against Great Britain. Namibia justified self-determination by force of arms against South Africa. The Southern Sudan did the same to obtain independence from Sudan. East Timor commanded strong international sympathy and help from the international community in asserting self-determination because of Indonesia's repressive rule. The United States earned self-determination by defeating the British in the Revolutionary War. India and Pakistan attained self-determination by a combination of British weakness and exhaustion from World War II, a growing
international consensus against colonial domination, and the political and diplomatic
skills of the likes of Mahatma Gandhi and Mohammad Ali Jinnah (Cigar, 1995).

The accord of the Sheikh Abdullah was criticized and protested not only Pakistan but
by the international community. The protest by the Pakistani Government was
recorded before the international community.

Sheikh Abdullah has given his appearance as the sole representative and spokesman
of the peoples of Kashmir remained dubious because his position was controversial
itself in the Kashmir. In fact he had serious clashes with the Mir Waiz Umer Farooq
who was the leader of the Muslim Conference (Husain, 1998).

So, it is very difficult to say that the Accord of 1975 was the approval of the instrument
of the accession by the sheikh Abdullah.

5.6 Indian Constitution and Plebiscite in Kashmir

It has been argued by some jurists including the government of India that there is no
provision in the Indian Constitution for holding the plebiscite in Kashmir. According to
them Indian constitution cannot allow any state to secede from the union of India.

In order to reply the above said version of the Indian government we need to mention
the article 3 of the Indian constitution. According to the Article 3 of the Indian
Constitution which states (Parker 2003) ,that;

“Parliament may by law—

(a) form a new State by separation of territory from any State or by uniting
two or more States or parts of States or by uniting any territory to a part of
any State;

(b) Increase the area of any State;

(c) diminish the area of any State;

(d) alter the boundaries of any State;
(e) alter the name of any State"

This article is very clear that Indian parliament has full power to create new states and alter the boundaries or areas of any state or the names of existing states. If any change is required under this article then bill is to be presented before the president of the India and President will refer the bill to the assembly of affecting the state.

However further proviso have been added also for state of Jammu and Kashmir. It has been said that no bill will be introduced in the parliament for the increasing, altering, or diminishing the status of Jammu and Kashmir unless that is passed by the assembly of the Jammu and Kashmir (Noorani, 2001).

Indian government has been failed to follow the United Nations Resolution of 1948 regarding the final disposal of the state of Jammu and Kashmir. Because this resolution is for the free and impartial plebiscite in the valley and for this purpose assurance was given by both the countries India and Pakistan (Haider, 1992).

India has also violated the resolutions of 1951 and 1957 of the United Nations where it was forbidden to the Indian government not to do any act which determines any shape or affiliation of the state of Jammu and Kashmir except the right of self determination. It was a failure of the Indian government to act upon the resolutions of the United Nations while determining the ad hoc status of the Jammu and Kashmir. In fact this is a violation of the principal of good faith by the Indian state. It is a great question mark on the largest democratic state that whether it has followed the principle of good faith or acted in good faith as she has promised with international community at the floor of the United Nations (Husain, 1998).
5.7 Recognition of Right of Self Determination in Different Countries

The right of self determination which is universally accepted a basic fundamental right. This rights is guaranteed by al the international instruments of human rights law. As right of self determination is part of the charter of the United Nations and the international Covenant on Civil and Political Rights. According to the Committee of the Elimination of All Forms of Racial Discrimination, the right of self determination is fundamental principal of international law. The application of this right is not limited only to colonized states but now it is expanded to all the peoples on the basis of fundamental human rights.

The right of self determination has been exercised in the different countries as mentioned below;

5.7.1 East Timor

East Timor is small country situated in the South East Asia. The official name of the East Timor is democratic republic of Timor-Leste. Portugal's were the first invaders on east Timor and they landed there in the 16th century. They made the East Timor as its colony. East Timor was declared as an independent state in 1975 by the Portugal. After nine days of liberation from Portugal, east Timor was occupies by the Indonesia which is a neighboring country. It was converted as province of the Indonesia (Cigar, 1995).

Indonesia has made huge investment in the East Timor and the considerable infrastructure was improved but even then dissatisfaction was remained in the hearts of the residents in the area of Timor. The conflict was highlighted by the militants of Timor for liberation and it is estimated that more than 10 millions causalities were occurred from 1975 to 1999 in east Timor (ibid).

In order to resolve the issue of Timor, referendum was conducted in 1999 by the United nations. Resultantly majority had decided to live as an independent state and
not to live with Indonesia. After the referendum the militants who were against the independence started violence by the support of Indonesian Military in East Timor. A lot of infrastructure was destroyed during this conflict (Taylor, 2003).

After emergence of violence the International Force for East Timor was sent in East Timor which has restored the peace in the whole country. East Timor Internationally recognized as an independent state in 20 may 2002 (Shelton, 2005).

After the Liberation from Portugal, an international East Timor Solidarity Movement was started in East Timor against the Indonesian occupation. The purpose of this movement was to fight for independence. This movement was supported by the human rights activists, churches and other peace promoter organizations. This solidarity movement had started its infrastructure in other countries as well. The movement was also supported by the Australia, Portugal, America, and other European countries (Ricklefs, 1991).

East Timor is a case of delayed decolonization. After the Portugal, the Indonesian government tried to deprive the people of East Timor from the exercise of the right of self determination. United Nations has played vital role in East Timor and tried to resolve the issue according to the resolutions passed by it.

The United Nations Transitional Period for East Timor was not an easy task for the United Nations and especially the government structure. Although this had been used on several occasions by the United Nations in the different parts of the world. United Nations has played very effective role for peace for the new generation (Simma, 2002).

It has been pointed out that in the absence of any controversy or internal conflict in the territory of East Timor made an easy job for the administration of the United Nations. It has also been observed that the population of East Timor is not a problem maker and not divided in any ethnic or social distribution but it is a peace loving society. They appreciated the involvement of United Nations as peace loving mission and welcomed the improvement of the infrastructure of the country. In spite of all this East Timor may not be an easy task because of its immaturity in the democracy and administration. The institution building is still in its at early stages.
If we look at the history of the East Timor then it seems that the involvement of the United Nations is not new. In 1960, the United Nations had given to the East Timor the status of Non Self Governing territory (R.S, 1980).

In 1974, when the Portugal’s army taken over the government in Portugal then new emerging government in Portugal while accepted the duties, favored the autonomous of the colonies and acknowledged the right of self determination of the people of the east Timor (Arnold, 2008).

After this news, several democratic parties were formed in east Timor. The most important parties were the Timorese Democratic Union and the Timorese democratic Association. The Timorese Democratic Union had preferred the extension of the federation of Portugal and the Timorese Association preferred East Timor as an independent state. The Timorese Democratic Association had changed its name and formed a new name as Revolutionary Front for an Independent East Timor. The purpose of FRETILIN was to fight for independence (Steel, 2002).

The emergence of these two parties started new controversy in the country and civil war was started. On 28 November 1975, Fretilin declared independence and proclaimed the “Democratic Republic of East Timor”. But this hope for the independence of east Timor ended soon after few days when the Indonesian army occupied after the invitation by the Timorese Democratic Union (ibid).

The action of Indonesian government was strongly condemned by the international community. The United Nations had passed Resolution against the action of the government of Indonesia and further declared that the action of the Indonesia was against the right of self determination and independence of the people of East Timor. The resolution demanded from the Indonesia that it should withdraw its forces immediately from the East Timor (Meron, 1998).

In spite of all the agitations from the international community, The government of Indonesia has not withdrawn its forces and declared the East Timor as its 27th province which was denial of the right of self determination of the people of east Timor (ibid).
Another resolution of the Security Council was passed in 1976 for the withdrawal of forces of the Indonesia. After the 1976 the matter was not put up until 1999. But the question of east Timor remained the part of the agenda of General assembly till 1999 (Roddley, 1999).

Australian government was the only country which has recognized status of East Timor in Indonesia firstly de jure and after some time de facto. In 1991 an agreement was made between Australia and Indonesia named as “Timor-Gap-Treaty” and in this treaty Australia recognized the East Timor as province of the Indonesia. The matter was taken before the International Court of Justice but it was not concluded by the ICJ due to the non attendance of Indonesia as a third party (Chopra, 2000).

A new era of resistance was started after 1990 in East Timor and mainly youngsters were involved. Public participated in the country wide protests and those protests attracted the world intention (Steele, 2000).

In 1997 a Council for Timorese Resistance was established for the opposition of Indonesian occupation. The pressure was built on Indonesia by the Asian countries through different economic issues (ibid).

The pressure was increasing day by day on the Indonesia. The International community resisting strongly for the right of the self determination of the East Timor. An agreement was completed between Portugal and Indonesia in 1999, in which it was decided that the people of East Timor will be finally given a right to decide for their future by referendum (Orrego, 1995).

The two options were given to the peoples of Timorese that whether they want to live with Indonesia or as an independent state. The whole arrangement was on the part of Indonesian Military including the security for the referendum. The referendum was held on 30 august 1999. Majority of the Timorese with 78% decided to live as an independent state (Leesa, 2011).

After the result of the referendum, at large scale violence started in the territory of Timor. Indonesian Military a looted and destroyed lot house even in the capital and it is estimated that more than 50 percent infra structure was destroyed.

When the situation was going on very dangerous then the Security Council of the United Nations came into motion and announced the deployment of International
Force for the peace and security in the territory. The United Nations Passed a Resolution 1272 and under this resolution the Security Council has decided to United Nations Transitional Administration in East Timor (UNTAET). Under this the overall control of the administration of the East Timor was given for the purpose of maintaining the peace and security in the territory. The people of East Timor were asked to cooperate with the Transitional force of the United Nations. Along with the civilians several troops of military were deployed in the Timor. In 2002, the overall control was transferred to the Timor forces (ibid).

East Timor remained under the possession of Portugalis for several centuries, and then for 35 years under the control of Indonesian government, got the independence at least in 2002 (Martin, 2001). The process of decolonization was started from the Mid of the 20th century in Asia and the case of East Timor is a process of “delayed decolonization”. Therefore the right of self determination is not controversial for the people of East Timor. This is the most recent example of the exercise of the right of self determination. Third, the right to self-determination implied a duty (on both states and the United Nations) to assist the entity entitled to self-determination, i.e. the population of East Timor, to achieve this self-determination (Lessa, 2011).

It thus imposed on UNTAET the duty to protect and promote the territorial integrity, resources and future sustainable development of the state-in-waiting.

It is the right of the all the democratic government to form government under international law is a customary right which cannot be denied in any circumstances. International law imposes the duty on all the democratic countries that they should respect the democratic right of the people. The democratic is that the people should consult the government and they should have option to choose their representatives for the government (Taylor, 2003).

There are several reports have been received by the international community about the violation of human right in East Timor. It is pertinent to mention here that the most effective forum is the organs of United Nations for the protection of human rights in the world. Still there is no effective mechanism for the monitoring of the status of human rights in East Timor.
It is very clear from the above study that the issue of Kashmir and East Timor has much similarity. Both the countries remained under the control of foreign countries against the norms of international law.

The exercise of the right of self determination left lot of questions for the international community. It has paved the ways for the efforts of the right of self determination. The role of the United Nations in this regard is increased beyond any shadow of doubt. It has given an encouragement for the people of those countries which are under the process of their freedom and are living in occupation of other countries like Kashmir. It has also acknowledged the efforts of the colonized states for the exercise of the right of self determination.

No one can deny the development of right of self determination in international which is a ray hope for the people of Kashmir. Currently the status of Kashmir is uncertain on the ground that it is not clear whether Kashmir is a part of Pakistan, India or as an independent state. There was same case in East Timor where the status of east Timor was also uncertain.

Security Council has passed several Resolutions on the issue of Kashmir where it was urged that the status of the Kashmir should be determined with the exercise of right of self determination through impartial plebiscite. As the state of Kashmir is a threat to peace in the south Asia between the two atomic powers India and Pakistan. The case of the East Timor was also same, because it was also threat to peace for the region. In order to resolve this issue, the different resolutions of the United Nations were passed and resultantly the people of East Timor were given the opportunity to exercise the right of self determination in the light of resolution.

The conditions prevailed in Kashmir while comparing with the east Timor requires measures for the implementation of the principles of international law. The intervention of international community is required in Kashmir in the light of the resolutions passed by the Security Council of the United Nations.

The current status of Kashmir calls for the intervention of international community for the exercise of the right of self determination in Kashmir. If referendum could be
conducted in East Timor then why there are hurdles for the free and impartial plebiscite in Kashmir in the light of the resolutions passed by the Security Council of the United Nations. In Kashmir the bloodshed is started from 1947 for the future status of the state. The resolutions of free plebiscite are being deliberately ignored by the Indian government (Shelton, 2005).

Recent development of the right of self determination in east Timor requires the recognition of this right in the territory of Kashmir as well and responsibility is laid down on the international community. The indication and directions are already there in the shape of the resolution of the United Nations which is the free and impartial plebiscite in the state of Kashmir.

As the conflict of Kashmir is global threat to the international peace, it is well founded ground for the implementation of the right of self determination. The massive violation of human rights in Kashmir will continue until the internally recognized right is not given to the people of Kashmir as it is given to the east Timor because there is much similarity in the both conflicts and same resolutions are passed by the United Nations.

5.7.2 Right of Self Determination and Kosovo Case

The people of Kosovo got the independence by the act of its parliament in order to response to the voice of the people. Legally the constitutional position of the Kosovo was mainly on two categories. The main features were the independence in the areas of territorial integrity, judiciary, finance, economics, protection of constitutionality and legislation, international relations, and maintaining order, providing security and national defense. Kosovo has vital role in the Yugoslavia and it has an integral role in the federation of Yugoslavia which specific border and boundaries (Leibenberg, 2000) Kosovo was one of eight federal units which had its own president, national bank and other administrative bodies with defined powers and duties. Also, Kosovo was permitted a measure of international action within the framework of a foreign policy defined by Yugoslavia and international treaties (Shelton, 2005).

The Declaration of Independence of Kosovo of 1990 made clear the paths of Kosovo Albania Claim from Serbia. The advocates of Kosovo claims that the Kosovo Albanian
are people and being people they have right of self determination. They also argued that the Kosovo Albanian have right of self determination as per the principles of international recognition of right of self determination. They further argued that their rights are being dishonored by the Central Government of Yugoslavia (Martin, 2001). The people of Kosovo Albanians are distinct in culture, and customs from the other groups of the region, they have their separate identification. It has been observed that the Kosovo has separate territory in the region from the Yugoslavia since 1918. It has also been shown that since the creation of the Socialist Federal Republic of Yugoslavia (SFRY), Kosovo has been regarded as a distinct region, and accordingly, it was granted autonomy within the framework of the SFRY, with its status being upgraded from an autonomous region to a province by the 1974 SFRY Constitution (Chopra, 2000). The Kosovo was not granted separate official status even then it was geographically demarcated as separate state with separate boundaries which shows the distinct identification of Albanian people of Kosovo. It was further in 1974 the constitution of Yugoslavia stipulated that the boundaries of Kosovo cannot be changed without the prior approval of the parliament of Yugoslavia (ibid). Various statements have been recorded of the international community that the people of Kosovo are entitled for the right of self determination. In 1997 a resolution was passed by the United Nations that the government of Yugoslavia should give the right for the establishment of democratic institutions in the Kosovo. There is no doubt that the United Nations urged that the people of Kosovo should be given right of self determination as per their wishes and they should be at liberty to decide their future status (Parker, 2003). The Security Council after one year stressed further that political dialogue should be started in order to determine the official status of the Kosovo. It has been observed that the international community was feeling hesitation regarding the right of self determination and to support the declaration of Independence 1991 of the people of Kosovo on the grounds that if its supported then it will be base of new Pandora box and will open a gate for other international issues (Lessa, 2011).
The case of Kosovo has great importance before the international community. This territory remained under the oppressive control of Serbia since long time. This tenure was very painful for them because they were deprived from the exercise of their basic rights along with the right of self determination (Taylor, 2003);
The main features of the Serbian government policy pursued in Kosovo were:

1. a total blockage of the Kosovo Albanian people from a meaningful realization of its political, economic, social and cultural development;
2. Systematic discrimination and the commitment of gross human right violations;
3. The commitment of acts seriously attacking the physical existence and integrity of the Kosovo Albanian people especially after the Serbian forces’ crackdowns in Kosovo from early spring 1998.

The Serbian regime was of course was a bad regime for the people of Kosovo in the sense that the Serbian government deprived them from all the constitutional rights which were provided them in the Yugoslavian constitution of 1974. There was full control over the main institutions of Kosovo like banks, judiciary, education and police with full dominance. During this time the media of Kosovo was banned and language was discouraged. All the schools and universities were closed for Albanian students. It is estimated that huge number of people were deprived from their jobs and employment. The whole society of Kosovo was badly damaged by the Serbian administration. The situation of human rights in the Kosovo became great challenge for the international community (Steele, 2000).

The Serbian regime had divided the Kosovo society badly and state of emergency was proclaimed. Several laws were passed by the Serbian assembly in order to improve the human rights situations in Kosovo but unfortunately these laws proved insufficient. The police could not change its attitude and added proudly contribution for the deterioration of Kosovo society. These laws also could not enable the status of the courts (Umozoroke, (1972).

It was very astonishing that the education system of Kosovo was destroyed and funding for education was decreased, students were not allowed to take admissions in the universities. The professors of the Albanian universities were removed from their
jobs. Several scientific institutions were destroyed. The basic fundamental rights were infringed particularly right to life (Chopra, 2000).

In response to criticism by the international community on Serbian government for the massive violations of human rights in Kosovo, the Serbian government taken the plea that they were fighting against the terrorist and other criminals. The Serbian government denied the violation of human rights in Kosovo. But this defense of Serbian government was negated by the photos, clips, videos and other paper material.

As far as the question of right of self determination is concerned for the people of Kosovo, that is very clear and supports the claim of Kosovo by the international community that the people of Kosovo are living in the territory since long time. These people have their own identification in the region with distinct culture and custom. They preserved their language and culture on ethnic grounds. By nature the people of Kosovo were peaceful and were struggling for the peaceful solution of the independent issue. They wanted the freedom from the external powers and aggressions through the resolutions and other conventions of the United Nations which were passed for the recognition of right of self determination (Meron, 1998).

From the above study and different arguments it is developed that there are three reasons for granting the right of self determination to the people of Kosovo. Firstly, unjust with the territory, secondly dissolution of country and thirdly genocide. The third one is the most attractive for the international community.

It has been the wish of international community that genocide should be stopped and the decision for the future status of the people of Kosovo should be granted according to the wish of the people.

Presently the atrocities are good defense for the demand of right of self determination. The strategic role played by NATO and most of the member countries of the European Union and Organization for Economic Cooperation & Development (OECD) in achieving independence and freedom for the people of Kosovo is a significant blueprint that can be directly applied to the longstanding crisis of the disputed Jammu and Kashmir in view of the fact since so many aspects of their struggle for self-
determination against an oppressive foreign state are similar to that of Kosovo (Boyle, 1996).

The peoples of Kosovo and Kashmir were forced to join the territory which totally distinct in culture, ethnic, language and literature. Both the countries faced violations of human rights by the external forces and were deprived from the basic human rights, the right of self determination recognized by the international community. The nature of the abuses of human rights in Kosovo and Kashmir were the same. The laws passed in order to control the freedom movements in Kosovo are also almost of similar nature.

The history of Kosovo and Kashmir are almost same, the tension in Kosovo remained active for almost half of century and similarly in Kashmir the massive destruction of the will of the people is still in long queue. The most important the conflict of Kashmir is just like piece of meat between the two loins, which are India and Pakistan and both are atomic powers which is huge apprehension for the 3rd world war. If the issue of Kashmir is resolved then it will go long way for the peace and prosperity of both the atomic powers India and Pakistan.

The declaration of Kosovo is beautifully summarized the emotions of the people who suffered for many decades under the oppression of foreign regime. The declaration showed the wishes to build such a great society which respects and honor the status of human rights in the democratic society. Its main purpose was to create such a society which promotes the will of the people in the affairs of the state (Victoria, 2000).

The people of Kashmir are still waiting for the activation of those documents of human rights which were affirmed for the future status of this territory. The people of Jammu and Kashmir have been subjected to gross human rights violations, including custodial killings, army brutality, beatings, torture, violence, reprisal attacks against civilians, kidnappings and disappearances, destruction of personal property, family unit destruction leaving children orphaned and homeless, child abductions, starvation and disease, massive psychological illnesses (including depression, bipolar disorder or schizophrenia) resulting from trauma of daily violence, and sexual exploitation.

Kashmir which is the most elegant and beautiful piece of land on the earth. The European parliament declared it as gorgeous prison of the earth.
In order to follow the Kosovo model the international community should take such effective measure for the implementation of internal covenants and norms in the case of Kashmir. The situations are same, the facts of the case almost similar then why international community is reluctant to follow the case of Kosovo and east Timor as a precedent for the people of Kashmir.

A lot of water has been passed from the bridges of rivers in Kashmir but the people who are living there are still waiting for any breakthrough which can facilitate the process for the exercise of right of self determination. They are waiting those moments when their voices would be heard by the forums of international community. The morning which announce the good news that international community has taken the steps for the protection of human rights in the state of Kashmir.

This question is being asked regularly by the children and girls of the territory of Kashmir that when international community will come forward to protect their human rights as they taken the measures for the realization of basic fundamental rights of the people of Kosovo.

5.7.3 **Borneo Conflict and the Right of Self Determination**

The conflict of Borneo started in 1962 when the British forces were withdrawn from the Malaysia. The situation got the serious way when Indonesia refused to recognize the new government of Malaysian. The creations of Malaysian laid severe criticism by the leaders on the British government for its failure in making decision. The Borneo conflict started when Philippines government resisted in Malaysia (Taylor, 2003).

In 1963 Kalimantan National Army had started revolt in the region with support of Indonesian government and they kidnapped the sultan of Brunei for purpose of snatching oil resources. While in reaction government of Britain sent their troops there and declared victory in 1963 (ibid).

Due to the intervention of British government the newly government of Malaysian and Indonesian government agreed to hold free and impartial referendum in Borneo in order to resolve the conflict in the region.
But the conflict was not fully resolved and the war over Borneo started. A peaceful negotiation was started between Indonesia and Malaysian including Philippine government on several occasions. In 1966, after some dialogue it was declared that the issue is resolved over Borneo (Ricklefs, 1991).

The involvement of Japani government and secretary of state of United States of America helped to resolve the issue. Japan was already considered as credible mediator in the South Asia.

On the other the Indonesian President Suharto realized the importance of investment and economic conditions with the world. He came to the solution that there will be no outcome of the war in the region. The same view was adopted by the Malaysian government. The involvement of Borneo was considered a major factor resolving the dispute of Borneo (Shelton, 2005).

The involvement of numerous international organizations and governments made it easy to resolve the issue of Borneo through negotiations. The involvement of the United Nations was considered as important factor in this issue.

Kashmir and Borneo conflicts are similar in a number of reasons. Firstly, both the territories have dispute with the neighbor countries and the remained under the domain of British regime. The involved nations have created tensions for each other. After the world war –II Britain had realized that it is going difficult to maintain control over the occupied territories (Orrego, 1995).

Under these circumstances the British government had decided to give the freedom to India, Pakistan and Indonesia in South Asia. With the end of colonialism, new territorial disputes were arisen in the different areas for the ownership of the territory. In fact the problem left by the British government was unjustified distribution of land demarcation of boundaries. Resultantly the neighbor countries refused to accept those territories. The Kashmir and Borneo disputes are rooted by the colonial history (Gidvani, 2008).

India and Pakistan must do some satisfactorily act of negotiations over Kashmir issue in order to resolve the issue. They should kept in mind the example of Borneo conflict.
where Indonesian government and Malay government done positive steps for the solution of this conflict. It was no doubt boundary dispute like Kashmir but resultanty resolved with dialogue.

The most important development was the recognition of the right of self determination in the case of Borneo. For the exercise of right of self determination in Borneo conflict, referendum was held with free and impartial measures and the people of Borneo were given free choice and environment in order to determine their future status (Lessa, 2011).

Same measure can be adopted in the case of Kashmir by the international community in order to resolve this issue. The resolution of the Security Council of the United Nations was passed for the people of Kashmir where their right of self determination was recognized by the international community. There are various factors in the case of Kashmir which have contributed the tension between India and Pakistan.

The economic factor may be crucial issue because if dispute is resolved then both countries may start trade with each other otherwise they are losing the facilities of trade due to high tension over the dispute of Kashmir.

Similarly Indonesia and the Malay government realized that Borneo conflict will not render the opportunities for free trade and prosperity of the region so the conflict must be resolved according to the will of the people of Borneo and consequently referendum was held (ibid).

Same methodology may be adopted in order to decide the conflict of Kashmir between India and Pakistan while obeying the resolutions of Security Council of the United Nations where referendum was promised by the international community.

5.7.4 Tibet and Right of Self Determination

When we study the history of Tibet then it seems that the Tibet was a sovereign state before 1950. At that Tibet fulfilled all the requirements of statehood. Tibetans have
been distinct nation even before the occupation of China. The government of Tibet has full control over the boundaries of the territory. They were used to issue passports to its citizens as they have separate identification in the world (Parker, 2003).

Tibet was not part of china and was an independent state. It has never been the part of china even during the time of Mongol.

When the China’s army entered in the Tibet, at that time Tibet was an independent state and fulfills all the requirements of dependant state. Under International law there are four requirements for the statehood. These requirements are (Mian,2012);

1. Population
2. There must be territory
3. Government is another requirement for state, there must stable government which should have effective control over the territory.
4. The government should have capacity to enter into relationship with the other sovereign states.

The state of Tibet possessed all the above said requirements. The entry of China was absolutely illegal and violation of the norms and principles of international law.

International law recognizes the right of self determination of the people as per their wishes. It authorizes the people to freely choose their political status without any external pressure or interference in order to chase their socio and economic growth as an independent nation (Gupta,2006).

The residents of Tibet are people beyond any shadow of doubt and they fulfill the definition of people as defined by the international community. The peoples of Tibet are entitled for the right of self determination from the China because the government of china has no effective control over the territory of Tibet.

The government of China has enforced powerfully its sovereignty over the Tibet with giving them the chance of the exercise of right of self determination.
Since the control of China over Tibet, The Republic of China has been accused of massive violations of Human rights in the Tibet. The peoples of Tibet are being deprived from their basic fundamental of human rights (Brazalie, 2003).

The sympathies of the international community are with the Tibetans because they feel that independent Tibet would be guarantee of stable peace in the territory. They also consider that the independent will ensure the dignity and respect of human rights in the region.

The right of self determination for the people of Tibet must be acknowledged by the International community because the republic of China has illegitimate claim over the territory of Tibet which is not maintainable as per the charter of the United Nations. Further the authority of Republic of China was not established by the free will of the people of Tibet and they have not exercised the right of self determination.

There is much similarity between Tibet and Kashmir disputes. Both the countries were not given the opportunity to exercise the right of self determination. Both the countries fulfill the requirements of statehood under international law. Their right must be protected by the international community.

It is very alarming situation for the territory of Kashmir and Tibet that they are being deprived from the basic fundamental human rights. The right of self determination is a universally recognized right by the international community. The Security Council has passed various resolutions for the recognition of right of self determination. It is the need of the time that India and China must realize the demand of the peoples living in Kashmir and Tibet and they must be given opportunity to choose freely their future political status.
Chapter 6

Case Studies on Human Rights Violations and
International Community’s Response

Kashmir is bone of contention between the two atomic super powers India and Pakistan in the south Asia. Kashmir was left unsolved by the British government at the time of partition in India in 1947. Several resolutions were passed by the United Nations about the future status of the state of Kashmir.

Since that time resolutions of the United Nations are not implemented. The government of India is doing massive violations of human rights in Kashmir. It has been reported by the international organization and agencies about the violations of human rights in Kashmir by the Indian forces. India is violating human rights recurrently. Several draconian law have been introduced by the Indian government which is violation of international human rights law. India has also signed various treaties and conventions for the protection of human rights but in Kashmir all such treaties and conventions are being violated by the Indian law enforcement agencies.

Unfortunately International community has not played its role which was the need of the day. International community is silent on the breach of promises which were made by the Indian government with the world for the protection of human rights.

There are several examples in the world where international community has played very effective role for the implementation of human rights. Several steps have been taken so far by the United Nations against the wrong doers but unfortunately UN is silent here in Kashmir.

There are some case studies where international community has taken serious action against the violations of human rights, these are as follows;
6.1 Zimbabwe

There was lot of systematic reports from the different sources about the violation of human rights in administered period of Mugabe and by his party. According to the several reports of Amnesty International that there is a sever violation of basic fundamental human rights like freedom of speech, freedom of assembly, equal protection before law and the most important right to life. Civil society, political parties and media has been victimized by the government in Zimbabwe (Widmalm, 2006).

The violations of human rights are included murder, torture, violence against women and children, disappearance are the common violations in Zimbabwe since 2000 A.D. The bad governance is badly affecting the economy of the country. The current crisis of the country are considerably increasing the poverty and poor health (Buchanan, 2007).

Human rights violations are continuously being reported by the different agencies and NGO’s from Zimbabwe. These reports show that the government of Zimbabwe have been failed to implement the instruments of human in the country.

From 2001 to 2006 more than fifteen thousand cases have been reported and 90 percent cases out of them were complained against the police. Police torture has been the most effectual instrument for the violation of human rights (ibid).

It has been observed that the constitution of the Zimbabwe which was enacted in 2005 is itself great violation of human rights. According to the amendments the following legislation is against the human rights (Griffiths, 2003);

1. Absence of fundamental rights from property
2. Limitations on the freedom of movement
3. No option for no confident vote
4. Unlimited powers to the president of Zimbabwe

Due to the above said amendments the constitution itself loses the shadow for the protection of basic fundamental rights. In every country the constitution is considered the father of the fundamental rights which are universal and cannot be derogated in
any circumstances. When constitutional law is itself week then how the institutions of the state will deliver.
There are multi reasons which are responsible for the violation of human rights, like Lack of independence of judiciary and non obeying the decisions of the judiciary are the major factors which are promoting the violations of the human rights in the Zimbabwe. Human rights violations can only be stopped in the state when the judicial system of any country works properly and its decisions are obeyed by the institutions of the state otherwise human rights violations are frequently committed.
Unfortunately some law were also passed in Zimbabwe which are termed as draconian laws like the black laws which are implemented by the Indian government in the valley of Kashmir. These laws are also the violation of human rights because it restricts the right to speech and right movement.
There are different ways where police commits human rights violations in Zimbabwe for example in investigation, interrogations and in detentions. Excessive use of force is also another measure of police which is adopted for the violation of human rights in Zimbabwe (Dormann, 2003).
The leaders of Southern African Development Community expressed their serious concern on the violation of human rights in Zimbabwe. They have condemned the massive destruction of violence against the basic fundamental human rights (Asad, 2007).
The United Nations Human Rights Council’s first Universal Periodic Review of Zimbabwe took place in October 2011. In this report it was highlighted that there is sever violation of human rights in Zimbabwe and government is itself involved in such violations but this allegation was rebutted by the government of Zimbabwe regarding the violation of human rights (Times, 2012).
Similarly European Union and United States of America have also targeted the government of Mugabe about the violation of human rights and they held him responsible for this violence (Harris, 2012).
From the above study it is clear that the international community has strongly condemned the massive violation of human rights in Zimbabwe. As Zimbabwe is a member of major human rights instruments like Organization of African Union,
Universal Declaration of Human Rights, the Charter of the United Nations, International Covenant on Civil and Political Rights and the Geneva Conventions. The stress was given on the government of Zimbabwe to stop the violation of human rights and to comply the treaties and conventions with the international community. It is the primary duty of every state to fulfill the promises with the international community (Mian, 2012).

So the pressure was built on the government of Zimbabwe to obey the international law of human rights. Similar demand is from the people of Kashmir before the international community that the violation of human rights must be stopped by the Indian forces whereas the Indian government is also signatory of all the above said human rights instruments.

6.2 Bosnia

In 1991, a war was started in the former Yugoslavia, the independence was declared by the Bosnia Herzegovina and the Croatia as sovereign states. Soon after the declaration of independence resistance was started in the region by the Serbs. In Bosnia there was majority of Muslims and in Croatia Christian were in majority. It has been reported that during that conflict over 200000 Muslims were killed and more than 2 million were displaced (Taylor, 2003).

As far as the status of human rights is concerned, there was massive violation of human rights in the Bosnia by the Serbian military and paramilitary forces. The crimes which were being committed by the Serbian forces those include the murder, extra judicial killings, forced disappearances, rape, illegal evacuation from the homes and mass killings. The infrastructure was destroyed like the burning of houses, buildings, public institutions, schools and hospitals. The atrocities committed were of serious nature and disturbed the family system in the Bosnia. The effected persons lost their close family members with serious trauma. Those who are escaped during that conflict and atrocities of human rights have been become the patients of psycho and other fatal diseases.

In 1993, War Crimes Tribunal was established by the United Nations. The purpose of this tribunal was to investigate the massive destruction of human rights and war crimes
in the Bosnia. Thousands of people have recorded their statements before the tribunal and confirmed the violations of human rights in the Bosnia. After the detailed survey and observations of the tribunal, it had imposed the responsibility on different individuals (Martin, 2001).

Twenty first century is called the period for the promotion and protection of human rights in the world. Several efforts were made in order to make an effective system for the development of human rights. Governments were forced to adopt certain measures for the respect and dignity of human rights.

New laws were introduced on national and international level for the protection of human rights. Several tribunals were formed in order to convict the violators. Different bodies and non-governmental organizations were formed which very impressive source for the reporting of abusive of human rights in the different parts of world. Media has also played very effective role in this regard. By the help of independent media the government is prevented to exercise their will and arbitrary decisions which are against the human rights law.

It has been seen that the Security Council of the United Nations is playing positive role in this respect but it is still ignoring some parts of the world as well. In former Yugoslavia, the massive violation of human right attracted the attention of the international community. A systematic mechanism was introduced by the United Nations in order to stop the violations of human rights. Several step in this regard were taken by the United nations which including the Commission of Experts for investigation of abusive of human rights in 1992, the International Criminal tribunal for former Yugoslavia, the establishment of Special Reporter on human rights (Parker, 2003).

In spite of all the above said steps, the violation of human rights could not stopped satisfactorily. While in reaction by the international community NATO forces were deployed in the Bosnia against the forces of former Yugoslavia. United States of America has taken keen interest in the Bosnian issue and involved itself not only with military support but diplomatic missions as well and Dayton Peace Agreement was signed in 1995 in Paris. This agreement was signed by the Bosnian president and former Yugoslavia and Croatia. This agreement is very good example for the effective
treaty and mechanism for the enforcement of human rights. The parties in the agreement acknowledged that protection of refugees, respect for human rights and the settlement of displaced persons will be the vital efforts for peace (Steele, 2002). Furthermore the constitution of the Bosnia Herzegovina included all those human rights which are enlisted in the charter of European Union with the spirit that the same will be implemented in the Bosnia. The legislature, executive, and judiciary were given the responsibility for the implementation of human rights safeguarded in the European Union and the constitution of the Bosnia and Herzegovina (Gidvani, 2008).

The constitutional court of Bosnia was given wide jurisdiction regarding the implementation of human rights. Right of appeal was given to victim of human rights to file an appeal before the constitutional court against the decision of any court if those are violations of human rights which are enlisted in the charter of European Union. The decisions of the constitutional court will be declared as final decision. The Bill of rights of the European Union was fully applicable in true spirit in Bosnia as well and it shall have the priority over all the existing laws (Orrego, 1995).

No law was to be legislated which is against the provisions of the European Convention of Human Rights. In case of any confusion regarding any law that whether it is compatible with the European Convention of Human Rights or not then matter may be referred to the International Court of Justice.

Human Rights Commission was appointed in Bosnia and Herzegovina in order to assist the parties for the protection of human rights. The mandate of the commission was to adopt such measures which are necessary for the honoring the highest level of human rights which are internationally recognized by the international community. The commission is fully authorized to investigate and to deal the complaints of individual regarding the violation of human rights. The decisions of the commission have the equal status with the decisions of the constitutional court (Leibenberg, 2000).

In Bosnia there are numerous organizations which are working for the cause of human rights. In the presence of these bodies for human rights the question arises about the implementation of decisions of the tribunal of human rights. Normally this duty is imposed on the police of that country to enforce the decision but in Bosnia there is no
such mechanism in the constitution. The Dayton agreement is also unfortunately silent on this issue.

The International Police Task Force (IPTF) which was established in 1995 by the Security Council of the United Nations even has no such operative authority to involve itself directly in the implementation of decisions. Although it has direct access to the local records and documents of the police and criminal justice system including all places of detention but can not enforce decisions. In case of non compliance it can report to the Human Rights Commission against such issue for further action. The major body for the implementation of human rights decisions in Bosnia is Multinational Military Implementation Force established by the United Nation’s Security Council in 1995 in accordance with the Dayton Peace Agreement (Lessa, 2011).

Apart from this several NGO’s are also working for the protection of human rights in Bosnia. The United Nations itself is involved deeply and several programs and actions have been taken in order to improve the human rights situation in Bosnia.

The atrocities of human rights are almost same in Bosnia and Kashmir. There are massive violations have been occurred in Bosnia like Kashmir. Over this issue the international community has taken several steps in order to improve the status of human rights in Bosnia. But unfortunately in Kashmir, no such attention has been given by the international community. The so called largest democracy the Indian state is propagating its democratic values but deliberating ignoring the Kashmir conflict and the violations of human rights.

6.3 Rwanda

Rwanda is the smallest country in Africa and is very fertile land in economic resources. Unfortunately this country is facing bad governance from last decades. Due to bad governance the people were being targeted by the irate tribal hatred.

Before the colonial period the Tutsi were on higher status and the Hutu were on lower status in the social system of Rwanda. Rwanda got independence in 1962 and after independence huge number of Tutsi became refuge in the neighbor countries (Keegan, 2001).
In spite of this a new wave of violence and ethnic conflict were continued after independence. Tutsi refugees tried to restore their position in Rwanda and to start their activities and social life. They started to target Hutu tribes and their government. Several attacks were occurred on the Tutsi community between 1962 to 1967 lots of people were killed and many became refugee due the violence by the Hutu organization. The government bodies were also attacked during this wave of violence. It has been observed that till 1980 more than 400000 Rwandans became refugee due to the violence (Hillman, 2004).

Rwandan patriotic Front was formed in 1988 at kamala as military and political movement with certain aims. This was mainly depending on Tutsi exiles and they were experienced (Orrego, 1995).

In 1990 more than 7000 fighters attacked on the Rwanda from Uganda. In this violence all the Tutsi who were residing in the country were blamed by the government that they are also involved in the attack. Thousands were displaced due this attack. Propaganda were started through media and by radio against the different groups. Baseless rumors were spread by the different stake holders which resultantly started ethnic conflicts in the country (Liebenberg, 2000).

During this era, the violence attracted the attention of the international community in order to maintain peace and order in the country. For this Organization of African countries started its efforts. Arusha Peace Agreement was signed between the Hutu government and the leaders of the opposition in order to end the conflict in the country. Security Council had also established United Nations Assistance Mission for Rwanda (UNAMIR). The mandate of this mission was to maintain peace, efforts for the protection of human rights and to support for the peace keeping process in the country of Rwanda (ibid).

Almost all the parties who have signed agreement were willing to sustain peace and order in the society but that could not be fulfilled due to unnecessary delay in the implementation of the terms of the agreement. The human rights situation became very critical.

In 1994 when the plane of the president was crashed due to rocket attack, the violence in the country was started at large scale within half an hour. The Tutsi were the main
target by the guards of the president and paramilitary forces. More than 1 million people were killed in this wave of violence (Lessa, 2011). It was really great shock for the international community and the human rights activists. UNMAIR was failed to fulfill its responsibility positively because the violence was not stopped. As the mandate of UNAMIR was narrow and it was satisfactorily responded by the different groups. UN personnel and the diplomatic community in general became well aware of extremely worrying developments indicating that hard-liners in the government intended to overturn the Arusha Accords. There is little doubt that the international Society was in many cases warned by local people, including human rights activists and political leaders, that preparations were currently a crackdown on those who oppose regime Habyarimana. I know that it is hate-filled radio programs, and the distribution of arms and training of the militia. UNMAIR was badly failed to maintain peace and order in the different parts of Rwanda after the plane crash of president. The violence could not stop by the current strategy by the United Mission (Maculan, 2012).

Under the terms of the Arusha agreements, the United Nations was asked to provide peace keepers to monitor the agreement. His attitude and general incompetence led to the quietly in exile in Nairobi until his term expired. Further, accepting that genocide was happening would impose moral obligations to intervene and certainly legal obligations for the states that have ratified the Convention on Genocide (Orrego, 1995).

The response of international community was not satisfactorily because the member states had not fully cooperated with the UNAMIR.

The debate was started about the humanitarian intervention, when the rights of the citizens are violated barely and when the killing of innocent people is started then what steps should be taken by the international community. The question of sovereignty was also discussed and according to some scholars the states should have unconditional sovereignty over its territory but on the other side it was argued that it is responsibility of the international community to interfere in order to protect the rights of the citizens. The firm opinion was made that any government in the states or group of the people should not be allowed to start genocide.
The issue and situation of human rights in Kashmir is similar as it was in Rwanda. We have seen that the international community had played vital role in the maintenance of peace and order in Rwanda but it is failed in Kashmir to stop genocide which is being committed by the Indian government. Indian government is using every option which is suppressing the freedom and liberty of the citizens of Kashmir state. The worse and brutal acts are committed by the Indian soldiers. It is the time for the international community that it should play similar role for the protection of human rights in the valley of Kashmir as it had played in the case of Rwanda for the protection of human rights.

6.4 South Africa

South Africa has parliamentary system of government. Its constitution almost protects all the basic human rights in the country. The implementation of its constitutional provisions regarding the human rights is respected due to the repressive acts of the law enforcement agencies in South Africa. The struggle for the protection of human rights mainly based on the Freedom of Charter as declared by its president Nelson Mandela. The Freedom of Charter was signed in 1955 by the government of South Africa after the lengthy discussions and survey all over the country (Walzer, 2000). Different proposals were collected and finally passed Freedom of Charter. We can say that this charter is considered as ground norm for the struggle in South Africa. South Africa has significant importance for two reasons, one is the immigrants from Europe and other is its geographical importance because it has direct access to the sea paths and Suez Canal as compare to the other African countries in Africa. This country had faced lot of crisis relating to racial differences between white and black people because the black people are in majority and they have been always dominant on the white people which are in minority. Black people have been playing vital role in the socio political history of the region of South Africa (Gardam, 2004).

The political history of the South Africa is very satisfactory because it has experienced the process of elections since the century. A democratic process is being availed since long. The economy of the South Africa is also very developed as compare to the other African countries with modern infrastructure and equipment (Shelton, 2005).
From the 1970, considerable informations were collected regarding the conflict in apartheid era and it has attracted the attention of international community towards the massive violations of human rights. Several human rights organizations, state organs and the different groups of the civil society started to pay its attention on the violation of human rights in that era (ibid).

For the protection of human rights different arrangement has been done in the shape of African charter for human rights. This charter includes the civil and political rights along the social and economic rights. The responsibility for the implementation of these rights has been laid down on the states in the region.

The government of South Africa has decided not to prosecute the apartheid but they decided not to give, to some heinous crimes committed in that era to any compensation or relief (ibid).

For this purpose Truth Commission was established with limited scope but its powers to provide any relief or reconciliation was revolutionary and it became the example for the commissions previously established. While examining this commission and its powers it created certain doubts that whether the South African Truth Commission is compatible with the general principles of international law (Schindler,2004).

The Truth Reconciliation was established by the Nelson Mandela the president of South Africa in 1995 after the lengthy debates, discussions, conferences and the various proposals of the NGOs. Different suggestions and recommendations were included from the public. Open and impartial process was adopted for the selection of the commissioner for the Truth Commission (ibid).

After the completion of the commissioners’ process, a new controversy was started regarding the functions and powers of the Truth Commission. It was objected by the numerous NGOs that the hearings of the commission should be in camera not in open door. On the other side it was strongly opposed the proposal made by the NGOs and demanded the proceedings of the commission in open door. It was finally decided after the different objections that the proceedings of the commission will be open to public except in few cases where the matter is of great importance and related to the public interest (Moller, 2004).
It was also matter of controversy about the cutoff date of cases for the eligibility of amnesty. Different suggestions were made but finally President Nelson Mandela declared its implementation from the date of constitutional amendment which was made in 1997 (Arnold, 2008).

The primary objective of the commission was to promote harmony and unity among the different stakeholders in the state keeping in mind the previous conflicts. The mandate of the commission was wide and comprised on the 30 years tenure. The definition of the commission included the gross violation of human rights such as target killings, detention without trial, extra judicial killings, torture, ill treatment of detainees and other political victims.

The life span of the commission was initially for 18 months but it was extended for further 6 months by the president Nelson Mandela. The commission established three committees such as committee for the violation of human rights, Committee on Amnesty and Committee on Reparation and Rehabilitation.

The function of the Committee on the Violation of Human Rights was to gather and collect the information regarding the violation of human rights. It was also its duty to record the evidence and allegation regarding the violation of human rights in the state. Huge response was received by the committee from the people due to the special motivation by media and people come forward and recorded their evidence and provided the other use full informations (ibid). The most important work of the commission was a public hearing which was directly watched by the international media from all over the world.

The most controversial work was of the Committee of Amnesty because it has received thousands of the application for the amnesty. Although the committee was presided by the Judge but it faced lot of difficulties in order to decide the applications. The main ground for eligibility of the amnesty was full and true disclosure of the facts and figure regarding the violation of human rights. It was declared that the acts which are committed for personal benefits, with bad faith and ill will, not be part of option of amnesty. The decision of the committee will be taken by majority. The committee has also power to hold public hearings in the important cases (Schindler, 2004).
The main responsibility of the committee for the reparation and rehabilitation was to make the arrangements for the settlement of those who were the victim of the human rights violations in the past. The process of identifying the victims was fully scrutinized through different modes. For this purpose informations were collected from the different sources, workshops were conducted, data was also gathered from the NGOs and the academic institutions and also reports were collected from the media sources in order to determine the true victims of the human rights violations during the past apartheid period in the state. The opportunity was also given to the victims to apply directly to the commission in order to seek reparation and amnesty (ibid). The committee for the Reparation and Rehabilitation had recommended certain measures and steps for the rehabilitation of the victims to the government including construction of the buildings, houses, schools, compensation in the form of money and other possible compensation. These recommendations were not effective in the sense that the ultimate final decision was to be taken by the government keeping in mind the country resources (Boyle,1996) Then the process of prosecution and to punishments was started to the criminals who have violated the human rights in the state. It was really tough job for the commission to tackle with the previously committed crimes against human rights. Here the different questions were raised that whether the government has power to punish those criminals. Whether this will be the violation of international law or not?. It has been much discussed by the scholars and the human rights activists (ibid). The development of the human rights can only be appreciated after examining the historical background of human rights in the era of apartheid. In that era there have drastic violations of the human rights which are secured under the charter of Universal Declaration of Human Rights and other major instruments of the international law of human rights. This was actually the war between whites and black people and white peoples got extensive powers in order to control all the political and administrative affairs in the country (ibid). The most suffered community during this regime was the African people. The Registration Act was most controversial and prejudicial law which classified the
community into racialism and ethnic divisions. They also classified the people in the religious divisions as well. The black peoples were also deprived from their basic political rights like right to vote and to form any political party or even to form any association. Such examples of exploitation can never be traced in any other part of the world as these were in the South Africa (Liebenberg, 2000).

Similarly freedom of movement and right to liberty was also restricted of the blackish people. There right to ownership was also snatched and they were kicked out from their inherited houses. The most interesting thing was the introduction of pass system. The people were asked to carry their pass book whenever they are outside. In the case of any failure demanded by the police it was declared as criminal offense. It was the check and balance for the movements of the African people.

In order to get the full control over the people during the apartheid period all the basic rights were restricted such as right to freedom and movements, right to life, right to fair trial, right to property, right against the torture, other forms of degradation and freedom of speech at large scale (Bosl, 2009).

The black people were suffered badly in order to access to the public places, social services, economic resources and other economic opportunities and to the community services. The blackish people were severally lacked the adequate facilities of the life. Almost all the fundamental rights were snatched during the apartheid period. They were living the life which was practiced by the Kashmiri people and Indian Muslims during the Dogra rule and English rule respectively (Hillman, 2004).

Rural women deprived from their basic fundamental rights. They really disadvantaged women. Cultural rights were also denied. The black Africans were restricted to access to the government jobs. Their language completely banned and they were being exploited in all the ways. The purpose for the abolition was that to control over the tribal areas and their traditions. They were banned to promote or communicate their local languages. English and Africans were declared the official languages. For the purpose of developing the human rights huge efforts were made in the South Africa (Walzer, 2004).

The untold stories, past conflicts and exploitations during the apartheid periods left miseries of the black people. The society was astonished due to the black
administration and cruel laws. In these circumstances there was a dire need of the constitution. In order to restore the democracy interim constitution was introduced. The primitive parliamentary system was replaced by the democratic norms based on the constitution of the country. Fundamental rights were made the basis in the constitution of the South Africa. The right to vote was also recognized in the constitution along with the political rights (ibid).

Several steps have been taken for the protection of human rights at regional level due to heavy pressure from the international community. In this regard, OAU was the first charter for the protection of human rights in the Africa. In this charter different steps were recommended to the parties for the welfare and protection of basic fundamental rights of the citizens. OAU has considerably intervened in the affairs of the states against the human rights abuses. Due to the pressure from the international community, the African governments adopted the charter on Human and Peoples Rights in 1986. This was considered great step from the African leaders for the protection of human rights in the region (Ankerl, 2000).

The Commission was established under this charter with the spirit to work for the safety of the basic fundamental rights although due to lack of judicial mechanism it faced different problem for the implementation of its decisions with regard to the protection of human rights (ibid).

There is no doubt that all the instruments for the protection of human rights are based on the charter of the United Nations and similarly in this sense the Charter on Human and Peoples Rights was considered as the initial step in Africa for the protection of human rights (Barzilai, 2003).

It is very interesting that the African system for the protection of human rights is generally based on the African Charter on Human and Peoples Rights (ACHPR) whereas the universal system is primarily based on the Universal Declaration of Human Rights and the Charter of United Nations (Blattberg, 2007).

The African Charter includes the civil and political rights along with the social and economic rights. There is no separate system for the inclusion of these rights like the European Union and America. The significance of the charter of the Africa is that it
places the duties on the individuals. The APCHR has been made almost the base for constitutions of the African countries (Bosl, 2009).

In spite of all the necessary measures adopted by the African Charter for the protection of human rights there are still some weaknesses in its values. Although much efforts has been done for the development of the human rights. All those who were remained the victim of the apartheid period they were compensated in any way. This all was done due to special concentration of the International community and its pressure for the protection of human rights in Africa (Blaustien, 2000).

There is no doubt that the exploitations and sufferings are same as are in the valley of Kashmir but the role of international community is not satisfactorily. International community is silent on the gross violations of human rights in Kashmir because the Indian law enforcement agencies are involved barely in the extra judicial killings, torture, murder and ill treatment with the individuals.

It is the need of the time the international community should pressurize the Indian government to stop the violation of human rights in Kashmir. It will be great unjust for the Kashmiri People that international community takes effective measures for the protection of human rights in all over the world but it is silent in the case of Kashmir and voices of Kashmiri people are being heard to all the universal human rights activists in the world.

### 6.5 Argentina

The land of the Argentina faced on more than one occasion the military interference in the process of government functions. The most famous military tenure was of John Peron who ruled the country in 1946 to 1955 and on second time from 1973 to 1974. During this period country faced lot of human rights problems, the wave of terrorism remained the part of the country and inhuman treatments have been part and parcel of the military governments and other institutions of the state. After that his wife took the charge. The period from 1976 to 1983 is known as “Dirty War”. The salient feature of this period is the killing of thousand people in Argentina, torture to the innocent people at unknown places, burning the houses, destruction of personal properties of individuals and extra judicial killings (Bosl, 2009).
After the dirty war in 1983, democratic government was formed. New government investigated the human rights violations committed during the dirty war like torture, extra judicial killings, murder and forced disappearance. Many of them were convicted who held responsible. According to some reports there were 15000 to 25000 thousands were murdered (Mendez, 2005).

The human rights activists were thinking the urgency for the publicizing the violation of human rights in Argentina up to mid of 1980. They were insisting that the violators should be punished for their bare violation of human rights (ibid).

The military remained very active throughout in the history of the Argentinean society and this military regime was not new for the people. There is no doubt that the Argentina had faced several military regimes but the military regime from 1976-83 was most worsen and longer than the previous one. In this era military government had defeated all the previous records of human rights violations in the country (Chauhan,2004).

After the defeat of military government from the British army they decided to leave the government and to end the military rule in the Argentine. In fact they knew that they might face the criminal trials by the democratic government. For this purpose the military government passed a law which was known as the “Law of National Pacification”. This was a self oriented attempt by the military rulers in order to evade them from the prosecution of cases of human rights violations in the country. This law was designed to finish the possibility of the question of human rights abuses by the military rulers. This was their last attempt that they will not be punished for the atrocities of human rights in the country during their regime (ibid).

In 1983 Mr. Roul Alfonson became the president of democratic government and in his first address to the nation he described the stories of human rights atrocities committed by the military junta. For this purpose he established national commission comprising on distinguished persons. The name of the commission was “National Commission on the Disappearance of Persons”. The establishment of this commission was considered a very remarkable step which was appreciated by the whole world (Clayton,2004).
This was unique in its significance and such effective practice was never practice by the any other country in the world. The reports of this commission were known officially as “never again”. It has been reported that more than 9000 people were forcibly disappeared (Donnely, 2003).

The trials conducted by the democratic government after the military regime were criticized by the some organizations on the ground that although such trials are against the violators of the human rights during military era but these are against the spirit of rule of law and the democratic norms. But on the other side these trial were defended on the ground that no one is above the law and even Junta is accountable before law for its illegal acts against humanity. One of the tragic elements of these trials was that it marked the line of tension between army and the civil society for the protection (ibid). Due to these trials more than 481 were held responsible and convicted for the violation of human rights and out of the 16 were the highest level officers from military and police were also convicted. The most note able sentence was against the some Generals and Air Marshals who were sentenced for life imprisonment. Their sentence subsequently was reduced by the Supreme Court (Rock, 1987).

The hard steps taken by the president created unrest between the government and the military. The military threatened to the democratic government to destabilize the process of democracy. In fact due to these trials the military officers were mainly affected and convicted (ibid).

In 1987 another law was also passed known as Due Obedience law. The purpose of these laws was to satisfy the military which he could not got. That’s why he resigned 5 months before prior to his constitutional time (Awashti, 2001).

In 1989 president Menon showed his intention to grant the pardons to the military officers. He granted more than 270 pardons to the criminals of human rights. His act of amnesty and pardon to the military persons who were involved in the violation of human rights during the military era, was criticized by the NGOs and other organizations of human rights. Demonstrations were started in the all parts of the country. The demonstrators blamed that president Menon had destabilized the democratic norms in the country. The President argued that his acts are for the pacified country (Lessa, 2011).
The alternative method which was adopted by the human rights organizations to prosecute the criminals of human rights was to push for the implementation of Truth Trials. This exercise was in order to know about the truth and to get information about the disappeared persons. These truth trials served as information source for the families in order to know about the disappeared persons (ibid).

The status of the Truth Trials was of judicial proceedings to know the truth of the human rights violations during the military period. Although there was no plaintiff and defendants and even no judgments but peoples were invited to come for the evidence which they know about the violation of human rights and the methodology of such terrorism by the state.

The Truth Trial has recognition in the international law and other human rights instruments. According to the Inter American Commission of Human Rights (IACHR) the right to truth is a basic fundamental rights of the individuals and communities to know the truth about the commission of crimes (Maculan, 2012).

The violation of human rights in Argentina was not war against external enemy but it was war against the people of state. There is no harm to say that it was state terrorism against the citizens of Argentina by the Military dictatorship. The military government did all the measures to dehumanize the enemy. They declared their enemy the people who are in minority and called them as non-Argentinean. The purpose of these killings by the military government was to eradicate the opposition and that’s why they have started this bloody movement against the innocent citizens (ibid).

Due to this bloody war thousands of students, workers and the members of community were disappeared, tortured and killed in extra judicially killings. Major disappearances were made in clandestine centers which were in the whole country. One of the major centers for detention was Naval mechanics School where over 5000 were killed, tortured and disappeared by the military government (Donnelly,1999)).

The military period from 1976 to 1983 was responsible for huge and inhuman human rights violation in Argentina. They used all types of horrible methods against the humanity (ibid).

Some school of jurists argued that the Truth Trials are not fruitful for the process of democracy because they may undermine the development of democracy but this
argument was negated in the case of Argentine. It can be argued that Argentina had exercised lot of trials in its history regarding the violation of human rights but the democratic system has never been disturbed in the last 30 years (Ellerman, 2005).

The Argentinean Human right Trial can be encouraged because its legal system proved that even powerful can be tried before law. Several military generals were held accountable and they tried in the truth trials. This exercise strengthened the process of protection of human rights in the world. Such trials raised the confidence of the people in order to fight with the violation of human rights. The negative aspect of these trials against human rights violations in Argentina was the emergence of conflict between military and the civil society (Forsythe, 2005).

In every society human rights organizations are playing important role for the protection of human rights. Similarly in Argentina human rights organizations played integral role for pointing out the violation of human rights by the military regime. Due to the value able efforts of the persons of human rights organizations, the violators brought before the door of justice.

The situation of human rights is same in the state of Jammu and Kashmir as it was in Argentina. We have seen the human rights organizations and other international instruments for the protection of human rights had played very important role against the violation of human rights in Argentine. It is necessary that such efforts must be done in order to stop the violation of human rights in the state of Kashmir. The international community must come forward in order to play its role and keeping in mind the example of Truth Trials in Argentine, similar trials must be started in the valley of Kashmir.

6.6 Sierra Leone

Sierra Leone is officially known as Republic of Sierra Leone situated in West Africa. In this country president is elected directly by the open election. There is unicameral legislature system. The total population of Sierra Leone is 6 million and its area is 71740 km. Freetown is the capital of Sierra Leone which is most attractive for business and commercial activities in the region. This country is divided by four administrative
units like North Province, South Province, West Province and East province. These units are further divided into several districts (Glendon, 2001).

The economic sector of Sierra Leone is mostly depended on diamond and mining. This country is a major producer of gold in the world. Beside rich in natural resources, this country has still more than 70 percent people are living in poverty. This country is Muslim country but its Christian minority is very dominant (Haddad, 1998).

The civil war was started in 1991 which resulted thousands of causalities, killings and other massive destructions in the country of Sierra Leone. From 1991 to 2001 the country of sierra Leone faced bloody conflicts in the history of mankind. In 1991 the Revolutionary United Front (RUF) revolted against the government and they overthrown the government of Momoh. The rebels were being assisted by the Liberian despot Charles Taylor. The rebels immediately got the possession of diamond production areas. Due their revolt, the chaos and destruction started in all parts of the country. This period is very shameful in the history of mankind because inhuman crimes were committed by the rebels like killings, cutting of limbs, sexual slavery and the frequent rapes (Larson, 2011).

During this war international humanitarian law was violated barely by the rebel forces and the people were deprived from their basic human rights. More than 200000 people were killed and thousands were disappeared during this bloody period (Ignateiff, 2001).

After the establishment of Truth Commission, it has issued its report in 2004. More than 220 recommendations were made for the redresses of victims. The recommendations were divided into four categories for the purpose of implementation. The causes of the war were also pointed out along with the recommendations. Recommendations were also given regarding the protection of human rights, reforming and developing the democratic institutions and suggestions were also given about the effective participation of youth in reformatory process of the country (Nathwani, 2003).

The purpose of these types of commissions was to promote the passion for the protection of human rights in the country. Several new laws were enacted for the
respect of human rights of children and women. Several steps were taken for the best behavior of judicial officers for their better performance towards the protection of human rights (ibid).

Public awareness programs for the dignity and protection of human rights were started in the all parts of the country. Sense for the respect of basic fundamental rights was developed in the mind of general public. Unfortunately the concept of human rights was completely snatched away by the rebel groups and they brutally violated the basic fundamental rights of citizen which were granted by the constitution of the country (Nickel, 2009).

Still lot of programs are needed to be introduced for the protection of human rights in Sierra Leone like the legislation for the freedom of information. The office of the public defender is also to be opened for the regard of the human rights.

International community had taken keen interest in the conflict of Sierra Leone and established National Commission and Special Court in order to provide justice to the victims of the war. Special court for Sierra Leone was established in 2002 in order to heal the victims of the brutally suffered under the violence committed by the rebel forces in all the parts of the country (Paul, 2001).

The purpose of this court was to provide justice to those whose fundamental rights were disregarded. This court has taken some steps towards the grievances of the people and held the responsibility on the violators. The special court has taken some successful steps for the conducting the fair trials.

This court has conducted several trials of war criminals and tried them before the court. More than eight people were convicted by the special court during the trial. The special court has also determined that the forced marriages are the crimes against humanity in the sense and cannot be given any legal protection even if the children have been born in that forced marriage.
The standard of the court was declared by the international community satisfactorily. It has maintained the justice on the right path. This was not often criticized by the general public. The operation of the special court was different from the ordinary courts in the country. The procedure of fair trial was fully adopted and every accused was given full chance to avail the opportunity of free trial (ibid).

Although the ordinary lower courts were not affected from the working of the court but even it has left value able examples in order to fight for the protection of human rights against criminals. The reason was that the Sierra Leonean people were not involved in the process of the court and only few were engaged by the court. The other reason was also that the domestic law was not used in the proceeding of the court (Mian, 2012).

Reparation program was launched in 2009 in the country for the victims of the violation of human rights. The National Commission for Social Action (NCSA) has identified that there are total more than 27000 victims including children and amputees and other wounded people who were fighting during the civil war in all over the country (Solomann, 2009).

In 2009, Trust Fund was also created for the victim of the civil war. Reparation for victims is as effectual remedy which obliges the states at international level to provide remedy. In this regard the treaty signed by the Sierra Leone had included the article 8 of the Universal Declaration of Human Rights and the article 2 of the International Covenant on Civil and Political Rights. It has also included the article 14 of the Convention against Torture and other inhuman Treatment or Punishment and, article 21 of the African Charter of Human and Peoples Rights. It has also made part the basic guidelines provided by the charter of the United Nations (Hassan, 2012).

If government fails to implement the reparation program then it will amount to the violation of international law of human rights and other norms of the international law. When any treaty is signed by any country then it becomes the legal duty of that state
to follow the international norms which are set by the international community for the protection of human rights (ibid).

United Nations has played vital role for the peace and order in the state of Sierra Leone especially after the 2000. The organs of the United Nations working in this regard had focused from 2000 to 20002 on the resettlement, rehabilitation, disarmament, return of displaced persons and the demobilization of the victims of the civil war (Jamil,2012).

The International community has focused on the poverty sector because after the war the financial condition of the people was very miserable. They don’t have the basic necessities of the life including the shelter. At this stage the help from the international community proved great gift (ibid).

The United Nations Development Program has also played very significant role for the rehabilitation of the displaced persons. It has also helped all those institutions which were working for the settlement of the residents of Sierra Leonean people (Victoria, 2000).

UNDP had focused specifically on the very important areas for rehabilitation like, for recovery and peace building, governance and democratic development, and poverty reduction and human development (Simma,2002).

Overall if we examine the role of the international community then it seems to be very positive. It was great job from the international donors for the resettlement of the effected people of the war. Because such a bloody civil war has never been practiced by any community as it was faced by the people of Sierra Leone.

The main issue which faced by the international community after the rehabilitation of the people that was the legitimated strengthen government in the country because the road to link with the democratic train was key heal the wounds on the face of this country. Although it was difficult task but with the efforts of the United Nations development institutions and other instruments of international community brought
significant changed in the democratic process of the country. The people felt the level of satisfaction from the efforts of international community and they have realized that now they are taken out from the bloody war.

The human rights conditions are same in the valley of Kashmir as these were in the state of Sierra Leone where people were sternly victimized and they were deprived from the basic fundamental human rights. Similar violations are also being committed by the Indian law enforcement agencies. It is need of the time that similar measures should be taken by the United Nations and the international community for the protections of human rights.

All the international instruments for the protection of human rights imposes the duty on the United Nation and the international community to come forward in order to play their role which they have played in the case of Sierra Leone and the other world major conflicts. This question is very frequently being asked by the innocent Kashmiri people that why United Nations is ignoring the sufferings of the residents of Kashmir valley. United Nations and other international community can establish the similar commission for peace and the special courts for the victims of war in Kashmir as it has established in the state of Sierra Leone. The charter of the United Nations also has promised to the international community in article 1 that measures will be taken for the development of friendly relations among the member states of the United Nations.
International Humanitarian Law and the Issue of Kashmir

7.1 Historical Background

The International Humanitarian Law or the Law of Armed Conflict is a body of rules that reduces the effects of war. It gives the protection to the non combatants and civilians in the armed conflict. International Humanitarian Law restricts the means and modes of combating the war.

According to Cicero “inter arma leges silent” it means during the period of war the laws are silent. If we support the version of Cicero that if laws were not there in armed conflict then no doubt that there were rules to limit the combatants in order to reduce the loss in war. The wars were fought in organized groups with some well settled principles and rules (Theodor, 1998).

According to Keegan, Mesopotamia had established well organized military system in the early period as (3000 B.C). During that period wars were well organized with settled principles (Keegans, 2001).

Although we are unable to trace the military code of Roman but today we found some criminal offences which were recognized in the Roman military codes. There were few rules available were there to combat with non-Romans. But the conduct of Roman war was very unrestricted as there was not any distinction placed on the board regarding the combatants and non combatants. All were treated in the same way (Keegan, 1993).

The time gradually changed around 1400 B.C when some code of conduct were framed by the Egypt. It had made an agreement with Sumeria along with other states regarding the prisoners of war and their treatment. Similarly if we trace the history of Asia in Hindu Books around 200 B.C, then several rules of war are traced. It has been reflected from various Hindu literature regarding the war rules that when fighting should be ceased when the enemy become disable during the war. The wounded should not be killed. Non combatant also should not be involved in war. The public and
worship places should be respected by the combatants. The Hindu Code of Manu prohibits that enemy attempting to surrender or if someone is badly wounded then he should not be killed (Hillman, 2004).

After the 6th century Islam has specified the code of conduct for war. According to the Islamic law of noncombatants and other civilians must be respected and they should not be killed. Wounded should be treated as innocent and immediately must be provided medical treatment. There is no harm to say that Islam has given a complete set of humanitarian law during the armed conflict because Islam is the only religion which provides complete set of human rights (ibid).

With the passage of time the rules and norms were continued to be adopted by the nations. In Europe, in 1590 Articles of war were adopted by the Netherlands. Sweden also adopted rules for war which later became the basis of law of war in England. Similarly the English articles of war became the basis of law of war in United States of America (ibid).

The treaty of Westphalia which was adopted in 1648 became the first treaty between the warring states. This code of conduct for war in Europe became the source for the other states during the course of war. These European law of war were used as precedents by the other states in the battle fields (Walzer, 2000).

During the nineteenth century states started to write the codes for humanitarian ideals. The violation of these codes was declared as punishable offences. Several multinational treaties were signed by the states with regard to the limitations in the battlefield.

7.2 Development of International Humanitarian Law

Although the history of International Humanitarian Law can be traced from the old ancient times but its actual development was started from the middle of the 19th century. The actual working was started by the Henur Dunant. He was the Swiss businessman and travelled through Solfarino, Italy. During this travelling he saw a bloody war between French and Austrian armies. After the departure of the armies Henur Dunant saw the miserable condition in the battlefield. He is witness of many wounded and sick persons who were lying in the battlefield without any assistance. He
tried to give them necessary medication with the help of local residents but unfortunately he could not recover them many died resultantly (Fleck, 2008).

This was great shock for the persons who have feelings of humanity like Henury Dunant. Henury wrote memories of Solfirono which describes the miseries of the battlefield between French and Austrian army. It is natural principle that man always learns from experiences. Henury started efforts and called the international community for the relief of those who got wounds and other sufferings in the battlefield. He propose civilian relief for this purpose (Simma, 2002).

The efforts of the Henury Dunant pushed the worldwide thinkers who have strong human feelings in mind. His publications brought significant movement in all over the world. As he proposed an idea for the formation of relief committees in the time of peace in order to train the individuals for the treatment of wounded people in the time of war. He called the world for international agreements to protect the committees during the armed conflict.

In 1863 Henury and four other members from Geneva Public Welfare Society succeeded to form the International Committee for Relief to the Wounded during the armed conflict. That Committee was politically neutral purely working on the ideas of Dunant (Gardam, 2004).

In 1864 Swiss government gave the consent to sponsor the diplomatic conference and members from sixteen countries participated in the conference. It was agreed that groups of volunteers will be formed to help the wounded persons in the case of war. In 1864 the international Committee taken the shape of International Committee of the Red Cross (Solis, 2010).

In August 1864, the first meeting of the ICRC was held in Geneva soon after the adoption of Liber code by the America. In this meeting ICRC urged to formulate the guidelines for the protection of wounded in the battlefield. In 1882 United States of America ratified the First Geneva Convention (ibid).

In 1868, St. Petersburg Declaration was signed in order to prohibit the use of explosive weapons in the war. It was the first international agreement where use explosive weapons was declared as against the humanity (Gardam, 2004).
In 1899, the First Hague Peace Conference was held in Hague, in which the international community realized that there should be body to resolve the national issues. It was decided that there should be International court of Justice to resolve the issues. This conference was attended by the members of twenty eight nations. The most prominent fruit of the conference was the declaration about the prohibition of the use of deleterious gases (ibid).

In 1904 United States of America again called Peace conference in Hague. The main success of this conference that certain rules and regulations for the war were decided. In this conference few more conventions were agreed in which some provisions were added for the protection of victims of the war (Bosl, 2009).

The work of the Hague peace conference was not to be called small but its effects were for long time. It was not only the basis of Geneva Convention 1949 but also it was step to the establishment of International court of justice and the League of Nations. Although the Lieber code was single sponsored country documents but that has positive effects for the future of the law of war. It improved the provisions for the wounded in the Hague conferences. The Red Cross movement spread speedily in all over the world. It has given the awareness to the world for the protection of rights of the people in the time of war (Shelton, 2005).

### 7.3 Legal Basis of Humanitarian Law

The use of force under international law is strongly condemned by the international community. According to the Article 2(4) of the United Nations the states are prohibited to exercise the use of force except in the exercise of individual or collective right of self-defense under article 51 of the UN Charter or it is authorized by the United Nations under Article (43-48) (Fleck, 2008).

Article 2 of the United Nations states that“ All members shall refrain in their international relations from the threats or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purpose of United Nations”. Different debates have been done over this article about the options of use of force but majority and prevailing view is that the attack or use of force by one state against the sovereignty of other state is illegal and cannot be
justified unless it is done under exceptions under the charter of the UN. Those exceptions are military sanctions and the collective use of force in self-defense under the procedure as described by the charter (ibid)).

International Humanitarian law imposes certain limits on the states regarding the use of force and weapons against the other state. It stresses on the state that force should only be used against the combatants. It should not be used against the civilians who are not part of the war. It imposes the liability on the state for the treatment of wounded and sick persons. International humanitarian law mainly deals with the treatment of individuals of other fighting state. It does not mean that the outbreak of the armed conflict diminishes all the relations between the conflicting states. The diplomatic relations even then cannot be ceased. The diplomatic immunity remains untouched. But there are some examples where diplomatic relations were ceased between the states like United Kingdom broken the diplomatic relations with Argentina when Falkland conflict was started. India and China had not severed their diplomatic relation during the conflict in 1961 (Shelton, 2005).

During the conflict law of peace is also superseded on some occasions. The hostages of the other states are dealt by the 4th Geneva Convention. The diplomatic relations and the treaty relations thus continued during the conflict (ibid).

The jurisdiction of international humanitarian law is invoked when force of armed is used by one state against the other state. Even there is partial military occupation or no military resistance is faced by that state, the international humanitarian law shall attract its provisions. Similarly the Hague convention 1907, along with a huge number of treaties apply only during the time of war and the rules contained by these treaties are treated as rules of customary international law (Parker, 2003).

Although the Geneva Convention do not define the term armed conflict clearly and it is clarified by the ICRC that any conflict which is raised between the two states or between the groups of the states comes within the meaning of the Article 2 of the convention. It is immaterial that the how long the conflict lasts. The time and duration of the conflict has no value for the application of international humanitarian law. When US pilot in 1980 was shot down and the pilot was captured by the Syrian Forces at
that United States declared that it is an armed conflict and the pilot should be declared as prisoner of war under the third Geneva Convention (Schindler, 2004). The vital thing is the emergence of armed conflict between the states. It is pertinent to mention here that it is not necessary that the state should have de jure recognition; the international humanitarian law even applies to state which has de facto recognition or which is not internationally recognized.

7.4 Importance of the Geneva Conventions

The Geneva Convention of 1864 laid down the principles for the protection of wounded and sick persons in the battlefield. The defenseless must be protected. All measures must be taken for the care of these persons in the battlefield. The Geneva Convention also stresses on the states that the ambulances and the hospitals should be protected from the military invasions.

For this purpose the white signal known as Red Cross officials and other supporting staff must be regarded and should not be subjected for the military work. The Geneva Convention played vital role in order to provide the significant stage to the Red Cross for its universal acceptance. This convention in other words we can say that was the basis for the evolution of international humanitarian law. This convention was open invitation for all the states (Pictet, 1955).

This convention proved itself as the root for the innovation of international humanitarian law. It was initially limited in its scope and with the passage of time it has taken the shape of complete branch of international law. It provided complete structure for the respect of man in the battlefield.

The Geneva Conventions are beneficial for the entire mankind and they have given the payback to large number of victims of war. International Humanitarian law played very important and impressive role during the World War I and World War II. The Conventions deal with the superior interests which is the dignity and welfare of the man in the battlefield during the armed conflict.
After the Second World war the revision of the Geneva conventions was felt necessary because it has been remained the routine effort of international committee of the Red Cross to make certain changed and improvements in the existing structure of the Geneva conventions.

In order to complete task the steps were taken in 1945, to upgrade the Geneva Conventions. The draft of the modified conventions was brought for the open discussions to the public. All the governments of the states were given opportunity to discuss the amendments and modification suggestion for the Geneva Conventions in the beginning. The available literature was collected along with the proposed modifications and amendments. For this purpose several workshops and conferences were arranged in Geneva for the improvement of the Conventions. The conference of National Red Cross Societies in 1947 and the conference of Government Experts which was arranged in 1947 were the main segments towards the improvement of these Geneva conventions (Fleck, 2008).

These conferences immediately formed the four committees which formulated the.

1. First Geneva Convention and the Second which adapts it to maritime warfare.
2. The Prisoners of War Convention.
3. Convention for the protection of civilians, and
4. Provisions common to all Four Conventions.

Besides this the drafting committees were also formed in order to finalize the Conventions.

Finally on 12 August, 1949, the four Geneva Conventions were signed by the committee. These conventions were left open for ratification by the states. Firstly these conventions were ratified by the Switzerland and Yugoslavia (ibid).

As far as the case of Kashmir valley is concerned that is obviously, a violation of human rights and international humanitarian law. The Indian forces are engaged in armed conflict in Kashmir and they are violation several provisions of the Geneva Conventions.

The application of international humanitarian law will continue until Kashmir remains in the occupation of Indian forces.
The humanitarian law firstly invoked in 1947 when Indian forces landed on the land of Kashmir. In these circumstances both Indian forces and other fighting groups are bound by the provisions of international humanitarian law in the valley. The state of India is signatory to the Geneva conventions 1947 and is thus bound by all the provisions of the International Humanitarian Law. The application of the law of armed conflict must be in true spirits in the case of Kashmir because there is armed conflict and large numbers of human rights are being violated.

7.5 **Geneva Conventions and Kashmir Conflict**

Kashmir conflict which is a bone of contention between the two atomic powers both India and Pakistan in South Asia. Indian forces are in occupation of major part of Kashmir valley and its armed forces are engaged in the violence of human rights and international humanitarian law. Indian forces are committing the violation of various provisions of Geneva Conventions as the Geneva Convention is the major instrument for the protection of human rights in the battlefield. All the states which are signatory to these conventions are bound to follow all the provisions of the Geneva Conventions in true spirits.

As far as the Article 2 of the Geneva Convention is concerned, it is very important in the sense that it relates to the jurisdiction of the Convention. It prescribes the limits of the convention and explains the situation when international humanitarian law becomes applicable in armed conflict. This article further describes that formal proclamation is not required for the application of international humanitarian law. The law of armed conflict becomes applicable as soon as the hostilities are started between the two international fighting groups (Mian, 2012)).

The scope of Article 2 is very extensive for the application of Geneva Convention. This article is more comprehensive than the previous ones in the Geneva conventions. When the conflict exists between the two contracting parties, the law of armed conflict attracts its jurisdiction (Bosal, 2009).

The expression of “armed conflict” is not clear in the sense that whenever any attack is made on the other state or any militant group, it is argued by that state that the action
is taken in self defense. The aggressive state always makes excuses of self defense and takes plea that it is not war.

Article 2 of the Geneva Convention 1949, is very clear about the definition of armed conflict. It explains that any armed intervention between the two states is amount to armed conflict even one party does not admit that it is war and attracts the jurisdiction of international humanitarian law. It further describes that it make no difference that how long conflict continues and how many casualties are committed. It does not encircle the jurisdiction of the law of armed conflict. The human respect does not require any measurement for its protection. It is due even if wounded and sick person is there in the armed conflict. The convention will have the same jurisdiction even over single person so number of wounded persons has nothing value in this regard (Brownlee, 1963).

As far as the practice in Kashmir valley is concerned, the Indian army is frequently committing torture and extra judicial killings. The wounded and sick persons are also not spared by the forces. The property of the innocent Kashmiris is also being destroyed. A large number of people are made hostages on daily basis.

The Article 2 of the Genève Convention strongly lays the responsibility on the conflicting armed forces that not to destroy the public and private property during the armed conflict between the forces (Brownli, 1992).

The third paragraph of Article 2, is almost taken from the Article 25 of the Geneva Convention 1925 with slight changes which run as that if belligerents are not party to the convention even then its provisions will apply to all (ibid).

The Article of 3, of the Geneva Convention is almost same as it was in the previous conventions before 1949. It is very important article in the Geneva Convention 1949. All the international conventions primarily are concerned with the affairs of the governments. It has been the duty of the governments to finalize these conventions after lethargic discussions and now the entire responsibility lies on the governments to apply the convention in true spirits. But it seems difficult to implement the Geneva conventions without the support of Red Cross (Chauhan, 2004).

The main purpose of the common article 3 of the Geneva Convention is to secure the persons who are non combatants, olds, women, children and particularly wounded and
sick who are remained in the battlefield. It ensures that there should be human treatment in the battlefield who no more part of the war. This article also stresses the protection of those also who are taken into custody by the armed forces. Although the Geneva Convention declares that with the application of article 3 the legal status of the parties will not be changed. Because the convention has no concern with the legality of the dispute between the armed conflicts, it has only concern with the protection of persons who no more part of the conflict (Donnelly, 2003).

Moreover article 3 of the Geneva Convention gives complete protection to the medical staff who is engaged in battlefield for the medical treat of the wounded and sick. They will be secured to access to the persons who required the medical treatment, should have liberty to approach them. In these circumstances they will not be subjected to attack by the armed forces (Dixon, 1991).

In the case of Kashmir the Indian government cannot make any excuse from the application of human rights and the international humanitarian law, on the ground that the militants are also committing the human rights abuses. Indian government is strictly bound the follow the provisions of the common article 3 of the Geneva Conventions.

In Kashmir many cases have been reported that the Indian security forces visited the hospitals and captured many wounded and sick persons. Some of them were killed or forcibly disappeared. Many have been found with tortured bodies.

Article 5 of the Geneva Convention strongly prohibits the security forces to raid on the medical staff and hospitals. The purpose of this article is to secure the defenseless wounded and sick persons from the attack. It does not differentiate whether those are combatants or civilians, it is sufficient for the application of article 5 if they are defenseless and waiting for the medical treatment (Shelton, 2005).

It also has been reported through many sources that the Indian security forces has made many hurdles for the medical vehicles which transports the wounded and sick persons to the hospitals. This is often happened during the promulgation curfew in Kashmir valley. It is pertinent to mention here that the international prohibits such kind of actions by the state parties. The medical vehicles and doctors have full frequent access towards the hospitals and other medical camps during the conflicts.
There are several examples which can be explained that the Indian forces has tortured the medical staff and the drivers of the Ambulances on the ground that they are giving the medical aid to the militants. These types of actions are against the norms of international humanitarian law (Davis, 1997).

There are many cases which are described by the doctors that many wounded are passed away due to the unnecessary delay in transit and due the some hindrances made by the security forces. The patients of serious nature often died during the journey to the hospitals due the road blockages by the forces. Due to the unnecessary road crackdowns the doctors and other medical staff often reached late in the hospital which causes many casualties due the delay in medical treatments (Hussain, 2002).

The travel restrictions often results the lack of communication between doctors and medical staff. The supply of blood and other essential for medical treatment are not reached on proper time.

On several occasions the search operations are conducted by the Indian security forces and the hospitals remains closed for many hours or even for the whole day. The doctors are harassed and threatened for the informations about the injured persons who were brought in the hospitals.

This is very inhumane practice by the Indian security forces which is being exercised in the valley of Kashmir. It is also frequent practice by the security forces to burn the equipment of the hospitals and other medical camps for the treatment of injured persons (Chattah, 2006).

The obligation regarding the respect of the Geneva Convention is mandatory on all the state parties and parties to the convention. Similarly India is also party to the Geneva Convention; it cannot liberate itself from the application of the provisions of the international humanitarian law. Indian is responsible for the violations committed by its security forces and paramilitary forces.

Although the common article 3 of the Geneva Convention does not prohibit the Indian forces from the application of its domestic law. The government can prosecute and hold the trials against those who are in involved in murder or kidnappings. But in this regard the Indian government will remain bound before its constitution which ensures the exercise of fair trial. The norms international law prohibits the Indian government
from the forced disappearances and extra judicial killings or frequent exercise of torture against the non combatants or civilians. While enforcing the domestic law the principle of due process of law must be observed by the state.

There is nothing astonishing, therefore, in the fact that the Red Cross has long been trying to aid the victims of international conflicts, the horrors of which sometimes surpass the horrors of international wars by reason of the fratricidal hatred which they engender. But the difficulties which the Red Cross encountered in its efforts in this connection as always when endeavoring to go a step beyond the text of the Conventions were enhanced in this case by special obstacles arising out of the internal politics of the States in which the conflict raged. In a civil war the lawful Government, or that which so styles itself, tends to regard its adversaries as common criminals. This attitude has sometimes led governmental authorities to look upon relief given by the Red Cross to war victims of the other Party to the conflict as indirect aid to those who are guilty (Hashmi, 2007). Applications by a foreign Red Cross or by the International Committee of the Red Cross have more than once been treated as unfriendly attempts to interfere in the internal affairs of the country concerned.

As the result of their labors an Article was drafted, under which the principles of the Convention were to be applied in civil wars by the Contracting Party, provided the adverse Party did the same (Solis, 2010). Indian army and security forces operating in the occupied Kashmir are clearly violating the provisions of international humanitarian law. Extrajudicial killing and forced disappearances are the normal routine of the Indian forces. Most of the detainees under the custody of the Indian security forces are subjected to torture at torture cells. Torture is committed not only for extracting the information but also it is committed just to revenge from the detainees because of their sympathies to the militants and freedom fighters (Asraf, 2010).

Torture is committed with several methods like electric shock, heated stoned, burning with heated objects and to crush the muscles with roller. This is the worse form of torture which is practices in sub continent. The detainees are normally held at the army controlled centers. They are not given any opportunity to access to the courts
and to their families. They are also not allowed to have access to medical treatment. Many of them are passed away due to the non availability of medical treatment. Rape is also normal routine by the security forces with the detained women. It has been reported that the rape is often committed with women before their blood relatives. This is the most paining way of torture to the people of Kashmir (Syed,1991).

The security forces have restricted the medical aid to the wounded and sick persons and have violated the various provisions of international humanitarian law. Many cases have been noted that medical practitioners are detained and even tortured at the torture cells. The medical staff always have been assaulted and threatened by the security forces. It has also been observed that troops have visited many hospitals and threatened the doctors to identify the trauma patients and the forces have arrested many patients who are admitted in the hospitals.

The security forces of India are frequently committing the violation of Article 3 of the Geneva Convention. As India is signatory of this convention so responsibility lies on Indian government to respect the most respectable law which is called the international humanitarian law. The operations and actions taken by the Indian forces in the valley of Kashmir are the bare violations of law of armed conflict (Chattah,2006).

The word “armed conflict” was much discussed in the convention. The members of the states were not clear about the conflict. They were feared that the word conflict is very wide in its definition and scope and might be the internal actions of the states conducted by the police become the subject. It was further clarified in the below mentioned criteria;

- That the party involved in revolt against the sovereignty of the state should posses its own military force.
- That the government should recognize those groups as belligerents.
- That the armed forces acting against those military groups are in position to observe the rules of war.
- That the civil authority must ratify the provisions of the convention (Keegan,1993).
This above said criteria may be very useful in order to recognize the armed conflict and to attract the provisions of the convention. In spite of all this if any conflict does not fulfill the above mentioned criteria and that is general dispute in the state even then the international humanitarian should apply for the respect of human dignity because the human dignity should not be shuffled before foots of the armed operation whether those are of international or relating to international matter. The convention merely demands respect for certain rules which are recognized by all the civilizations for the respect of human being.

As far as the obligations of the parties are concerned, each party is required to obey the provisions of the convention. The convention stresses the responsibility of all the parties at any cost no exception is spared to any party in any circumstances during the armed conflict. This obligation on the parties is utter and self-determining. The obligation which lies on party and establishes authority cannot be called for question because it is mandatory in all respects. The legitimacy of the government is also not exception from the provisions of the convention (Solis, 2010).

The word “including members of armed forces who have laid down their arms” The meanings of this phrase were discussed extensively. It was discussed in the diplomatic conference that it is not necessary that the whole army should lay down the arms. If one soldier lays down the arms in the battlefield even then he is solely entitled under the Four Geneva Conventions of 1949. The Geneva Convention applies to the individuals not to the whole group of forces. The main thing is the surrendered person will be no more active part in fighting (Fleck, 2008).

The Article 3 is very strict on the principle of humanely treatment. It refers no compromise on the human dignity. Human being must be treated with the dignity of humanity without any distinction (ibid).

Any organization can offer to work for the effected persons of the war but that offer must be acceptable. That organization should not interfere in the internal affairs of the state. That offer should purely based on the humanitarian grounds beyond the shadow of any biasness.

The paragraph 3 of Article 3 of the Geneva Convention for the Amelioration of Wounded and Sick Persons, addresses further special agreements under the
convention. Generally as far as the provisions of the Geneva Convention are concerned, only parties to the agreement are bound to follow the terms of the Article 3 of the convention. The Parties to conflict may ignore the other articles if they are not willing to act upon. The spirit of the convention encourages the parties to observe all the provisions of the whole convention (Hillman, 2004).

The provision of the above said paragraph stresses the parties with an urgent request that “the parties to the conflict should further endeavor…. It's mean the parties should make further agreements keeping in mind the aim and purpose of the First Geneva Convention 1949 (Pictet, 1955).

The 4th Paragraph of the Article 3 is about the Lack of Effect on the legal status of the parties to the convention. This paragraph is mandatory and without adopting this paragraph the application of the Article is not possible (ibid).

The Article 3 of the First Geneva Convention strengthens the sovereignty of the government. It also does not restrict the government’s powers to suppress against the rebellion in the country. In these circumstances the state is not precluded from prosecution and trying the accused from the offenses. The state remains fully independent in order to maintain its authority. The main purpose of the convention is the dignity of the humanity (ibid).

The application of Article 3 of the above said Convention does not discriminate the individuals regarding the treatment of the persons. This article further does not restrict the individuals from the exercise of their political rights in the state (Solis, 2010).

As far as the case of Kashmir is concerned, it has been reported through various sources that Rape is committed frequently by the Indian forces, particularly against the women. The provisions of protocol II attracts here along with the article 3 of the present under discussion convention (ibid).

The Article 3 strongly prohibits the “outrages upon personal dignity” The protocol II says that “outrages upon personal dignity, in particular humiliating treatment, rape, enforced prostitution and any form of indecent assault.” It has been discussed in detail by the international committee of red cross that the protection of the women under article 3 and protocol II is mandatory in order to promote the provisions of the international humanitarian law. Because the women are becoming the victim of rape
by the Indian armed forces brutally which is against the humanity and the dignity of the women. Keeping in mind the above said provision of Protocol II, the protection of the women is supreme task under international human rights and humanitarian law (Shelton, 2005).

Although, ICRC is working sturdily for the protection of women during the conflict, because the cases of rape are frequently pointed out in the areas of war by the armed forces. Enforced prostitution is also major issue in the regions of the war by the armed forces and it is often committed in the valley of Kashmir by the Indian security forces (Harris, 2012).

Rape is also prohibited under the International Covenant on Civil and Political Rights along with the international convention of Torture and other inhumane treatments against the humanity. The article 3 of the Geneva Convention includes it in the principles of international humanitarian law (Meron, 1998). The violation of this article is very common in the valley of Kashmir which often committed by the Indian armed forces.

The heinous crime of rape is also declared as punishable in the Indian Penal Code under section 376 and heavy sentence is suggested under this law. But unfortunately, in practice this has not been done so far and members of security forces are often involved in rape are not prosecuted and punished. Indian government is itself intentionally violating the humanitarian law in the valley of Kashmir. Till now no evidence came out on the face of the record that the Indian government is willing to implement this penal in true spirits against the members of armed forces who are involved in rape.

It also has been observed by the ICRC that the Indian military courts are still unable to implement the law against the offences of serious violations of human rights and the humanitarian law (Schofield, 2000).

The Article 5 of the Geneva Convention of 12 August 1949 deals with the duration for the application of the convention. The duration of the convention continues until full rehabilitation. The application of the convention on the wounded and sick will remain
until they are cured. The wounded and sick persons enjoy their rights under the both First and Third conventions (Forsythe, 2005). The convention fully stresses on the human grounds the treatment of the wounded and sick persons beyond the shadow of discrimination and duration of the convention does not matter for the purpose of treatment

7.6 The Role of the International Committee of the Red Cross (ICRC)

The International Committee of Red Cross was simply an association when it has started it working in start. Its office was in Geneva and it was just a private organization which was working for human treatment in the armed conflict. It was composed on the Swiss citizens only.

Now a days the Committee has taken the shape of International body for the protection of effected persons during the war. All the other organizations which working for the treatment of wounded and sick persons or missing persons in the armed conflicts, are being regulated by the International Committee of Red Cross. It is a approved organization working for humanitarian need and all the working in this regard must be undertaken under the supervision of this committee (Forsythe, 2000). This is beyond the control of any government and even it is not under the control of the Swiss government. It has no concern with the political issue of the conflict and it is only concerned with provision of relief to the victims of the war. It is recognized by the international community because its working is very impressive and neutral.

As International Committee for Red Cross is a founder body and has given good grounds to the Geneva conventions has played very effective role in the protection of principles of Geneva Conventions.

It is recognized by the four Geneva Conventions and all the protocols with the status of ICRC. Article 9 of the above said Geneva Convention deals with the functions of the International Committee of Red Cross during the armed conflict. The services of the Red Cross cannot be ignored in the First World War where special forum was created in order to collect the informations regarding the wounded and sick persons in the battle field. The desk was also created regarding the informations of Prisoners of war.
Special arrangement was made for the contacts of prisoners with their blood relatives and other family members. The Committee has played special role in tracing out the missing persons during the war (Walzer, 2000).

Hague Regulations also has given the approval for the charity associations for the purpose of help for the effected persons of the war. In order to check the working of these associations special delegations were sent to the areas.

The ICRC has been given special right under the Geneva conventions to take all the necessary steps regarding to the humanitarian matters. The members of the ICRC used to visit the Prisoner of wars and other detainees and conducts the interviews from them without any resistance from the conflicting parties (Solis, 2010).

The ICRC works with full devotion and honesty. It makes confidential reports and used to send to the concerned authorities for the improvement of the situation. ICRC is the only international body which has visited the Guantanamo Bay.

It is very unfortunate that the Indian government has not fully allowed the ICRC to visit the occupied Kashmir in order to examine the human rights situation. The ICRC is permitted to visit only in some parts of the valley. The real picture regarding the humanitarian matters is still beyond the eyes of ICRC. Because there are lot of principles of international humanitarian are being violated by the Indian armed forces in the state of Kashmir.

The ICRC has become as the guardian of international humanitarian law in practice. The most significant work of the ICRC is that it maintains the records of the detainees, killed and injured persons during the battlefield.

The ICRC is very quick to provide the medical help to the wounded and sick during the armed conflict when there is no arrangement of local treatment. It provides all the facilities of hospital and competent doctors. It also provides the safe distribution of water supply to the local population in order to prevent them from the deadly disease in the area of war, because during the armed conflict the ammunitions of living are often destroyed by the armed forces.

The major concern of the ICRC is to provide the facility of relief aid to the refugees, displaced persons and prisoner of wars. ICRC stressed always on the governments to ratify the Geneva Conventions and the Additional protocols. It has always taken the
deep concern for the implementation of the international humanitarian law. It is the
exemplary achievement of the ICRC that almost all the states in the world have
adopted the Geneva Conventions and additional protocols. The states are bound to
act upon all the provisions of Geneva Conventions. This is all done by the efforts of the
ICRC because it has worked neutrally for the implementation of Humanitarian law
(Shelton, 2005).

The Article 13 is again very important which explains that who are protected persons
under the Geneva Convention of 12 August 1949. The main theme of the article is to
give the specification that which categories fall in the wound and sick persons. This
article does not restrict itself but it extends its jurisdiction to the belligerents as well.
The purpose of the article is to give the treatment to wounded and sick in the
battlefield. It has no concern that the person in question who is? , because its
operation is for the regard of the humanity (Schindler, 2004).

Under this article every civilian is entitled for the application of international
humanitarian law. This article is not only applicable on the militants but it is equally
applicable to the civilians who are sick or wounded in during the armed conflict.

Keeping in mind the provisions of article 13 of the 1st Geneva Convention, the
residents of occupied Kashmir fall in the category of protected persons because they
are living in the armed conflict. Indian forces are committing huge and dangerous
violations of human rights in the valley of Kashmir. The militants and other civilians
who are fighting against the Indian security forces must be treated as wounded and
sick persons under the article 13 of the Geneva Convention of 1949 (Roddley, 1999).

They are fully entitled for the humanitarian relief under the international humanitarian
law. Indian armed forces are committing bare violations of human rights and
humanitarian law. The effected persons from the Indian forces are fully deserved the
application of international law.

The Article 14, deals with the status of the detained persons by the enemy forces
during the armed conflict. According to this article these persons would be treated as
the prisoner of war. The wounded soldier who falls in the hands of enemy is prisoner
of war. They equally entitled for the full treatment under the different provisions and
It is very unfortunate that in the valley of Kashmir the Indian forces have established various torture cells for those who are detained by the forces. The wounded becomes unable to get the medical facility from the hospitals. Many cases have been reported that wounded and sick persons are being deprived from the initial medical care. The security forces often visited frequently the hospital in order to arrest the wounded persons. This is against the provisions of international humanitarian law because they fall under the definition of protected persons and they must be treated humanely.

It is the duty of the ICRC to look after the wounded and sick of the armed conflicts in the battle field but unfortunately Indian government does not frequently allow the delegations of ICRC to visit the battle areas in the valley of Kashmir. Article 17 of the First Geneva Convention, is related to the examination of dead bodies. The purpose of this article is to ensure the safe burial of the dead bodies during the armed conflict. It also stresses the complete information must be provided to the other party to the conflict (Best, 1994).

According to this article the state is bound to make complete examination of the dead body and it should be done by the competent doctor. The complete record must be secured by the state. Article 16 also ensures that the time of death should also be recorded. Identification record of the deceased body should be maintained by the state in the conflict (Schindler, 2004).

The other necessary step which must be taken by the state that is to keep the record or papers which are recovered from the body of the deceased. If papers are not found then some other measures should be taken which should facilitate the opposite party in to identify the dead body. The place of the grave and the burial should also be recorded and identified. From this process the death of the body will be identified by the international information Bureau within minimum time, which will inform the party as soon as possible.

According to the International Peoples Tribunal on Human Rights in Kashmir that there thousands massive graves have been discovered in the Indian administered Kashmir. The dead persons which are buried at unknown places and unknown graves are described by the Indian forces that those were foreign militants who were fighting against the Indian security forces. The Indian security forces further explained that the
dead bodies of foreign militants a were unidentified and they crossed the border without documents (Chatterji, 2009).

In many cases exhumation has been taken and it is noted that bodies which are buried in the unknown graves belongs to the local people. They are not militants from the foreign country. The version of the Indian security forces proved clearly wrong and it is a violation of human rights and international humanitarian law.

The provisions of the article 17 of the first Geneva Convention attracts here in the case of massive graves of unidentified persons. As it has been described in the article 17 that the record of the dead bodies and their identification must be taken by the state in order to facilitate the dead bodies by the opposite conflicting body (Shelton, 2005).

The article 120 of the third Geneva Convention and Article 130 of the Fourth Geneva Convention makes it compulsory for the state to keep the record of all the buried bodies and buried them according to their religious rites. The third Geneva Convention further states that an official enquiry must be held where prisoners were injured, tortured, where the cause of death of the prisoners is unknown and killed extra judicially by the state (Solis, 2008).

The article 17 of the Geneva Convention states that the international informations Bureau takes the step for the registration of the Graves and re organizes the graveyards and further prepares the list of buried bodies with the identifications. The graves can be grouped according to the nationality of the dead bodies if it is possible. The graves must be respected by the conflicting parties (ibid).

This proposal was taken in the event of Diplomatic Conference in 1949 that the graves may be grouped. It is also recommended by the convention that the graves should be marked and maintained properly. The main purpose of marking the graves is that the graves of the combatants could be identified at any time. This is required by the conventions in order to identify the graves (Arnold, 2008).

It was also discussed by some delegations in the Diplomatic conference about the return of the dead bodies to the state from where they belong. It is general usage of the some countries that they bring the dead bodies to the home.

Third Geneva Convention makes it clarify that the registration of graves does not mean that the registration should be done only of those who fallen in the battle field
but it includes also the graves of prisoner of wars who died during the prison. It is the duty of the state to register those as well (ibid).

Keeping in mind the provisions of the above said convention the Indian government should allow the independent inquiry regarding the massive and unidentified graves found in the valley of Kashmir. It is obligation on Indian government because it is a party to the Geneva conventions.

### 7.7 Additional Protocols 1977

There are several conventions, treaties and other international and domestic laws which deal with the international humanitarian law but the Additional Protocols of 1977 have vital importance after the Geneva Conventions 1949 on the humanitarian law.

In 1971 and 1972 there were more than hundred experts, scholars, academician and government official were gathered at Geneva. Several sessions were conducted and huge discussions were made over the improvements in the international humanitarian law. Along with these sessions in 1976 and in 1977 conventions were held for open discussions (Shelton, 2005).

After the long discussions Additional Protocols were signed in 1977 on humanitarian law. All the states which have participated in the discussions contributed very positively keeping in mind all the requirements of the basic and primary norms of international law and humanitarian law during the conflict. Some liberation groups have also participated but there participation was not welcomed by western states (Fleck, 2008).

### 7.8 Additional Protocol I 1977

The additional protocol I supplemented the Geneva Conventions 1949 on the international humanitarian law. In this protocol the Grave Breaches system was introduced with some new improvements although theses were made part in the Geneva Conventions (Schindler, 2003).

The Additional Protocol I played very important role for the establishment of customary international law. Several laws of customary international law have been developed by
this protocol. The Additional Protocol I of 1977 gives special protection to the specific and core objects under international humanitarian law like the protection of medical units, cultural objects, civilian population and religious places during the armed conflict.

As far as the Article 44 is concerned, it is clear that this article provides adequate protection to the guerilla fighters in the conflicting area. The basic purpose of this provision is to give the maximum opportunities in order to obey the rules and regulations of the law of armed conflict (Shelton, 2005).

7.9 Additional Protocol II 1977

This protocol which was supplement to Geneva Convention of 1949 has created some problems for the international community. It is difficult to say that this protocol is customary international law as a whole but there are some provisions which are customary international law (Schindler, 2003).

This additional protocol was basically for the wider scope of international humanitarian law in armed conflicts. Additional protocol II protects all the victims of internal and civil armed conflict. According to article 4 of this protocol all the persons who participated in the conflict directly or ceased their hostilities, these persons are protected and will be treated humanely by the opposite state (Fleck, 2008).

The common article 3 of the Geneva conventions and additional protocol II 1977 often applies where there is a de facto position of armed conflicts. The main theme and purpose of the this protocol is the protection of humanity from the cruelties during the battlefield by the conflicting parties (ibid).

The article 4 of the additional protocol II is very wide for the protection of human rights in the conflict. The article stresses that the right of respect and dignity of man must be treated humanely. They should not be deprived from the basic human rights at any cost by the opposite party (ibid).

In the valley of Kashmir the additional protocol is barely being violated by the Indian forces. The people are deprived from the basic human rights. The general protection regarding the human rights is not secured by the state.
The protocol II lays down the principle that the people should be given due respect in all the aspects of life without any distinction. The adverse party should not make any distinction on race, culture, religion, sex or on any other ground which is against human rights.

7.10 **War Crimes**

There are lots of human rights issues in the world and the violation of these rights is prosecuted normally in the International Tribunals and International Criminal Court. In this regard International Criminal Tribunal or courts should apply the law of human rights and international humanitarian law. Humanitarian law is violated during the armed conflict and it becomes the violation of International Tribunals or courts to hold the trials against the states or individuals.

The Geneva Conventions 1949 and the additional protocols provide the guidelines for the law of the armed conflict. The application of these instruments is mandatory on all the states. The violation of these laws will amount to war crimes. The state or any other group which is involved in the conflict will be responsible before the International tribunals or courts (Best, 1995).

If rape is committed by the members of any conflicting party then it will be violation of customary international humanitarian law. In Yugoslavia and Rwanda rape was frequently committed by the groups in order to demoralize the parties which were termed as war crime and crime against humanity.

International humanitarian has been growing speedily after the major conflicts in the world which have violated massively the humanitarian law and adopted the Geneva Conventions and additional protocols (Meron, 1998).

We can examine the contribution of international criminal tribunals for the application of international humanitarian law mainly into two classifications;

1. The grave Breaches System and;
2. Violation of Customary Law of War.

According to article 2 of the ICTY, describes comprehensively under the Geneva Conventions 1949 that;
“The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention (Arnold, 2008):

(a) wilful killing;
(b) Torture or inhuman treatment, including biological experiments;
(c) willfully causing great suffering or serious injury to body or health;
(d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
(e) Compelling a prisoner of war or a civilian to serve in the forces of a hostile power;
(f) willfully depriving a prisoner of war or a civilian of the rights of fair and regular trial;
(g) unlawful deportation or transfer or unlawful confinement of a civilian;
(h) taking civilians as hostages.”

While drafting the statute of the ICTY, the article 147 of the Fourth Geneva Convention 1949 was taken as guidelines which is about the protection of civil prisoners. The main and distinctive feature of the Grave Breaches system is that it imposes the responsibility on the state parties to hold the enquiries and trials against those who are involved in the violation of international humanitarian law (Kirtz, 2000). This responsibility in the case of Kashmir lies on the Indian government to prosecute the individuals who are involved in the frequent violation of human rights and humanitarian law.

The additional protocol I of 1977 is about the protection of victims in the Armed Conflicts in addition to the provisions of the Geneva Convention regarding the Grave Breaches during the war.

There are some scholars who are on the view that the ICTY does not have jurisdiction over the Grave Breaches under the additional Protocol I because it is not the part of
customary international law. As far as the international humanitarian law is concerned this view does not have any basis due to the following reasons (Arnold, 2008);

1. There are many provisions of the Protocol I which relates to the protection of civilians which reflects the customary international law.

2. It is even though the basic clause that there should be state practice in order to accept the customary international law, does not have any base for the practice of international humanitarian law. ICJ had decided in the Nicaragua case that the common article 1 and 3 of the Geneva Conventions of the 1949 are the part of customary international law even thought that the decision has never been examined on the parameter that there should be state practice for the accepting of any in customary international law (Widmaalm, 2006).

The question arises why many judicial decisions has been ignored in humanitarian law, the most important element that there should be state practice, it is explained in the below mentioned reasons

a. It has been seen that it is not easy to trace out the practice of state in this area of international law.

b. The international tribunals are guided on the criteria which are based on the dignity of humanity.

In this scenario, beyond any shadow of doubt, the Geneva Conventions 1949, the grave breaches, the additional protocol I and the additional Protocol II are the part of customary international law regarding the protection of civilians in the time of war.

In short the ICTY had jurisdiction on the grave breaches under the additional protocol I and the Geneva Conventions 1949.

The Ad hoc Tribunals are playing important role in the implementation of additional protocols and the Four Geneva Conventions 1949 in international humanitarian law while the interpretation of the above said instruments. The Ad hoc tribunals are playing significant role in the development of international humanitarian law because these tribunals deal with each crime which is committed in the eye of humanitarian law by the states.
7.11 Requirements for the Grave Breaches System

Normally there are two conditions in the system of grave breaches; those are General and Specific conditions.

As far as the general conditions are concerned, it is essential to examine the basic norms of the international humanitarian law and the crime which are the subjects of humanitarian law. These are followings:

1. The existing of armed conflict whether that the concerned conflict is national or international.
2. It is important that there should be link between the acts of the accused and the armed conflict (Wirsing, 1994).

In order to understand the concept of war crimes and the application of grave breaches system there should be armed conflict between the two parties whether that conflict is of international level or national level between the groups and the state.

The idea in this regard was first time drawn by the ICTY in the case of Prosecutor Vs Dusko Tadic. The ICTY has determined the following formula in order to know whether armed conflict is existed or not (Fleck, 2008):

".. an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there" (Prosecutor Vs Dusko Tadic, 1995)

The basic idea can be drawn from the norms of international humanitarian law which regulates the internal armed conflicts those are the common article 3 of the Geneva Conventions and the provisions of the additional protocols of 1977. Although article
does not gives any specific criteria about the intensity of the conflict for its application during the conflict (Mian, 2012).

For the application of article 3 of the Geneva Conventions it is quite enough if there is level of conflict. On the other hand the governments can claim that the conflict is based on its internal issues or riots. But even then common article 3 of the Geneva Conventions with the addition of the additional protocols does not loses its application on this plea of the governments. In order to solve this issue the international community had adopted the additional protocol II of 1977 (Sheloton, 2005).

As far as the conflict between the governmental authorities and the internal organized groups are concerned, this criteria is lays down in the article 8 of the statute of the ICC which is used in international (Schinler, 2004).

As far as the link between armed conflict and the accused is concerned, it is sufficient to say that for the application of international humanitarian law, the existence of the armed conflict is not enough. There should be specific connection between the armed conflict and the criminal act. This was explained by the Appeal Chamber of ICTY in its decision of Prosecutor and the Dusak Tadic case (Cigor, 1995). The appeal chamber takes the version in the following words that;

“It would be sufficient to prove that the crime was committed in the course of or as part of the hostilities in, or occupation of, an area controlled by one of the parties … It is not necessary [that the crime] be part of a policy or of a practice officially endorsed or tolerated by one of the parties to the conflict, or that the act be in actual furtherance of a policy associated with the conduct of war or in the actual interest of a party to the conflict” (ICTY, 1995).

The practice of the ICTY defiantly will provide the guide lines to the ICC for the determination of its jurisdiction in war crimes.

### 7.12 The Existence of an International Armed Conflict

The existence of the international armed conflict was in detail discussed in the Tadic case and it was observed in the appeal that the article of the statute was only applicable to the international armed conflicts and the offences which are committed in
the Dusko case are not the subject of international armed conflict and it was said that
the grave breaches system cannot applied in the Geneva Conventions. On the other
side it was argued that the Yugoslavian conflict was of international conflict. In order to
support these arguments reference was given of the United Nations resolutions about
the Bosnian conflict which was declared as international armed conflict. The
prosecutor in this argued that keeping in mind the Bosnian conflict the Grave Breaches
System is the part of the Geneva Conventions 1949 (Arnold, 2008).
From the so far discussion it can be assumed that the basic purpose of the
international humanitarian law is to provide the protection to the rights of the persons
during the conflict. Whatever the nature of the armed conflict is, it does not play the
role for the application of the international humanitarian law. If there is conflict then
humanitarian attracts its jurisdiction.
As far as the grave breaches system is concerned it should apply in all circumstances
whether the conflict is of international or national conflict. It should have same
application with true spirit as it is mentioned in the Geneva Conventions of 1949. The
element of internationality should not be prerequisite for the application of Grave
breaches system.

7.13 The Crimes of Genocide
Genocide is a universal crime which is in strongly prohibited by all the internal
instruments of human rights and by the customary international law. It is always crime
whether it is committed in times of war or in peace time.
The convention regarding Genocide has already been passed by the United Nations in
the name of Prevention and Punishment of Genocide Crime in 1949. The statute of
ICC also has been given the power to prosecute the offences of Genocide and to give
punishments to the persons who are involved in the commission of Genocide crime in
any circumstances (Boyle, 1995).
Although there is wide prohibition regarding the commission of Genocide and it is a
part of customary international law but it was not practically applied and defense was
in this regard the sovereignty of the states before the ICTY after these tribunals it was
internationally accepted practically (Meron, 1998).
There is no doubt that the international community has not prosecuted satisfactorily the offences of Genocide due to unseen reasons. There are number of incidents of Genocide which have not been dealt in accordance with the convention of genocide like the issue of Russia, Bosnia, Afghanistan and Kashmir.

The guarantee is provided by the developments of international humanitarian law and the human rights law that the crimes of Genocide will not be tolerated for the sake of dignity of human rights (Best, 1994).

The international Tribunals like the Tribunal for Rwanda had has jurisdiction over the crimes of genocide. The term Genocide can be defined that it is a act which destroys the racial, ethical and religious groups such as killing of human being, causing bodily injury or mental to human being and transfer the children by force from group to another group members (Schindler, 2004).

After the adoption of Convention against Genocide, the crime of genocide has been declared as the most heinous crime in the world. The mass killings have also been declared as it is crime of genocide. If we look at the historical application of genocide in the 20th century then it is clear that the attack on Hiroshima and Nagasaki were declared as genocide crimes by the international community and also considered it as the defiance from the international humanitarian law and other human rights instruments under international law (Shelton, 2005).

It is the main requirement for the offence of genocide that it must be committed against the particular and identifiable group that group may religious, ethnic or national group in the area. This logic behind is that it will show the intent for the commission of genocide. In the genocide the victims are identified on the basis of their groups not on the basis of their individual capacity (Simma, 2002).

Now days there are two ad hoc tribunals established by the international community working against the offences of genocide and the other one is ICC. These two tribunals and ICC have jurisdiction over the offences genocide (Cigor, 1995).

There is no doubt that the practice of these two tribunals is very effective and useful because they interpret rightly and justly the offence of genocide and plays integral role for the application of instruments against the genocide.
The ad hoc tribunals are important in two aspects, firstly they apply the genocide in true sense and secondly, they provide the accurate clarity about the synopsis of the genocide (ibid).

In this regard the primary prerequisite by the international tribunals about the commission of the offence of genocide is that the act must be committed against the groups of the individuals whether they are based on ethical, religious or racial grounds. It is very important development in the international humanitarian law that it has been the practice of the ICTR that the rape and sexual assault is termed as an offense of genocide. This was a new development by the international law which included all the sexual crimes the part of heinous offence genocide and these sexual crimes have secured same status in the definition of genocide as it is a crime against the group of individuals (Arnold, 2008).

This can also be included in the scope of the concept of deliberately inflicting the physical conditions on the life of the people like to burn the houses of the people, to make shelling on the citizens in which there is no military objectives are concerned.

This approach regarding the rape by the ICTR has taken the shape of prudential asset for the ICC (Shelton, 2005). There are several incidents of rape which are happened in the Rwanda and in Bosnia against the Bosnian Muslim women.

Similarly In the valley of Kashmir rape is being committed by the Indian armed forces very frequently. A lot of Kashmir women are victimized before the sexual desire of the security forces. Several are raped even before their family members. This heinous offence must be punished and the responsible persons must be brought before the ICC and other tribunals for the protection of human rights. This act of rape which is being committed by the Indian security forces fulfills the definition of the genocide and the spirit of the convention of the genocide.

The Indian forces are violating numerous norms and principles of international humanitarian law. The commission of the offence of genocide in the Kashmir by the Indian security forces raised serious question on the claim of Indian government that India is biggest democracy in the world. The international community must ask to the Indian government about the offence of genocide which is being committed by the police and army of the India.
7.14 Crimes Against Humanity

The crimes against humanity are declared as universal crimes against human being. These crimes are universally prohibited by the international community and the norms of international humanitarian law.

The concept of crimes against humanity had no conventional background in the international humanitarian law until the adoption of statute of International Criminal Court. The ICC statute, which is the primary document and it has settled the terms and condition for the implementation of rules against crimes against humanity in the world (Best, 1994).

The impression of crimes against humanity is the creation of 2nd world war. The idea of crimes against humanity came out after the massive destruction of human being in the end of World War II. The responsibility on individual basis was first time implemented by the military Tribunal at Nuremburg and Tokyo. In this scenario the most important development was the creation of ad hoc tribunals (ICTY and ICTR) and the rules of ICC which have declared on many occasions announced punishments against those who were found involved in crimes against humanity (Cigor, 1995).

7.15 Notion of Crimes Against Humanity

The perception of crimes against humanity has been defined in various international instruments. According to the Article 5 of the ICTY has jurisdiction over following crimes against humanity during armed conflict whether they are committed in international or that is internal conflict against any civilization; the offences are included like murder, enslavement, deportation, imprisonment, torture, rape and persecution on the basis of political, religious grounds (Meron, 1998).

These crimes are punishable under the rules of international law because the crime against humanity is not excuse able at any cost. For this purpose, it is the responsibility of the international community, to bring the responsible persons before the justice. Unfortunately the Indian forces are committing the crimes against humanity
frequently in the state of Kashmir. The role of international community in this regard is not satisfactorily. The Indian forces are continuously violating the provisions of international humanitarian law.

7.16 **Criminal Responsibility of Individuals in International Law**

It is the main responsibility of the international humanitarian law to implement the criminal responsibility of individuals in international courts or in domestic courts or in other international institutions. In this regard the practical example can be given of the International Military Tribunal at Nuremberg and Tokyo (Solis, 2010).

The establishment of ICTY and ICTR by the United Nations with the strong support and demand from the international community and the practice by these tribunals regarding the true application and interpretation was highly appreciated because it has played vital role in the development of international humanitarian law. These Tribunals have given land mark judgment against the individuals who were involved in the commission of crimes against humanity. The Tribunals and other international institutions identified and fixed the individual responsibility for the crimes against humanity (Fleck, 2008).

The adoption of the statute of the ICC was itself an example that the practice by the international community for the fixing of individual responsibility in crimes against humanity. It showed the level of interest taken by the international community for the persecution of individuals who are involved in crimes against humanity during the armed conflict. This is positive step taken by the international community for the protection of universal human rights and justice for the aggrieved persons (ibid).

The concept of individual responsibility in crimes against humanity does not restricts only to the persons who have committed or directly participated in the commission of this heinous offence but it also included those as well and have abetted in the commission of crimes against humanity (Shelton, 2005).

If the head of state or the chief executive is involved in the aiding or in planning of the commission of the offence of crime against humanity then on individual basis he can
be tried in the courts of international community. On the other hand it is the responsibility of the armed forces in the state not to obey the illegal orders of the superior which are for the crimes against humanity. The members of armed forces cannot take that the order was issued by the superior from the chief executive of the sovereign country during the conflict (Arnold, 2008).

It is the true spirit of the international humanitarian law for the implementation of the principles which accounts the individuals for the crimes which are committed by them against humanity.

### 7.17 The Role of United Nations in Implementation of Humanitarian Law

The Security Council of the United Nations is political body and its basic aim is to maintain peace and order in the world. The enforcement of international humanitarian law is not generally the duty of United Nations because the Red Cross which is mainly working for the victims in the war and that is not under the control of United Nations. It does not mean that the Security Council has no role in the implementation of international humanitarian law and human rights because today the conflicts are not only between the neighboring countries but it often crossing the regions. During these conflicts the international borders are crossed and the question of the state sovereignty rose, which is an international concern. When the matter is of international concern and relates to the sovereignty of the states then it attracts the purpose of the United Nations. It is the primary responsibility of the Security Council to protect the peace and order in the world at any cost (Simma, 2002).

It was decided that the UN should not involve itself in the enforcement of international humanitarian law. It was apprehended that if any misinterpretation would be a question mark on the efforts of United Nations on its main purpose which is to maintain peace and order in the world then it would defeat its primary objective.

In spite of all, the Security Council cannot stand itself beyond the effects of modern armed conflicts. In 1971 the Security Council asked to obey the humanitarian law in Pakistan when war was broken out between India and Pakistan. Similarly SC asked in its resolution 436 in 1978, to all the parties in the civil war of Lebanon, to allow the
ICRC for its services for wounded and sick persons in the conflict. This was the first time when Security Council took interest and acknowledged the rights and responsibilities of ICRC in the non international armed conflict (Shelton,2005). The Security Council also asked in the Gulf War between Iraq and Iran (1978) to all the conflicting parties to respect the Geneva Conventions on the humanitarian law. Before 1960 the role of Security Council was least but during the period of 1970-1980 the Security Council started to take interest in the violation of International Humanitarian Law. After 1980 the role of Sc was considerable as the violation of humanitarian law was on large scale.

Number of resolutions was passed during this period which shows the interest of Security Council on the violation of humanitarian law. In these resolutions the parties which were involved in the violation were strictly asked to refrain from the violation of Geneva Conventions (Schindler,2004). All the states are bound to follow and respect the all Geneva conventions on the international humanitarian law.

After 1990, the role of SC got importance with the power of veto and it has started to work very effectively for the implementation of international humanitarian law and human rights law (Simma, 2002).

There are several calls from the United Nations to the states to ratify, implement and adopt the conventions relating to the Human Rights law and International Humanitarian law. There is resolution No 1265 which is an exemplary resolution for the protection of Civilians in Armed Conflict. This resolution ensures the protection of wounded during the conflict. It stresses on the parties to the conflict to respect the humanitarian law. In several resolutions the United Nations stresses on the conflicting parties to respect the Geneva conventions on the humanitarian law (Arnold,2008).

The wording of the Resolution 1265 is as under;

"The Security Council] urges all parties concerned to comply strictly with their obligations under international humanitarian law, human rights and refugee law, in particular those contained in the Hague Conventions of 1899 and 1907 and in the Geneva Conventions of 1949 and their Additional Protocols of 1977"
The wording of the resolution is very clear and impressive which indicates the intention of the Security Council for the respect of international humanitarian law and human rights law. Now a days United Nations is dealing with lot of cases of conflicts including Kashmir in which it is strong wish of the Security Council that the parties should obey the requirements of the Geneva Conventions of 1949.

The Security Council mainly focused while implementing the rules and regulations of the international humanitarian law, the protection of civilians in the battle field. The Security Council also has shown serious concern over the violation of international humanitarian law in Bosnia in 1995. There were complaints about the grave violations of human rights in the area (Cigar, 1995).

The United Nations has much focused on the protection of women and children in the battlefield because they are considered the most vulnerable class of civilians during the conflict. The Security Council in its general resolution 1325 adopted in 2000, it has called upon all the parties to the conflict that all the parties should take special measures regarding the protection of women particularly from the acts of rape and other categories of sexual abuses (ibid).

It has prohibited all the violence against women during the conflict because the SC has seen the horrible violence against the women in the conflict of Rwanda and Yugoslavia where large number of sexual abuses were committed by the armed forces. The Security Council also stressed the protection of children during the conflict and also suggested certain safeguards which must be taken by the parties to the conflict (Arnold, 2008).

Humanitarian access is another factor during the conflict, it is often denied by the armed forces. Such cases have been observed in the conflicts of Afghanistan, Congo and Nigeria where access to the population was denied which is bare violation of humanitarian law.

The Security Council has repeatedly stressed and asked the parties to the conflict to grant immediate access to the population on humanitarian grounds. The Resolution of 1265 of the United Nations focused on the access to the population and especially the wounded persons. They must be accessed by the medical personnel and other assistance (Rodely, 1999).
The Security Council demanded access not only from the governments but also from all the other parties to the conflict even from the non state actors. The debate was started in Security Council regarding the protection of civilians during the armed conflict in 1999, which has given vibrant approach towards the maintenance of international peace and security and the implementation of international humanitarian law.

After the different debates and discussions by the Security Council in 1999 and 2000, there were three resolutions passed. The resolution of 1296 which was passed in 2000 declared that the access to the civilians should be uninterrupted during the conflict between the parties and it was further wished that the implementation of humanitarian law should be in true spirit by all the states. This resolution was considered as landmark in the implementation of humanitarian law because it was apprehended that the denial from the implementation of humanitarian law may amount to the breach of international peace and security for the world (Boyle, 1996).

As far as the attitude of the UN members and Secretary General is concerned regarding the extended role of the Security Council for the protection of international humanitarian law has been appreciated and supported by them. It is welcomed by the majority states and was urged by the states the protection of humanitarian law.

The reaction and determination for the protection of civilians during the conflict shows the will of the Security Council and the Secretary General. It has been observed that most of the members made close link between the violation of humanitarian law and the maintenance of international peace in the world. It can concluded that the member states including the General Secretary are fully determined to interpret the true spirit of the Article 39 of the UN charter (Best,1994).

In spite of all the intention and determination of the SC, there some shortcomings while implementing the human rights law and international humanitarian law because the Security Council is apolitical organ and its decisions are often based on political will which cannot be termed as legal one. In case of any denial from the decision of the Security Council, no legal action can be taken against the state which is involved in the violation of international humanitarian law. All the legal arguments may be supported
by the political will and the enforcement of such legal decision s may be not easy because there are political factors involved (Arnold, 2008).

It has been observed that the actions taken by the Security Council remains discerning and based on political resolve because there are lot of grave violations were committed in the different conflicting areas like Kashmir, Palestine, Burma and in Bosnia but no action has been taken so far by the Security Council.

The concern of the Security Council is considered very important because it has established the norms of the customary international humanitarian law. It is very important development by the Security Council about the customary rules of non-international conflicts.

The role of Security Council in this context has an integral importance because it has provided forum against the violations of humanitarian law. The repeated interests taken by the Security Council provided the shelter to the norms of the international humanitarian law.

Keeping in view the above study, it is very unfortunate the Security Council has not taken any satisfactorily interest for the implementation of international humanitarian law in the valley of Kashmir which is a conflict between two states India and Pakistan. The Indian forces are continuously violating even the basic norms of humanitarian law. Although there are some resolutions of security council regarding the dispute of Kashmir but it has not paid any attention on the actions of Indian army which committing grave violations of the Geneva convention of 1949 which are about the protection of civilians during the conflict.

7.18 Combatants and Non Combatants

International law declares the major difference between the persons who takes part in the armed conflict and those who do not take part in the conflict. They declared distinctively on the bases of their position in the armed conflict.

International points out the status of persons during the armed conflict according to their participation in the battlefield. This reality cannot be over thrown that the civilians have been closely linked with the combatants. They have been engaged to provide certain assistance for the purpose of war which has been facilitating the combatants
that assistance may be of any weapon, shelter, food and or any other mean of assistance during the armed conflict (Arnold, 2008).

In order to determine the real combatants, they are the members of the armed forces and they fully justified under international to take part directly in hostilities with the armed forces of other party. There are some persons who are not real member of the armed forces but they are accompanying the armed forces they also get the status of combatants under exceptional circumstances.

According to the Article 3 of Hague Regulations, the combatants are those who participate directly in hostilities and uses weapon against the conflicting party. The other members are considered by the international law as no combatants (Boyle, 1996).

Thus combatant is a person who is authorized to fight under international law which is applicable in armed conflict. This authorization does not belong to the individual capacity but it belongs to any organ or group of armed forces of other party which is authorized to fight under international. That party must be subject of international law.

But if persons who are not combatants and they take part in the armed conflict then they will not be protected under the rules and regulations of armed conflict and even they will not be treated as prisoner of war. These irregular combatants would not be classified as subject of international.

The word unlawful combatants were initially used after 2001 and they introduced as third category of persons which may be under the current legislation combatants or non combatants but they not fulfilled some necessary conditions. But it is important to mention here that this third category is indeed a controversial category because it creates lot legal questions. This third category also does not fully define the crime committed by it and even it does not attract the protection of humanitarian law (Shelton, 2005).

In order to constitute the term combatant, it includes all its organized members of armed forces, its different groups and its different units which engaged in fighting with the opposite party. In order to define the armed forces;

- It should be under the control of any command which must be answerable before the international community for the acts of its subordinates.
• That should be fully organized in discipline and must respect the rules and regulations of international law and international humanitarian law while fighting in the armed conflict (ibid).

Under the broad definition of combatants it will include all the members of armed forces, groups, and units fighting against other conflicting party. Article 43 para 2 of Additional Protocol I has given a comprehensive term to the Armed Conflict and declared significantly the term combatants (Cigor, 1995).

Although the preliminary status of the combatants is the participation in the armed conflict, similarly the women and children would be fallen in the definition of combatants if they participate in the armed conflict. The parties are bound to make its sure that the children should not take part in the fight if they are below the age of eighteen years and even the parties cannot recruit the children below this age.

The combatants are advised under the armed conflict rules that they should make themselves separate from the civilian population and should wear proper uniform in the battle field (ibid).

In the occupied territories, the guerrillas war is started, in these circumstances the fighters carries openly arms, they are also treated as combatants. The Article 44 of the Additional Protocol I in this regard was the most controversial because it includes the guerrillas in the definition of combatants (Rodely, 1999). If guerrillas do not distinguish themselves from the civilians even then they are combatants because they carry arms openly during each military engagement. Such cases are found where liberation movements are started like Kashmir etc.

The recognition of guerrillas was strongly opposed several states but it was supported by the Germany and it has drafted even some draft regarding this exception. This rule was limited only to the occupied territories. Similar movement is started in the valley of Kashmir where Kashmiri Muslim fighters are engaged in the war of independence against the armed forces of Indian Government as they don’t accept the occupation of India.

There is no doubt that the freedom fighters which are Muslim Mujahedeen are fighting against the Indian security forces with organized group and attacking only on the
members of armed conflict. They are resisting by organized freedom movement and
are backed by the majority population of the valley of Jammu and Kashmir.
Article 44 of AP I imposes additional responsibility on the party which is involved in the
conflict that if combatant violates any provision of armed conflict law then he must be
punished by the party to which he belongs (Simma, 2002).
The combatants who are detained during the conflict by the opposite party they will be
treated as prisoners of war. They will be treated according to the rules and regulations
of international law.
From the above so far discussions it can be derived that the freedom fighters in the
valley of Kashmir are combatants according to the sense of Additional Protocol I 1977
and the rules of International law. They must be treated as combatants and the rest of
the population in the Kashmir are civilians. They should be treated by the Indian
government as civilians as per the rules of international humanitarian law.
According to the Hague rules and the Additional protocol I 1977 along with the Geneva
Conventions 1949 on humanitarian law declares that the non combatants although not
member of armed forces and are not the part of conflict or direct fight with the adverse
party but they have a right to defend themselves from the aggression, if they fight for
self defense even then they are non combatants. Similarly the persons who are
accompanying the members of armed forces during the conflict are not combatants
within the meaning of Geneva conventions on humanitarian law (Shelton, 2005).
From the above frequent discussion it can be assumed that the freedom fighters who
are engaged in the valley of Kashmir are not combatants because they are fighting for
the right of self defense. The right of self defense has been declared by the
international law as the basic right which is also guaranteed by the international
covenants and conventions.
Conclusion and Recommendations

The valley of Kashmir which is no doubt the blessings of the God in the world and it has no alternative in its beauty. The inhabitants of this valley had been very passionate and self made. The thorough study of the history of Kashmir shows that there had been Muslim rule for hundreds of years. This land remained very prosperous and fertile not only for the local residents but also for the tourists or who settled in Kashmir from outside.

The miseries of this Kashmiri nation started when the treaty of Amritsar was signed in 1846 between the British government and Maharaja Gulab Singh. It was a great slave’s trade which was done by the British government. Although the English people had very fertile history for the propagation human rights in the world as it has been the largest Empire from east to the west. The historic document named as Magna Carta, which was concluded in 1215 by the British Society was ultimately the first instrument for the recognition of human rights in the western society. But unfortunately the government of Britain forgot the its value able efforts for the development of long history of human rights and made the sale of Kashmir. This sale had been condemned by all the scholars, historian, jurists and other sects of all the walks of life.

Although the violations of human rights had been the part of Kashmiri society like the other societies of the from world from the first day it beginning but any recorded document for atrocities of human rights can be found from the Treaty of Amritsar 1846 which was agreement for the slavery of people of Kashmir. The Maharaja Gulab Singh proved himself the actual owner over the Kashmiri society because he ruled the in Kashmir like the slaves. There was no record for the regard of human rights in Kashmir. The whole society was being oppressed under the vicious acts and taxes on the daily life of the people. There were horrible examples which have been reported through different sources regarding the human rights atrocities on the inhabitants of Kashmir. Although on several occasion he was warned by the British government and its different officials when they visited the valley but the fate of the people of Kashmir was not ready to change its path.
The British government had decided to divide the India into two parts India and Pakistan and for this purpose partition plan was given on 3rd June 1947. According to the criteria of this plan, the princely states were given the option to accede with any newly established state either Pakistan or India. The Maharaja of Kashmir did not decide timely the accession of Kashmir because he was expecting the hope that the state of Kashmir might become an independent state without accession, that’s why he was reluctant to accede with any state. On the side the Muslims who were majority in Kashmir were willing to join with Pakistan as they had bitter experience with the Dogra raj in Kashmir because they were mainly victimized. The revolt was started in Kashmir against the Maharaja and he was pushed back to Srinagar by the freedom fighters with help of Tribesmen came from Pakistan. At the same time Maharaja requested the military assistance from India which was accepted with the condition of signing the instrument of accession. In fact the Maharaja was blackmailed by the Indian government because India perceived that there is no chance for Maharaja except to sign the accession. The same was done by him and India landed her forces at Srinagar. During this time some parts of Kashmir were liberated which is now called Azad Kashmir. The Muslim conference established its government.

The matter was referred to the United Nations by the India. The complaint was filed by the government of India against Pakistan. After hearing the parties, the resolution was passed by the United Nation in which it was demanded from both the parties the withdrawal of forces immediately and further the future of the state will be decided through the free and impartial referendum which is democratic process.

Unfortunately, India is still denying the demand of plebiscite in Kashmir. The demand for plebiscite is very logical and is in conformity of the international law and human rights. Here question arises, why India is deliberately denying from the exercise of the right of self determination. This right is inherent which cannot be abrogated in all the circumstances. The right of self determination is universally accepted human right. The American president Wilson who addressed to the US congress on January 1918, strongly acknowledged the self determination and included this right in his famous fourteen points, he further stressed that this concept should be used and exercised by all the small states and colonies without any discrimination. The right of self
determination is enshrined in the charter of the United Nations which is binding on all the member states in the world. India is also member of the united Nations and is bound to obey its charter but we have seen that she is willfully denying to the Kashmiri people from the exercise of the right of self determination besides the several resolution adopted by the United Nations for the holding of plebiscite. The concept of self determination is also included in the human rights covenants like ICCPR which was adopted in 1966. It has an integral position in this covenant and Indian state is also party to the convention unfortunately same is being denied by the Indian government.

Further it has been observed that the Indian government which has in occupation of major part of Kashmir called Indian occupied Kashmir is deprived from the basic human rights which are available under the international law and the humanitarian law. There are many draconian laws have been introduced in the Jammu and Kashmir which are in repugnant to the basic norms of international law and human rights law. Such types of laws can never be allowed to be implemented in any part of the world which derogates the basic fundamental rights of the people.

The laws which enforced in Kashmir by the Indian government are like TADA, POTA, AFSPA etc. These laws are clearly the violation of the Charter of the United Nations, UDHR, ICCPR and the other human rights instruments which are agreed and implemented by the international community. These above said black laws are not against the international law but also these are against the domestic law of India like the constitution and its procedural which is used for the administration criminal justice system.

No law can be validated from the illegal occupation. The administration and legislative body of India is part and parcel of the international community, so the limitations and obligations are fully binding over Indian state. It is universally accepted principal that unlawful act should not have any prerogative. As the Indian state has no Locus Standi in Kashmir and its all the acts, legislation and trials are unlawful because it has no jurisdiction over the fate of Kashmiri people. It is further argued that no legislation can violate the Indian constitution and the international obligations.
There is no doubt that the occupation of the Indian government is unlawful, similarly the legislation which implemented in Kashmir by the Indian government that is also quite illegal and the laws are unjustifiable. As the India is party to the many international instruments for the implementation of human rights and the humanitarian law, and these instrument strongly prohibits the laws which are legislated for the territory of Jammu and Kashmir. It is pertinent to note here that the forced disappearances, arbitrary arrests and detentions, inhuman forms of torture, secret trials, arbitrary violation of secrecy of the personal life of the people, these are specifically against the concept of the human rights instruments. No derogation can be allowed from the said instruments and principles of international law and human rights in all the circumstance even during the times of emergency and the proclamation of war in the country.

As the India has occupied the territory of Jammu and Kashmir against the will of the people, so its actions are attack on the sovereignty of the land and it is war which is being fought by the freedom fighter against the Indian government. In these circumstances the law of international humanitarian will also apply in Jammu and Kashmir. Apparently India is violating several principles of humanitarian law like attacks on injured and wounded persons, arrest of civilians, child, women and old aged people. The attack on hospitals and even the custody of patients from the hospitals is also against the norms of international humanitarian law. Indian government must abide by the provisions of humanitarian law along with the other treaties, conventions and commitments with the international community.

In view of all the above said discussions that as far as the present status of the Jammu and Kashmir is concerned, the occupation and legislation which implemented in valley is illegal and derogatory with the norms and principles of international community, so it is the responsibility of the international community to take action against the state of India. Indian state must be pressurized by the international community to allow the free exercise of right of self determination to the Kashmiri people and it should also ensure the restoration of human rights in the Jammu and Kashmir. It should also provide the compensation to all the aggrieved families in Kashmir along with other possible relief. It is the duty which is imposed on the
international community to make ensure the proper exercise of rights of self
determination which is democratic process for the final disposition of the valley of
Kashmir and in this regard both India and Pakistan should cooperate with the final
decision of the state of Kashmir because the protection and exercise of this right will
automatically prevent the violation of all other form of human rights atrocities in
Kashmir.

**Recommendations**

In view of the above study, the following recommendations are hereby made before
the international community over the conflict of Kashmir.

1. The British government should declare the Treaty of Amritsar 1846 as null and void
   agreement with retrospective effects because it was the base of the human rights
   atrocities in Kashmir. This act will encourage the people of Kashmir for the
   propagation human rights.

2. The resolutions of the United Nations should be obeyed in true spirits by both the
countries India and Pakistan.

3. Both the governments should immediately withdraw their military forces from the valley
   of Kashmir.

4. The Indian Government should immediately give permission to the United Nations
   observers for the frequent visit to Kashmir.

5. India should also ensure the investigation should be made by the judicial authorities
   over the case of torture, forced disappearances, deaths and other inhumane
   treatments by the forces. These types of investigation reports should be open for
   public.

6. It is urged that India should withdraw its draconian laws which are implemented in
   Kashmir because those are against various human rights principles.

7. It is necessary in order to improve the status of human rights, the peace committees
   should be formed in all the localities in the valley of Kashmir.

8. All the Indian forces must be aware about the requirements of international
   humanitarian law.
9. All the agencies which are working for the protection of human rights should be allowed to make investigations over the abuses of human rights in Kashmir.


11. The dispute of Kashmir should be raised at the international level and the actual story of occupation on the area by the Indian forces should be explored before the international community.

12. The frequent movement of the Kashmiri people is restricted by the Indian forces, so the people should be at liberty to move freely in the different parts of the state of Kashmir including Azad Kashmir.

13. Steps should be taken by the international community for friendly and frequent environment for the effective working of human rights NGO’s in Kashmir.

14. Dialogue process should be started regularly between India and Pakistan in order to resolve the issue of Kashmir peacefully. For this purpose Kashmiri people must be made part of dialogues.

15. The principles and norms of international humanitarian law should be observed by the Indian armed forces in Kashmir against the freedom fighters because it has been observed that there is no respect for the provisions of the humanitarian law by the forces.

16. Steps should be taken for the recognition of right of self determination for the people of Kashmir and plebiscite should be conducted in the light of various resolutions of the United Nations. For this purpose neutral forces should be appointed in the state of Kashmir by the United Nations.

17. Seminars and Workshops should be conducted for the propagation of human rights for the people of Kashmir in the different parts of the world.

18. Human rights atrocities over the people of Kashmir should be highlighted through NGO’s and by the different human rights activists.

19. Indian government should release all the political prisoners which have been detained or sentenced under the black laws in Kashmir.

20. Indian government should provide free environment for the freedom of press and speech in the valley of Kashmir.
21. The international community must come forward for the true enforcement of all the human rights instruments and international humanitarian law.
Bibliography


71. Edward Michel, (1963), The Last year of British India, London.


100. Gupta, Sisir, Khas,(1966), Kashmir A Study in India, London.
119. Hordy C. Dillard, J; 1963, Conflict and Change: The Role of Law,” proc .ASIL.

Islamabad.


164. Lawrence, Walter (1928) The India We Served, Houghton Mifflin, New York.


208. Prasana Dikar sohail Vs Director Institute of Technology Nagpur.(1982) AIR. Bom.76


Rawalpindi.


269. umarqutb.wordpress.com/2011/04/04/kashmiri-body-lauds-amnest


271. V.M. Tarkunde, et.al. (1992), Report on Human Rights Situation in the Kashmir Valley, May 20–25, 1992 (New Delhi: Coordination Committee on Kashmir,


288.


Legal and Government Documents

3. Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949. http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/fe20c3d903ce27e3c125641e004a92f3

http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6ef6854a3517b75ac125641e004a9e68


9. For list of State Parties to Geneva Conventions see ICRC website at:
   http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=375&ps=P


17. The Atlantic Charter of 1941.

   http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/genevaconventions


22. UN Resolutions on Kashmir.

Newspaper Articles


Websites
1. www.frontlinekashmir.org/2011/05/amnesty-international-1224- - 101k
6. www.dw.de/dw/article/0,,16096455,00.html - 51k
7. www.icaed.org/fileadmin/user_upload/European_Parlament_reso
8. www.kashmirglobal.com/tag/amnesty-international/ - 52

**Human Rights Reports**

1. All Parties Hurreit Conference-APHC reports.
4. Institute of Peace and Development-INSPAD reports.
7. United States Institute of Peace-USIP reports.