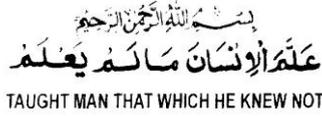


KASHMIR JAMMU & KASHMIR

— PRIMER —



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Roadmap for the Political and Legal Resolution of the Kashmir Dispute

Dr. Muhammad Khan and Ms. Sidra Khan

Abstract

The origin of the Kashmir dispute is political, as it is the unfinished agenda of partitioning the Indian Subcontinent. The legal aspects were later attached to the dispute to provide relevance and coverage to the unsolicited Indian invasion, which was a significant impediment towards a logical and pacific resolution. However, over seven decades of occupation proved infertile and less time for winning the hearts and minds of the people of Indian Illegally Occupied Jammu and Kashmir (IIOJK) for India. Today, after seventy-five years of its occupation, the people of occupied Jammu and Kashmir neither accept the Indian constitution, nor the annexation, unilaterally and illegally carried out by India on August 5, 2019. Instead, they stood up for their fundamental right of self-determination with new vigour and enthusiasm. This development has infuriated India to commit massive human rights violations in IIOJK. While India has done all this in violation of UN resolutions on Kashmir, there are sufficient grounds for pursuing the case in the UN politically and legally. This research focuses on finding out a roadmap as a way forward for the peaceful resolution of the Kashmir dispute through political and lawful means.

Keywords: IIOJK, UN Resolutions, Right of Self-Determination, Pakistan, India.

During the British colonial era, the Indian subcontinent was divided into two major parts, British India and a group of over 560 Princely States. There were three categories among the Princely States: Class A, Class B and Class C. Jammu and Kashmir had enjoyed Class A status. It was autonomous in most state affairs and under an agreement with the British Crown. At the time of the partition of the Indian subcontinent, all Princely States were given a choice to join any of the two new dominions,

Pakistan and India. Nevertheless, two factors were to be considered, i.e., the people's will and the state's geographical contiguity. Based on these factors, the People of Jammu and Kashmir acceded to Pakistan on July 19, 1947, through a consensus resolution of their leadership. This accession was done much before the formal declaration of Pakistan as an independent state. It occurred through a resolution passed by representatives of all parts of Jammu and Kashmir in Srinagar under the banner of the All-Jammu and Kashmir Muslim Conference. Maharaja of Kashmir had a Standstill Agreement with Pakistan to provide logistics and communication facilities through Pakistani landmass, as before India's partition. It was due to the natural inclination of Jammu and Kashmir State with Pakistan.¹

With this background, this article analyses a political and legal road map for a peaceful resolution of the Kashmir dispute, which will pave the way for peace and stability in South Asia. The research focuses on attaining three objectives; a) to examine the right of self-determination and UN resolutions, being the fundamental provisions for resolving the Kashmir dispute; b) to evaluate the roles of international forums as legal bases to reject the Indian illegal occupation and massive human rights violations in Indian Illegally Occupied Jammu and Kashmir (IIOJK); and c) to analyse the political and legal way out for resolving the Kashmir dispute through the involvement of the international community, UN bodies and confidence-building measures. In line with these objectives, two key questions are addressed during the research process; a) What are the stakes of the key stakeholders which constrain a peaceful resolution of the Kashmir dispute; and b) What inadequacies exist in the policies for legal and political persuasion over Kashmir dispute despite the presence of UN resolutions for the fundamental right of self-determination of Kashmiris.

Stakes over Kashmir Dispute

a) People of Kashmir

The people of Jammu and Kashmir (State subjects) are the primary stakeholders of the dispute. It is their birthright to be the fundamental stakeholders and to exercise their free will over the state's territorial boundaries. The UN Charter grants this right to every citizen of the state.

Thus, Kashmiris cannot be considered an exception regarding their statehood and deny them the right to self-determination. As mentioned earlier, the people of Jammu and Kashmir had decided much before the partition of the subcontinent to accede to Pakistan. Denial of their will to join Pakistan, the state's people stood up against Dogra's rule as they were aspirants to join Pakistan immediately after learning about the conspiracy hatched by Indian politicians and Lord Mountbatten, the last Viceroy of British India. Tribesmen also came to support Kashmiris in their struggle against illegal infiltration of Indian armed forces.

b) **Pakistan**

By acceding with the state of Pakistan on July 19, 1947, Kashmiris decided to be part of Pakistan. Upon knowing that Indian Government and Lord Mountbatten were pressurising Maharaja of Kashmir, Hari Singh, for accession with India, the people of Kashmir stood up, took arms and announced war against the Dogra rule. They captured a portion of Jammu and Kashmir, called Azad Jammu and Kashmir and established their Government on October 24, 1947. Since Kashmiris had already decided through a resolution to become part of Pakistan, therefore, Pakistan fully supported their will and wish. Visualising a defeat at the hands of the Kashmiri people, Maharaja asked for Indian military assistance, later exploited through a fake instrument of accession and taken as an excuse for its military invasion of Jammu and Kashmir on October 27, 1947. Since the people of Jammu and Kashmir had already decided to join Pakistan, India took the Kashmir case to the UN, and the leadership of Kashmir mandated Pakistan for the legal and political persuasion of their case at the UN.²

c) **India**

As mentioned above, the Indian armed forces invaded the state in October 1947 and captured the state's capital city, Srinagar, while taking an excuse for the fraudulent instrument of accession. Indeed, Maharaja of Jammu and Kashmir never wanted to accede to India; instead wanted to keep the state independent, having standstill agreements with India and Pakistan. Pakistan signed a standstill agreement, but India refused to sign the agreement and instead asked for negotiations which hinted at the ill designs of India over Kashmir. Upon occupation of the state, the

Indian military fought against Kashmiris. Envisaging its likely defeat, India referred the case to the UN on January 1, 1948.³

d) **United Nations**

The UN's essential role after its establishment in 1945 was to ensure the right of self-determination for all nations and communities. Pakistan and India were decolonised due to this crucial provision in the UN charter. Moreover, the UN got involved in the Kashmir dispute, following India's reference of the Kashmir case to this international body. Subsequently, the UN passed several resolutions for the conduct of a plebiscite to give Kashmiris their right to self-determination. In this regard, UNSC passed Resolution Number 39 on January 20, 1948, in its 230th meeting under code number S/654.⁴

Right of Self-determination: UN Charter and Resolutions

After two successive world wars and massive killings, the war victors thought of an international organisation that could save future generations from the horror of another caustic world war. With a Charter, the UN was mandated to protect global peace as an international regulating headquarters. The significant aspect was recognising the right of self-determination⁵ for all nations and communities. Under this specific provision of the UN Charter, many new states took birth with their own identity and sovereignty. Pakistan and India also became independent of colonial rule (United Kingdom) mainly because of the same provision. Ever since the decolonisation of the subcontinent in 1947, the people of Jammu and Kashmir have also been demanding their right to self-determination under UN resolutions derived and got accredited from the charter. Owing to its principal significance, the right of self-determination was secured in Article 1 of the UN Charter with a universal application, where Kashmiris cannot be made as an exclusion.

The provision of the right of self-determination and legal ownership of the people for deciding their future course of action with a determined destination is the essence of international law and is secured by several international treaties and agreements. Besides UN resolutions, Kashmiris' right to self-determination is also guaranteed in treaties and international commitments of Indian leadership. In light of the UN-

mandated right to self-determination, the people of Jammu and Kashmir also had a right to determine their destiny, political status and economic, cultural and social development model. The UNCIP resolutions also give Kashmiris their inalienable right of self-determination, valid until the dispute is resolved.

Legal Grounds to Pursue Resolution of the Kashmir Dispute

Pakistan has the following legal basis to pursue the Kashmir dispute at all international forums.

a) Indian Violation of the Fourth Geneva Convention and Kashmiri's Right

Article 49 of the Fourth Geneva Convention-1949 offers sufficient protection to the local populace of territory occupied by any occupying state and a foreign power.⁶ The essence of this article is that the local people will maintain their right over their land despite the external occupation. The occupation power cannot change the demography of its area. Indeed, from the perspective of international law and the UN Charter, occupation is an illegal act; therefore, how can an unlawful occupier change the demography of that territory? The IIOJK is a classic example of an occupying power; India is changing the state's demography under its occupation.

Article 49 (6) of the Fourth Geneva Convention deals with the safety and security of the civil population during the war. Since 1990, IIOJK has been a war zone where the current Indian force level is over 900,000. This force level makes Jammu and Kashmir a territory with the world's highest troop concentration area. Moreover, the Indian troops are unremittingly and immensely violating the human rights of Kashmiris, including killing, torture and rape, thus making the area an active war zone where the Indian military is conducting war crimes. The worst part of the Indian military occupation is that its security forces had total impunity through discriminatory laws like Public Safety Act and Armed Forces Special Power Act.

Article 49 (6) of the 4th Geneva Convention also bans the relocation by an occupying power of its population in the area it occupies or colonises. The article stipulates that the "Occupying Power shall not deport or

transfer parts of its civilian population into the territory it occupies"⁷. Since India is rapidly transferring its population in its active parts of Jammu and Kashmir, it is a grave violation of the 4th Geneva Convention⁸ and international law, which must be taken up at the UN level.⁹

b) **Mandate of International Court of Justice**

As per the opinions of the international jurists, the Kashmir dispute can be referred to the International Court of Justice (ICJ) based on two broad elucidations:¹⁰ a) the massive human rights violations and massacres committed by Indian security forces in IIOJK, and b) the treaty violation (Simla Agreement) by India on August 5, 2019, by unlawfully altering the status of IIOJK. Human rights violations and massacres come under the broad category of genocide and are covered in the UN Genocide Convention-1948. Based on this Convention, ICJ has given many verdicts related to human rights violations in various parts of the world. It provides a concrete basis for debating India's illegal acts in the disputed region.¹¹ Article-1 of this Convention deals with human rights violations and genocide acts committed during peace and war, while Article-2 defines the act and the types and forms of human rights violations. Article-4 of the Convention describes the punishments and the people involved in these acts of human rights. The treaty violations provide yet another cause for refereeing the Kashmir dispute to ICJ. India unilaterally and illegally violated the Simla Agreement-1972.

Para 1(ii) of the treaty (Simla Agreement) states, "The two countries are resolved to settle their differences by peaceful means – neither side shall unilaterally alter the situation nor shall both prevent the organisation, assistance or encouragement of any acts detrimental to the maintenance of peaceful and harmonious relations."¹² Since India violated the treaty upon abrogating Article 370 and Article 35A of its constitution on August 5, 2019, and altered the state's status, ICJ has the jurisdiction to start a trial against Indian unlawful acts. Moreover, Simla Accord stands scrapped after this unilateral and illegal Indian act.¹³

UNSC Resolutions do not allow unilateral change of the special status of Kashmir. The unilateral Indian act of revoking Articles 370 and 35A, which ends the state's special status, violates two UNSC resolutions; Resolution 91 of March 30, 1951,¹⁴ and number 122 of January 24, 1957.¹⁵

These resolutions were passed to secure the state's special status against Indian conspiracies at various times. The first attempt was made in 1951 once Indian Prime Minister Nehru prevailed over National Conference for the occupied state's change of status in India's favour but was scorned by the UNSC resolution. Based on the abovementioned resolutions, Pakistan must approach the UNSC to reverse the Indian act of August 5, 2019, since it contradicts the clearly stated UNSC resolutions.

c) **Forum of United Nations High Commissioner for Human Rights**

The role of the Office of the United Nations High Commissioner for Human Rights (OHCHR) over the Kashmir dispute has been quite appreciative and welcoming for the subjugated people of IIOJK. OHCHR has initiated two critical reports on issues related to human rights. Its first June 14, 2018 report highlighted the circumstances in IIOJK and demanded an international inquiry against the Indian excesses. India rejected this report and refused to act upon the contents of this report. In its second report, issued on July 8, 2019, OHCHR urged India to respect the fundamental rights of Jammu and Kashmir, fully occupied parts in line with the international humanitarian law and its covenants. On October 29, 2019, OHCHR showed severe concerns over the massive human rights violations and deprivations in IIOJK after August 5, 2019.¹⁶ This UN body unequivocally stressed India "to unlock the situation and fully restore the rights currently being denied."¹⁷

It is worth mentioning that former Chief of Defense Staff (CDS) of India General Bipin Rawat once advised Prime Minister Modi to establish concentration camps for the Kashmiri youth with De-radicalization Centres, to punish them for their demand for the right of self-determination. He planned to use these centres to terrorise the Kashmiri youth and to force the conversion of their ideology and desire for freedom from India. These massive issues of human rights in IIOJK need the attention of OHCHR.

d) **Reference of International Criminal Court over Kashmir Case**

The massacre of Kashmiri Muslims undertaken by Indian security forces in IIOJK can broadly be divided into two categories. One; The mass killings like Chotta Bazar in Srinagar on June 11, 1991, where the Indian military killed over 32 innocent civilians,¹⁸ Kunan Poshpora on night 23/24 February 1991, where over 80 Kashmiri women were gang raped¹⁹ by the Indian military, and Gowkadal Massacre, where Indian Army killed over 53 Kashmiri Muslims on January 20, 1990.²⁰ Two; targeted killings of Kashmiris who dared to stand for their right to self-determination.²¹

Both types of killings can be categorised as war crimes, as over 900,000 Indian security forces deployed in IIOJK are involved in the massacre of Kashmiris. Such killings by Indian forces fall into the category of genocide of the Kashmiri people. Indeed, in the post-August 5, 2019 scenario, the Kashmiri youth of IIOJK are targeted through fake encounters, custodial killings and on sight shootings. According to Kashmir Media Service (KMS), the details of killings, rapes and detentions are as follows:²² total killings of Kashmiris from 1989 to January 2023 are 96,175, custodial killings at the hands of the Indian Army are 7,288, civilians arrested by Indian security forces are 165,565, structures burnt and destroyed are 110,496, women widowed by killings of their spouses are 22,957, children orphaned by killing their fathers are 1,07,896, and Kashmiri women gang-raped and molested are 11,256. It is pertinent to mention that, ever since August 5, 2019, the day India annexed IIOJK into its union as union territories, over 1000 Kashmiris have been killed, besides wounding 3000. Indian forces arrested over 19000 Kashmiri civilians while destroying 1150 houses and buildings. Indian immoral military raped over 150 women, widowed over 50 women and 125 children was made orphaned.²³

The massacre and genocide can be tried by International Criminal Court (ICC). It was misperceived and misunderstood that mandate of the ICC is limited, and genocides and massacres of Kashmiris undertaken by India in IIOJK cannot be tried in ICC. Indeed, ICC must probe and indict individuals from any country it finds involved in a crime against humanity, like the killing of any particular community, ethnic or religious group in an organised manner. It may include war crimes and even

isolated killings.²⁴ Relating its mandate to IIOJK, the massive human rights violations committed by Indian security forces from 1990 to date is very much covered in its domain since all were genocide acts where state and state's military power was used in an organised and systematic way to kill, torture and arrest all those Kashmiris who demand the UN-mandated right of self-determination.

The term genocide, as defined by ICC, includes the killings "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group."²⁵ Indian security forces have deliberately targeted Muslims in IIOJK ever since 1990. The strategy Indian military commanders used in IIOJK includes segregating the Muslim community from Hindus, Sikhs and others and then killing them, causing bodily and mental harm in torture centres established in military camps in the population centres. The Indian military also commits crimes against humanity "as part of a widespread or systematic attack directed against any civilian population."²⁶ These crimes have been and are being committed against the civilian population of IIOJK under the blanket cover of broader impunity provided to Indian security forces through special laws, such as Armed Forces Special Power (AFSP) Act and Public Safety Act (PSA).

To avoid ICC disciplining, India takes the cover of its non-membership of the Rome Statute since it is not a signatory of this Statute and hence not a member of it. It is factually incorrect since ICC deals with individuals who commit crimes against humanity, irrespective of its membership or otherwise. ICC prosecutes individuals instead of prosecuting the states, as other UN organs do as per their mandate. Since India is not a signatory state of the Rome Statute, there is a different procedure for trying the Indian nationals, also laid down in ICC rules. The individuals from a non-signatory state will be tested through an indirect reference of the UNSC. "The Security Council may refer a situation to the ICC, which empowers the ICC to investigate all four crimes under the Rome Statute, including crimes of aggression."²⁷

It clarifies the misperception India has consciously spread to mislead Pakistan and Kashmiris. Thousands of Indian nationals (its military commanders and troops) have been found in the massacres and genocide of Kashmiris in IIOJK since last over three decades. There are hundreds

of Indian military commanders and middle-ranking officers who systematically killed, tortured, raped and arrested the innocent people of Jammu and Kashmir. Besides, the Indian military used Kashmiris as a human shield in several instances. They all need to be tried in ICC, and being non-signatory nature of India does not stop their trial, as claimed by India.²⁸

Inadequacies in the Policies over Kashmir

The agonising account of the Kashmir dispute is evidence of two broad conclusions: a) India maintained an inflexible stance over Kashmir despite being an invader and illegal occupant of IIOJK with strong anti-India sentiments of Kashmiri masses, b) there remained flexibility in the stance of Pakistan over Kashmir dispute despite being the legal convener of Kashmir with the overwhelming and unwavering support of Kashmiri people. With consistency in its policy over the future of Jammu and Kashmir, India kept consolidating its hold over Indian-occupied parts of the state until it annexed them with the Indian Union on August 5, 2019. Although this act of India was illegal, unlawful and a severe violation of international law and UN resolutions, the UN neither stopped India nor witnessed any worldwide condemnation.

As a part of its foreign policy and diplomatic manoeuvring, India maintained the highest level of political and diplomatic engagements with key power centres at the international level before and after this unilateral and illegal act. India continued lobbying over Kashmir with East and West simultaneously to pave the way for its unlawful occupation and acts of human rights violation in its occupied parts of the state. So much so it convinced Muslim states of the broader Arab world, especially the Gulf Cooperation Council (GCC), on the Kashmir dispute in its favour. These states favoured India at a time when India was unleashing a reign of terror on Muslims of IIOJK through killings, detentions, fake encounters and arresting the innocent Kashmiris who stood for their right to self-determination.

Besides its brutalities in IIOJK, India was simultaneously passing new laws for the alienation, discrimination and denationalisation of Muslims in various parts of India, and the Muslim world was tight-lipped. Instead, some Muslim states later became part of Indian investment plans in

IIOJK. Moreover, due to its intimate relationship with the international community, India gained a maximum advantage for its illegal acts and felonious stance over Jammu and Kashmir. However, the Organization of Islamic Cooperation (OIC) largely remained ineffective in stopping Indian illegal acts over Kashmir. These aspects are worrisome from two perspectives; a) the international community and UN seem least interested in human rights violations and political rights of the Kashmiri people in IIOJK, and b) the contemporary Muslim world, their ruling elites and the only Muslim representative organisation OIC have ignored Kashmiris against Indian oppression and consolidation of Indian hold in IIOJK.

Despite having an extremely political and legal position over Kashmir, Pakistan could neither attract nor influence the international community over the dispute. Instead, it lost the support of those states which were instrumental in the passage of UN resolutions over Kashmir during the Cold War era. Moreover, Pakistan wanted to convince the Muslim elites of the Middle East for their intimate and most needed support for Kashmiri's right to self-determination. In the aftermath of Indian illegal act of annexation of IIOJK into its union through the Jammu and Kashmir Reorganization Act, some key Muslim states of OIC conveyed to Pakistan that Kashmir is not an issue of the Muslim world and they would like to have a fair policy over this issue with India. While India was putting IIOJK under complete siege and military cordon after August 5, 2019, some vital Muslim states invested heavily in India in various fields, amounting to Indian support and acceptance of its unlawful actions in IIOJK.

Indeed, this was a complete departure from the traditional stance of the entire Muslim world and especially some critical states of the Middle East over the Kashmir dispute, which hurt Pakistan and especially the people of the whole Jammu and Kashmir State. Scholars of international relations have various views over this changed stance of Muslim states over the Kashmir dispute since these states have traditionally supported Kashmiri's right to self-determination and Pakistani stance over the Kashmir dispute. Some scholars attribute this change to a result of hectic Indian diplomatic and political engagements in the Arab world, with a vast Indian diaspora already paving the way for the acceptability of India

in the Middle East. Indeed, it was an indirect Indian strategy to create space for itself in these oil-rich economies of the world. Currently, many critical financial and administrative positions, including business centres, academic and research institutions, media and information technology and even oil industries, are either held or influenced by Indian expatriates. Once Indians have a significant influence on critical facilities of the Middle Eastern region, it is natural that they tend to manipulate the policies of these states in favour of India, and that is what has been happening since the beginning of the 21st century.

There is yet another perception of intellectuals and regional experts. This category of scholars believes that over the years, Pakistan was found wanting in its diplomatic and political engagements in the Middle Eastern region, taking the traditional support as guaranteed. In a way, Pakistan provided a space for India, which India fully exploited. In this regard, 2015 is considered a crucial year once Pakistan refused to become a partner in the war against Yemen. Due to this refusal and related events, India sent the maximum workforce to the Middle East. It later consolidated its socioeconomic and socio-political gains in the region, paving the way for its larger adequacy and refutation of space for the Pakistani workforce and expatriates.

India fully exploited the lowering of Pakistani engagements, strengthening its involvement and arrangements in diversified fields. However, this well-thought-out Indian strategy impacted Pakistan from two angles: a) it minimised the space and acceptability of the Pakistani diaspora, and b) it brought a change in the traditional affiliation and support states and people of this region had for Pakistan and Pakistani policies, especially over Kashmir dispute. The primary reasons for such a situation are repeated political instability, economic fragility, and evolving political, social, sectarian and ethnic fault lines. This internal weakness of Pakistan restricted the space for diplomatic and political engagements with friendly states and the international community, especially the world's foremost power centres.

Pakistan needs a clear road map for the realistic pursuit of the Kashmir dispute. Political leadership must have a consensus to move forward in a successful quest over the Kashmir dispute. At the same time, the diplomatic community of Pakistan must gear up its efforts for a realistic

resolution of the Kashmir dispute. It is only possible once there is a united national will among the political, social and strategic forces of Pakistan on all issues of national interest, including the Kashmir dispute.

Proposed Strategy for Legal and Political Persuasion of Kashmir Dispute

Pakistan legally stands on a higher pedestal to pursue the Kashmir dispute in line with international global norms and practices. Pakistan has a very sound basis for pursuing the issue at all levels, including legal, political, diplomatic and moral. Indeed, Pakistan morally stands on high grounds compared to India. India has breached global norms and treaties by violating human rights in IIOJK through the massive deployment of its security forces for ruthlessly killing, torturing, and arresting innocent masses since 1990. It has committed gang rapes of Kashmiri women of all ages as a weapon of war. Kashmiris in Pakistan-administered parts (Azad Jammu and Kashmir) live in peace and comfort. They enjoy an excellent living standard with all possible facilities of life, having complete freedom of expression and services. Azad Jammu and Kashmir people live at par with Pakistani citizens; in some cases, they are more facilitated. It makes Pakistan morally very high to present the Kashmir case at international forums, especially the UN.

Diplomatically, Pakistan must best use its massive diplomatic corps on the Kashmir dispute. The Pakistani diplomats must be well aware of the dynamics of the Kashmir dispute and human rights violations in IIOJK before engaging with the international community. They must be well equipped to convince foreign government officials on the Kashmir dispute through historical realities, legal position and above all, the will and wish of the people of Jammu and Kashmir. UN Charter, UN resolutions on Kashmir, treaties and pacts and various commitments with the people of Jammu and Kashmir by the international community and even Indian leadership are sufficient to convince the broader global community and attain their attention towards the Kashmir dispute. Indeed, legal and ground evidence on the dispute has to be interpreted and articulated through logical presentations.

The huge Pakistani diplomatic corps need a clear direction from the government – the political will to resolve the dispute under the will and

wishes of the people of Jammu and Kashmir. Besides, the state and its institutions must clearly state that Kashmir is an issue of Pakistan's national security, upon whom there will be no flexibility and concession. Two aspects have to be taken care of by diplomats and politicians: a) Kashmir is an issue of national interest of Pakistan, thus has to be safeguarded in letter and spirit, and b) Kashmir is an issue of the national security of Pakistan, thus has to be secured, protected and pursued as states protect their geographical and ideological borders.

Politically, there has to be a very intimate engagement between the political leadership of Pakistan and other countries. The essence of political commitment is the determination and consistency to persuade the objective; resolution of the Kashmir dispute until its logical solution. Political will is a commitment to the cause and involves making the best use of bilateral and multi-lateral relations through mobilising political systems. In the process, there is a need to coordinate the use of institutions, the diplomatic community, the diaspora, friendly states and resources.

Unconventional Approaches to Highlight the Kashmir Dispute

a) Liberal Approach to using Art and Culture

Pakistan can use Kashmiri art and culture through its diaspora, especially the Kashmiri diaspora to create awareness among the international community about the Kashmir dispute. In this regard, all available means, like traditional Kashmiri art, literature and cultural aspects, can be used to attract the attention of the liberal West. The brutalities of Indian security forces can be reformed in reality-based storytelling narratives to incite the inner consciousness of the international community to create sympathy for those killed, tortured, raped, blinded, paralysed and those under siege or languishing in jails. Practising such a strategy would attract the international community's attention on humanitarian grounds, which can be used later for a political settlement of the issue.

b) Awakening the International Community

An existential threat is linked to the unresolved nature of the Kashmir dispute, as both Pakistan and India are nuclear-armed states. Even if war

starts at the conventional or limited level, it can always get into a nuclear exchange. Such a scenario would be unfortunate with global consequences, not just confined to the South Asian region. As per the scientists' estimates, in such a scenario, millions of people may be killed at the regional level, and globally, its repercussions would be even more dangerous.

c) **Undertaking Assorted Measures**

Pakistan must extensively undertake assorted measures, including extensive lobbying at various UN, EU and other international forums. Furthermore, Pakistan must formulate a strategy to counter all efforts made by India to defame the rightful Kashmiri struggle globally.

d) **Humanitarian Dimension**

Pakistan must approach the international community on the humanitarian basis of the Kashmir dispute. International humanitarian organisations have already raised their voices against the Killings and massive human rights violations in IIOJK. Pakistan needs to make concerted efforts to raise awareness about the authentic Indian agenda of *Hindutva*. It must invite international human rights organisations and the UN to monitor the ground realities in IIOJK.

Through the intellectual community and media, Pakistan needs to create an interface with the Indian civil society. There are several Indian writers, scholars and even a restricted class of politicians and media circles who boldly accept the human rights violation in IIOJK and criticised Indian state policy over these unjustified acts. The huge Pakistani and Kashmiri diaspora, working all over the world, must be mobilised to create awareness in the host countries about the Indian oppression and repression in IIOJK with the sole purpose of stopping India from all illegal and brutal acts it has taken to consolidate its unlawful gains.

e) **Domestic Coaxing: Paving Ground for International Persuasion**

At the domestic level, Pakistan must create political stability and take all political, social and religious groups and parties on board to create concord and harmony. Moreover, Pakistan must make all efforts for the

stabilisation of its economy. Since the forms of warfare have changed altogether, therefore, Pakistan must make use of human intelligence, internally as well as externally. Through academia, think tanks and intellectuals, various dimensions of the Kashmir dispute can be explored and exploited for an ultimate solution. The humanitarian side of the dispute provides an excellent opportunity for attracting the international community's attention. Pakistan can establish academic and social forums at home, Azad Jammu, and Kashmir. The more comprehensive interaction between academic circles and social media groups for presenting the accurate picture of IIOJK to the international community and the UN organs will be the best strategy for attracting the international community's attention. The other segments, like trade unions, lawyers associations, engineers and doctors associations, can also play a decisive role in projecting the Kashmir cause. The primary stream media of Pakistan can be provoked to play a dominant role in highlighting the Kashmir issue in its actual perspective.

Conclusion

The entire debate for the political and legal persuasion for the solution to the Kashmir dispute reveals sufficient grounds for Pakistan to reach the UN and the international community. The legal and political forums which support Pakistan's stance on Kashmir include a) the UN Charter, which is essentially based on the right of self-determination; b) UN resolutions over the Kashmir dispute, the essence of all UNCIP and UNSC resolutions is to give Kashmiris their right of self-determination through a plebiscite under UN, c) the provisions of International Law, Geneva Convention, International Humanitarian Law and Covenants support for the Kashmiris' will for their future status. The organs of the UN, such as UNSC, UNGA, ICJ and OHCHR, have legal provisions and political space for resolving the Kashmir dispute in line with the past practices and precedence for the settlement of international disputes.

The illegal annexation of IIOJK in the Indian Union and the undoing of its special status have opened Pandora's box. India has violated all UN resolutions it accepted to resolve the Kashmir dispute. Moreover, India has violated its constitution and the constitution of the occupied state, which cannot be justified as it was never placed before the occupied

Jammu and Kashmir Constitutional or Legislative Assembly for ratification.

Despite its political origin, the Kashmir dispute has a humanitarian dimension. The massive human rights violation in IIOJK, which killed over 97000 innocent masses, demands that India be penalised as a state at ICJ and that its military commanders who perpetrated these massacres be tried at ICC. Besides, India is making massive demographic changes in its occupied parts of the state. Demographic changes are not allowed in the occupied territory of any shape and can be tried as per the Fourth Geneva Convention. However, from the legal perspective, neither India can change its status (special status) nor can it change the demography of the occupied state.

References

- ¹ Chitralekha Zutshi, India, Pakistan and the Kashmir Issue: 1947 and Beyond, Association for Asian Studies, Education about Asia, Volume 14:2 (Fall 2009): Asian Intercultural Contacts. Accessed at; <https://www.asianstudies.org/publications/eaa/archives/india-pakistan-and-the-kashmir-issue-1947-and-beyond/>.
- ² Ershad Mahmud, Status of AJK in Political Milieu, Policy Perspectives, Vol. 3, No. 2 (July - December 2006). Accessed at; <https://www.jstor.org/stable/42922642>.
- ³ Alastair Lamb, Kashmir: A Disputed Legacy, 1846-1990, Oxford University Press (January 1, 1991).
- ⁴ UNO, Resolution 39 (1948) / [adopted by the Security Council at its 230th meeting], of 20 January 1948, United Nations Digital Library. Accessed at; <https://digitallibrary.un.org/record/11954?ln=en>.
- ⁵ Charter of the United Nations, Chapter I, Article 1, Accessed at; <https://legal.un.org/repertory/art1.shtml>
- ⁶ International Humanitarian Law Databases, Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, Article 49 - Deportations, transfers, evacuations, ICRC. Accessed at; <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-49/commentary/1958>.
- ⁷ Practice relating to Règle 130. Transfer of Own Civilian Population into Occupied Territory Note: For practice relating to ethnic cleansing, see Rule 129, Section C. Treaties Geneva Convention IV, CICR. Accessed at: <https://ihl-databases.icrc.org/fr/customary-ihl/v2/rule130>.
- ⁸ Article 49, Geneva Convention, Relative to the Protection of Civilian Persons, in Time of War of 12 August 1949. Accessed at; https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33_GC-IV-EN.pdf
- ⁹ Deportations, Transfers, Evacuations, Article 49-4th Geneva Convention, International Humanitarian Data Bases. Accessed at; <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-49>.
- ¹⁰ Prof Dr Muhammad Khan, Kashmir: A reference to ICJ, Pakistan Observer-October 7, 2022. Accessed at; <https://pakobserver.net/kashmir-a-reference-to-icj-by-dr-muhammad-khan/>
- ¹¹ Priya Pillai, Pakistan v India at the International Court of Justice, on Kashmir, Opinion Juris. Accessed at; <https://opiniojuris.org/2019/08/25/pakistan-v-india-at-the-international-court-of-justice-on-kashmir/Comments>
- ¹² Simla Agreement, Stimson, July 2, 1972. Accessed at; <https://www.stimson.org/1972/simla-agreement/>

-
- ¹³ A.G Noorani, Shimla scrapped, Dawn, August 24, 2019. Accessed at; <https://www.dawn.com/news/1501373>.
- ¹⁴ UNMOGIP, Security Council Resolution 91 (1951), United Nations Military Observer Group in India and Pakistan. Accessed at; <https://unmogip.unmissions.org/security-council-resolution-91-1951>.
- ¹⁵ Ibid.
- ¹⁶ Permanente Mission of Pakistan to the United Nations, Geneva, UN High Commissioner for Human Rights on Jammu and Kashmir, Accessed at: <https://www.pakungeneva.pk/ContentPage.aspx?ID=37>
- ¹⁷ Rupert Colville, Spokesperson for the UN High Commissioner for Human Rights, Press briefing note on Indian-Administered Kashmir, United Nations, Geneva; October 29, 2019. <https://www.ohchr.org/en/press-briefing-notes/2019/10/press-briefing-note-indian-administered-kashmir>.
- ¹⁸ Asifa Amin Koul , Flashback Chota Bazar - June 11th, 1991: 32 civilians massacred by Indian security forces, Youth Forum for Kashmir, 9 June 2010. Accessed at; <https://yfk.org.pk/flashback-chota-bazar-june-11th-1991-32-civilians-massacred-by-indian-security-forces/>
- ¹⁹ Muhammad Umar, The WIRE, 26 Years After Kunan Poshpora, Army Still Enjoys Immunity For Sexual Violence, February 23, 2017. Accessed at; <https://thewire.in/rights/26-years-after-kunan-poshpora-army-still-enjoys-immunity-for-sexual-violence>. Six of the Kashmiri women who were allegedly gang raped by Indian soldiers in 1991 have died, the remaining 17 survivors still await justice.
- ²⁰ An interview with the sole survivor of the Gowkadal Massacre, We spoke with Farooq Ahmed Wani, the sole survivor of the brutal Gowkadal Massacre in which 53 Kashmiris were fired upon and killed by India's armed forces. Stand with Kashmir, January 21, 2022. Accessed at; <https://standwithkashmir.org/gowkadal-massacre/>.
- ²¹ 30 years since the Chotta Bazaar Massacre in IIOJK, Ministry of Foreign Affairs, Government of Pakistan, Accessed at: <https://mofa.gov.pk/30-years-since-the-chotta-bazaar-massacre-in-iiojk/>
- ²² Kashmir Media Service, HR Violations in IIOJK-(From Jan 1989 till 31 January 2023). Accessed at: <https://www.kmsnews.org/kms/?>
- ²³ Ibid.
- ²⁴ Sang-Hyun Song, The Role of the International Criminal Court in Ending Impunity and Establishing the Rule of Law, United Nations-UN Chronicle, December 2012, No. 4 Vol. XLIX, Delivering Justice. Accessed at; <https://www.un.org/en/chronicle/article/role-international-criminal-court-ending-impunity-and-establishing-rule-law>.
- ²⁵ Amnesty International, International Justice. Accessed at; <https://www.amnesty.org/en/what-we-do/international-justice/>
- ²⁶ Widespread or systematic attack - crimes against humanity, Republic of Trinidad and Tobago, The International Criminal Court Act 2006. Accessed at; <https://cjad.nottingham.ac.uk/en/legislation/167/keyword/146/>
- ²⁷ International Criminal Court, Rome Statute of the International Criminal Court, International Criminal Court-2012. Accessed at; <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.
- ²⁸ Alasdair Pal, Fayaz Bukhari, Human Rights and the Law in Indian Controlled Kashmir, Reuters, April 30, 2019. Accessed at; <https://www.reuters.com/article/us-india-kashmir-encounter-law-idUSKCN1S6oXU>.

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Seizing Kashmir's Identity: Implications for the Global Peace and Stability

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Abstract

India's unilateral action of seizing Kashmiri's identity on Israeli model, has set ablaze the peace and stability in the South Asian region. Kashmiris have been robbed of their autonomy by Indian Prime Minister Modi and his hawkish government. The unilateral action by the Indian side is unprecedented, and demonstrates Indian stubbornness towards its neighbours in particular and world in general besides ridiculing the international institutions responsible for peace and security such as the United Nations Security Council (UNSC). Needless to remind, that Kashmir has been a bone of contention between Pakistan and India since their Independence in 1947. The Indian action of annexing Kashmir without taking into consideration sensitivities attached to it is likely to affect the contemporary world order, besides further strengthening realpolitik assumptions. The two neighbours, who are nuclear rivals, have already fought three full-fledged conventional wars over their tangent claims on Kashmiri territory, besides a limited war i.e. Kargil Conflict. If the Kashmir issue is not addressed in time, it may actualize yet another war between Pakistan and India which, if initiated, could spiral up into a 3rd World War having likely exchange of nuclear devices that might be the end of world due to the devastation attached.

Keywords: Kashmir, Indian Atrocities, Extremist Ideology, Peace and Strategic Stability, Abrogation of Article 370 and 35 (A).

Pakistan-India bilateral relations have again come to a standstill with flurry of blame game and accusations regarding each others' claims on the valley of Kashmir. Indian act of abrogating Jammu and Kashmir's special status on August 5, 2019 has created a war like situation.¹ Both Pakistan and India have emotional attachment to their

respective positions. Pakistan views the Kashmir issue as an outstanding territorial dispute, while India is adamant that the Kashmir valley chose to be under Indian Union at the time of Independence by the then Maharaja of Princely state of Kashmir, Raja Hari Singh. Against the will of Muslims, who were in majority, Raja Hari found a kind of comfort in acceding to India so as to have its rule continued.² The accession to Indian Union was immediately denounced by the locals, who took up arms against the Indian armed forces. The Pakistani armed forces also joined the local freedom fighters so as to resist India's forced occupation of the Valley against the subcontinent's formula of division. Pakistan Armed Forces and the freedom fighters resisted the Indian forces' offensive move and evicted them from their strongholds. Seeing their defeat, the then Indian government rushed to the United Nations Security Council (UNSC) for intervention and requested for ceasefire. The UNSC acted as per its mandate and a ceasefire was called between the two sides. The ceasefire line between the two sides of Kashmir was later on converted into Line of Control (LoC).



Source: <http://www.futuredirections.org.au/wp-content/uploads/2019/08/Kashmir-and-the-Abrogation-of-Article-370-An-Indian-Perspective.pdf>
(Showing Indian version of Kashmir)

India played smart, diplomatically, and thus for buying time hedged behind the UNSC Resolutions (UNSCR) on one lame pretext or the

other against those who demanded a plebiscite in Kashmir to let the Kashmiris exercise their free will to decide about their future. The UNSC Resolutions about Kashmir were a reflection of Pakistan and the Kashmiri people's will, and hence the Pakistani defensive-offensive was relegated in favour of the UNSC assurances for holding free and fair plebiscite. India, which felt humiliated and defeated, started employing delaying tactics and never let the plebiscite take place on multiple self-generated arguments and pleas. Seeing the Indian government and the occupation forces' atrocities, the Kashmiri youth soon started indigenous freedom struggle, which had full moral and diplomatic support from Pakistan. However, the Indian diplomatic corps dubbed the freedom struggle as violence or extremism and made an excuse for not holding plebiscite the world community unfortunately, accepted. Since then, the Pakistan- India bilateral relations have never been normalized due to the Indian stubbornness on the Kashmir dispute.

Pakistan and India have fought three wars i.e. 1948, 1971 and 1965, besides a limited war in 1999 of Kargil on the issue of unresolved Kashmir dispute. The world community over a period of time has lost interest in resolving the issue for apparently three reasons: *First*, India is regarded as largest democracy vis-à-vis Pakistan; *second*, India has become one of the biggest markets for the consumable goods; and *third*, India was and is being seen as counter-weight to rising China.

Indian political and military leadership, with second tenure of the hardliner BJP government have found themselves an opportunity to cash the major powers' sensitivities and played their cards to annex the Kashmir valley against all the international laws, UNSC Resolutions, bilateral agreements with Pakistan. By abrogating Articles 370 and 35A from its constitution, which accorded special status to the Jammu and Kashmir. The unilateral act of Indian government is being seen as an act of war by the other stakeholders including China, Pakistan and Kashmiri people.

The three other stakeholders are carefully watching the evolving geopolitical situation and behaviour of the international institutions besides members of P-5 countries. Pakistan is exercising maximum restraint and playing its all possible diplomatic and political cards to

let the international community exercise their authority to settle the issue peacefully of which the first expected step is denouncing of Indian act of abrogating the special status of Kashmir. The Pakistani military and political leadership fully understands that there are three major stakeholders on the Kashmir issue which happen to be nuclear powers. Any miscalculation may result into a catastrophic conflict that may result into nuclear winter or end of life.

Things are getting serious and hotter. The issue is of sovereignty for which nations have been non-compromising. The Indian side has aired a state of uncertainty and subjected the world in general and South Asian region in particular to existential threat. Happenings about the identity of Kashmir are no more normal, but alarming. The world powers have to understand the sensitivities and act fast. The paper is thus an effort to identify the genesis of the Kashmir issue, reasons behind the Indian act of mutilating Kashmiri's identity and listing the strategic implications associated with the issue.

Theoretical Framework

The current Pakistan-India bilateral relationship can be seen through the prisms of realism and constructivism. Realists' paradigm of international relations professes that states in an anarchic international system pursue more and more power so as to have their dominance and hegemony in the World.³ India is on course of maximizing its military modernization, which would instigate it to actualize its offensive military doctrines.⁴ As per the 2018 annual report published by the Sweden based Stockholm International Peace Research Institute (SIPRI), India has been the biggest arms and ammunition importing country in last five years that amounts to be approx. 12% of the global share of arms imports.⁵ Indian conventional and strategic military might encouraged it to take an ultimate decision about Kashmir status, which is a reflection of Indian hegemonic and revisionist strategic designs.⁶

To be more specific, the Mearsheimer theory of offensive realism tries to dominate the strikes thinking faculties. However, without being subjected to nationalistic orientation, theory of constructivism comes to forefront, which believes that in social construction of inter-state

relations. Alex Wendt, in his 1992 masterpiece stated, “Anarchy is what states make of it: The social construction of power politics,” identifies that any systemic anarchy is product of inter-state actions and behaviour that basically revolves around state to state relationship over a period of time in an international structure of power.⁷ Pakistan-India bilateral relationship has long been subjected to hostilities and mistrust. Any action by either side is perceived with suspicion. Both sides are hostage to ‘reification’ i.e. pre-conceived ideas. In other words, any bilateral relationship under overall rubric of international relations is designed by two main ingredients i.e. interests and the international political structures, which in turn is dependent on social norms and pre-conceived ideas and not purely on material conditions.⁸

India, which is in search of achieving major power status, has done its part of maximizing hard power so as to adopt aggressive approach in dealing with different issues in order to meet political ends especially hegemony at regional level. Realists believe that for becoming a major power, regional hegemony is a must.⁹ However, India denies the mindset and argues that it is in response to its security concerns vis-à-vis China. The two perceptions about Indian approach, thus, often keep rubbing the shoulders.

The Rashtriya Seva Sangh (RSS)

The Rashtriya Seva Sangh (RSS) is a much talked about extremist right-wing Indian political cum militant organization, which happens to be the parent organization of the incumbent Indian ruling Bhartiya Janta Party (BJP). RSS was founded back in 1925 by a rightist leader Keshav Baliram Hedgewar with an ideology of establishing Hindu dominance after the end of British rule in subcontinent.¹⁰ RSS had its mother ideology inferred from the then German racist Nazi party, which was deadly against the Jews being a direct threat to their superior race.

Historically, Hedgewar was ideologically inspired by the Indian nationalist scholar Vinayak Damodar Savarkar who believed in the superiority of Hindu nation. He dreamed a home for the Hindus and gave concept of *Hindutva*.¹¹ Motivated by the Savarkar’s ideology, Hedgewar raised Hindu nationalist right wing organization in which, being a racist, he included only the upper-class Brahmins with a single

aim of protecting Hindu social, cultural, political as well as religious interests. He believed in Hindu supremacy over rest of the religions.¹²

Initially, the RSS did not have any political aspirations and instead concentrated only on maintaining Hindu domination mission. Their basic orientation was to institutionalize the *Hinduness* among the superior castes of the Hindus. They focused on the discipline and ideology, which gelled well with the elite class Hindus.¹³ The RSS people had reservations on Kashmir's autonomy rights, especially the religious rights for the Muslim majority vis-à-vis Hindu minority and termed it as 'pseudo-secularism'.¹⁴ Thus, when the Hindutva ideology flourished, the RSS members started taking part in politics. Nationalist approach got the audience among the Hindus who happened to be the majority in India and thus the BJP came into power which is believed to be the soft political face of the decades old rightist party RSS.¹⁵ The incumbent Indian Prime Minister Modi has been among the most active members of RSS.¹⁶ With the extremists in power, hope of justness, fairplay, equal rights, sympathy, religious freedom, and above all restraint approach in dealing with different issues will be naïve. Needless to remind the major actors of international system, that RSS has been under sanctions and among banned organizations in the past due to its extremist approaches especially involvement in communal violence.

Genesis of the Kashmir Dispute

The dispute dates back to 1947, when the subcontinent was divided by the British rulers basing on the basic rule of majority. It was left on the choice of majority to side with either Pakistan or the Indian Union. Kashmir, while being in process of settling the political and demographic dichotomy i.e. the ruler being non- Muslim (Hari Singh) and majority being Muslims, the Indian Army launched an offensive to capture the entire Kashmir. The Pakistani troops, which were not well equipped at the time of independence, took up the arms along with the civilian *Lashkars* and stopped Indians from further advance.

The first Kashmir war started on 27 October 1947 that lasted till January 1, 1949. Later, on intervention of the United Nations, India, that was seeing defeat, managed a ceasefire with a promise to hold

plebiscite to let Kashmiris decide about their status. However, nothing tangible could materialize as India initiated delaying tactics to put the issue on back burner. Resultantly, skirmishes kept occurring and finally on March 14, 1950, the UN Security Council (UNSC) adopted a Resolution on Kashmir, urging immediate demilitarization talks between India and Pakistan, pursuant to the decision of the Security Council taken at its 457th meeting, on December 22, 1949, which is also termed as McNaughton proposals; however, India later backed off.¹⁷ In spite of the UNSC instructions, the Indian side shied away from holding constructive or result oriented talks and did not let anything materialize in tangible terms but just the cosmetic and lip services were meted for the face value only in order to dilute global pressure for resolving the Kashmir issue.

The unresolved issue of Kashmir, however, kept the local Kashmiris on toe to get their identity recognized. The stubborn attitude of the Indian administration led to the outbreak of an all-out conventional war over Kashmir on September 6, 1965, which was also put to another ceasefire on September 23, 1965. The issue went extensively internationalized and India was forced upon to settle the issue. While the pressure was still building, India started ingression into East Pakistan which was difficult to be administered as it is located geographically apart. To the badluck of Pakistan, the 1971 general election created political turmoil on the issue of power sharing between political parties based in East Pakistan and West Pakistan. The political disharmony and geographical disconnect between the two wings gave an opportunity to India to cash in on and supported *Mukti Bahini*, a Bengali separatist organization. Indian Premier Modi recently admitted at government level that India supported *Mukti Bahini*.¹⁸ In spite of the fact that the Armed Forces of Pakistan fought with much valour and dignity, the political disharmony-led interests made the Pakistani forces to surrender. Had the Pakistan Armed Forces chosen to fight, there would have been huge innocent civilians' casualties. A war won militarily both in West Pakistan and East Pakistan had to taste a defeat on political table. It was Kashmir issue that encouraged India to checkmate Pakistan's huge military success of 1965 war.

After the 1971 debacle, on July 2, 1972 the Simla Agreement was signed between the two sides and the Kashmir issue was decided to be resolved bilaterally. Simla Agreement infact was the agreement because of which the Kashmir issue was brought down to the Indian desires of keeping it bilateral.

After Simla Agreement, the Kashmir issue once again went into back burner as Pakistan was recouping from the 1971 incident. In 1989, Afghan War started, and it further went into back seat. In 1998, Pakistan tested nuclear device in response to the Indian tests and once again the Kashmir dispute came into forefront. The Kargil Conflict was fought in 1999, which almost bought the two sides on brink of nuclear war which was averted by the international intervention.

Despite the international pressures, the indigenous freedom struggle by Kashmiri youth was getting intense against the Indian occupation forces. To the good luck of India, in 2001 the Twin Tower attacks took place which introduced 'terrorism' as a new kind of threat to the global peace and stability. The Kashmiri freedom struggle also got tainted with terrorism and the just struggle got the sham name of terrorism. The steam got out of the Kashmiri struggle and India successfully started blaming Pakistan as a state sponsoring terrorism, at all possible international forums. In short, the world got involved in debate of differentiating between freedom struggle and terrorism; thus, it became difficult for the Kashmiri freedom fighters to justify their attacks against the occupying Indian armed forces.

It was as late as 2017, when the martyrdom of Kashmiri freedom fighter Burhan Wani refueled the freedom struggle. Indian Armed Forces were left with no choice but to divert the world attention by all means. India, having an edge over media, started a campaign against Pakistan by projecting its involvement in physical support to the Kashmiri attacks. The Indian tactics included the choreographed attack against their own national institutions and armed forces installations in order to put Pakistan on back foot. India made the world worried that Pakistan's involvement in Kashmir could result into a nuclear war. Pakistan denied the allegations of any state sponsored activities inside India including Kashmir Valley. Meanwhile, the BJP government came into power and the Indian

atrocities inside Kashmir intensified. BJP, as identified earlier, is political face of the RSS¹⁹ and rightist in its approach kept the nationalistic anti-Pakistan approach in front to win the second term in office. BJP also indicated in its manifesto that the Kashmir special status would be revoked. To win anti-Pakistan votes, the BJP government also staged a self-assumed kind of so called surgical strike inside Pakistan against the training camp of mujahideen. Pakistan denied any such activity; however, Indian media played an extremist role and talked so much of the fake surgical strike that the Indian masses started believing the lie.

In short, BJP that follows the RSS ideology of Hindu nationalism,²⁰ came into power in 2018 for the second term in India. The unexpected victory by BJP put their leaders into a pseudo fallacy of superiority. Lately in 2019, the BJP government taking the lead from self-believed success of staged attacks to blame Pakistan once again staged a terrorist attack against its own troops at Pulwama. The Pulwama attack led to a new wave of Kashmir related debate at the international forum. India took initiative of bombing inside Pakistan at Balakot, which was effectively responded by the counterattack.

During Prime Minister Imran Khan's visit to the US in July 2019, President Trump during the White House press briefing offered to mediate between India and Pakistan to resolve the Kashmir issue. The US President also revealed that the Indian Premier and asked for mediation. Trump's revelations did not go well within India and a debate initiated about Modi's sincerity with the Kashmir issue. Kashmir again got the international attention which was against the Indian hardliners. Modi, sensing the loss of his political popularity, took a bold step and revoked Articles 370 and 35 A of the Indian constitution.

The revoking of said Articles related to Kashmir was not well received and fueled the freedom struggle inside Indian Occupied Kashmir (IOK) besides Pakistan also held up to its diplomatic trenches steadfast. Seeing the eruption of violence in IOK, the Indian side imposed a tough curfew inside IOK and denied all basic rights to the people.

While exercising cautions in their approach, the world in general and human rights organizations in particular have started tacitly

supporting Pakistan’s diplomatic positions based on the undeniable realities on ground and have professed Kashmiri people’s distresses, much to the dismay of Indian political elite. Despite all odds and oppressive tactics employed by the Indian troops inside IHK, the indigenous freedom struggle is being multiplied duly supported by the Pakistani diplomatic Corps to fight the case on political and diplomatic fronts. India is believed to have fired on its toes with an unprecedented action which even rejected the UNSC multiple resolutions to settle the issue. Only time will tell as to which course the Kashmir dispute would go amid all international, local and regional support aligned with the Kashmiri people’s freedom struggle. Its’ nothing but a test of international community, international organizations which champion human rights and international security, for instance the UNHRC and the UNSC.

An Account of UNSC Resolutions on Kashmir

Before a detailed analysis of the recent Indian act of abrogating Articles 370 and 35 A is undertaken, it is imperative to take an account of the UNSC Resolutions on Kashmir, to which India has been non responsive.²¹ It can be ascertained that since the 1971, no tangible UNSC was adopted, which shows Kashmir issue’s importance after 1971 Simla Agreement. Following are the major UNSC Resolutions on Kashmir:-

UNSCR	Date	Central Arguments
38	17 January 1948	Urged Pakistan and India to take prompt actions to improve the situation in the state.
39	20 January 1948	Calling for an urgent investigation into the matter fearing “the deteriorating situation might threaten international peace”

47	21 April 1948	Noted that both India and Pakistan desire that the accession of the state should be decided through democratic method of a free and impartial plebiscite.
51	3 June 1948	Reaffirmed previous resolutions and directed the Commission to move to the areas of dispute and complete the duties assigned to it in UNSC resolution 47 as soon as possible.
80	14 March 1950	Urged India and Pakistan to make immediate arrangements for the ceasefire and demilitarization of Jammu and Kashmir on the basis of the McNaughton proposals. ²²
91	30 March 1951	Reaffirmed that “the final disposition of the state of Jammu and Kashmir will be made in accordance with the will of people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the UN”.
96	10 November 1951	Called upon the parties to accept arbitration by the international Court of Justice upon all outstanding points of difference and decided that the UN Military Observer Group in India and Pakistan (UNMOGIP) would continue to supervise the ceasefire in the state.

98	24 December 1952	Recalled the provisions of the United Nations Commission for India and Pakistan's (UNCIP), UN resolutions of August 13, 1948 and January 5, 1949, which provided that the question of the accession of the State of Jammu and Kashmir of India or Pakistan would be decided through an impartial plebiscite.
123	21 February 1957	Requested that the president of the Security Council visit the sub-continent along with the government of India and Pakistan, examine any proposals which were likely to contribute to the resolution of the dispute.
209	4 September 1965	Called upon both India and Pakistan to take all steps necessary to immediately cease firing and return to their respective sides of the line. It also called on the two governments to co-operate fully with the UN military observer group in Pakistan and asked the Secretary General to report back on the implementation of the UNSCRs within three days.
210	6 September 1965	Called on the parties to cease hostilities in the entire area of conflict immediately and withdraw all armed personnel from the positions they held before August 5, 1965.

211	20 September 1965	Demanded that the cease-fire take effect at 0700 hours GMT on September 22 and that both forces withdraw to the positions held before August 5, 1965. The council requested the Secretary General to ensure the supervision of the cease-fire and called on all states to restrain from any action which might aggravate the situation.
214	27 September 1965	The Council expressed the concern that the cease-fire called for in resolutions 209, 210 and 211 (and agreed to by India and Pakistan) was not holding, and demanded that the parties to honor their commitment, cease-fire and withdraw all armed personnel.
215	5 November 1967	After the call of cease-fire and failure of materializing it, the Council demanded that representative of India and Pakistan meet with a representative of the Secretary General to purpose schedule for the withdrawals as soon as possible.
303	6 December 1971	Decided to refer the question to the UNGA and meeting were called following deterioration in relations between India and Pakistan over a series of incidents, including Jammu and Kashmir and the additional strife in east Pakistan.

307	21 December 1971	Demanded that a durable cease-fire be observed until withdrawals could take place and called for international assistance in the relief of suffering and rehabilitation of refugees as well as their return home.
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A Bird Eye View of Articles 370 and 35 A of the Indian Constitution

In January 1950, the Constitution of India was put to effect in Kashmir and Article 370 was made part of the Constitution. The Indian act of including Article 370 was against the clause VII of the instrument of accession signed between Indian Government and Maharaja Hari Singh, which stated that the Jammu and Kashmir cannot be compelled to except the Indian Constitution.²³

It implied that the state of Kashmir had the right to draft its own constitution besides was empowered to choose about additional powers which could be extended to the federal government. The provisions of Article 370 gave special status to the state of Jammu and Kashmir, for instance, separate state flag, autonomy over Jammu and Kashmir's internal administration and of course separate constitution. In short, there were 5 special provisions of Article 370, which include: *first*, the state of Jammu and Kashmir was exempted to have complete implementation of Indian constitution and thereby have the powers to constitute its own constitution; *second*, India's central government could only exercise its authority and constitutional power on the State of Jammu and Kashmir if the state's government concurs with the central government; *third*, the concurrence would remain provisional till the time it was ratified by the Jammu and Kashmir's elected assembly; *fourth*, Article 370 cannot be abrogated or amended without the approval and recommendation of the State's elected assembly; and *lastly*, the Indian government's powers over State of Jammu and Kashmir were limited to defence, foreign affairs and communications.²⁴

Article 35A was applied on State of Jammu and Kashmir by

Presidential Order given in 1954, which kept the separate identity of Kashmiris for the last seven decades. Article 35A restricted the non-Kashmiri population from acquiring or buying property in Jammu and Kashmir and dual nationality of India and Kashmir, restrained giving jobs to non-Kashmiris, denial of admissions of non-Kashmiris in any professional college run by State government and disallowing any non-Kashmiri to marry Kashmiri women.²⁵

Implications of Abrogating Articles 370 and 35A

The current ruling party BJP had a written election manifesto, which clearly stated to integrate the State of Jammu and Kashmir into the Union of India by abrogating Articles 370 and 35A from the Indian constitution.²⁶ On August 5, 2019, in an unprecedented move, Indian President Ram Nath Kovind, through a constitutional order revoked Presidential Order of 1954, according to which the State of Jammu and Kashmir was given special status till the time a free and fair right of plebiscite was given to Kashmir to decide about their future.

The Indian government took the stance that abrogation of Articles 370 and 35A was done with the approval of Governor of Jammu and Kashmir.²⁷ However, in actuality it could only be done if the elected assembly of Jammu and Kashmir was willing and recommended it. Ironically, on August 5, 2019, the elective or constituent assembly of Jammu and Kashmir did not exist as it was dissolved in November 2018.²⁸ Indian political elite knew it that the special status of the Jammu and Kashmir could not be revoked, had the constituent assembly existed. Hence, it is evident from the Indian act that the decision about abrogating the Kashmir identity-related articles from the Indian constitution had already been taken a few months earlier. In fact, the Indian unilateral act revalidated Mohammad Ali Jinnah's Two-Nation Theory.²⁹ It also exposed BJP's extremist, racist and fascist ideologies³⁰ which happen to be the political face of RSS.

The Indian Premier's undemocratic and unprecedented immoral act of snatching away Kashmiri's identity could have multiple severe natured implications. A few of them are stipulated: the *First and foremost* is the fear of a new bloody freedom struggle that may result into an unprecedented violence by the Kashmiri youth; *second*, India by

implicating Pakistan in Kashmiri freedom struggle related actions could launch an all-out war with Pakistan; *third*, the Indian armed forces which are equipped with all kinds of lethal weapons may adopt the basic method of curbing insurgency i.e. genocide; *fourth*, impose demographic change in Jammu and Kashmir in a bid to convert Muslim majority into a minority; *fifth*, India can pave the way for sowing seeds of Hindutva ideology by establishing centres of extremist Hindus in Jammu and Kashmir; and *last*, by denying education and equal opportunities to the Kashmiri youth, relegate them to the level of third grade citizens and even beyond.

Immediate Responses by Pakistan

Pakistan being a major stakeholder of the unresolved Kashmir dispute, immediately took all possible steps primarily in the realm of diplomacy in order to make the world community realize about the sensitivity of strategic environment being built due to the Indian act of annexing Kashmir and including into its Union unilaterally.³¹

Besides, immediately strengthening the LoC with fresh troops amid Indian's open threats of launching limited offensive against Azad Jammu and Kashmir, Pakistan's political and diplomatic elite took multiple appreciable actions, which have taken aback the Indian political elite. The actions include passing of a unanimous resolution through its National Assembly on August 6, 2019 that rejected the Indian act of abrogating Articles 370 and 35 A and urged the world community to take notice of Indian violation of ceasefire along the LoC besides use of cluster ammunition against the unarmed public. In addition, Pakistan also expelled Indian High Commissioner from Pakistan and did not allow own High Commissioner to proceed to India. Pakistan also put an end to the bilateral trade including *Dosti Bus and Samjhota Express Train Service* and threatened to review existing bilateral agreements between Pakistan and India. Pakistan also celebrated August 14 as solidarity day with Kashmir while Indian Independence Day i.e. August 15 as black day.

At diplomatic level the Foreign Office held back to back meetings with like- minded diplomatic missions in Pakistan to win their support in favour of reminding India to honour UNSC Resolutions on Kashmir.

Pakistan also approached UNSC and Human Rights Council to constitute inquiry commission with regard to Indian atrocities in Kashmir. Both the institutions had played their role, however, not to the expectation of the stakeholders that is Pakistan Kashmiris and China. UNSC had held its consultative meeting on Kashmir but without issuing an official statement. On Pakistan's request a meeting of the Organization of Islamic Conference (OIC) Contact Group was also held, which took note of the human rights violations and urged the two stakeholders to settle the issue bilaterally.

A reality check of Pakistan's efforts reveals that the issue of Kashmir has, got international traction without any doubt; however, despite the Indian unilateral, undemocratic and unprecedented at that has humiliated the UNSC Resolutions, the world at large did not take tough stance against India less expressing concerns about human rights violations. Although the Chinese side did put up their tough stance against Indian act but remained cautious while siding with Pakistan. Turkey and Iran out rightly supported Pakistan's stance³² whereas, ironically, the UAE and Saudi Arabia awarded their highest national awards to Indian Prime Minister Modi for his role in improving the bilateral trade.³³ Albeit the UAE and Saudi Arabian acts were tangent to the Kashmiris and Pakistani expectations, it does support the argument that the contemporary political order is real politic-centered. It demonstrates the great powers' double standards. Economics has visibly taken over the morality in international relations, for instance, contemporarily, the volume of annual trade between Gulf Arab countries and India is approx. 100 billion USD.³⁴ The lukewarm international criticism has effectively been utilized by the Indian media and thus played the biased international environment to their advantage for supporting their unjust revoking of Kashmir's special status.³⁵ Pakistan, inspite of less resilient international support, has resolved to fight for Kashmir till the last man and last bullet. Pakistani military and political leadership have also reiterated that Kashmir undoubtedly remains the jugular vein of Pakistan.³⁶

Regional and International Implications

Let's now analyse as to how the Indian dismissive and stubborn

attitude could impact upon regional and global peace and harmony. In fact, the Indian unprecedented act of snatching Kashmiris identity without involving other stakeholders is a deliberate act of war which needs to be seen in realist perspective, lest it is too late. The world powers have to have a serious concern about evolving situation which could lead to destabilizing global peace and harmony. A few of the likely happenings based on the Indian approach of 'might is right' are discussed in the ensuing paragraphs:-

- **Sino-India and Pakistan-India Wars Leading to 3rd World War:** Besides the valley of Jammu and Kashmir, abrogation of Article 370 has also challenged the status of Ladakh valley. It is a well-known reality that China seeks its rights over the territory and issued an official statement on Indian act by stating that “India’s unilateral amendment to its domestic law, continues to damage China’s territorial sovereignty.”³⁷ Hence this Indian action is “Unacceptable and Void”. In case, India fails to invoke Article 370, there are all the likely chances that an armed conflict may get erupted between the two most populated states leading to a human catastrophe. Moreover, the regional level war could spill over to other parts of the world depending upon the alliances – a horrific 3rd World War scenario.
- **Introduction of Perpetual Threat of Limited Wars:** China, Pakistan and India are three nuclear powers who lay their respective claims on Kashmir’s geographical areas. All three stakeholders fully understand the destruction associated with the use of nuclear weapons. Foregoing all three could naturally be oriented to undertake limited wars or strikes at tactical levels to settle scores under the nuclear overhang. All three actors would try to remain well below the nuclear threshold and thus, there are substantial chances that the region may fall prey to perpetual threat of limited wars.
- **Negative Blow to the International Arms Control and Disarmament Initiatives:** The Indian stubbornness and dismissive attitude may send a negative image around the

globe. The third-world countries and especially those who feel threatened with regard to their existence including Iran and DPRK may relegate the idea of disarming in favour of building more and more power so that to avoid getting blackmailed by major powers. India took full advantage of its discriminatory membership of Missile Technology Control Regime (MTCR)³⁸ and special waivers with regard to Nuclear Suppliers Group (NSG). The two memberships helped India to build anti-satellite (ASAT) weapons systems, Ballistic Missile Defense (BMD) Systems³⁹ besides saving its indigenous fissile material to build more and more nuclear warheads. These out of proportion capabilities have proved to be among the leading factors because of which the Indian leadership has even overruled the UNSC bindings on Kashmir.

- **Derailing of Afghanistan Peace Process:** The ongoing Pakistan-led Afghanistan peace process between Afghan Taliban and the US does not go well with the Indian approach of sandwiching Pakistan between India and Afghanistan. India's National Security Advisor Ajit Doval has openly committed to apply 'double squeeze policy' on Pakistan i.e. to keep Pakistan's regular forces diluted at two fronts. Although Pakistan has rejected the ambitious Indian policy of double squeeze, yet India will do its best to create an environment through its consulates in Afghanistan to derail the process.⁴⁰ While it might serve the Indian purpose, coercing Afghan peace process is tangent to the global mission of eliminating terrorism. The world can't afford to have yet another version of al-Qaeda in shape of Daesh inside Afghanistan. The choice rests with the world community either to restrict India or let it loose at the cost of their future generations' peace and security.
- **Insider Threat and the Global Nuclear Security Concerns:** In recent past, the world in general and nuclear haves have been voicing against the insider threat to the nuclear devices being held by nuclear weapons states.⁴¹ A rogue element at the helm of affairs related to pressing nuclear button has been a major source of concern. Needless to stress that at the

moment Indian nuclear button is in hands of a man who happens to be the staunch member of Indian extremist rightist organization, RSS. Will the world powers let it remain as such? A regime change approach maybe option, although a non-democratic suggestion, however, could be beneficial when viewed through the prism of peace and stability. Irrational behaviour of the Indian leadership can't be ignored which could result into an accidental or deliberate early use of nuclear devices. An indicator of which has already been shown by the Indian contemporary Defence Minister who acknowledged that only the circumstances would lead the Indian political leadership to choose between 'First Use' or 'No First Use;' doctrines.⁴²

- **Emergence of New World Order:** The political economy based alignments and realignments of the states are indicating towards likely emergence of New World Order. China, Russia and Pakistan seem to be belonging to one strategic group while Western Great Powers and the US are on the Indian side. Both the groups have different alliances based on their security and strategic interests and concerns. Visibly Middle Eastern and Far Eastern powers are making their independent choices to align with the Western or Eastern power hubs. Mostly the alignments and realignments are market based that want to have their chunk of pie. These new alliances could either shift the power centres permanently or resonate between the two poles, leading to a new kind of Great Game.
- **Idealist Paradigm Would Further Get Naïve:** In terms of international relations' paradigms, the idealist paradigm remains subjected to the criticism of being naïve to the contemporary international system. Realists' argument of mustering more and more power without looking at morality will get further strengthened against peaceful and just international system being professed by the idealists. India, which was earlier known for being democratic, secular and peace loving state, has finally opted to be undemocratic, non-secular and hardliner fascist one. Thus, morality and

peace hugging arguments will breathe their last, if the Indian side is not pressurized to invoke the Kashmiri identity.

Way Forward for Pakistan

Although, a lot much is required to be done on Pakistan's part; yet, it needs to remain rational and logical while deciding any steps further. Following could be the modus operandi as a food for thought for Pakistani decision making apparatus:-

- Keep the steam filled in Kashmir issue and do not let any distractions to dilute the momentum already achieved.
- Build on the national economy and let the world come to Pakistan for trade. India has mustered courage to undertake unilateral action on Kashmir through effectively cashing on its market and evolving economy.
- Do not let the Western powers find a reason to equate Pakistan's moral and diplomatic support to Kashmiri freedom struggle with tag of state sponsoring terrorism. It could be through activating Pakistani diaspora in Western countries, holding awareness seminars and discussions at notable think-tanks, diplomatic offensive through Pakistani missions abroad, calling for bilateral and multilateral meetings of stakeholders and above all presenting fact sheets at international forums related to security and human rights.
- Instead of getting singled out on the issue at diplomatic and political levels, establish a tri-party committee comprising of Kashmiri reps from both Azad Kashmir and Jammu and Kashmir, China and Pakistan to issue joint statements on evolving situations inside Kashmir.
- Win favourable votes in own favour at international level through extensive diplomatic outreach.
- Employ aggressive media campaign to project own narratives while mitigating propaganda campaign of the Indian media.
- Hybrid warfare is the essence of today's conflict pattern.

Indian authorities have already acknowledged Pakistan's success in hybrid warfare, which needs to be maintained without falling victim to complacency.

- Harmony between civil-military hierarchies has to be maintained at all costs.
- Keep the nation informed through frequent press briefings by political, diplomatic and military spokespersons.
- Refrain from issuing hostile statements so as not to offer a broad side for getting tagged as irrational or irresponsible actor.
- Nuclear will come into play, albeit as a last resort. Pakistan should not let crystalize its threshold so that to avoid Indians bluff call.
- Religious and political harmony has to be achieved for a 'whole of a nation response'.
- Resisting war mongering statements for keeping the economic momentum going. Political and military leadership has done a lot to stabilize it. Nothing should disturb it.
- Initiate offer of holding Pakistan-India bilateral composite dialogue at an earliest convenience and reiterate its proposal of Strategic Restraint Regime (SRR).⁴³
- Keep itself relevant in Afghan peace process by bringing back the parties on negotiating table.
- Offensive and timely unfolding of the likely Indian choreographing of the terrorist incident for implicating Pakistan.

Conclusion

The Indian act of abrogating Articles 370 and 35 A cannot be taken light and thus has to be addressed at priority. Indian big market seems to have fascinated the major powers of the world, who have relegated the elements like norms, morality and justness in favour of their share of economic pie to be won from the Indian markets. The world

community should understand that the nations have not been compromising when it comes to their sovereignty and prestige. Pakistan and Kashmiris are part of a resilient nation who have amply demonstrated in past that when it comes to their nationhood, the complete fiber of the nation gets united under one flag.

Kashmiris can't be subjugated to the oppression tainted resolution of the issue. India has seen it throughout the last seven decades. Kashmiris did not budge to the coercive tactics and not willing to accept Indian hegemony even now. They have hundreds of thousands of martyrs in the name of Kashmir independence and thus they would never sell their blood to occupation forces.

Amid such a resilient resistance by the Kashmiris vis-à-vis hardliner policies of the rightist Hindu government in centre, there are all the likely chances that a kinetic action may take place embroiling three nuclear powers. Such an eventuality may spiral up unexpectedly leading to actualizing of most feared nuclear winter. The world community and other peace and security organization have to act fast against the Indian government's extremist acts so as to ensure global peace and harmony.

References

- ¹ Ali Ahmed, "Kashmir and the Abrogation of Article 370: An Indian Perspective," *Associate Paper*, August 20, 2019, <http://www.futuredirections.org.au/wp-content/uploads/2019/08/Kashmir-and-the-Abrogation-of-Article-370-An-Indian-Perspective.pdf>.
- ² Alastair Lamb, "The Indian Claim to Jammu & Kashmir: Conditional Accession, Plebiscites and the Reference to the United Nations," *Contemporary South Asia* 3, no. 1 (April 11, 2007): 67–72.
- ³ John J. Mearsheimer, *The Tragedy of Great Power Politics* (New York: W. W. Norton, 2003), 34.
- ⁴ Dr Ahmed Saeed Minhas, "Indian Military Modernisation: Catalyst for Doctrinal Shift," *The Express Tribune*, May 1, 2019, <https://tribune.com.pk/story/1962921/6-indian-military-modernisation-catalyst-doctrinal-shift/>
- ⁵ "SIPRI Yearbook-2018: Armaments, Disarmament and International Security," (Stockholm: Oxford University Press, 2018), 580.
- ⁶ Deepshikha Shahi, "India in the Emerging World Order: A Status Quo Power or A Revisionist Force?," *TNI Working Papers*, September 2014, 6, https://www.tni.org/files/download/shifting_power-india.pdf.
- ⁷ Maysam Behraves, "The Thrust of Wendtian Constructivism," *E-International Relations Students*, March 9, 2011, https://www.e-ir.info/2011/03/09/the-thrust-of-wendtian-constructivism/#_edn5.
- ⁸ J. Samuel Barkin, "Realist Constructivism," *International Studies Review* 5, no. 3 (September 2003): 326.
- ⁹ Barry Scott Zellen, *The Realist Tradition in International Relation: The Foundation of Western Order* (California: Praeger, 2011), xxi.
- ¹⁰ Christophe Jaffrelot, *The Hindu Nationalist Movement and Indian Politics* (New Delhi: Penguin Books,

- 1996), 25.
- ¹¹ Jaffrelot, *The Hindu Nationalist Movement in India*, 33-38.
 - ¹² Rustam Shah Mohmand, "India under the Shadow of RSS," *The Express Tribune*, September 7, 2019, <https://tribune.com.pk/story/2051050/6-india-shadow-rss/>.
 - ¹³ Rahul Shivshankar, "The Age of Hinduness: Modi Has Disavowed Hard Hindutva for the Humanism of 'Hinduness,'" *The Times of India*, June 7, 2019, <https://timesofindia.indiatimes.com/blogs/beyond-the-headline/the-age-of-hinduness-modi-has-disavowed-hard-hindutva-for-the-humanism-of-hinduness/>.
 - ¹⁴ Carsten Busch, "The Policy of the Bhartiya Janata Party, 1980 and 2008: Possible Influence of Hindu Nationalism on Indian Politics," Master's Thesis, (US Naval Post Graduate College, June 2009): 34, https://calhoun.nps.edu/bitstream/handle/10945/4765/09Jun_Busch.pdf?sequence=1&isAllowed=y.
 - ¹⁵ K. K. Pathak, "*Of Jaswant Singh, the BJP and the RSS: An Analysis*," (Mumbai: The Rajaji Foundation, 2010), 37, <http://www.freedomfirst.in/freedom-first/pdf/jaswant-singh-book.pdf>.
 - ¹⁶ Rehman Malik, "Modi's War Doctrine," *The Nation*, March 04, 2019, <https://nation.com.pk/04-Mar-2019/649315>.
 - ¹⁷ Robert Trumbull, "India will Reject New Kashmir Plan; McNaughton Proposal to U. N. Held Counter to Stand on Moving Troops," *The New York Times*, December 28, 1949, <https://www.nytimes.com/1949/12/28/archives/india-will-reject-new-kashmir-plan-mcnaughton-proposal-to-un-held.html>.
 - ¹⁸ "Indian forces fought along Mukti Bahini: Modi," *The News*, June 08, 2015, <https://www.thenews.com.pk/print/12923-indian-forces-fought-along-mukti-bahini-modi>.
 - ¹⁹ Mandavi Mehta, "The Role of Hindutva in Indian Politics," *The South Asia Monitor*, no.55 (February 2003), <http://www.ciaonet.org/pbei/csis/sam/sam55/>.
 - ²⁰ Busch, "The Policy of the Bhartiya Janata Party," 31.
 - ²¹ Data compiled by the Centre for Peace, Security and Developmental Studies (CPSD).
 - ²² Details of the McNaughton proposals available at <http://www.mofa.gov.pk/documents/unsco/Proposal%20in%20respect%20of%20Jammu%20and%20Kashmir%20made%20by%20General%20McNaughton%20on%2022%20December,%201949.pdf>.
 - ²³ Text of the Clause VII of the Kashmir Instrument of Accession. Available at <https://thewire.in/history/public-first-time-jammu-kashmir-instrument-accession-india>.
 - ²⁴ "Article 370: Law and Politics," *India's National Magazine* 17, no. 19, September 29, 2000, <https://frontline.thehindu.com/static/html/fl1719/17190890.htm>.
 - ²⁵ Rupali Pruthi, "Article 35A Scrapped: What Is It and Why It Has Been Controversial?," *Jagran Josh*, August 5, 2019, <https://www.jagranjosh.com/current-affairs/article-35a-of-indian-constitution-1533554733-1>.
 - ²⁶ "Text of Official BJP's Manifesto," 12, https://timesofindia.indiatimes.com/realtime/BJP_Election_2019_english.pdf
 - ²⁷ "Article 370: What Happened With Kashmir and Why It Matters," *BBC News*, August 6, 2019, <https://www.bbc.com/news/world-asia-india-49234708>.
 - ²⁸ Hakeem Irfan Rashid, "Jammu & Kashmir Governor dissolves Assembly After Rivals Stake Claim to Govt Formation," *The Economic Times*, November 22, 2018, <https://economictimes.indiatimes.com/news/politics-and-nation/jk-assembly-dissolved-amid-claims-for-power/articleshow/66739283.cms>.
 - ²⁹ Sarah B. Haider, "Independence Day, Kashmir and the Two-Nation Theory," *The Express Tribune*, August 14, 2019, <https://tribune.com.pk/story/2033807/1-independence-day-kashmir-two-nation-theory/>.
 - ³⁰ Abdul Majeed, "Analysts Term Indian Move in Kashmir Part of BJP's Policy to Target Muslims," *Radio Pakistan*, September 01, 2019, <http://www.radio.gov.pk/31-08-2019/analysts-term-indian-move-in-kashmir-part-of-bjps-policy-to-target-muslims>.
 - ³¹ "Pakistan Rejects Kashmir Move, says will Exercise all Options," *The Economic Times*, August 05, 2019, <https://economictimes.indiatimes.com/news/politics-and-nation/pakistan-rejects-kashmir-move-says-will-exercise-all-options/articleshow/70534427.cms?from=mdr>.
 - ³² "Erdogan Assures Support to Khan Over Kashmir Crisis," *TRT World*, August 5, 2019, <https://www.trtworld.com/turkey/erdogan-assures-support-to-khan-over-kashmir-crisis-28782>; Fatemeh Aman, "Iran Issues Rare Criticism of India over Kashmir," *Atlantic Council*, August 30, 2019, <https://www.atlanticcouncil.org/blogs/iransource/iran-issues-rare-criticism-of-india-over-kashmir>.
 - ³³ Inamullah Khattak, "Modi Awarded UAE Highest Civilian Honor Amid Occupied Kashmir

-
- Crackdown, Dawn, August 24, 2019, <https://www.dawn.com/news/1501402>; "PM Modi Conferred Saudi's Highest Civilian Honor," The Indian Express, September 10, 2019, <https://indianexpress.com/article/india/india-news-india/modi-saudi-arabia-king-abdulaziz-sash-civilian-honour/>.
- ³⁴ "UAE to Award India's Modi During Visit Amid Brutal Kashmir Crackdown," The New Arab, August 19, 2019, <https://www.alaraby.co.uk/english/news/2019/8/19/uae-to-grant-modi-award-amid-brutal-kashmir-crackdown>.
- ³⁵ Prabhaskar K Dutta, "Kashmir: Pakistan Tries to Isolate India Over Article 370, Gets A Reality Check," India Today, August 12, 2019, <https://www.indiatoday.in/news-analysis/story/kashmir-pakistan-tries-to-isolate-india-over-article-370-gets-a-reality-check-1579988-2019-08-12>.
- ³⁶ "Kashmir Is Pakistan's Jugular Vein, Says COAS Gen Bajwa," The News, September 6, 2019, <https://www.thenews.com.pk/latest/522926-defence-day-ceremony-at-ghq-begins>.
- ³⁷ Alexandra Ulmer, "India's Ladakh Buddhist Enclave Jubilant At New Status But China Angered," Reuters, August 06, 2019, <https://www.reuters.com/article/us-india-kashmir-ladakh/indias-ladakh-buddhist-enclave-jubilant-at-new-status-but-china-angered-idUSKCN1UW1QL>.
- ³⁸ Ahmed Saeed Minhas and Dr Farhat Konain Shujahi, "Indian Ballistic Missile Defense (BMD) Shield and Space Weapon Ambitions: Implications for South Asian Strategic Environment," *Margalla Papers* (2017): 62-63.
- ³⁹ Ahmed Saeed Minhas, "Space Weapons: A Rapidly Evolving Threat To South Asian Strategic Balance," *NDU Journal* (2018): 181-183.
- ⁴⁰ "NSA AjitDoval's 'Double Squeeze' Strategy Will Never Succeed: Pakistan," The Economic Times, July 13, 2018, <https://economictimes.indiatimes.com/news/defence/nsa-ajit-dovals-double-squeeze-strategy-will-never-succeed-pakistan/articleshow/60791752.cms>.
- ⁴¹ "The Risk of Nuclear Terrorism from Insider Threats," American Academy of Arts and Sciences Summer Bulletin (2014), <https://www.amacad.org/news/risk-nuclear-terrorism-insider-threats>.
- ⁴² Ankit Panda, "Indian Defense Minister: 'Circumstances' May Lead to Review of Nuclear 'No First Use' Policy," The Diplomat, August 18, 2019, <https://thediplomat.com/2019/08/indian-defense-minister-circumstances-may-lead-to-review-of-nuclear-no-first-use-policy/>.
- ⁴³ "Significance of Strategic Restraint Regime in South Asia," Foreign Policy News, July 15, 2017, <https://foreignpolicynews.org/2017/07/15/significance-of-strategic-restraint-regime-in-south-asia/>.

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Problem Solving Decision Making Model in Kashmir Conflict Resolution: Prospects and Challenges

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Abstract

Since 5th August 2019, the abrogation of Article 370 and 35(A) has given Kashmir conflict a different dimension. It has not only changed the autonomous status of Jammu and Kashmir (J&K) but also compromised the safeguard of the demographic status of J&K as a Muslim majority state in India. Since 1947, India and Pakistan have been locked into continuous adverse relations due to the conflict in Kashmir and do not find a common ground to bring peace in the region. Therefore, peace is an urgent need to address and redress the grievances of Kashmiris. Kashmiris in Indian occupied Kashmir are going through an ordeal, oppression due to massive human rights violations by Indian security forces. The conflict is becoming more protracted day by day and necessitates a systematic and sustainable resolution with the help of the international community and the United Nations. Throughout the last 72 years, several efforts were made, and multiple dialogue and negotiation took place, but Kashmir Conflict could not be resolved mainly due to India's rigid approach and policies towards Kashmir and continuous trust deficits between Pakistan and India. However, India and Pakistan need to commit to peaceful and sustainable conflict resolution. The paper suggests the application of the Problem Solving and Decision Making (PSDM) Model of Conflict Resolution in order to seek changes in legal and political framework to deal with complex issues of Kashmir conflict. The distinct aspects of the model carry a theoretical concept for framing Kashmir Conflict according to a particular sequence to resolve it.

Keywords: Kashmir Conflict, Conflict Analysis, Problem Solving Decision Making (PSDM) Model of Conflict Resolution.

Unending hostility between India and Pakistan over the Kashmir dispute, has been witnessed by the entire international

community for the last seven decades. Kashmir is the most violent and volatile conflict zones between two nuclear rivals – India & Pakistan in South Asia. The conflict becomes more fragile when the stakeholders are nuclear-armed because it certainly risks regional and international peace. The Kashmiri freedom struggle gained momentum as an indigenous and genuine movement after Burhan Wani's martyrdom in 2016, a 21-year-old Kashmiri freedom fighter who exposed atrocities of Indian military forces through his active social media posts. The continuing curfew in Indian held Kashmir in the backdrop of revoking Article 370 and 35(A) on 5th August 2019, heavy military presence, media blackout, kidnapping of young boys, brutal patterns of violence and suppression of masses' voices have ignited a wave of protest and condemnation from the global community, which is emphasizing on a peaceful and sustainable resolution of long- standing Kashmir conflict.

Even though India and Pakistan have taken initiatives aimed at improving their stature in international affairs, but none has shown serious concerns for their crucial neighbouring relations. Geographically, India and Pakistan are the two most discussed nuclear powers of the world in South Asia.¹ But unfortunately, both the countries have been stricken with the territorial conflict and failed to develop sincerity in their relationship. Both India and Pakistan, have experienced political, social, economic as well as human losses due to this protracted conflict. The strained relations are affecting the region enormously. Hence, it would not be wrong to say that India and Pakistan have a history of volatile relations in the region.

After 72 years of independence, persistent complex relationship reveals that the time is ripened for India and Pakistan to realize their losses and begin the process of resolving Kashmir conflict. The disputed territory of Kashmir between India and Pakistan has gained not only geographic significance but also strategic importance since their independence. Many times, India and Pakistan have shown willingness to wrest control of the complete territory from each other for which they have gone through animosity on the borders and in relationships. Pakistan, at regional and international forums, and Kashmiris have raised voice to end violence and human suffering and let them utilize their right of self-determination through a promised

UN-sponsored plebiscite.²

It is, therefore, needed that India and Pakistan opt for sustainable efforts and a systematic mechanism to resolve the territorial dispute and save the Kashmiris from great psychological and human loss. The discipline of peace studies offers various models that suggest a complete step by step process of conflict resolution through diverse and effective approaches such as negotiation and mediation. However, the Problem Solving Decision Making (PSDM) Model seems a comprehensive way to approach any conflict in a multidimensional way. This paper is an endeavour to apply the PSDM Model in Kashmir conflict to see its productivity and efficacy in the regional context. The PSDM Model is aimed at resolving conflicts through a complete and in-depth analysis of the conflict and it also presents options to resolve key concerns. It is an integrated approach combining both Problem Solving and Decision Making under one framework. Moreover, the implementation process holds the parties responsible for their own conduct rather than dealing with each other unfairly. The paper dwells upon following aspects:-

- The theoretical concept and contours of PSDM Model.
- The significance of the PSDM with reference to Kashmir Conflict.
- How the PSDM Model can be applied to resolve the Kashmir Conflict.

The PSDM Model - A Theoretical Framework

Problem Solving and Decision Making (PSDM) Model of conflict resolution is a wholesome approach to understand conflict and develop a constructive approach for achieving desired results. The model is a cooperative process of integrating Problem-Solving and Decision Making in conflict resolution. Basically, PSDM is the combination of two processes; identifying problems and incorporating creative solutions to address those problems in a decision making process. Problem-Solving discusses diagnosis of conflict and simultaneously, the development of alternative possibilities for resolving the conflict. Firstly, in decision making, there may be a range of choices involved to make better alternative possibilities. Secondly, Decision Making

emphasizes a commitment to the choice made to implement it further. Eben A. Weitzman and Patricia Flynn Weitzman proposed this four-phased model of PSDM in which they suggest that the conflict actors have to go through four different phases of approaching a conflict through constructive and interactive conflict resolution procedure. These are as under;³

- Conflict Diagnosis
- Identifying and Selecting Alternative Solutions
- Assessment and Evaluation of Mutually Agreed Solutions
- Making a Commitment towards an Alternative and Decision Making to implement it.

This interactive model provides an ideal, clear and simple roadmap to approach the conflict through its '3D' formula i.e. multi-dimensional conflict resolution processes. Overall, the model provides a way of thinking about the possible opportunities for the actors so that it can be adopted for the sustainable peace process and finally leads to resolution. Sometimes, the stages of this model give multiple opportunities to conflict actors to consider, reconsider their alternatives even if they are not fully willing to move towards the Decision Making and implementation stage. Therefore, applying this protean process to an intractable conflict may assure a desirable resolution in the future. The model consists of four general phases that can be taken as components of a broader conflict resolution process.⁴

- **Diagnosing the Conflict:** It is the initial stage of the Problem- Solving process, which refers to the analysis of the conflict and its all necessary elements and aspects, such as various interactions and interests of the parties, values and preferences, emotions and investments of the actors, etc. The conflict can be diagnosed by seeing "5-Ws" and "1-H"; what, why, where, when, who and how. The conflict analysis requires the party's interests, goals and different structural dimensions of the conflict. Consequently, Problem-Solving needs to be addressed in finding a solution to building one definition for the conflicting situation. Weitzman provides vital

components in the process, which involves conflict analysis as taking all aspects of the conflict on board and then, building a single definition of conflict to build consensus through scenario building.

- During the diagnosis period, social perspective coordination is important, which directs the parties to social level engagement in order to seek conflict resolution. Important decisions are supposed to be made by checking its affordability and viability to the parties. One may also create a joint diagnosis on the current situation considering a final statement that would come up with the above analysis in order to achieve desired results.
- **Identifying Alternative Solutions:** It suggests as once conflict diagnosis is done, the next step is to identify and generate alternative solutions. The alternative solutions should be acceptable to both conflicting parties. This step emphasizes on brainstorming for generating creative ideas and finding alternative solutions to make the parties develop as many ideas as they can. To encourage, put the parties in the situation to think over workable ideas and aiming for desirable ends from the process. Therefore, to identify or finding out alternative solutions to all problems of the conflict. Here, the concepts come as Best Alternatives to Negotiated Agreement (BATNA) or Estimated Alternatives to Negotiated Agreement (EATNA).⁵ Furthermore, it requires the parties' willingness to get a hold-on a position identified by them. Here, the high-level risk involved is a gradual process of trust- building between or among conflict actors, which is a prerequisite to develop and agreed on alternative solutions.
- **Evaluating and Choosing Mutually Accepted:** This is the third phase and almost final decision point of the process. Once a set of possible alternative solutions has been created, the next important stage is to consider alternatives, making assessments in terms of their pros and cons and pick the best possible solution to commit and implement. At this very stage, one can involve negotiator, mediator as a third party to

develop various options and choose amongst them. The mediator or negotiator can make decisions at the individual level and they can have group Decision Making. The first and foremost duty of the negotiator is to create a sense of the parties' needs and justification as the agreement should be accepted by both the parties.⁶

- Also, to prioritize and evaluate the solutions, one can figure out whether to choose the third party and enter into an agreement by having strategies and options from the earlier analysis of the conflict. In this way, parties should be able to identify the best solutions. Other than that, evaluating and choosing the best solution can be a complete set of considerations for resolving the conflict.
- **Committing to Decision Making and Implementing the Solution:** Finally, once a mutually agreeable solution is found, this final stage of the process suggests incorporating it in Decision Making at the official and formal level. To put it simply, committing to Decision Making in the post peace-building or peace process point aiming to resolve the problem through Decision Making. However, it is not enough just to understand the conflict, but understanding must be translated into a willingness to act on committing solutions productively. At this stage, the parties can come up with the transforming, managing and resolving perceptions about the conflict and conflict resolution. In that case, readiness to take risks and building trust can encourage parties to make them believe that the agreement will work for the better. Therefore, the process might be responsible for social perspective coordination and integrating different points of view for the parties creating mutual gains. Committing and implementing the solution can be very much productive and finally, the process may be repeated until the parties decide to agree. The process also provides a certain opportunity, which can be taken for setting down any abrupt triggering violence.

Problem Solving Decision Making (PSDM) Model Step-One: The Diagnosis and Analysis

Diagnosing conflict is the first investigative step of PSDM Model, there are mainly two steps for making a diagnosis of any conflict. The first step will cover conflict analysis and step two will provide a single definition to the conflict.

Section – I: Conflict Analysis

It provides a clear understanding to analyze a conflict leading towards Problem-Solving where one may find a solution for future assessment. Moreover, conflict analysis is one of the core systemic approaches to problem-solving. In the case of Kashmir conflict, it is described as a focused study having a vast capacity to make visualization for a deeper understanding of the underlying issues. The primary focus of analyzing conflict is to go deep or intervene considerably into conflict issues by studying all aspects of the conflict.

Similarly, to diagnose means tackling all the necessary elements of the conflict and answer the '5-Ws' and '1-H' accordingly, which refers to what of the conflict, where it is leading, when it started, who are the actors, why it doesn't provide any appropriate results, a solution or implementation in practice, and how it can be implemented. The why and how to evaluate a joint diagnosis, which in turn will present a final statement for further improvement in conflict resolution after checking the parties' affordability of conflict. Ultimately, social perspective coordination is important while diagnosing the conflict.

Conflict Analysis of Kashmir through Circle/Wheel Mapping Tool

Each individual has a different capacity to reach out to a solution or to get things to his mind. However, conflict analysis is a systematic study in the field of peace and conflict studies.⁷ It may provide the complete profile of political, economic and social issues of a conflict, what causes conflict and the study of dynamics of conflict.⁸ It is to define conflict intervention and looking into a sensitivity of conflict.⁹ In order to understand the conflict, it is further helpful for the planning stage, implementation stage and monitoring and evaluation stage¹⁰, which is the core purpose of the PSDM Model.

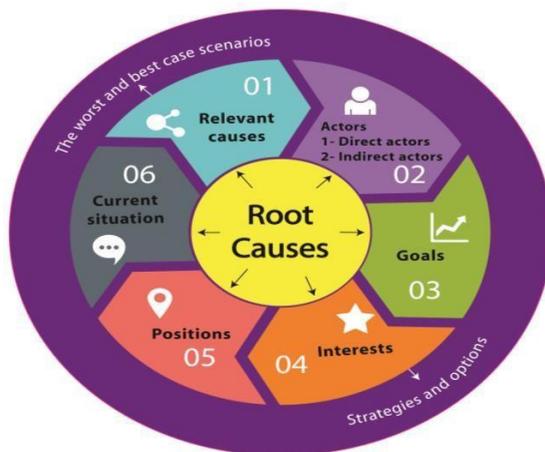


Diagram: Conflict Circle Mapping

Conflict mapping provides a bird’s eye view or objective view of the conflict. The modified areas in conflict mapping such as identification of root causes of the conflict, the relevant cause, actors of conflict, interests of the parties, goals of the parties, the contemporary events, making cost-benefit analysis, providing worst and best-case-scenario and eventually, it covers broader strategies and options. There are 7 standard tools of conflict mapping, suggested by conflict analysts,¹¹ the study has taken Conflict Wheel Model, which was developed by Dr. Maria Saifuddin Effendi.¹² For diagnosing the Kashmir conflict, a brief explanation of each area of circle mapping and application on Kashmir conflict is as follows:

- Root Causes of Kashmir Conflict:** Identifying the root causes of conflict is the first step towards conflict resolution. Why conflict actors have long been engaged in violence and what makes a conflict protracted that any effort to have peace fall victim to mutual paranoia? In the case of Kashmir, situations are often times unpredictable and more prone to violence. The conflict of Kashmir merits to be traced back from the Treaty of Amritsar 1846, which provided the lush green hilly and mountainous region of Kashmir to Maharaja Gulab Singh under British colonial rule.¹³ Kashmir, as a Muslim majority

state, was ruled by Hindu Maharajas from 1846 till 1947 and the century-old Dogra rule didn't prove itself as favourable for the Muslim community in Kashmir. In 1947, when partition plan was announced by Lord Mountbatten in June 1947, it was declared that all Hindu majority areas would form India, Muslim areas would make Pakistan and princely states will be given the right to choose to accede either side in consideration of predominant religion and geographical proximity.¹⁴

- At the time of partition of the sub-continent, lobbying for the accession of Kashmir to India or either Pakistan was started based on the country's own interests.¹⁵ However, Radcliffe division of Gurdaspur is one of the root causes that resulted in intense disturbance in the Kashmir issue earlier as Pakistan considered it as sudden changing in the partition map. The situation was in reverse as of Kashmir, Gurdaspur had a Muslim ruler and Hindu majority. The division has further complicated the matter, firstly, not only because of the loss of territory for Pakistan but it was the only space left for Muslim Kashmiris to access Pakistan and secondly, the growing realization that India was thereby assured of access to the state of Jammu and Kashmir.¹⁶ In August 1947, the fate of the two countries was declared as independent and princely states held back to decide which side to choose. While Maharaja was delaying his decision, there was an indigenous revolt started taking place in the Poonch region which was later joined by Pashtoon tribesmen and led to the first war between the newly born states.
- Maharaja rushed to the Indian government asking for its help to curb the revolt and India exploited the opportunity and made him sign the Treaty of Accession. It was in this backdrop when India and Pakistan fought and ended their first war in December 1947 with the intervention of the United Nations on the request of India and which instantly internationalized Kashmir conflict right at its beginning.¹⁷ On 13 August 1948, the UN Security Council (UNSC) passed a

resolution emphasizing on the removal of Pakistan's and Indian troops from the region. The U.N. Military Observer Group in India and Pakistan (UNMOGIP) was also established in 1948 to monitor the ceasefire line (later turned as Line of Control). Pakistan controls the far Northern and Western areas of the state whereas the Kashmir valley, Jammu, and Ladakh are under India's control.¹⁸ Not only in its resolution 1948, the UN kept emphasizing on the conduct of free and impartial plebiscite in Kashmir which never took place in the past 72 years.

- **The Relevant Causes of the Conflict:** Relevant causes emanated from root causes which may trigger or fuel the actual conflict further. The relevant causes of Kashmir conflict include:
 - Violation of United Nation Resolution 1948 by India¹⁹
 - Human Rights Violation by the Indian Army and the Authorities
 - Majority Muslim Population
 - India-Pakistan Geopolitical Rivalry
 - Violation of Indus Waters Treaty by India
 - India-Pakistan Glacial Fight
 - Ayodhya Mosque Violation against Muslim Majority²⁰
- **The Actors Involved in Kashmir Conflict:** This area significantly covers ample evidence as to finding out the complete profile of who are the actors involved in the Kashmir conflict. Finding the actors give a clearer way of diagnosing the conflict. In this phase, we will make analysis as taking direct actors as well as indirect actors. Direct actors are those who are directly involved in the Kashmir conflict such as India, Pakistan, Kashmiri people (pro-Pakistan, pro-independence and pro-India) and, therefore, United Nations since 1949 as establishing United Nations Military Observer

Group in India and Pakistan (UNMOGIP), working as a peace-builder in Kashmir conflict. Whereas, indirect actors are those who have been involved and participated in the conflict at a distance or indirectly. These secondary actors such as the United Nations military after 1971 when India attacked Pakistan.

- Second is China who played its part after the 1962 war with India.²¹ Third is the United States as having a strategic partnership with India and the others are, European Union and Russia. Furthermore, the United States and the Soviet Union engagement during the Cold War, the United Kingdom somewhat at the time of partition, China as supports Pakistan in order to have balance against India, and finally, militants who are giving the cause of Muslims to conflict and these are from various countries around the globe. Even though third party intervention does not acceptable to the parties, especially India, as considering it the bilateral conflict between India and Pakistan, still it is including the offers of facilitation from the United Nations, the World Bank and often times the United States and the other, facilitators.

The Interest of the Parties

This step makes an analysis by highlighting the interests of the parties involved in the conflict directly and indirectly. The area indicates that the conflicting parties have immediate interests in resolving the conflict which is of high priority for them. Even though every individual has its own interests in conflict or resolving conflict, still one cannot ignore the actual demands of Kashmiri people, a land of freedom and a right of self-determination for themselves and also, interests of the other Indirect actors. A complete independence from India has been long demanded by a major section within Kashmir valley while in terms of federal-provincial relations other section seeks full or more autonomy.²² So far, the people of Kashmir valley are only interested in cultural and economic interactions across the LOC.²³

Here, in this paper, the interests of Pakistan and India would be broadly taken in place. India and Pakistan have their own strategic interests rather than focusing on the interests of the people of

Kashmiris.²⁴ India is eagerly engaged in the conflict as considering it as war with Pakistan, whereas, Pakistan views its interests based on an indigenous reason for the right of self-determination for Kashmiri people.²⁵ Pakistan's interests are as under;

- To minimize the intensity of custodial killings, Muslims' massacre, the crimes against humanity that being perpetrated by the Indian soldiers,
- To improve better understanding among Kashmiri people and maintain brotherhood as Pakistan considers Kashmir as a Muslim zone,
- To resolve water disputes with India through resolving the Kashmir conflict between them.

India's objectives in the state of Jammu and Kashmir has been considerably seen in terms of the following as such, integrating the people of Kashmir emotionally into the Indian mainstream, winning the hearts and minds of Kashmiris politically as well as psychologically and eventually, influencing its policies in the political affairs of Kashmir Valley.²⁶ As far as discussing terrorism, Indian administration is avoiding strategy towards Kashmir and therefore, perceives terrorism as a bilateral issue between Pakistan and India. Once proven, India decided to fence the LOC and emphasized that there would be no productive talks until the cross border terrorism issue is being negotiated bilaterally between the two countries.²⁷ Additionally, it is quite obvious for India that to declare Pakistan as an aggressor state.²⁸ To encourage the private sector of Kashmir to secure Kashmir's internal developments and to do so, the welfare of the Kashmiris in order to serve its own interests in the state of Jammu and Kashmir.²⁹

The Goals of the Conflicting Parties

The Kashmir conflict is, actually, between India and Pakistan and the relationship between the two has been marked complex. These two countries had to evolve if not as a friend but in symbolic terms neighbouring countries after getting independence. But next to this, both the states engaged in war and confrontations and then later, both became military powerful that put a threat on the South Asian

region, it is now having unstable circumstances. In this context, India and Pakistan have opposing goals to each other. The goals of the conflicting parties are, therefore, referred to as the main purpose of the parties to be engaged in a particular conflict, and describes as, what outcome the parties want from the conflict or resolving the conflict. To the extent, Pakistan's goals on Kashmir are heavily depended upon its stance on Kashmir. Pakistan's foreign policy observes as to have peaceful relations with neighboring countries, however, Pakistan's goals are:

- To support Kashmiri people in their battle for freedom against Indian brutal rule to provide justice and freedom in Jammu and Kashmir and achieve sustained dignity of Kashmiri people,
- To have the complete resistance against violation of human rights and uncertainty in the state of Jammu and Kashmir,
- To maintain its stance on Kashmir as to settled down Kashmir conflict peacefully without any violence,
- To achieve prosperity in the South Asian region as Kashmir economy is predominantly agrarian.

On the other side, since independence, India has been maintaining its claims over Kashmir. Looking with it, India's strategy towards Kashmir has evolved in as a shrewd Kashmir policy that enables India to hold control over the main area of the state of Jammu and Kashmir.³⁰ India's desired objective is to not accept Kashmir accession to Pakistan, to which India did several attempts in history. For instance, to influence the Maharaja to accede to India, when he was under pressure following the troubles in Poonch, and the tribal invasion into Kashmir in order to attain secure persecuted majority Muslims.³¹ Furthermore, India's prime objectives in Kashmir are:

- To not allow Plebiscite in Kashmir and a continued resistance over the UN resolution 1948 as earlier it was only India who made efforts to delay the Kashmir crisis resolution proposed by UN Security Council,³²
- To hold the concept of secularism in order to justify the

instrument of accession, which was signed between the Maharaja and the Indian administration caused Kashmir conditional accession to India,³³

- To install a permanent pro-Indian government in the state of Jammu and Kashmir.

For example, in history, India successfully deferred the UN resolution of Kashmir of 1948 and therefore, installed a pro-Indian government.³⁴ As per the broader concerns over India's Kashmir objectives and strategies, India is making systematic efforts to take over the parts currently considering as the Azad state of Kashmir in Pakistan and therefore, completely occupied the state of Jammu and Kashmir.³⁵ Above all, to take Simla Agreement of 1972 in order to obtain India's goal of making the existing Line of Control (LOC) into a permanent borderline. As the agreement previously arranged the ceasefire of 1949 into the LOC which is taken as the directly negotiated borderline between the two countries.³⁶ To focus, India has been aiming to maintain the status quo and convert the Line of Control into an international border.³⁷

The Positions (on Kashmir)

This step can help one to make a critical analysis of Kashmir conflict by understanding what Kashmir for India & Pakistan is. Position of Pakistan on Kashmir,³⁸ can be summarized as:

- The state of Jammu and Kashmir is an unresolved agenda of Britain and a disputed territory between India and Pakistan,
- Both the parties acknowledged the disputed status of the state of Jammu and Kashmir in the UN Security Council resolutions of August 13, 1948, and to which on January 5, 1949, both the two countries are considered a party,
- UN resolutions is remained operative and cannot be unilaterally disregarded by either party,
- As agreed in the UN Security Council resolutions along peaceful and bilateral negotiations would be made between India and Pakistan over the future status of Jammu and

Kashmir. It, therefore, entails a fair, free and internationally supervised plebiscite that should be aimed to secure the right of self-determination for the people of Kashmir,

- The plebiscite should allow the people of Jammu and Kashmir to choose freely, whether to remain independent and of permanent accession to either Pakistan or India,
- As bilateralism has been seeing leading towards nothing, an international mediatory intervention may be appropriate if mutually agreed.

On the other hand, India claims that Kashmir accession to India was approved accession, which is not true. It is, therefore, considered that the accession was temporarily declared by Mountbatten, there is no such evidence available in the documents. Furthermore, India claims that according to the 1957 Constitution of the State of Jammu and Kashmir, it is an integral part of India,³⁹ which is also not true as Maharaja acceded to India in return for military assistance or for himself only. Whereas, India politically mentions that India never considered Hindu and Muslims as separate nations, but they believe in secularism, which makes no sense either.

The Critical Analysis

For India, Kashmir has great strategic value as bordering with Afghanistan and Pakistan; also it shares the border with China. Moreover, the importance of Kashmir cannot be denied due to origin of major rivers of Indus Basin in the region. Whereas, Pakistan considers Kashmir as a zone of fellow Muslims and to promote Muslims' cause is a responsibility of Pakistan. Since independence, Pakistan and India, however, fought three wars over Kashmir. Following the first war of 1947-1948, on January 1, 1949, a ceasefire was agreed between India and Pakistan with 2/3 of the territory under Indian control and 1/3 with Pakistan.⁴⁰ However, the ceasefire was intended to be temporary, but the Line of Control remains the de-facto border between the two countries.

Moreover, the current status shows both the positions on Kashmir, as, Pakistan is, in the favour of UN plebiscite as per the wishes of the

Kashmiri people. Whereas India doesn't consider UN resolution as significant as Pakistan does. India is claiming Kashmir as an integral part, which cannot be separated from India. India argued upon and claimed it a bilateral matter between India and Pakistan so disregard UN referendum which might include the voice of Kashmir. India accuses Pakistan of supporting Kashmiri separatists in Indian occupied Kashmir, which is a critical security issue on which many experts say that Pakistan should act upon it accordingly and change its security policies.

The Current Situation

This area of analysis provides a radiant outlook of any conflict. In this way, the major events of Kashmir conflict are being taken into board in order to know where the dynamics of the Kashmir conflict is currently leading. Come to the point, the recent crises that escalate the situation in the Indian-held Kashmir seems to breakout rapidly. The focus on the current situation is particularly the two as that the human rights violation by the Indian forces, and the continuing incidents of terrorism. As a result, and in retaliation, the birth of freedom fighters, ongoing protests against Indian authorities, clashes with Indian security forces, excessive persecution, increased violence in Kashmir, the youth's deadly observation and consequently, deadliest incidents that reported in the past years.

The Worst and Best Scenario of Kashmir Conflict

This area of analysis questioning that what would be the worst situation as well as the best situation for conflicting parties, such as, considering India and Pakistan while, having or resolving the Kashmir conflict. In the PSDM Model of conflict resolution, it is studied as, in this way, the researcher would be able to determine why the circumstances are not favourable for conflict resolution. For making the study relevant, furthermore, this area will be briefly explained by identifying alternative solutions to the Kashmir conflict. Therefore, the provided alternatives would be considered as the best-case scenario of Kashmir conflict. However, some of them would be referred to as the worst alternatives to the Kashmir conflict.

The Cost-Benefit-Analysis of Kashmir Conflict

This is the most essential phase in making an analysis of any conflict. It leads to check the feasibility of a conflict and therefore, make economic calculations of conflict. Through cost-benefit-analysis one may get to know about the economic condition of the conflicting parties and thus, can understand how the emerging conflict situations can be controlled or manageable. In the area, the cost observes as what India and Pakistan are costing from their active engagement in conflict. Whereas, benefit observes as what is, or would be the benefit of conflict for the conflicting parties while engaging in Kashmir conflict. The cost may refer to a Siachen war, which is the costliest war of Pakistan and India. It is estimated that the war claimed the lives of 8000 Indian and Pakistani soldiers between 1984 and 2012,⁴¹ and it cost approximately Rs. 50 million on both sides, as per the figure of 2015- 2016.⁴²

The defence budget of Pakistan has increased as around Rs. 920 billion in the fiscal year of 2017-2018.⁴³ Whereas, Indian defence budget is approximately 39.80 billion dollars.⁴⁴ However, these heavy military spending are hurting India and Pakistan defence allocations. To the Indian exchequer as per Independent observers costing of maintaining a military presence in Siachen is at Rs. 10-12 billion a year.⁴⁵ Pakistan attains a bit less drain but there appears a heavy costing on the country's finances. As long as, there seems no economic benefit of Kashmir conflict for India and Pakistan. What maximum, for both India and Pakistan, economic development would be possible through resolving the Kashmir conflict. In addition to regional gains, the South Asian region will be seeing the world's largest Muslim population and thereby, would benefit Muslims to be united. Eventually, for India as well as for Pakistan the cost-benefit analysis caters to have remained unchanged. Even though the case is not compromising that the time, efforts and resources on its resolution is too costly than its continuation but under a certain condition.⁴⁶

Strategies and Options

This area is found practically significant for making right strategies and choosing appropriate options for conflict resolution. In the paper,

it will be relevant to summing up the ideas so as to determine as efficiently and effectively. For example, In Kashmir conflict, there are mainly two options or ways. One is Kashmir conflict resolution through negotiations and mutually agreeable solutions. Another is to reach out the resolution through all-out War options. However, different strategies need to be addressed while resolving any conflict. While strategies are defined as choosing the appropriate techniques of negotiations while the parties dealing with each other with a desire to achieve a sustainable outcome. There are mainly 5 broader strategies that use to make negotiations successful, manage or resolve conflicts. These are avoiding, compromising, collaborating, competitive and accommodating.⁴⁷ India and Pakistan are mostly seen using avoiding or competitive strategies of negotiations.

Section-II: Formation of Integrated Definition for Kashmir Conflict

Approaching problem-solving and after a brief study of step one, the reader will be capable of finding a solution by giving a final statement for the Kashmir conflict. The integrated definition comes next to joint diagnosis which explored in the above discussion as of taking the conflicting parties as analyzing actors and their interrelationships as social perspective into consideration. The integrated definition of Kashmir conflict for India, Pakistan and Kashmiris, and for the world is as under. A peace agenda of freedom for Kashmiri people is a mixed combination of territorial, political, economic, identical, religious, humanitarian and a social-protracted conflict between India and Pakistan. For international peace and conflict resolution, Kashmir conflict is a critical conflict, which can be resolved through considering the humanitarian aspect of the conflict so as, building a neutral joint mechanism of the permanent members of the United Nations.

Step-Two: Problem Solving and Decision Making, Identifying Alternative Solutions

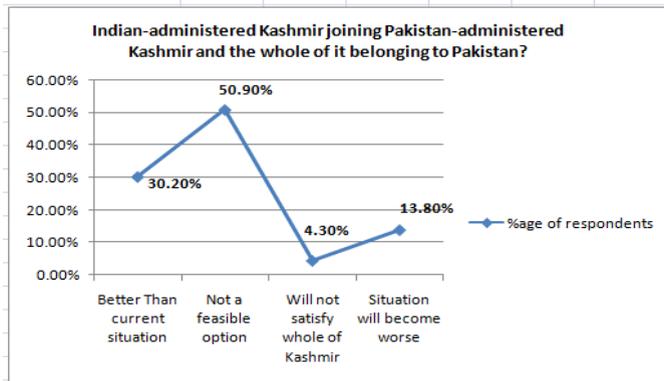
Identifying alternative solutions is the next step after diagnosing the conflict in the PSDM Model of conflict resolution. Here, we will be identifying a combination of the best-possible-alternatives as well as

worst-alternative solutions to the Kashmir Conflict. Alternatives will provide need and acceptable alternate solution to the conflicting parties. In the case of Kashmir conflict, alternatives must be acceptable to direct actors of Kashmir conflict, which include the people of Kashmir, government of India and government of Pakistan. All the parties need to forward and work something out through generating alternative solutions to the conflict. When one is at the stage providing alternatives solutions, therefore, the aim is to improve relations and make an environment conducive to the conflicting parties.

In this process of identifying alternatives, one may also persuade the parties to identify their own positions themselves and forge ahead with the alternatives provided. During the process, a greater chance of risk might be involved. To which, negotiators or practitioners should be well-informed about one-on-one situations indulging in the Kashmir conflict, therefore, the alternatives can match diversely for conflict resolution. Further, since 1947 a several proposals for Kashmir conflict are being offered by the analysts aiming to reach the resolution.⁴⁸

Kashmir joins Pakistan

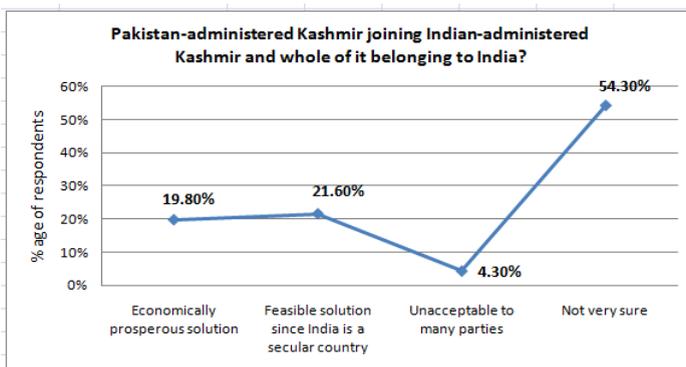
As per the graph, a total of 30.2% of the population in India-held Kashmir said that the recent circumstances would become favorable and the current situation would be better if Kashmir joins Pakistan-administered-Kashmir. But further, they said that it would not be a preferably as a good solution when considering whole territory becoming Pakistan. As of this, 50.9% showed their concerns as it would not be a feasible solution for Kashmir conflict resolution. Furthermore, 13.8% of the population believes that the implementation of such a solution will lead to the worst. Whereas, 4.3% of the population claims that it will not satisfy the people of Kashmir.



Source: International Journal of Humanities and Social Science 2011.⁴⁹

Kashmir joins India

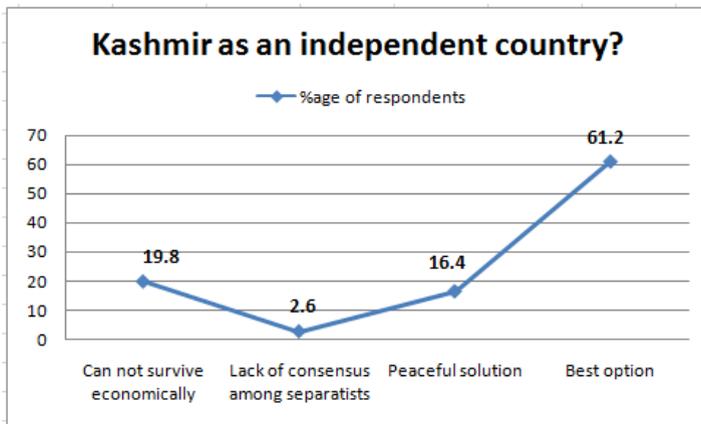
This option will be favouring one party to the conflict. This solution would be difficult for Pakistan and Kashmiris itself. The figures show that a maximum of 54.3% are not considered this solution as good enough. The parties believe that this option would be appropriate only from religious concerns. Whereas 19.8% of the Kashmiri population shows their concerns as they will gain success in terms of economics. However, 21.6% of population considers it as a feasible solution to join a secular country. Apart from this, it appears impossible as joining Azad Kashmir with the Indian Territory. Hence, around 4.3% of population rejects this option as shown in the following graph.



Source: International Journal of Humanities and Social Science 2011.⁵⁰

Independent Kashmir

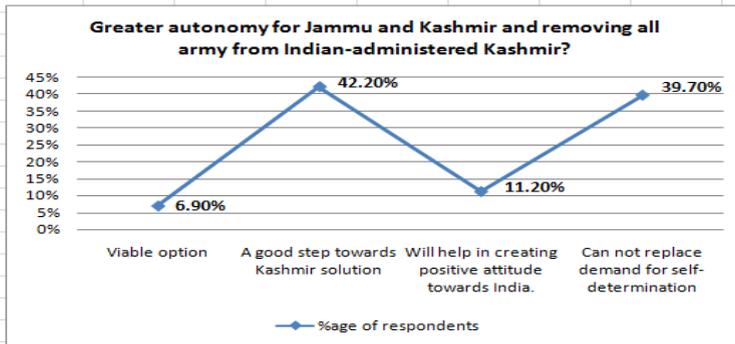
The belief is that independence is the best solution for Kashmir. For this, Kashmiris' inspiration is high up to 61.2% claimed they were promised the right of self-determination through a plebiscite by the government of India. Comparing with the above options, minimum critics of 19.8% come from the Kashmiris predicting that if gets independence Kashmir would not survive economically. In the graph further, 2.6% of the population said that due to lack of consensus this option is not possible whereas 16.4% said it would be an appropriate option for Kashmir to be independent. The figures are presented in the graph below.



Source: International Journal of Humanities and Social Science 2011.⁵¹

Greater Autonomy for Jammu and Kashmir and Demilitarization

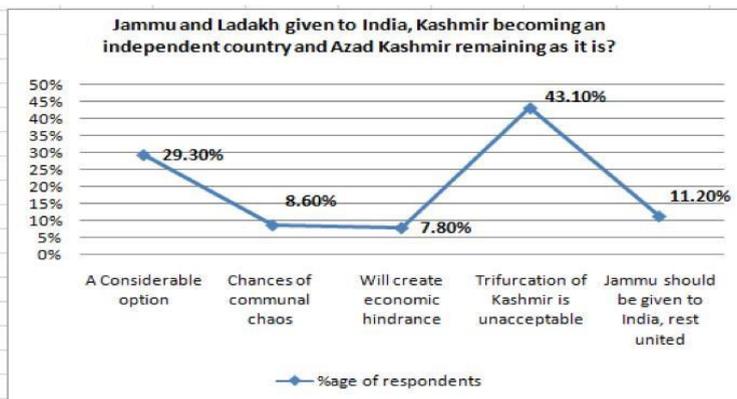
This is, therefore, offering greater autonomy for Jammu and Kashmir and demilitarization from Indian-held Kashmir. According to the graph presented the majority of the population think that 42.2% is a good approach to Kashmir conflict resolution. Whereas 11.2% said that this option will generate positive thinking towards India. However, 39.7% of the populations do not consider any solution except demanding self-determination.



Source: International Journal of Humanities and Social Science 2011.⁵²

A Mixed Division

Finally, the offer is parallel here. Kashmir would become an independent state, Jammu and Ladakh giving to Indian and Azad Kashmir remaining as it is. The data provided in the following graph explains that a majority of the people of Kashmir believe that as of around 29.3% that this option would be considerable. Whereas considering the trade, road linkages, and climate, 7.8% think that it will become an impediment in the economic development of the valley. Further, the figure of 11.2% said that they are unsure about this option. It is, therefore, mentioned that 43.1% are not satisfied with the process of trifurcating Kashmir.



Source: International Journal of Humanities and Social Science 2011.⁵³

Step-Three: Choosing the Best Alternative

Once the problem is solved by identifying all the possible alternative solutions to the Kashmir conflict, we need to choose the best alternative for implementation. This combines the third and the fourth step of the PSDM Model, which is approaching to decision-making. To choose the best alternative from all the identified alternatives in the study is very crucial in decision making and for the Kashmir conflict resolution. In this part, another procedural element is defined as a commitment to that alternative solution and proceeds for implementation.

Choosing the Best Alternative Solution to Kashmir Conflict

Given the characteristics of all alternatives provided by number of scholars, it is considered that no alternative is taken enough and perhaps might be for one-time application or limited, not for a sustainable resolution. But they can be taken along with the alternative of humanitarianism so might prove better results. It is evidently seen that India-Pakistan relations are in a dilemma, therefore, in their relationship Confidence Building Measures (CBMs) are not an end.⁵⁴ In this way, it is, whenever they both talk on a bilateral level with each other, bilateral interests come along with bilateral relations. Currently, India is not responding to any dialogue with Pakistan, whereas, Pakistan is worried about Indian policies in Indian occupied Kashmir but that eventually weakens India and muscles Pakistan.

Kashmir conflict is known to be a social protracted conflict thus intractable and where the parties are seen carrying opposing sides. The conflicting parties are not sharing good faith that oftentimes resulted in developing another rising factor in the conflict. Hence, to choose the best alternative will be the most certain factor because the alternative must be acceptable to the parties. Many scholars have proposed all possible changes in the conflict environment and thus solutions that is viably acceptable for Kashmir conflict resolution but could not reach to implementation. The parties themselves have made many serious efforts for the conflict resolution; therefore, they are still unable to reach out to any definite and sustainable resolution.

Step-Four: Commitment and Implementation

Commitment is pivotal in decision making and in order to resolve conflicts. To this, make a commitment with the best alternative solution to the Kashmir conflict is, however important. It is suggested in the study that the commitment based on humanitarianism will be made by the parties to the conflict. Once you develop a mutually acceptable solution, the process that suggesting having resolve through approaching decision making. However, it would not be fair just to understand the problem and have a solution, but the identified alternative solution must be leading to act on productively. At this stage, the parties will reach the conflict with certain perceptions in minds and those are for considering the conflict outcomes.

Conclusion

Kashmir conflict needs a sustainable resolution. The international community is responsible for sustaining the world peace and resolving conflicts between and among the states, thus, succumbs to influence the parties, India and Pakistan for a peaceful resolution of Kashmir conflict. The application of PSDM is the systematic way of exploring the Kashmir conflict resolution and is only explored by centering the people of Jammu and Kashmir (Indian-held Kashmir) due to their sufferings of lives for themselves. All the four steps of PSDM Model show brevity, preciseness and deeply concerning the sensitivity of different dimensions of the conflict.

In PSDM, one way to diagnose the conflict is through the analysis study that driving all the factors of conflict significance to engage in the process of problem- solving. Through this approach, the study offered an integrated definition of the Kashmir conflict toward defining various aspects of the conflict provided in a single statement. Nonetheless, to lead the Kashmir conflict in the right direction is essential, only defining structural ways does not seem enough for the resolution. The guidance is required for the conflict resolution while the parties negotiate should be in a definite operational process. Therefore, a certain framework needs to be made that must be mutually agreeable by the parties. Conflict resolution proposals need to

be made on ground realities knowing the sensitivity of the conflict.

In short, the application of the model would make India and Pakistan responsible to come to the negotiating table after going through all the steps of PSDM Model and meet the resolution criteria. It would also help the parties to be able to accommodate the Kashmiris' aspiration for self-determination. It would give the parties a better understanding to know each other's interests and positions over the conflict. Decision making and implementation should be achieved. Moreover, the parties need to be responsible for the ongoing human sufferings and future consequences. Human rights violations can be eliminated. The paper evidently proved that Kashmiris are not satisfied with the Indian illegal control of Kashmiris, therefore, mentioned which causes frequent protests in the area. The abrogation of Article 370 and 35(a) has further worsened the situation in Kashmir and one can see strong reactions from the international community also. It is high time for India to look into its domestic policies vis-à-vis its minority especially the Muslims. Taking away the autonomous status of Jammu and Kashmir (J&K), granting rights to other communities to seek settlements/buy and sell property in J&K are none other than structural violence embedded in Indian policy-making circles. India and Pakistan need to engage in a sustainable dialogue to discuss and address their core concerns related to Kashmir. Kashmir deserves peace after being a hotbed of issues during the past 72 years.

References

- ¹ Stephen P. Cohen, "Nuclear Weapons and Conflict in South Asia," Brookings, November 23, 1998, <https://www.brookings.edu/articles/nuclear-weapons-and-conflict-in-south-asia/>.
- ² Kartik Bommakanti, "The Use of Force—Stability and Instability: India, Pakistan, and China," *India Review* 11, no. 3 (2012): 161–90.
- ³ Eben A. Weitzman and Patricia Flynn Weitzman, "The PSDM Model: Integrating Problem Solving and Decision Making in Conflict Resolution," in *The Handbook of Conflict Resolution: Theory and Practice* (San Francisco: Tossey-Bass, 2006), 197–222
- ⁴ Weitzman and Weitzman.
- ⁵ Roy J. Lewicki, Alexander Hiam, and Karen Wise Olander, *Think Before You Speak: A Complete Guide to Strategic Negotiation* (USA: Wiley & Sons, 1996) <https://www.wiley.com/en-us/Think+Before+You+Speak%3A+A+Complete+Guide+to+Strategic+Negotiation+-p-9780471013211>.
- ⁶ Weitzman and Weitzman, "The PSDM Model: Integrating Problem Solving and Decision Making in Conflict Resolution."

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- 7 “Conflict-Sensitive Approaches to Development, Humanitarian Assistance and Peace Building: Tools for Peace and Conflict Impact Assessment” (International Development Research Centre (IDRC), n.d.), 1–3, <http://local.conflictsensitivity.org/wp-content/uploads/2015/05/Conflict-Sensitive-Approaches-to-Development-Humanitarian-Assistance-and-Peacebuilding-Resource-Pack.pdf>.
- 8 “Conflict-Sensitive Approaches to Development, Humanitarian Assistance and Peace Building: Tools for Peace and Conflict Impact Assessment.
- 9 “Conflict-Sensitive Approaches to Development, Humanitarian Assistance and Peace Building: Tools for Peace and Conflict Impact Assessment.
- 10 “Conflict-Sensitive Approaches to Development, Humanitarian Assistance and Peace Building: Tools for Peace and Conflict Impact Assessment.”
- 11 Simon Mason and Sandra Rychard, “Conflict Analysis Tool,” Tip Sheet (Freiburgstrasse: Swiss Agency for Development and Cooperation, Conflict Prevention and Transformation Division (COPRET), 2005), <http://www.css.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/pdfs/Conflict-Analysis-Tools.pdf>.
- 12 Dr. Maria Saifuddin Effendi has developed this tool taking inspiration from her Professor Prof. Johan Galtung, Transcend Peace University, Norway and she teaches this model to her students at National Defence University, Islamabad.
- 13 “India: Jammu and Kashmir: Half a Century of Conflict,” Conflict Prevention, n.d., <http://www.conflictprevention.net/page.php?id=40&formid=73&action=show&surveyid=17>.
- 14 “A Brief History of the Kashmir Conflict,” The Telegraph, September 24, 2001, <https://www.telegraph.co.uk/news/1399992/A-brief-history-of-the-Kashmir-conflict.html>.
- 15 Pervaiz Iqbal Cheema, “The Politics of the Punjab Boundary Award,” *Heidelberg Papers in South Asian and Comparative Politics* 1 (January 4, 2003), <https://archiv.ub.uni-heidelberg.de/volltextserver/4006/>.
- 16 Alastair Lamb, “The Indian Claim to Jammu & Kashmir: Conditional Accession, Plebiscites and the Reference to the United Nations,” *Contemporary South Asia* 3, no. 1 (April 11, 2007): 67–72.
- 17 Maria Saifuddin Effendi, “Mapping UN Peacemaking in Kashmir under Conflict Analysis Framework: Efficacy and Prospects,” *Green Book*, 2017.
- 18 “Behind the Kashmir Conflict” (Human Rights Watch, July 1999), <https://www.hrw.org/reports/1999/kashmir/back.htm>.
- 19 “United Nations Commission for India and Pakistan, 13 August 1948,” 1100 & Para. 75 (1948).
- 20 Edward A. Gargan, “Hindu Militants Destroy Mosque, Setting Off a New Crisis in India,” The New York Times, December 7, 1992, <https://www.nytimes.com/1992/12/07/world/hindu-militants-destroy-mosque-setting-off-a-new-crisis-in-india.html?pagewanted=all>.
- 21 Klaus H. Pringsheim, “China’s Role in the Indo-Pakistani Conflict,” *The China Quarterly* 24 (1965): 170–75.
- 22 D. Suba Chandran, “Jammu & Kashmir: India’s Objectives and Strategies,” Swords and Ploughshares (Champaign: Program in Arms Control, Disarmament, and International Security (ACDIS), University of Illinois at Urbana, 2008), <https://www.ideals.illinois.edu/handle/2142/154666>.
- 23 Chandran.
- 24 Shakti Bhatt, “State Terrorism vs. Jihad in Kashmir,” *Journal of Contemporary Asia* 33, no. 2 (May 14, 2007): 216–17.
- 25 Alexander Evans, “Why Peace Won’t Come to Kashmir,” *Current History* 100, no. 645 (April 2001): 171.
- 26 Chandran, “Jammu & Kashmir: India’s Objectives and Strategies.”
- 27 Chandran.
- 28 Dr. Pervez Iqbal Cheema, “India’s Kashmir Policy,” Perspectives on Kashmir, (Islamabad: Pakistan Forum, 1994), 103.
- 29 Cheema, 107.
- 30 Cheema, 98.
- 31 Cheema, 98.
- 32 Cheema, 102.
- 33 Cheema, 104.
- 34 Cheema, 105.
- 35 Cheema, 107.
- 36 Cheema, 106.

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- ³⁷ Chandran, "Jammu & Kashmir: India's Objectives and Strategies."
- ³⁸ Syed Rifaat Hussain, "Pakistan's Changing Outlook on Kashmir," *South Asian Survey* 14, no. 2 (2007): 7.
- ³⁹ Hussain, 7.
- ⁴⁰ Hussain, 7.
- ⁴¹ "Over 8,000 Indo-Pak Soldiers Killed in Siachen," *The News*, April 9, 2012, <https://www.thenews.com.pk/archive/print/621545-over-8,000-indo-pak-soldiers-killed-in-siachen>.
- ⁴² "Over 8,000 Indo-Pak Soldiers Killed in Siachen."
- ⁴³ "Ishaq Dar Presents Budget 2017-18 - GDP Growth Rate Set at 6%," ARY News, May 28, 2017, <https://arynews.tv/en/live-finance-minister-ishaq-dar-presents-budget-fy2017-18/>.
- ⁴⁴ "India Military Budget," Global Security, 2019, <https://www.globalsecurity.org/military/world/india/budget.htm>.
- ⁴⁵ Athar Parvaiz, "Killer Siachen 'Where a Pakistani Soldier Dies Every Four Days from the Cold,'" *DAWN*, February 8, 2016, <https://www.dawn.com/news/1237803>.
- ⁴⁶ Evans, "Why Peace Won't Come to Kashmir," 173.
- ⁴⁷ Roy J. Lewicki, Alexander Hiam, and Karen Wise Olander, "Selecting a Strategy," in *Think Before You Speak: A Complete Guide to Strategic Negotiation* (USA: Wiley & Sons, 1996), 54-69.
- ⁴⁸ "Proposals for Resolving the Kashmir Dispute," PILDAT, June 1, 2004, <https://pildat.org/parliamentary-developments/proposals-for-resolving-the-kashmir-dispute>.
- ⁴⁹ Rashmi Sehgal, "Kashmir Conflict: Solutions and Demand for Self-Determination," *International Journal of Humanities and Social Science* 1, no. 6 (June 2011): 192.
- ⁵⁰ Sehgal, 192.
- ⁵¹ Sehgal, 191.
- ⁵² Sehgal, 193.
- ⁵³ Sehgal, 194.
- ⁵⁴ Interview with Dr. Shaheen Akhtar, faculty member at National Defence University, Islamabad.

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Kashmir Uprising: Indian Approach and Regional Stability

Muhammad Tehsin and Adnan Bukhari

Abstract

The Kashmir dispute has been termed as the core issue between two nuclear arch-rivals of South Asia, India and Pakistan, for the last seven decades. This conflict has hampered political, economic and social development not only of Pakistan and India, but has also impaired the chances of political and economic integration of the South Asian region. Indian policies and laws in Kashmir, causing massive human rights violations and defiance of the UN resolutions, have exacerbated the security situation of Kashmir in particular and South Asia in general. Despite several proposals to settle the dispute including the UN resolutions, the issue remains still unresolved. The Kashmiri indigenous uprising erupted in 1987 and has been rejuvenated after the killing of Burhan Wani, a 22-year-old Kashmiri by Indian forces in July 2016. This paper attempts to examine multiple dimensions of the Kashmir issue to explore its implications for Indo-Pakistan relations. The article has been divided into three broad sections. The first section provides a theoretical framework by applying realist theory in India-Pakistan relations, Edward Azar's theory of protracted conflicts and John Rawls' theory of justice. The second section delineates policies adopted by both states on Kashmir. The article also discusses the recent developments in Indo-Pakistan relations including crisis management. The final section proposes a conflict resolution mechanism that will include ceasefire, managing cross border issues and other CBMs as the way forward towards resolving the dispute.

Keywords: Kashmir, Culture, Identity, Justice, Plebiscite.

The Kashmir dispute has been a permanent source of tension between two major nuclear arch-rivals, India and Pakistan, since partition. This issue has its roots in colonial divide in South Asia that was based on unjustified territorial partition of Kashmir. The

basic assumption of accession of princely states was that ruling princes would decide to accede to any of the newly established two states, India or Pakistan, considering two-pronged criteria, geographical contiguity and popular aspirations.

The controversy started, when the Hindu ruling prince of Kashmir, *Maharaja* Hari Singh acceded to India without taking into account peoples aspirations as the majority of Kashmiris consisted of Muslims. India in connivance with the *Maharaja* attacked Kashmir in 1948 and seized possession of a major portion of Kashmir.

Conversely, it also took forceful control of Hyderabad and Junagarh on account of their Hindu majority population despite the fact that the *Nizam* of Hyderabad had chosen to stay autonomous and the *Nawab* of Junagarh had signed an instrument of accession with Pakistan. According to one view, India occupied the Kashmir region with the intent of trying to validate its action by forcing the *Maharaja* to sign papers of accession.¹ In such a scenario, Kashmir's struggle for self-determination started against the Indian invasion of the valley.

The Kashmir movement is nearly a century-old now being started prior to the departure of the British in 1947. It has been seventy years since Kashmir's movement of self-determination is on the agenda of the United Nations (UN). The Kashmiri people perceive Indian injustices and violence as a threat to their survival. Almost a hundred thousand Kashmiris have laid down their lives in this fight for self-determination. The current uprising of Kashmir is galvanized by the murder of Burhan Wani, a Kashmiri freedom fighter in Indian Occupied Kashmir (IOK). Wani's assassination by Indian forces turned him into an icon for another wave of uprisings. India has been trying to suppress the uprising by trying to divert international attention by blaming Pakistan for terrorist attacks in Kashmir including an attack on the defence base of Uri in September 2016. Pakistan, however, has remained committed to highlighting the Kashmir issue and human rights violation by India in IOK.

There is, at least, one common perspective in India and Pakistan on the issue as they blame Britain for incomplete partition agenda of Kashmir. The unresolved issue of Kashmir has been viewed by India

as a policy of „divide and rule“ of the British. Many Pakistanis remain convinced that Lord Mountbatten and Radcliff supported India during the territorial division.² This narrative received credence, when the former British Prime Minister, David Cameron stated in 2011 that, “we are responsible for the (Kashmir) issue in the first place.”³ He suggested that Britain was responsible for the political deprivation and socio-cultural injustices faced by the Kashmiris.⁴ An author opined that, “the British, through their divide-and-rule administration, hammered the first cracks into the relations of Hindus and Muslims in South Asia, and in Kashmir in particular ... in the process of their withdrawal, the British granted the important decision of Kashmir’s fate to one man, which essentially created the possibility of the Muslim dominated Kashmir joining the Hindu-majority India. This is because the responsibility of making the critical decision was bestowed upon *Maharaja* Hari Singh, who leaned towards India. As such, the British were responsible for the fallout from the instrument of accession.”⁵

The history of the bilateral relationship of India and Pakistan is marked by three full-fledged wars including 1948, 1965 and 1971, a low intensity conflict in 1999, many incidents of cross border firing and several border stand-offs. However, peace process also made certain strides, which includes, signing of the Indus Water Treaty in 1960, Shimla Agreement in 1972, many Confidence Building Measures (CBMs) in 1999, and composite dialogue in 2004. Kashmir is considered a bone of contention between the two states. There is increasing need to resolve this issue through a process that is practical and agreeable to three major stakeholders, India, Pakistan and Kashmiris.

The changing regional dynamics and national postures in India and Pakistan have resulted in a situation, where it is not clear as to which party is revisionist and which side is pro-status quo. A revisionist state seeks to change the current distribution of power, e.g., national territorial boundaries. A status quo posture would seek to maintain existing borders and relative power between states. Both India and Pakistan remain locked in cross border firing across the working boundary and line of control. In the nuclearized context, an escalation of tension and conflict is dangerous for regional strategic stability. This

necessitates resorting to conflict resolution by initiating dialogue among three players, India, Pakistan and Kashmiris to resolve long-standing Kashmir issue. This approach should include elements of transparency, reconciliation, openness and above all, inclusiveness of Kashmiris.

Theoretical Framework

Theoretically, the crux of Kashmir issue between India and Pakistan lies in “power- centric” approach, which entails conflict and violence. India has stationed about 700,000 troops in IOK and is accused of human rights violations. Pakistan has also deployed troops in Azad Kashmir to avert any possible aggression by India. Realpolitik and power maximization have been adopted by both states to compete in anarchic international order. This has led both states towards conventional and strategic arms race along with evolution of different warfighting strategies. Kashmir issue has been proven to be a point of attrition, which results in escalation of tensions. A narrowly focused realistic approach by both countries has converted South Asia into a troubled region with uncertain security situation. Consequently, people of both states suffer from conflict and violence.

The Culturalist Theory provides an effective conceptual lens to understand Kashmir’s indigenous struggle for self-determination. This theory bases its premise on cultural identity as a dominant feature in understanding the nature of the Kashmir issue. The people are viewed as unit of analysis in such a scenario. This is also related to identity politics. Edward E. Azar explored the concept of conflict resolution, i.e., the Theory of Protracted Social Conflicts. According to Azar, protracted social conflicts are the result of deprivation experienced by communities on account of their unique cultural identity. This collective deprivation of a community is caused both by the state concerned as well as the international community that directly or indirectly supports the oppressive state.⁶

The Kashmir issue can be categorized as “protracted social conflict” because of deprivation of political, social and ethnic identity of Kashmiris, based on *Kashmiriyaat*. If any group of people qualifies to be termed as “one nation”, it is the Kashmiri speaking people of the

Kashmir valley. Kashmiri adolescents express their distinctive cultural identity through drawings and visual depictions.⁷ Azar substantiated “protracted social conflicts” as a combat situation between state and victimized group coupled with injustice and economic disparities. He posited that a protracted social conflict is the fallout of three main factors:

- Non-acceptance of separate identity and denial of political rights,
- Insecurity about ethnic, religious and cultural values, and
- Ineffective political participation of people due to trust deficit and non-remedial behaviour of concerned state.

The Kashmir issue has been transformed into a protracted social conflict because of denial of cultural identity of Kashmiris, insecurity in their community due to the killing of thousands of innocent Kashmiris by Indian forces and ineffective political setup, which snubbed their right to self-determination. Kashmir struggle is an epic example of identity based political, social, religious, communal and ethnic conflict. It is an indigenous struggle for the Kashmiri right of self-determination rather than a planned strategy backed by Pakistan, as India often claims. Kashmir is facing multi-dimensional and multi-layered sources of conflict, in a complex security situation. To deal with social protracted conflict, an innovative procedure, with amalgamation of the Justice Theory and Owen Dixon’s Plan, should be applied. John Rawls’ Justice Theory holds that the most effective way to manage a protracted social conflict is provision of justice to the affected community. The Rawlsian theory postulates that justice is fundamental to social institutions and is of primary importance in political participation.⁸ This theory can be applied for the purpose of peace restoration in valley, through social and political amelioration.

Through the perspective provided by Rawls’ and Azar’s theories, certain CBMs can be identified including ceasefire, observing human rights, and curtailing cross border firing. The problems of inequality at societal and political level should be replaced with equality, liberty and freedom. The UN observer group and other NGOs should be allowed access to the

people and to record truth about human rights abuses. Achieving stability, through crisis management, is an intense, difficult and time-consuming process that involves several backchannel meetings. Pakistan and India need to change the shape of clash - conflict transformation - and ultimately strive for resolution of Kashmir issue.⁹ The peace process should be consolidated with CBMs, comprehensive negotiations and people-to-people contact. Negative public perceptions, hatred, mutual suspicion and distrust should be eliminated. Both countries have inherited a legacy of distorted and complicated history. It promotes the negative image of each state, leading towards abhorrence. History should be written on the basis of archaeological facts and accurate events.¹⁰ This would require verification of facts, transparency and openness. Conceptually, many of the above-mentioned measures can be categorized by applying the theoretical framework provided in this paper:

- Adoption of John Rawls' theory of justice, i.e., manage conflict through dispensing justice by symbolic recognition of Kashmiri right to determine their future. Economic and trade activities should be encouraged. Draconian laws¹¹, such as, POTA, TADA, AFSPA and PSA should be withdrawn and all political prisoners (except hardcore terrorists), captured under this law should be released to initiate an inclusive political setup.
- Recognition of the Kashmir dispute as a protracted social conflict as per Edward Azar's definition. Furthermore, joint approach vis-à-vis conventional and strategic CBMs should be taken by India and Pakistan to sustain strategic stability of the region.
- Adhering to Owen Dixon formula of "demilitarization", i.e., mutual demilitarization of forces from disputed region by both states in a phased manner as a starting point to set the grounds for future plebiscite. Fencing should be removed from the Line of Control (LoC) and the boundary should be softened so that people should be allowed to move freely.

The power of dialogue and negotiation in peace process cannot be underestimated. The nature of Kashmir conflict is political; therefore,

long lasting solution can only be achieved through serious political and diplomatic efforts.¹² New Delhi and Islamabad should negotiate to formulate an extensive, workable and step-by-step de-escalation, conflict management and interactive conflict resolution mechanism, which should also include Kashmiris as stakeholders.

The next section analyses Indian policies towards Kashmir. It finds that Indian policies have been ineffective and proved a failure to achieve an enduring peace in the valley. Subsequently, this paper will discuss Pakistan's position on the Kashmir issue.

Indian Policies toward Kashmir: From Status Quo to Revisionism?¹³

The conventional Indian approach to Kashmir issue rests on the assumption that the decision of *Maharaja* to sign a paper of accession with India is absolute and unchallengeable. Recently, a revisionist posture has been adopted by India as declared by the Narendra Modi-led BJP government that the unfinished agenda of partition pertains to the disputed part of Kashmir occupied by Pakistan, which needs to be resolved through bilateral talks.¹⁴ This Indian position is revisionist since it rejects the status quo that currently prevails between India and Pakistan including the status of Kashmir. India negates the option of plebiscite in the valley on the account that Pakistan has not withdrawn its troops from its "illegally occupied" part of the valley. India envisages for itself a hegemonic and expansionist role in South Asia.

India claims that Pakistan has forfeited the moral grounds to file any petition in case of Kashmir. For Indian strategists, the only problem confronting Kashmiri people is Pakistan-sponsored terrorism. While, strategic and political narrative of Pakistan is based on Muslim brotherhood and its principled stance on illicit accession of Kashmir to Indian Union. India has divided its policy to deal with this enduring crisis at three levels; local, bilateral, and international.

At the local level, India is trying to suppress the resistance of Kashmiris, fighting for their right of self-determination since 1948. For this purpose, India is using callous state power. In the process, Rawlsian concept of justice remains neglected amidst the massive human rights

violations. Furthermore, Indian government is trying to manipulate the demographic realities. It is trying to alter the ethnic, religious and geographic realities of the valley by governmental action. This approach needs careful attention in view of India's professed policy of secularism.

At bilateral level, India avoids to discuss Kashmir in bilateral dialogue with Pakistan. Instead of the adoption of Owen Dixon's Formula, which still remains an equitable and practicable option, India is applying delaying tactics through intermittent engagement and dialogue with Pakistan to strengthen its control over the valley. India appears content to maintain a brutal control over a major portion of Jammu and Kashmir; is desirous to designate the LoC as a permanent international border, and has recently expanded the conflict to include the Pakistani portion of Kashmir.¹⁵

At international level, India denies the cultural rights and identity of the Kashmiri people, which fuels popular unrest, as per Edward Azar's theory of protracted social conflict. India is pursuing three objectives; first, it is trying to divert international concerns over Kashmir; second, it strives to diminish Pakistan's efforts to highlight the issue of human-rights violations by India; and third, it is denying Pakistan's standpoint that Jammu and Kashmir are unresolved territory and needs resolution. India also excludes any third-party involvement in resolving Kashmir issue on the pretext of Shimla agreement, which called for resolving all outstanding issues bilaterally.

Denial of Rawlsian Justice: Indian Laws in Kashmir

Jammu and Kashmir retain special autonomous status according to Article 370 of the constitution of India. This provision was initially temporary and later became a permanent feature of the Indian constitution, when Kashmir's Constituent Assembly dissolved itself. However, the Central Government of India has been chipping away at Kashmir's autonomous status and the ruling Bharatiya Janata Party (BJP) government led by Narendra Modi has openly talked of revoking Article 370, which affirms Kashmir's unique cultural identity.¹⁶ This policy is in line with the Indian approach of denial of justice to the Kashmiri people. According to Rawls, denial of justice is the crux of protracted social conflicts. Coupled with social discrimination, there are

human rights violations, which highlight the gap between the Indian policies in Kashmir and the Rawlsian criteria of social justice.

India is providing impunity to law enforcement agencies from any legal action under various obscure acts, including POTA, TADA, PSA and AFSPA. The Armed Forces Special Power Act (AFSPA) provides military with excessive power to arrest without any warrants from court. The Disturbed Area Act (TADA) is a Presidential Act, which provides safety to police officer and magistrate of “troubled area” even if they are involved in killing of local unarmed people. The Public Safety Act (PSA) allows law enforcement agencies to arrest any individual on charges of creating “unrest” in the valley. Under the Prevention of Terrorism Act (POTA) 2002, any person can be jailed for 180 days on suspicion of any terrorist activity, without any evidence. Kashmiri people are subjected to illegal detention and torture under these laws. International human rights organizations routinely express serious concerns over gross violations of human rights in Kashmir by India. These organizations include UNHCR, European Commission on Human Rights (ECHR) and Human Rights Watch (HRW).

Defiance of the UN Resolutions: Indian Approach to Owen Dixon Plan

Ironically, India raised the Kashmir issue in the UN in January 1948, but later defied the UN resolutions by not holding plebiscite in the valley. An appraisal of some important resolutions calling for holding plebiscite provides interesting insight into the genesis of the Kashmir issue. The United Nations Commission for India and Pakistan (UNCIP) adopted a resolution on August 13, 1948, which stated that both governments should agree to a truce and then consult with the commission for creation of suitable environment for a plebiscite.¹⁷ The UNSC Resolution of January 5, 1949 highlighted the need for a vote to determine the will of the Kashmiris.¹⁸

In 1950, UN mediator Sir Owen Dixon proposed regional plebiscite to provide a solution to the Kashmir dispute. He identified three issues in conducting the plebiscite. First was identification of regions in Jammu and Kashmir; second was the issue of demilitarization; and third was the nature of status to be accorded to the territories. Owen Dixon noted

that that these differences originated from sharply different views of both states over the meanings of the Kashmir dispute. The Indian External Affairs Minister Natwar Singh acknowledged this difference in perceptions about Kashmir in an interview, “India can wait indefinitely on Kashmir, while Pakistan cannot wait.”¹⁹

The UNSC reaffirmed the principle of self-determination for Kashmiris through various resolutions in 1951 and 1957.²⁰ Two UN resolutions passed on March 30, 1951 and January 24, 1957, both re-emphasized the centrality of a plebiscite to determine the will of the Kashmiris in deciding their political fate and cultural preservation.²¹ Pakistan has repeatedly called for implementation of the UN resolutions on Kashmir.²² If India is sincere in resolving the dispute, it is need of the hour to implement the UN resolutions to conduct plebiscite. This can be accomplished in an equitable and practical manner by adoption of the Owen Dixon Formula. India’s defiance of the UN resolution has exacerbated the situation and increased regional hostility.

Kashmir Uprisings: A Consequence of Protracted Conflict

The protracted conflict between India and Pakistan mainly because of Kashmir dispute has resulted in three wars, i.e., 1948, 1965 and 1971, and a small-scale conflict in 1999. A significant separatist uprising started in 1987 within the valley. From 1987 to-date, Kashmir has been facing intermittent uprisings. The persistent India denial of Kashmiri rights and identity led to the 1987 uprising begun in post-1987 elections in Indian held Kashmir, when the Muslim United Front claimed that the elections were rigged.²³ As predicted by Edward Azar, the deprived Kashmiri community rose up in protest in anti-India demonstrations, followed by police firing and curfews. Bomb blasts and kidnappings marked the uprising. India also claimed that Pakistan sent *Mujahedeen* to support the Kashmir movement. The killing of more than 100 protesters by Indian forces on Gaw Kadal Bridge in January 1990 sparked a wave of fury among the entire population of Kashmir. Subsequently, around 100 people were killed during the funeral procession of the slain leader Mirwaiz Maulvi Farooq. Yasin Malik representing a faction of the Jammu Kashmir Liberation Front (JKLF) announced unilateral ceasefire in 1994.²⁴

After 1995, there was some involvement of certain organizations, such as, *Lashkar-e-Tayyiba (LeT)*, *Harkat-ul-Mujahedeen* and *Hizb-ul-Mujahedeen*, however, they had a separate existence under the umbrella of the United Jihadi Council (UJC).²⁵ Mirwaiz Umar Farooq, a Kashmiri leader, maintains that the Kashmir movement is “purely indigenous, purely Kashmiri” and a militant strand has appeared since 1989 that remains on the sidelines.²⁶ A report, appeared in *BBC* in 2011, stated that 2,156 bodies were found concealed in forty unmarked graves over the past twenty years.²⁷ Such heinous violations of human rights characterize the Kashmir uprising providing evidence of a separate Kashmiri identity within Indian society and polity, and the repressive denial of this Kashmiri identity by the Indian state and government institutions.

Burhan Wani: A New Spirit of Freedom Struggle

The recent wave of uprising in Kashmir was triggered, when a 22-year-old Kashmiri, Burhan Muzaffar Wani was assassinated by Indian security agencies on July 8, 2016. India professed that Wani had links to militant outfit, *Hizb-ul-Mujahedeen*. He was popular because of his active use of social media, where he advocated resistance against Indian rule in Kashmir.²⁸ His video messages contained the topics of Indian injustice and oppression, which would often go viral in Kashmir. He exhorted the Kashmiri youth to resist Indian occupation.²⁹ The killing of Wani has given a new spirit to indigenous freedom struggle of Kashmiris.³⁰ Shujaat Bukhari, a Srinagar based journalist, stated that a new political discourse was emerging and militancy was gaining political legitimacy in a vacuum where genuine political activities were muffled. He raised a pertinent question about the popularity of Wani attributing it to the ideology, he promoted.³¹

In the aftermath of killing of Wani, India adopted a hard-line approach to deal with the situation of social unrest.³² Popular protests were witnessed as a consequence of the assassination. Indian law enforcement agencies employed brutal methods to control the popular protests.³³ More than 104 people died and over 12,500 people were injured as of September 2016.³⁴ All districts of IOK were placed under curfew for 53 consecutive days,³⁵ in a brutal demonstration of “collective punishment”. The Kashmiri lives and liberties have, since then, been

subjected to intense disruption and turmoil at the hands of Indian law enforcement agencies.

Pakistan showed solidarity with Kashmiris and provided them moral and diplomatic support. On July 20, 2016, a black-day was observed in Pakistan against the atrocities of India in Kashmir.³⁶ The Pakistan's Parliament, the National Assembly, adopted unanimous resolution against human rights violations in Kashmir by India and called for sending UN Human Rights Council (UNHRC) to the region to investigate the issue.³⁷ Pakistan's former Prime Minister, Muhammad Nawaz Sharif highlighted the ongoing Kashmir activism in the 71st UN General Assembly session in September 2016. His speech referred to the murder of Burhan Wani by Indian forces. Mr. Sharif demanded a UN fact-finding mission to investigate the cases of extra-judicial killings and other atrocities committed by the Indian occupying forces.³⁸

Pakistan's Policy toward Kashmir

While, India proclaims Kashmir as its integral part, the historical approach of Pakistan over Kashmir is that *Maharaja* acceded to India, because he could not sustain pressure of the Indian army and government. The British Viceroy also supported India at that crucial moment. Pakistan claims that Kashmir has been a disputed territory on the forum of UNSC since 1948. It was the time, when India agreed that Kashmir accession was controversial and promised to conduct a plebiscite to determine the opinion of Kashmiris about their political future. These resolutions are still on the agenda of the UNSC, and any party to conflict cannot marginalize it unilaterally.³⁹ Pakistan's Kashmir policy has three aspects:

- Pakistan has been reiterating that the issue of Kashmir is disputed and unresolved. It calls for India to initiate dialogue. This approach serves two purposes; one, the issue of Kashmir stays alive; and two, it strives to protect the inherent right of self-determination of Kashmiris.
- Pakistan has been calling for conducting plebiscite under the supervision of the UN so that aspirations of the Kashmiris could be determined.

- Pakistan encourages the involvement of Kashmiri leaders to find out a solution through talks held in continuation of the Shimla Agreement, Agra and Lahore summits.

In spite of the above-mentioned facts, in practical terms, Pakistan's repeated recourse to diplomatic means for resolving the conflict shows that Pakistan is ready to make compromises for peace with possible acceptance of a solution resembling status quo.⁴⁰ On the other hand, Indian belligerence and the Modi-government's reference to those Kashmiri areas, which currently form part of Pakistan, demonstrates India's increasingly revisionist posturing towards the Kashmir dispute.

Different solutions have been proposed for the management of this conflict during last seven decades. At the first instance, violations of human rights should be stopped to create a feasible milieu as stipulated in Rawlsian theory of justice. A phased demilitarization of the region in line with Owen Dixon's formula would be a second significant CBM and most importantly, the fundamental right of local people to participate in dialogue and negotiation should be ensured as pointed out by Edward Azar's theory, signifying the provision of cultural rights to resolve protracted social conflicts.⁴¹

Towards Conflict Resolution: Crisis Management in Nuclear Context

The threat perceptions in both India and Pakistan derive from the asymmetrical power structure in South Asia.⁴² This imbalance owes itself to the larger size of India, greater human resource and expansionist military objectives. However, both countries are equipped with nuclear arsenal and any strategic adventure can lead towards the nuclear flashpoint.⁴³ The crisis of Uri in September 2016 was caused by a militant attack on an Indian Army base in the Baramulla District of IOK killing seventeen Indian Army soldiers and injuring eighteen others. India accused Pakistan for this incident by claiming that the weapons and equipment that was used in Uri attack had Pakistani markings.⁴⁴ On the other hand, Pakistan declared this attack as "self-generated" and called Indian allegations as "long-time habit".⁴⁵

The cross-border firing by India and Pakistan in the post-Uri incident

has caused further deterioration in Indo-Pakistan relations. The current tension between the two nuclear rivals is dangerous for regional strategic stability. India's blame-game towards Pakistan for holding it responsible for every terrorist attacks needs to cease. India's so-called surgical strike in late September 2016 in post-Uri incident further exacerbated the crisis. India claimed that it carried out a commando operation to demolish several transit hideouts of militants, who were operating against India by entering several kilometres inside Pakistan's territory.⁴⁶

India's two-pronged strategy of isolating Pakistan and threatening to abrogate Indus Water Treaty contains dangerous strategic dimensions. It should be kept in view that the annulment of treaty unilaterally would be considered illegal under Article 12(4) of Indus Water Treaty, to which both the countries agreed upon 66 years ago.⁴⁷ Pakistan is a lower riparian country and dependent on 80 percent of water of rivers, coming from Kashmir. The hydro-politics in Kashmir also necessitates resolving this issue amicably.

The recent developments including killing of Burhan Wani, augmenting of Kashmir uprising, Uri incident, and post-Uri so-called "surgical strikes" have caused escalation in tensions between India and Pakistan. Further, trust deficit, clashing religious ideologies and different security perceptions have caused excessive damage to the Indo-Pakistan relationship.⁴⁸ The escalation of tension necessitates managing the conflict under the nuclearized context. This needs an effective conflict resolution mechanism by referral to Azar's concept of identity as a basic human need and Rawls theory of justice. For this, there should be realization in India that its hard-line and heavy-handed approach during last seventy years has failed in Kashmir that is leading to a snowball effect of greater freedom struggle in Kashmir. If this conflict has to be managed and curtailed, an inclusive framework for resolution should be initiated, involving Kashmiris, Pakistan and India. All three parties need to work together to form a consensual approach for a peaceful and stable valley that could be divided for a peaceful and stable region.

The ceasefire should be revived and a renewed spirit should be shown by both India and Pakistan. There is a need to stop the violent activities

of non-state actors. Pakistan and India should formulate a joint working mechanism to curb the menace of terrorism. This requires greater transparency, openness and above all political will in order to fulfil the Rawlsian criteria for provision of social justice. India should stop human rights violations in Kashmir and provide space for Kashmiris for talks. The use of pellet guns and tear gas should be banned. Providing space for political and economic activity to Kashmiris will create conducive environment to negotiate final-status issues.

According to the Owen Dixon Formula, both India and Pakistan should seek mutual and simultaneous demilitarization from Kashmir in phased manner. The demilitarization will serve as a major CBM not only between India and Pakistan, but also for Kashmiris. This will show sincerity of both states in resolving this seven-decade-old problem. Whatever the proposed solution might be either it be holding plebiscite, establishing self-governance with a joint management, or making the existing border permanent, Kashmiris should be involved in the peace process. The inclusiveness of Kashmiris in resolving Kashmir issue is a pre-requisite to achieve a long-term solution.

Conclusion

The issue of Kashmir has entered its seventy-first year and no major breakthrough has been achieved so far despite several policy options and solutions proposed by Kashmiris, Pakistan and the UN. The Kashmiri indigenous uprising for self-determination, which started in 1987 and rejuvenated after the killing of Burhan Wani in July 2016, has entered into a crucial phase because of the long-standing politico-economic deprivation of the people of Kashmir. India has been trying to crush this insurgency by adopting a coercive approach that is failing by all means. Moreover, its approach of isolating Pakistan diplomatically is dangerous, because Pakistan's presence in the region cannot be ignored. The Kashmir issue between the two countries has remained a bone of contention since their independence. Both countries fought three wars against each other and a low intensity conflict goes on. Many cross-border firing incidents have yet achieved nothing. A general war in nuclearized context would be catastrophic. Any conventional or non-conventional confrontation will prove suicidal for both countries.

The erstwhile approach of pitting blame on the British should be shunned. India and Pakistan should both display statesmanship by opening up to “out-of-the- box” solutions – including constructive third-party role – in dealing with this intractable problem. It is imperative for conflict resolution that both states realize the miseries of the Kashmiri community. The only way to move forward is to be engaged in interactive conflict management talks, and constructive dialogue. This dialogue should not only be “inter” (between India and Pakistan) but also “intra” (among Kashmiris, Pakistan and India). This dialogue should be inclusive, mutual and “Kashmir-centric”. The Kashmiris have their own identity, history and culture. Only dispensation of justice (in form of giving the right of self-determination to Kashmiris) will address the protracted conflict between the two states. The resolution of this core dispute will not only fulfil the longstanding Kashmiri dream of freedom, but also prove to be a catalyst for strategic stability in South Asia.

References

- ¹ Mushtaq ur Rahman, *Divided Kashmir: Old Problems, New Opportunities for India, Pakistan, and the Kashmiri People* (Boulder: Lynne Rienner, 1996), 17.
- ² T. V. Paul, *The India-Pakistan Conflict: An Enduring Rivalry* (Cambridge: Cambridge University Press, 2005), 23.
- ³ Palash Ghosh, “Britain to blame for Kashmir strife, other global conflicts: PM Cameron,” *The International Business Time*, April 5, 2011. <http://www.ibtimes.com/britain-blame-kashmir-strife-other-global-conflicts-pm-cameron-278725>. (accessed on Aug 10, 2017).
- ⁴ Ibid.
- ⁵ Edward Quah, “To what extent can Britain be held responsible for the conflict in Kashmir,” *Academia*, accessed January 20, 2017, <https://bc.academia.edu/EdwardQuah>.
- ⁶ Edward E. Azar, *The Management of Protracted Social Conflict: Theory & Cases* (Aldershot, Dartmouth, 1990), 12.
- ⁷ Kanika Ahuja, Megha Dev Dhillon, Kalyani Akalamkam, and Deepika Papneja, “Identities in Conflict: A Comparison of Drawings of Muslim Adolescents in Kashmir and Delhi,” *Sage Open*. January-March 2016:1-11. <https://us.sagepub.com/en-us/nam/open-access-at-sage>. (accessed on April 4, 2017)
- ⁸ John Rawls, *A Theory of Justice*, (Massachusetts: Harvard University Press, 1971), 33.
- ⁹ Adekoye Abimbola Raquel, “The Impact of the Kashmir Conflict on Indo-Pakistani Relations and its Security Implications for the South Asian Region,” *University of KwaZulu-Natal*, (South Africa, 2014). <https://researchspace.ukzn.ac.za/handle/10413/12770>. (accessed on Aug 11, 2017).
- ¹⁰ P. R. Chari, Pervaiz Iqbal Cheema and Stephen P. Cohen, *Four Crises and a Peace Process* (New Delhi, Harper Collins Publisher, India, 2008).
- ¹¹ The Draconian laws are imposed by India in IOK including Public Safety Act (PSA) 1978, Terrorist and Disruptive Activities Act (TADA) 1990, The Armed Forces (Jammu & Kashmir) Special Powers Act (AFSPA) 1990 and Prevention of Terrorism Act (POTA) 2002.
- ¹² Pervaiz Iqbal Cheema, *India’s Kashmir Policy in Perspectives on Kashmir*, ed. Dr. K. F. Yousaf (Islamabad: Pakistan Forum, 1994), 97-118.

- ¹³ The notion of status quo and revisionist powers is taken from Morgenthau's definitional framework of types of states. According to him, a status quo power is one which aims to keep its power level and shows no interest in changing the distribution of power. In contrast, a revisionist power aims at acquiring more power. See Morgenthau, Hans J., *Politics Among Nations*, New Delhi, Kalyani Publishers, 1985, p. 53
- ¹⁴ "Pakistan Occupied Kashmir is a Part of J&K: PM Modi at All-Party Meet," *CNN- News18*, Aug 12, 2016. <http://www.news18.com/news/india/pakistan-occupied-kashmir-is-a-part-of-jk-pm-modi-at-all-party-meet-1280803.html>. (accessed on Aug 15, 2017).
- ¹⁵ Robert G. Wirsing, *India, Pakistan, and the Kashmir Dispute: on Regional Conflict and Its Resolution* (New York: St. Martin's Press, 1994), 219-20.
- ¹⁶ "Will work to remove Article 370 when we have numbers in Parliament, BJP says." *The Times of India*, May 24, 2015. <http://timesofindia.indiatimes.com/india/Will-work-to-remove-Article-370-when-we-have-numbers-in-Parliament-BJP-says/articleshow/47405797.cms> (accessed on April 4, 2017)
- ¹⁷ Resolution adopted by the United Nations Commission for India and Pakistan on 13 August 1948.
- ¹⁸ "The Kashmir Issue at a Glance," *National Assembly of Pakistan*, <http://www.na.gov.pk/en/content.php?id=89>. (accessed on January 20, 2017)
- ¹⁹ V. Sudarshan, "No Time-Frame on Kashmir - V. Sudarshan interviews K. Natwar Singh," *Outlook*, 25 April 2005. <http://www.outlookindia.com/magazine/story/no-time-frame-on-kashmir/227193> (accessed on April 05, 2017).
- ²⁰ Ibid.
- ²¹ Ibid.
- ²² Irfan Haider, "PM Nawaz urges Ban Ki-moon for plebiscite in Kashmir," *The Dawn*, September 28, 2015. <https://www.dawn.com/news/1209319>. (accessed on Aug 12, 2017).
- ²³ Kashmir: Nuclear Flashpoint, 1987-1998, *Kashmir Library*, (accessed on January 20, 2017), http://www.kashmirlibrary.org/kashmir_timeline/kashmir_chapters/1987-1998_detailed.shtml.
- ²⁴ Ibid.
- ²⁵ Ibid.
- ²⁶ Emily Wax, "Peaceful Protests in Kashmir Alter Equation for India," *The Washington Post*, August 28, 2008. <http://www.washingtonpost.com/wp-dyn/content/article/2008/08/27/AR2008082703195.html>. (accessed on Aug 13, 2017).
- ²⁷ "Kashmir graves: Human Rights Watch calls for inquiry," *BBC*, August 25, 2011. <http://www.bbc.com/news/world-south-asia-14660253>. (accessed on Aug 14, 2017).
- ²⁸ Peerzada Ashiq, "Burhan Wani, Hizbul poster boy, killed in encounter," *The Hindu*, July 8, 2016. <http://www.thehindu.com/news/national/other-states/Burhan-Wani-Hizbul-poster-boy-killed-in-encounter/article14479731.ece>. (accessed on Aug 15, 2017).
- ²⁹ Shujaat Bukhari, "Why the death of militant Burhan Wani has Kashmiris up in arms," *BBC*, July 11, 2016. <http://www.bbc.com/news/world-asia-india-36762043>. (accessed on Aug 15, 2017).
- ³⁰ Ibid.
- ³¹ Ibid.
- ³² Ashok Swain, "Unrest in Kashmir is bad for India, but good for Modi government," *Dailyo*, May 26, 2017. <http://www.dailyo.in/voices/kashmir-policy-stone-pelting-bjp-modi-armed-forces/story/1/17433.html>. (accessed on Aug 16, 2017).
- ³³ "Protests intensify in Indian Kashmir, security forces kill five," *The Reuters*, August 17, 2016. <http://www.reuters.com/article/us-india-kashmir/protests-intensify-in-indian-kashmir-security-forces-kill-five-idUSKCN1oRoVQ?il=0>. (accessed on Aug 20, 2017).
- ³⁴ "Kashmir Intifada: Death toll in post Burhan Wani martyrdom rise to 104," *The Times of Islamabad*, September 17, 2016. <https://timesofislamabad.com/kashmir-intifada-death-toll-post-burhan-wani-martyrdom-rise-104/2016/09/17/>. (accessed on Aug 21, 2017).
- ³⁵ "Curfew lifted from entire Kashmir valley, says Div Com," *The Greater Kashmir*, August 31, 2016. <http://www.greaterkashmir.com/news/front-page/curfew-lifted-from-entire-kashmir-div-com/227298.html>. (accessed on Aug 23, 2017).
- ³⁶ "Pakistan observing 'black day' against Indian 'atrocities' in Kashmir," *The Hindustan Times*, July 20, 2016. <http://www.hindustantimes.com/india-news/pakistan-observes-black-day-today-against-indian-atrocities-in-kashmir/story-n43uQ35WYBbjUBZ8Apl6RP.html>. (accessed on Aug 24, 2017).
- ³⁷ "Pakistan parliament unanimously passes resolution on Kashmir," *The Economic Times*, August 2, 2016. <http://economictimes.indiatimes.com/news/international/world-news/pakistan-parliament>

-
- unanimously-passes-resolution-on-kashmir/articleshow/53509254.cms. (accessed on Aug 23, 2017).
- ³⁸ Statement by Pakistan's PM at the General Debate of the 71st Session of the UN General Assembly, September 21, 2016, www.pmo.gov.pk.
- ³⁹ Ijaz Hussain, *Kashmir Dispute: An International Law Perspective* (Rawalpindi: Services Book Club, 2000), 17.
- ⁴⁰ Khurshid Mahmud Kasuri, *Neither a Hawk nor a Dove: An Insider's Account of Pakistan's Foreign Relations including Details of the Kashmir Framework* (Karachi, Pakistan: Oxford University Press, 2015), 337-339.
- ⁴¹ Pervaiz Iqbal Cheema, "Solution for Kashmir Dispute," *Regional Studies* (Autumn 1986), 121.
- ⁴² Hasan Askari Rizvi, *Pakistan and Geostrategic Environment* (London: The Macmillan Press, 1993), 18-20.
- ⁴³ Robert G. Wirsing, *Kashmir; the Shadow of War Regional Rivalries in a Nuclear Age* (New York: M.E. Sharpe, 2003), 10.
- ⁴⁴ "A haul of arms with Pakistani markings," *The Hindu*, September 20, 2016. <http://www.thehindu.com/news/national/A-haul-of-arms-with-Pakistani-markings/article14988759.ece>. (accessed on Aug 24, 2017).
- ⁴⁵ "Uri Attack was "self-generated" by India: Pakistan Defence Minister," *The Indian Express*, October 4, 2016. <http://indianexpress.com/article/india/india-news-india/uri-attack-was-self-generated-by-india-pakistan-defence-minister-3052279/>. (accessed on Aug 25, 2017).
- ⁴⁶ Mahendra Ved, "India-Pakistan ties sour again after Uri camp attack," *New Straits Time*, Oct 8, 2016. <https://www.nst.com.my/news/2016/10/178922/india-pakistan-ties-sour-again-after-uri-camp-attack>. (accessed on Aug 16, 2017).
- ⁴⁷ Khaleeq Kiani, "Ahmed Bilal Soofi Interview, 'Indus Treaty Can't Be Revoked Unilaterally,'" *The Dawn*, September 27, 2016. <https://www.dawn.com/news/1286307>. (accessed on Aug 27, 2017).
- ⁴⁸ Khurshid Mahmud Kasuri, *Neither a Hawk nor a Dove: An Insider's Account of Pakistan's Foreign Relations including Details of the Kashmir Framework* (Karachi, Pakistan: Oxford University Press, 2015), 173.

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Resistance of Women against Indian Illegal Occupation of Jammu and Kashmir: Their Invisibility during Peace Negotiations

Izzat Raazia and Saqib Ur Rehman

Abstract

Kashmiri female freedom fighters have remained at the forefront of the resistance movement, rallies, protest marches, and sit-ins. Unfortunately, their activism is invisible, and they have lagged during the dialogue process. The peace negotiations go awry to address the concerns, specific needs, approaches, views, and grievances of women during and after conflict situations. The UN has long been trying to address the concerns of women through varied resolutions, but the implementation of these mandates remains a formidable challenge. This research paper, therefore, aims to analyse the resistance and activism of Kashmiri women for their inalienable right of self-determination against the Indian Illegal Occupation of Jammu and Kashmir. The problem of Kashmiri women's visibility in the resistance movement and their invisibility in the peace process is seen through the theoretical framework of Feminist Security Studies. For the textual interpretation and contextualization of data, Qualitative Content Analysis is employed. A way forward to address women's issues and approaches during conflict situations is to implement the UN landmark Resolution-1325 on 'Women, Peace, and Security' by involving women in all stages of conflict resolution and post-conflict reconstruction.

Keywords: Women, Resistance, IIOJK, Freedom Fighter, Self-determination.

The vale of Kashmir, once famed for its mesmerizing beauty and tranquillity, remains the most longstanding unresolved conflict between Pakistan and India. For a long, due to Indian illegal occupation,

Kashmiris have been facing inhuman brutal treatment. India has not only taken illegal control of the vale and its people but also refused to implement the UN resolutions of a free and impartial plebiscite. Demanding their inalienable right of self-determination, Kashmiri women have now shouldered with men and remained at the forefront. They have come forward, raised their voices, and took an active part in demonstrations. They have spearheaded the freedom movement, participated in large-scale mobilizations, and raised anti-India slogans under the banner of Dukhtaran-e-Millat (DeM) and Muslim Khawateen Markaz that have even outnumbered men at times.

However, women in Indian Illegally Occupied Jammu and Kashmir (IIOJK) are the worst hit of the conflict, such as rape and human rights violations, and managing their lives after the disappearance and killing of male members in households. Regrettably, they have been projected as victims of violence, but their activism is undervalued. They are symbolized as grieving wives, half-widows, martyrs' mothers, and raped women.¹ They have been neglected during the dialogue process and peace-making efforts, and their resistance and involvement in demonstrations, agitations, sit-ins, and liberation politics have not changed into their emancipation and empowerment.

Furthermore, the political role of Kashmiri women has been reinstated in the motherhood narrative that is idealized in their slogans. They carry *mujahid* (fighters) in their wombs and lure their male children with the tales of martyrdom. Kashmiri children, soon they open their eyes, are taught the slogans of freedom and fight for the self-determination of their people. Kashmiri women are ever ready to sacrifice their sons, the best and dearest thing in life, and that is enough contribution on their part to serve the freedom struggle.²

After their huge contribution to the freedom movement, Kashmiri women have been lagged during the dialogue process. Their approaches and views are overlooked in conflict-related discourse, and the role of gender in the transformation of conflict remains to be a peripheral issue. The peace negotiations are failed to address the concerns and grievances of Kashmiri women during and after conflict situations. However, the UN has long been trying to address the concerns of women through varied resolutions on 'Women, Peace, and Security' but the implementation of

these mandates remains a formidable challenge. Therefore, this paper analyses how have Kashmiri women resisted their right to self-determination and how they remained marginalized, underrepresented, and invisible during peace negotiations in IIOJK.

To answer these research questions, qualitative content analysis has been employed. Qualitative methods, by contrast, are best understood as data enhancers; when data are enhanced, it is possible to understand key aspects of cases more clearly.³ In social science research, the qualitative approach collects and analyses non-numerical data that seeks to interpret meaning from data to understand the social context of the targeted population and place. In the qualitative research method, Content Analysis is a widely used technique to analyse the data. The goal of content analysis is “to provide knowledge and understanding of the phenomenon under study.”⁴

The current study unravels women’s contribution and active participation in the resistance movement and their marginalization during the peace process as an attempt to contribute to the existing conflict-related discourse on IIOJK and opens new approaches for future research. Also, on the practical ground, this study helps direct the attention towards addressing women’s approaches, needs, and participation during policy formulation and its implementation. A feminist approach to international security has also been adopted that is aptly suitable to the topic and contention of current research work. The inclusion of women in security studies opened new vistas of research and broadened the boundaries of security that were previously understood and analysed as a state-centric approach. The major proponents of Feminist Security Studies (FSS), Laura Sjoberg, Cynthia Enloe, Ann Tickner, and Christine Sylvester sought to draw attention towards women’s unique experiences and outlooks other than their perceived private sphere and in their public security domain. In her seminal work, Enloe raised the question: “where are women” in the international political realm. Generally, men are charged with the duty of decision making, formulating military and security policies, and making war and peace, whereas, women have little significance to say.⁵

According to Shekhawat (2014), the traditional International Relations studies exclude women in the domains of war and peace-making.

Alternatively, women are an inseparable part of the social frame. Therefore, the discourse on conflict and peacebuilding must include their role and contribution as they are competent in conflict as well as in peace-making.⁶ Sharoni (2001) asserted that in political conflict, gender is widely ignored due to the public-private dichotomy. It is generally perceived that power is a male arena and women are powerless. Women are viewed as victims of a conflict that overlooks their power and agency.⁷ However, there is increased visibility of women during resistance movements in IIOJK. They are protesting and responding to the Indian atrocities with bravery and courage. Manchanda (2001) stated that Kashmiri women would break out into *wan-u-wan*, the traditional Kashmiri song of celebration, intertwining couplets in praise of local *mujahids* (fighters). “Cutting across class, mothers, wives, and daughters, all come to join the swelling processions... due to their activism embedded in their cultural roles. Their voices are now joining those of men in the cry for *Azadi* (freedom).”⁸

Kashmiri women’s activism is not confined to public protest. They serve as messengers, supplying shelter and food to freedom fighters, and looking after the injured. When their male counterparts are seized by the Indian army, women protest in front of the security bunkers for their release. In the narrow paths of city areas, women perform the duties of guards and preventing the approaching Indian occupied forces.⁹ Their contribution cannot be denied in developing the nationalist or separatist narrative. Kazi (2018) examined that the Kashmir conflict has assumed gendered overtones and women are subjected to gender-specific forms of violence and discrimination. They are more vulnerable to intractable conflicts. Indian security personnel use sexualized repression to maintain their hegemony in IIOJK with impunity. In the year 2000, this issue got salience in the UNSC Resolution-1325 by affirming the gender implication in militarized regions.¹⁰

Women’s Activism in Conflict Situations

Women are the worst recipients of war and they are portrayed as victims of war but they as active participants are ignored and undervalued. Traditionally, it was considered that women’s involvement in violent conflicts required their de-feminization or withdrawal of their feminine attributes as they are naturally endowed with a ‘motherist’ role

emanating emotionality and softness. Men were supposed to play a productive role in war and women were confined to reproductive functions. When women's roles are reduced to mothers and wives, there is a grave threat to obscuring their role in society as political and economic actors. But all women are not always pacifists. Some men can be pacifists and women can be warmongers. "Women are associated with pacifism that is based on a simplified dichotomy (woman-peace, man-war)" that does not allow the conceptualization of non-violent masculinities.¹¹

In war experiences, women are vulnerable to brutality and misconduct. The female fighters are visible in conflict areas around the world. Women actively participate in conflict regions of the world as combatants or military leaders and restructure their traditional gender roles. They are not less militaristic than men during war situations. The empirical instances of women's active involvement in conflict zones are Kashmir, Sri Lanka, and Palestine.¹² FSS scholars emphasized that women's activism in war or conflict was either ignored or not viewed from a gendered perspective.

Women's Absence in Peace-Making Efforts

Women are marginalized during peace negotiations. They are ignored in thinning the conflict. Both men and women have the capability and responsibility to build and keep the peace. "In waging peace, women seem more creative and effective... their tendency to peace provides greater potentials for peace-making."¹³ The existence of disparities between men and women is a worldwide phenomenon. Ignoring women's role in socio-economic and political spheres affects the whole society. Therefore, gender equality and women's involvement in foreign policy and decision-making, result in alter policy outputs. Gender-based violence in conflict zones is an extension of discrimination; women suffer at the time of peace. Building peace requires their active participation. Only, the male population cannot make complete peace while women remained at the margins.

Women, who take an active part in formulating military and security policies, are possessed of rationality as that of men. At the point of a negotiated settlement, women's issues are never considered essential.

The developmental strategies neglecting women have failed. As noted by Melanna Veneer, spearheading the State Department's Office for Global Women's Issues, thirty-one of the world's thirty-nine active conflict areas show the recurrence of conflict after the conclusion of peace settlements. Without women's active participation, the needs, interests, and views of half of the population in conflict areas are underrepresented and underrated.¹⁴ The attribute of rationality is found devoid of the distinction of gender. Therefore, women should take part at all decision-making levels (national, regional, and international) for the prevention and management of conflicts. Increasing women's participation includes the deployment of gender-balanced peacekeeping units and a whole-of-government approach. Gender-based social inequalities should be recognized and then such programs should be initiated that complement UN resolutions on 'Women, Peace, and Security'. Enloe's feminist definition of peace is "women's achievement of control over their lives," which she regards as requiring "not just the absence of armed and gender conflict... but also the absence of poverty and the conditions, which recreate it."¹⁵

Women's Role in Kashmir Conflict

War is considered a male phenomenon. Generally, the decision of war-making is made by men. They initiate conflict and fight a war. Women have not played an active role in warmongering. Women's movements demand peace.¹⁶ Previously, they were either confined to reproductive functions in which there was a grave threat to obscuring their role in society as political and economic actors. Still, they are considered involuntary victims, passive recipients of war, or apolitical that limits their roles.¹⁷ Women support men in war is natural. Men are portrayed as protectors and women as protected. The proponents of FSS averred that the representation of women as mute victims and passive recipients of conflict and not survivors in much of the discourse undervalued their struggle and removed them from the political dimension of militarized conflict. Moreover, their contribution to peace-making has been overlooked. Today, in conflict regions of the world, women are not just simply victims; they also participate in the fight.¹⁸ This has altered a stereotypical representation of women as they are associated with peace that is embedded in their role as mothering and caring.

IIOJK is one of the most heavily militarized zones in the world, and women are in much of the discourse as victims of this militarization. Besides Indian atrocities, they face numerous psychological problems and other health-related issues.¹⁹ They have been victims of a direct hit of violence, molestation, and physical and sexual abuse by Indian occupational forces. They also bear indirect violence due to the absence of their male relatives (fathers, husbands, and sons) as they have either been abducted or killed in the genocide and buried in mass and unidentified graves. Thousands of women have become widows and half-widows, left with a challenging situation of heading their households. Unfortunately, their multiple roles in war are ignored by undervaluing them as victims and not active participants.

Women in IIOJK have assumed multiple roles, from managing their homes singlehandedly to involving in separatist politics. However, their activism in protest movements remained secluded from state politics. They have negotiated conflict situations by becoming citizens, heads of households, workers, war resisters, combatants, and political leaders at local and national levels.²⁰ Their active participation in the resistance movement has altered the traditional view that women are essentially pacifists. Therefore, the presence of women in conflict serves as a shield to protect freedom fighters and restrain Indian occupational forces to fire in the throngs.²¹ They joined women organizations, such as Dukhtaran-e-Millat (Daughters of Nation) and Khwateen Markaz (Muslim Women's Organization). Asiya Andrabi, head of the DeM, and Anjum Zamarud Habib, an erstwhile Hurriyat member, were detained and tortured by Indian forces for allegedly supporting freedom fighters leading to the mass protests and marches in the Valley. Asiya Andrabi strongly advocated that women should perform *jihad* at home, whilst men fight against the oppressive Indian state apparatus in IIOJK.²² Parveena Ahanger is the founder of the Association of Parents of Disappeared Persons, an indigenous organization that was formed after the Indian Armed Forces took her son, leaving no clue about his disappearance. She started documenting such cases and conducted peaceful protests on monthly basis.²³ Parashar enunciated that it is the politicization of women's traditional 'motherist' role by taking the private act of mourning into the public space. Women's ways of acting are increasingly challenged by the notion of what a political activity can be.²⁴

Women's Mobilization in Mass Protests in IIOJK

Following the first phase of militarization in 1989, thousands of women in IIOJK came to the forefront, poured into the streets, showed unparalleled courage, spearheaded agitation movements, and raised anti-India slogans. The protest movements have the support of Kashmiri men and women alike. Kashmiri women protestors contributing to mobilizations of *Azadi* campaigns legitimizes the freedom struggle and reveals the aspirations of Kashmiri society. Women activists of DeM came to the streets, provided support to their menfolk, and arranged women-led mass protests. They organize protests against Indian occupational forces in front of human rights bodies, often taking up the issue of their missing male relatives. Moreover, 23 February is marked as Kashmiri Women's Resistance Day in commemoration of the struggle for the survivors of a massive hoax orchestrated against women of Kunan-Poshpora, twin villages of Kupwara District, on the night of February 23, 1991.

Coming out from the peripheries of their homes, Kashmiri women during protest marches and demonstrations faced the national and international media to help disseminate their message to the world and requested international human rights bodies to help resolve the issue. In women-led protests and marches, they are in a way empowered to make their own decisions.

Women's Role as Facilitators

The freedom movement in IIOJK could not have been sustained without the participation of women. Their involvement is not restricted to demonstrations and protest marches. They shoulder the burden with their male counterparts. From sheltering to nursing to nurturing to feeding to shielding men, women acted as protectors, messengers, and combatants. They raise funds, facilitate medical treatment, help the release of men from Indian forces' illegal custody, and arrange venues for the meetings.

Female freedom activists in IIOJK play an active and supportive role to popularize their *Azadi* movement. Their involvement (mostly college and school students) in political activities has increased the credibility of the

Kashmiri freedom struggle.²⁵ They devised innovative strategies to alert their male counterparts about the nefarious actions of Indian occupation forces against them. They block the path of Indian occupational forces in narrow alleyways by pelting stones at them and letting freedom fighters move away.²⁶ However, they are not directly involved in hostilities. They arrange food during long and unprecedented curfews, provide shelters and take care of the injured. They even resist before the Indian occupational forces and march to courts to secure the release of their male relatives.

Women's Role in Formation of Narrative

Besides giving material support, women in IIOJK provide moral support to their male counterparts. They are no less militaristic than men. The male fighters are glamourized and projected as heroes. The females are seen to be interested in making nuptial ties with freedom fighters and give birth to as many children (sons) as they can. As it is idealized in their motherhood narrative, their sons will become fighters. They are complicit in the reproduction of militarized masculinity. As biological regenerators, they produce the future generation of fighters. Creating male warriors, the credit goes to women.²⁷

Moreover, they mobilize and indoctrinate the Kashmiri youth by transmitting their ideology to fight for freedom. By playing a direct role in war processes, women lure and mobilize men to go on war by chanting pro-freedom slogans, "*Shaheed ke jo mauth hai, voh qaum ki hyat hai* (He who dies a martyr, gives life to the nation)"²⁸ and "*Hum kya Chahte... Azadi* (What do we want? Freedom)."²⁹ Mothers transmit militarist values to their sons. They deliver speeches at the funerals of their sons, glorifying martyrdom and mobilizing the youth.³⁰ Motherhood narrative as a mobilization strategy by discussing sacrifices of mothers in conventions and rallies provide the cause and justification of *jihad*. These narratives are now their political voice and part of the freedom struggle.³¹

Women's Absence in Political Process

Women in IIOJK are not passive recipients of the conflict. They are projected as victims rather than survivors. The conventional patriarchal ideology of struggle in Kashmir is enhanced in which women are

symbolized as grieving mothers.³² They act courageously in the conflict and deserve praise but are neglected even by their people. In much of the existing literature on Kashmir, women remain invisible.³³

Women in Kashmir are confined to perform secondary roles. They are not much active on the political front and have less political representation. Women's concerns and representation of their issues remain at the helm of male political leadership. They are only involved in the mobilization of the freedom movement but remained politically marginalized.³⁴ They are underrepresented in politics and the decision-making process. Only two visible faces in Kashmiri politics are Begum Sheikh Abdullah (wife of Sheikh Abdullah), who remained a member of parliament twice, and Mehbooba Mufti (daughter of Mufti Sayeed), who has derived position from her father and became Chief Minister and President of Peoples Democratic Party. These women have been able to carve some political space only due to their political family background.³⁵

Kashmiri male political leadership does not encourage women to participate in state and national politics and assumes deafening silence on their political rights due to Indian government pressure. Women's grief and mourning serve as a political project.³⁶ They have only been directed to organize protests, demonstrations, and sit-ins besides supporting men in the resistance movement. Enloe's feminist definition of peace is "women's achievement of control over their lives,"³⁷ whereas, in IIOJK, negotiations and peace-making efforts have not involved women due to the leadership absence. When asked what they want if they are present during the negotiation and dialogue process, their demand is peace. "We want peace and a just peace," is the chant heard in the entire Valley. Overwhelmed by immediate challenges, many women who became widows in the prolonged conflict say that they need jobs and education for their children or a house to reside in. The reason an average Kashmiri woman does not participate in political matters is also that they have immediate issues to resolve.³⁸

As per the traditional stance, women are essentially peaceful, and their equal participation can play a role in conflict mitigation, peace processes, and reconstruction efforts. Schofield asserts that non-recognition of women's contribution in the Kashmir conflict adversely impacted the peace process besides women's victimization and marginalization.³⁹ The

discrimination of women in IIOJK leads to their marginalization in politics.

UN Response towards Invisibility of Women during Peace Process

The role and contribution of women in the conflict cannot be ignored any longer in all stages of resolution of conflict. Peace cannot be sustainable without full and equal participation of women.⁴⁰ Women's marginalization at negotiating table, their experiences, their needs, and protection during conflict and post-conflict situations, such as repatriation and rehabilitation have already received international accreditation. The UN landmark Resolution-1325 on 'Women, Peace, and Security' is binding on all its member states.⁴¹ It endorses the equal participation of women in the decision-making process and their contribution to peace negotiation and peacebuilding. It also addresses their specific needs, issues, and approaches during the management and resolution of a conflict, but there is no enforcement and accountability mechanism.

UN Resolution-1325 should be put into practice to protect women against violations of human rights. A complete mechanism for its implementation regarding women's security in conflict times must be developed. Women are rendered destitute in IIOJK. Demilitarization and repealing of immunity laws that provide Indian Armed Forces with extraordinary powers in IIOJK are mandatory steps for the peace process. Women do not merely want to end the conflict but to take control of their lives. They aspire to attain peace and empowerment along with sovereignty. They want to make their own decisions and chase their destiny.

Conclusion

Women in IIOJK are directed as well as represented by the male political leadership. Earlier, they were supposed to remain in their private sphere; however, they have come out of their traditional roles as mothers and daughters to facilitate and support their men and sustain the freedom movement. Unfortunately, during negotiations and peace-making efforts, they are marginalized, underrepresented, and invisible, whereas, they play a vibrant and active role in the conflict. They are the

worst sufferers of conflict and portrayed as victims of violence, but their role remains undervalued. Due to the women's leadership crisis, women in IIOJK are not seen or heard during the conflict resolution process. They should be given their due political space on negotiating table.

References

- ¹ Rita Manchanda. ed. 2001. *Women, War and Peace in South Asia: Beyond Victimhood to Agency*. New Delhi, Sage Publication.
- ² Seema Shekhawat. 2014. *Gender, Conflict and Peace in Kashmir Invisible Stakeholders*. New Delhi: Cambridge University Press.
- ³ William Lawrence Neuman. 2015. *Social Research Methods: Qualitative and Quantitative*. Toronto: Pearson Education Limited.
- ⁴ Barbara Downe-Wamboldt. 1992. "Content Analysis: Method, Applications, and Issues." *Health Care for Women International* 13: 313-321.
- ⁵ Cynthia Enloe. Bananas. 1990, *Beaches and Bases: Making Feminist Sense of International Politics*. Berkeley: University of California Press.
- ⁶ Seema Shekhawat. 2014. *Gender, Conflict and Peace in Kashmir*. New Delhi; Cambridge University Press.
- ⁷ Simona Sharoni. 2001. "Rethinking Women's Struggles in Israel Palestine and in North of Ireland." In *Victims, Perpetrators or Actors: Gender, Armed Conflict and Political Violence*, edited by Caroline Moser. London: Zed Books.
- ⁸ Rita Manchanda. 2001. "Guns and Burqa: Women in the Kashmir Conflict." In *Women, War and Peace in South Asia: Beyond Victimhood to Agency* edited by Rita Manchanda. New Delhi: Sage Publications.
- ⁹ Sudha Ramachandran. 2003. *The Shades of Violence: Women and Kashmir*. New Delhi: WISCOMP.
- ¹⁰ Seema Kazi. 2018. "Law, Gender and Governance." In *Kashmir History, Politics, Representation*, edited by Zutshi Chitra lekha. UK; Cambridge University Press.
- ¹¹ Jean Bethke Elshtain. 1995. *Women and War*. Chicago: University of Chicago Press.
- ¹² Swati Parashar. 2011. "Women in Militant Movements: (Un)comfortable Silences and Discursive Strategies." In *Making Gender, Making War: Violence, Military and Peacekeeping Practices* by Annica Kronsell and Erika Svedberg. New York; Rutledge.
- ¹³ Ed Garcia. ed. 1994. *Pilgrim Voices: Citizens as Peacemakers*. Ateneo de Manila University Press.
- ¹⁴ Valerie Norville. 2011. "The Role of Women in Global Security." United States Institute of Peace. https://www.usip.org/sites/default/files/SR264-The_role_of_Women_in_Global_Security.pdf.
- ¹⁵ Cynthia Enloe. 1990. *Bananas, Beaches and Bases: Making Feminist Sense of International Politics*. Berkeley: University of California Press.
- ¹⁶ Anuradha M. Chenoy. 2002. *Militarism and Women in South Asia*. New Delhi; Kali for Women.
- ¹⁷ Rekha Chowdhary and Vibhuti Ubbott. 2016. "Conflict and the Peace Process in Jammu and Kashmir: Locating the Agency of Women." In *Openings for Peace: UNSCR 1325, Women and Security in India* edited by Asha Hans and Swarna Rajagopalan. New Delhi: Sage Publication.
- ¹⁸ Swati Parashar. 2011. "Women in Militant Movements: (Un)comfortable Silences and Discursive Strategies." In *Making Gender, Making War: Violence, Military and Peacekeeping Practices* by Annica Kronsell and Erika Svedberg. New York; Rutledge.
- ¹⁹ Rekha Chowdhary and Vibhuti Ubbott. 2016. "Conflict and the Peace Process in Jammu and Kashmir: Locating the Agency of Women." In *Openings for Peace: UNSCR 1325, Women and Security in India* edited by Asha Hans and Swarna Rajagopalan. New Delhi: Sage Publication.
- ²⁰ Rita Manchanda. 2011. "Kashmiri women demand participation in peace process." *Peace Talks*, February 4. <http://peacetalks.hdcentre.org/2011/02/kashmiri-women-demand-participation-in-peace-process/>.

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- ²¹ Swati Parashar. 2011. "Women in Militant Movements: (Un)comfortable Silences and Discursive Strategies." In *Making Gender, Making War: Violence, Military and Peacekeeping Practices* by Annica Kronsell and Erika Svedberg. New York; Rutledge.
- ²² Ibid.
- ²³ Essar Batool. 2017. "Women's Resistance in Kashmir." <https://www.awid.org/news-and-analysis/womens-resistance-kashmir>.
- ²⁴ Rita Manchanda. 2001. "Guns and Burqa: Women in the Kashmir Conflict." In *Women, War and Peace in South Asia: Beyond Victimhood to Agency*, edited by Rita Manchanda. New Delhi: Sage Publications.
- ²⁵ Seema Shekhawat. 2014. *Gender, Conflict and Peace in Kashmir Invisible Stakeholders*. New Delhi: Cambridge University Press.
- ²⁶ Seema Shekhawat. Visible in Conflict, Invisible in Peace: Positioning Women in the Militancy of Kashmir. Female Combatants in Conflict and Peace: Challenging Gender in Violence and Post-Conflict Reintegration. Seema Shekhawat. (ed.). (UK; Palgrave Macmillan, 2015).
- ²⁷ Seema Shekhawat. 2014. *Gender, Conflict and Peace in Kashmir Invisible Stakeholders*. New Delhi: Cambridge University Press.
- ²⁸ Suddha Ramachandran. *The Shades of Violence: Women and Kashmir*. (New Delhi; WISCOMP, 2003).
- ²⁹ Ubbott Vibhuti. 2013. *Patriarchy, Armed Conflict and the Agency of Women in Kashmir*. PhD Dissertation. University of Jammu, Jammu & Kashmir.
- ³⁰ Seema Shekhawat. 2014. *Gender, Conflict and Peace in Kashmir Invisible Stakeholders*. New Delhi: Cambridge University Press.
- ³¹ Swati Parashar. 2011. "Women in Militant Movements: (Un)comfortable Silences and Discursive Strategies." In *Making Gender, Making War: Violence, Military and Peacekeeping Practices* by Annica Kronsell and Erika Svedberg. New York; Rutledge.
- ³² Rita Manchanda. 2001. "Guns and Burqa: Women in the Kashmir Conflict." In *Women, War and Peace in South Asia: Beyond Victimhood to Agency*, edited by Rita Manchanda. New Delhi: Sage Publications.
- ³³ Kavita Suri. 2009. "Women in the Valley: From Victims to Agents of Change." In *Kashmir New Voices, New Approaches*, edited by Waheguru Pal Singh Sidhu, Bushra Asif, and Cyrus Samii. Vanguard Books.
- ³⁴ Seema Kazi. 2009. "Between Democracy and Nation: Gender and Militarisation in Kashmir." Women Unlimited.
- ³⁵ Kavita Suri. 2009. "Women in the Valley: From Victims to Agents of Change." In *Kashmir New Voices, New Approaches*, edited by Waheguru Pal Singh Sidhu, Bushra Asif, and Cyrus Samii. Vanguard Books.
- ³⁶ Swati Parashar. 2011. "Women in Militant Movements: (Un)comfortable Silences and Discursive Strategies." In *Making Gender, Making War: Violence, Military and Peacekeeping Practices* by Annica Kronsell and Erika Svedberg. New York; Rutledge.
- ³⁷ Cynthia Enloe. 1990. *Bananas, Beaches and Bases: Making Feminist Sense of International Politics*. Berkeley: University of California Press.
- ³⁸ Sudha Ramachandran. 2003. *The Shades of Violence: Women and Kashmir*. New Delhi: WISCOMP.
- ³⁹ Victoria Schofield. 2004. *Kashmir in Conflict: India, Pakistan and the Unending War*. London: I. B. Tauris.
- ⁴⁰ "UN Report of the Secretary-General of women, peace and security."2002. <http://www.iccnw.org/documents/S-2002-1154-E.pdf>.
- ⁴¹ UN Security Council, Security Council Resolution 1325 (2000) [on women and peace and security], 31 October 2000, S/RES/1325. <https://www.refworld.org/docid/3boof4672e.html>.

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Explaining Jammu and Kashmir Conflict under Indian Illegal Occupation: Past and Present

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Abstract

The Jammu and Kashmir conflict remains one of the oldest UN agenda items. However, despite the genuine plight and legitimate demand for the right to self-determination, Kashmiris in Indian Illegally Occupied Jammu and Kashmir continue to struggle for their lives and livelihood under Indian oppression and state-sponsored terrorism without respite. This paper, therefore, attempts to glean into the history of the conflict, which has a strong connection with the contemporary situation, while answering important questions: What circumstances compelled people to rush to Kashmir soon after the independence? How has India, over the decades, interpreted, misinterpreted, and manipulated world opinion in its favour? Why and how have the Muslim world and international community shown apathy towards the beleaguered Kashmiris? Lastly, can there be a way forward, especially after India's illegal annexation of the UN declared disputed territory? It also highlights options available for a plausible solution to this humanitarian issue.

Keywords: Jammu Massacre, IIOJK, Shimla Accord, Article 370, EU DisinfoLab.

August 2019 marked a new chapter in the tragic story of Indian Illegally Occupied Jammu and Kashmir (IIOJK), when India, under the fascist Modi regime, annexed the disputed territory unlawfully and in violation of UNSC resolutions. The Indian government has placed a perpetual curfew in IIOJK, which is the longest in perceivable history. Despite stiff criticism and condemnation within and outside the country, India continues to hold the territory unashamedly. The Modi government has been, since that time, engineering demographic changes in the

illegally occupied territory. This being a priority item on Bharatiya Janata Party's (BJP) manifesto for several decades, which they could translate into reality under Prime Minister Modi only. On the other hand, Pakistan is continuously raising its objections against Indian unlawful actions and demanding the international community to come forward and take much-needed action to stop Indian state terrorism in IIOJK.

This academic study is, therefore, an effort to understand the genesis of the conflict, how the issue has evolved over the decades, what kind of human rights abuse the Kashmiri population is subject to, India's unilateral annexation of the occupied territory, and removal of its special status and how the world community including Muslim countries reacted to India's August 2019 action. Lastly, it highlights the option available for a plausible solution to this humanitarian issue. It is a descriptive study largely based on the analysis of a historical account of the conflict, which has a strong connection with the contemporary situation in IIOJK.

Genesis of Kashmir Conflict

At the time of the partition of British India, an important task for the boundary commission was the settlement and accession of princely states located across the region. These princely states covered 40% of the land territory and were home to 23% of the population.¹ Ranging from an area as little as 25 km² to 200,000 km² and supporting population groups that varied between 2-3000 to over 4 million population in the case of Jammu and Kashmir.² These states were given a choice to accede to either of the successor (independent) countries, namely India or Pakistan. The principle of accession was based on the geographical location of the state, and the respective rulers were to decide in accordance with the will of subject populations. Except for Jammu and Kashmir, Hyderabad Deccan, Junagadh, and Manavadar, the accession of all other princely states took place without conflict.

The state of Jammu and Kashmir, which comprised of Jammu, Valley of Kashmir, and Ladakh under the Hindu Dogra rule, was predominantly a Muslim majority area with 77% of the population being Muslim. At the time of accession, Maharaja of Kashmir Hari Singh, unsure of his fate, decided to remain independent and offered a Standstill Agreement to

both the dominions. Pakistan responded immediately and signed the agreement, whereas India sought more time to deliberate. The draft of said agreement was formulated on June 3, 1947, when Partition Plan was announced by the British government. It was agreed that all administrative arrangements that existed between the princely state and the British Crown would continue unaltered with the signatory dominion (Pakistan).³ Christopher Snedden, in a fact-finding account of Jammu and Kashmir history, states that Pakistan was the preferred choice of the ruling monarch.⁴

Soon after the agreement, a massive genocide against Muslims in the Jammu area took place, which was intentionally ignored by the British Viceroy turned Governor-General of India, Lord Mountbatten,⁵ and this heinous act was reduced to a negligible footnote of history. Maharaja, in connivance with the cadres of radical *Rashtriya Swayamsevak Sangh* (RSS) and his own Dogra force aided by Hindus and Sikh migrants from Pakistan, systematically exterminated thousands of Muslims from the Jammu region as they fled to Pakistan. Before this, Muslim soldiers who were part of the Dogra army and Muslim police personnel were disarmed and demobilized and the administration forced Muslims to surrender their arms.⁶ These arms along with new weaponry were handed to Hindu and Sikh loyalists of Maharaja, which they ruthlessly used in their systematic pogrom against Muslims. Ved Bhasin, one of the few journalists of that time who raised their voice against these atrocities, stated in a 2003-testimony:

Tension increased with a large number of Hindus and Sikhs migrating to the State from Punjab and NWFP and even from areas now under Pakistan's control. Trouble was brewing in Poonch, where a popular non-communal agitation was launched after Maharaja's administration took over the erstwhile jagir under its direct control and imposed some taxes. The mishandling of this agitation and use of brutal force by the Maharaja's administration inflamed the passions, turning this non-communal struggle into communal strife.⁷

Bhasin further stated that RSS played a key role in these killings, aided by armed Sikh refugees, who even paraded the Jammu streets with their naked swords.⁸ The British government in Delhi and secularism touting Indian National Congress leadership comprising Jawahar Lal Nehru,

Sardar Patel, and others, intentionally ignored the news about the genocide of Muslims, thereby, making it difficult to document the exact number of people killed by RSS cadres, Hindu and Sikh marauders. However, independent British press sources⁹ of that time including a widely quoted article by Horace Alexander¹⁰ (published in the January 1948-issue of *The Spectator*) and later accounts by historians (which were corroborated by eyewitnesses to the massacre, such as Bhasin himself) put the figure of Muslims killed by Dogra administration between 200,000 to 237,000, with more than half-million forced into displacement across the border into the newly created state of Pakistan.¹¹

Additionally, women were abducted and raped in this systematic holocaust unleashed by the Dogra ruler and his marauders, who were given tacit approval by the Delhi-based leadership that could not see Kashmir joining Jinnah's Pakistan. The *Sangh Parivar* very proudly flashed its role in this holocaust, which "drastically changed the demographics and reduced a Muslim-majority Jammu province (then 61 percent) to a Hindu-majority region."¹² As Muslims fled their ancestral homeland, to which they had never been able to return, the majority lost their lives at the hands of RSS. "They were pulled out of the vehicles and killed mercilessly with the soldiers either joining [in] or looking [on] as idle spectators."¹³

The *Parivar*, according to Mittal,¹⁴ played a vital role in removing Ram Chandra Kak, the pro-independence Prime Minister of the Jammu and Kashmir (J&K) state, and infiltrated the ranks of tribal warriors, who rushed to the aid of beleaguered Kashmiris. RSS used its influence in making Hari Singh's criminal act in Delhi's favour.¹⁵ Commenting on these developments, Pakistan's first Prime Minister, Liaquat Ali Khan, accused RSS of orchestrating the violence in connivance with Maharaja.

Indian National Army and the RSS shifted their headquarters from Amritsar to Jammu. They were provided modern weapons by the state authorities. They set about the formal business in Jammu and Poonch of repeating the horrible drama they had enacted in East Punjab.¹⁶

The Jammu massacre by no means was a solitary action. The Dogra rule since its establishment in 1846 under the Treaty of Amritsar was per se a Hindu Raj where, according to Bazaz, "Muslims were dealt with harshly

in certain respects only because they were Muslims.”¹⁷ The 1947-Poonch uprising, which led to the Jammu massacre, was preceded by several uprisings against Dogras in the past, most notably in 1865, 1924, and 1931.¹⁸ Snedden further terms the Jammu massacre as a prelude to the contemporary Kashmir conflict and one of the major reasons instrumental in the continuity of Pakistan-India acrimonious relations.¹⁹ “The events of Hyderabad and Jammu and Kashmir reveal the emergence of an establishment in New Delhi, which was indifferent to Indian Muslims.”²⁰

The tribal fighters from North-western province came several days later in response to the Muslim massacre, an aspect India has intentionally distorted to legitimize its heinous role in the tragedy of J&K. As these 2000 odd tribesmen marched onto Srinagar, they faced minimal resistance at the hands of Maharaja Forces, which were only strong enough to attack and kill unarmed civilians, especially Muslims. When Hari Singh became sure of losing the fight against tribal, he sent Sheikh Abdullah to New Delhi to seek help from the newly formed Indian government. The Indian Defence Committee under Governor-General Mountbatten decided to rush arms and ammunition to J&K without realizing that the situation had worsened because of Maharaja’s wrongdoings against the Muslim majority in the state. Mountbatten, however, made this so-called assistance to Maharaja conditional by adding that “the question of State’s accession should be settled by a reference to the people.”²¹

Resultantly, in 1948, the princely state was divided into two parts as Indian Illegally occupied Jammu and Kashmir (IIOJK) and Azad Jammu and Kashmir (AJ&K). In the same year, the UNSC passed a series of resolutions 38, 39, 47, and 51²² seeking a peaceful resolution of the conflict by holding a free and impartial plebiscite in J&K and establishing a commission on India and Pakistan under the UN (UNCIP) to investigate and mediate the dispute. By the ceasefire agreement, a 460-mile-long Line of Control (LoC) was drawn between Pakistan (AJ&K) and India (IIOJK).

Jammu and Kashmir Conflict through the Decades

Despite UN intervention, the promise of conducting a plebiscite remained unfulfilled. In 1952, Kashmir was given a special status in the Indian Constitution by introducing Article 370.²³ Unlike similar provisions for other special status areas, the official records of Indian constituent assembly deliberations treated J&K as an exclusive case owing to India's entanglement with the UN. According to International law experts:

*Article 370 was, thus, portrayed by India as an 'interim system' and labelled a 'temporary provision' which gave constitutional cover to the [disputed] Instrument of Accession by exempting Jammu and Kashmir from the provisions of the Indian Constitution and restricting Parliament's legislative power over the State to three subjects namely defence, foreign affairs and communications. If other constitutional provisions or other Union powers were to be extended to Kashmir, the prior concurrence of the State government was required. This concurrence was strictly provisional and had to be ratified by the State's Constituent Assembly. Negotiated over six months, it represented a solemn compact between the State of Jammu and Kashmir and India.*²⁴

In September 1965, a major war broke out between Pakistan and India, when *Mujahedeen* sought to liberate the occupied territories from Indian. Pakistan denied its role in the uprising and stressing the need for India to do serious soul searching as its oppression and tyranny had driven the people of Kashmir to take up arms for liberation.²⁵ The third Pakistan-India war, in 1971, cantered mainly in the East Pakistan sector, which led to the dismemberment of Pakistan. Consequently, on July 2, 1972, Indian Prime Minister Indira Gandhi and Pakistani President Zulfikar Ali Bhutto signed the Shimla Agreement. A watershed event as India since then declared Kashmir as a bilateral issue, whereby no third party would be involved including the UN, whereas, the text of the agreement gave primacy to the UN Charter. Clause 1(i) of the agreement states that "the principles and purposes of the Charter of the United Nations shall govern the relations between the two countries."²⁶

Since then, India has not been accepting third-party mediation on the Kashmir issue, even if Pakistan sought UN intervention. However, India

has never shied away from involving a third party, as and how it deemed suitable, for instance, the 1990-nuclear crisis,²⁷ the 1999-Kargil war,²⁸ and 2008-Mumbai attacks.²⁹ To consolidate itself further and strengthen its control in the occupied territories, Kashmir Accord was signed between Sheikh Abdullah and Indra Gandhi in 1975. It was termed as a one-sided agreement and capitulation by Sheikh Abdullah, who under the pressure of the Indian government gave up the long-standing demand of Kashmir's right to self-determination (pre-1953 status) to re-enter Kashmir politics.³⁰ Although a state administration maintained under Article 370, IIOJK had been a constituent unit of the Union of India by this accord.³¹ Thereby, the Indian government could legislate and effectively assert control over the illegally occupied areas, further muzzling the voices of the Kashmiri people.³² The state was only allowed "to have its own legislation on matters like welfare measures, cultural matters, social security, personal law and procedural laws in a manner suited to the special conditions in the state."³³

The decade of 1970s was tumultuous for Pakistan; first, it faced the trauma of dismemberment, then India's testing of the nuclear bomb in 1974. To redress this strategic imbalance and build an effective deterrence against India, Pakistan pushed the case for developing a nuclear muscle. In the following decades of the 1980s and 1990s, the Kashmir issue became somewhat dormant due to multiple factors, such as the Soviet invasion of Afghanistan in 1979 and the role Pakistan played. While Pakistan remained focused on its western front, India sped up its quest to become a regional hegemon. However, very much cognizant of India's intents, Pakistan used its leverage as a conduit state in the Afghan war to develop its nuclear weapons program. After the end of the Afghan war, an indigenous uprising in IIOJK against Indian forceful occupation ignited. Furthermore, India involved the US in what came to be known as the 1990-nuclear crisis, when it cried wolf about Pakistan's alleged plans to wage nuclear strikes against India to liberate the occupied territories. However, in the wake of 9/11, India started presenting the Kashmiri freedom movement solely as cross-border terrorism; hence, attempting to weaken the narrative of Kashmiri Muslims and Pakistan on international fora.

Balance of power was created in the region when Pakistan tested its first nuclear weapon in 1998. Both states leaped forward in their relations by signing the Lahore Declaration in 1999. However, due to the Kargil crisis, the momentum broke down. It introduced a new dimension to the traditional rivalry, i.e., the possibility of waging sub-conventional limited war under the nuclear shadow and Kashmir problem thereon considered as a dangerous 'nuclear flashpoint', a term attributed to US President Bill Clinton. To malign and demonize Pakistan, the mass murder of 35 Sikh pilgrims was staged by Indian authorities on the eve of US President Clinton's visit to the region while blaming Pakistan. India capitalized well from this farcical tragedy, known as Chittisinghpura Massacre, as US President Clinton strongly condemned and admonished Pakistan for the horrible development.³⁴ It proved wrong in the light of the statements made by the survivors of this tragedy that the killings were carried out by Indian security forces.³⁵

Given the success of back-channel diplomacy during the Lahore peace process, Indian Prime Minister Atal Bihari Vajpayee and Pakistan's Chief Executive General Pervez Musharraf discussed the Kashmir issue at Agra Summit (2001), but this effort remained unsuccessful.³⁶ Another breakthrough was the Composite Dialogue Process in 2004 initiated at the SAARC summit, which led to a 4-point solution of the Kashmir issue proposed by General Musharraf in 2006. Initially, this proposal was welcomed by the Indian leadership; however, the BJP government rejected it, and the reconciliation process once again halted.³⁷ Another indigenous tide of freedom struggle rose in IIOJK after the 2016-killing of Burhan Wani, a 21-year-old freedom fighter who became an icon of Kashmiri youth voluntarily joining the liberation movement against Indian oppression.

Since Narendra Modi's victory in the 2014-Indian elections with BJP winning a majority in the parliament, the Hindutva ideology and Hindu nationalist sentiments have deeply eroded the secular foundations of the Indian state. Subscribing strongly to the RSS ideology, Modi has been waging an ethnic cleansing drive against the Muslims of India, including those in Indian-occupied territories. A systematic pogrom against Muslims has launched through the Citizenship Amendment Act (2019), National Register of Citizens (2020), cow vigilantism, mob lynching, and

2020-Delhi riots that claimed 53 Muslim lives with 200 injured as per official account.

Human Rights Abuses in IIOJK

Ever since the illegal occupation of India, there have been colossal human rights abuses in IIOJK. Several reports, published by the UN, US Congress, and many other fact-finding missions, have already highlighted this plight. People of IIOJK have faced several types of abuses, out of which lack of freedom to become a part of a state of own choice is foremost. Apart from these atrocities, India has also snatched freedom of expression³⁸ and freedom of association from the Kashmiris. It remains one of the highly militarized zones of the world.³⁹ In recent years, Indian forces have frequently used pellet guns and snipers against innocent Kashmiris. Gender-based violence is also one of the menaces of Indian illegal occupation. Rape is being used as a tool of torture by Indian forces. Forced disappearances turned into unmarked graves is also a grave human rights abuse. Even results of the investigation of extrajudicial killings were never publicized.⁴⁰

According to the UNHRC Report of July 2019, 586 people were killed in IIOJK in 2018,⁴¹ a year that marks the highest number of conflict-related casualties. Whereas, between 2008 to 2018, at least 40,000 Kashmiris have been killed.⁴² Pulwama, Shopian, Kulgam, and Anantnag remained highly affected districts. According to the report, 12-gauge pump-action shotgun firing metal pellets is one of the most lethal weapons used in IIOJK to control protesting crowds.⁴³ Not just youth and adults have been the victims, infants and minors have also been affected. According to Srinagar's Shri Maharaja Hari Singh Hospital, the number of pellet gun victims has been almost 1200 from 2016 to 2018, reporting the loss of vision and many other injuries.⁴⁴ All these facts have repeatedly been highlighted by international human rights organizations, yet little has been done on the part of the UN to provide the people of Kashmir with their just right of self-determination.

Tactics Used by Indian Security Forces

The Indian government and security forces have been taking several systematic actions to oppress Kashmiris and not letting the world hear

their cries. The 1990-Armed Forces Special Powers Act has provided extra-judicial powers to Indian forces and remains a major hurdle in any accountability regarding atrocities in IIOJK, thus, resulting in searches and arbitrary detention of innocent Kashmiris.⁴⁵ Due to these unchecked powers, no prosecution could be launched against Indian soldiers despite their heinous crimes. The infamous Terrorist and Disruptive Activities (Prevention) Act, which remained effective between 1985 to 1995, was replaced by the Prevention of Terrorism Ordinance in 2001, which further empowered the Indian security apparatus. The 2010-Foreign Contribution Regulation Act, under the guise of tracking grants from foreign donors, has resulted in the harassment of humanitarian organizations and stymied their activities.⁴⁶

On August 5, 2019, the Modi government by abrogating Article 370, which had previously accorded J&K with a special autonomous status, incorporated IIOJK into the Indian Union.⁴⁷ It was done by virtue of the J&K Reorganization Bill, passed in the Indian Parliament, that divided IIOJK into two Union Territories of Ladakh and Jammu and Kashmir.⁴⁸ The impact of abolishing the said article was two-fold; first, it terminated the state's autonomy, which had already greatly eroded over the decades through umpteenth presidential orders and entries into the Union listing.⁴⁹ Secondly, it rendered Article 35-A null and void, which "protected native Kashmiris from displacement and any attempts to change the demographics of the state by preventing people from the rest of India from buying properties or acquiring certification as a permanent resident of Jammu and Kashmir or availing local government jobs."⁵⁰

Correspondingly, the abolishment of Article 35-A is one of the systematic tactics of the Modi government, where changing the demographic status of Kashmir is a prime objective. It implies granting citizenship and property rights to other ethnicities, mainly Hindus, leading to a shift in population figures and ultimately nullifying the claim of Kashmiri Muslims. Since August 2019, the people of IIOJK remain under a perpetual curfew, one of the longest in the history of the world, with their right to move, communicate, right to earn, and live a free life usurped by the Indian government. Indian Home Minister, Amit Shah, while addressing the Indian lower house, proposed the abrogation of Article 370 of the Indian Constitution.⁵¹ It was only in 2019 that this plan was

executed although it was in the pipeline since 1954. As mentioned in a report of the Association of Parents of Disappeared Persons, several presidential orders (approximately 56) led to constitutional amendment.⁵² Apart from executive orders, three constitutional orders of 1954, 1986, and 2019 were also issued that further eroded the autonomy of the state of J&K.

It is pertinent to mention that constitutionally, Article 370 could be abrogated only by the decision of the J&K Constituent Assembly, which was already dissolved in 1956, while in 2018, Kashmir's legislature body was also dismantled leading to governor rule in the state.⁵³ This was not the first attempt to abrogate J&K's special status. In 1963, Indian Home Minister, Gulzari Lal Nanda, had also proposed abrogation of Article 370 before the Indian parliament. However, this dream only materialized after the re-election of Narendra Modi as Prime Minister, who had promised it as part of the BJP election manifesto. To pre-empt any protests and retaliation, 450,000 extra troops were deployed with mainstream Kashmiri leaders placed under house arrest. Internet and communication services were cut down and a curfew was placed in the Valley, which continues. This situation has led to the internationalization of the Kashmir issue, as this unilateral act has rendered the Indian claim of J&K being a bilateral issue null and void.⁵⁴

In response, Pakistan highlighted Indian atrocities at the international fora and urged the international community to come forward and take necessary measures against the Indian illegal act. Pakistan's Prime Minister Imran Khan highlighted the issue both home and abroad, as well as from the UN platform and wrote a well-articulated article in the renowned US daily, *The New York Times* titled, "The World Can't Ignore Kashmir," in which, he said:

*With the nuclear shadow hovering over South Asia, we realize that Pakistan and India have to move out of a zero-sum mindset to begin dialogue on Kashmir, various strategic matters and trade. On Kashmir, the dialogue must include all stakeholders, especially the Kashmiris.*⁵⁵

Response of International Community

The Indian unilateral action of revoking J&K's special status and atrocities against Kashmiri Muslims gained the limelight across the world. The Organization of Islamic Cooperation (OIC), as the sole representative of the Muslim world, did condemn Indian brutality in J&K but seemed lenient in its approach towards India due to trade and economic relations. The UAE, in March 2019, invited India to become a part of the OIC session as a guest and in protest, Pakistan did not take part in the meeting. Moreover, in the wake of this event, the Indian Ambassador to UAE stated that "we expect that the changes would improve social justice and security and confidence of the people in the local governance and will encourage further stability and peace."⁵⁶ However, the world has witnessed it otherwise.

On the other hand, Saudi Arabia termed the Kashmir issue as an internal issue of India besides fortifying several billions of dollars investment in India as a partnership between Armco and Reliance.⁵⁷ It is pertinent to mention that more than 7 million Indians are working in Gulf States, hence, fostering economic relations between both states, while more than 2.7 million Indians are residing in Saudi Arabia.⁵⁸ Bahrain, Qatar, Kuwait, and Oman did not even issue an official statement regarding the abrogation of Article 370. However, Turkey extended its full moral and diplomatic support to Pakistan at a time when the Gulf States were bestowing Modi with civil awards.⁵⁹

India's unilateral alteration of the constitutional and demographic status of the disputed territory has disregarded the UNSC resolutions, and the response of the international community remains limited. The Indian government continues its systematic cleansing of the Kashmiri Muslims, whereas Kashmiris stand resolute seeking their right to self-determination while facing extreme hardship and continuous suppression. Unfortunately, the western world that stands as a custodian of human rights, peace, and freedom is blind to the plight of the Kashmiris. It is appreciable that the previous US President, Donald Trump, offered mediation between the two countries. However, during his visit to India, Muslims were subjected to the worst form of communal violence, and the US did not condemn the viciousness. Somewhat similar has been the level of apathy from the other countries.

Possible Resolve of Kashmir Conflict

The best solution would be a fair and free plebiscite under the UN aegis as per the UNSC resolutions. However, the Indian leadership in the past and present, whether seculars or religious hardliners, never committed to nor would let this option work. Over the decades, Kashmiris have been suffering in all respects, and the worst case is systematic and progressive demographic engineering by India, which emboldened the Modi government further to do anything without being challenged. Taking a leaf out of the Israeli occupation of Palestine,⁶⁰ it would not be surprising that the Modi government seeks a plebiscite after altering the demographic balance to its desire by flooding the region with the Hindu population.⁶¹

IIOJK has become more vigorous after the 2019-unilateral annexation, and the possibility owing to extreme demographic engineering is that India may end up manipulating a plebiscite in its favour in IIOJK. Would this imply freezing of the existing status quo, and the answer is it is not a new idea as in the past such options have already been proposed. First, the ceasefire line that was drawn post-1948 war and renamed as LoC after the Shimla Agreement has been maintained and guarded as a de facto border. Secondly, India has already constructed a 340-mile fenced barrier along the LoC despite Pakistan's reservations and in violation of UN resolutions.

When the question of accession came up at the time of partition, the option available to the princely states was to accede either to Pakistan or India. Any princely state that sought independence or standstill arrangement was tackled by India forcefully, point in case of Hyderabad Deccan, Junagarh, Manavadar, Sikkim, and Goa. None of the states could decide on its own and exercise the option to stay independent as it was not in the strategic interest of India. The same was the case with the state of Jammu and Kashmir, but its forceful accession turned out to be a conflict between Pakistan and India. However, the only lasting and acceptable solution to the problem is that the will and wish of beleaguered Kashmiri people be considered impartially as per the UNSC resolutions. The young Kashmiris remain confident and clear about seeking freedom and liberty from the Indian oppression and humiliation their forefathers were subjected to.

Conclusion

The Kashmiri youth of today are a generation who stand defiant against pellet gun attacks and hold Wani along with many such young Kashmiri martyred as their role model. They chant slogans of *Azadi, let's march to Muzaffarabad* and raise the Pakistani flag as an act of defiance. Funerals of resistance fighters are a celebration, with women and children chanting songs of *Azadi* and valour with the coffins mostly draped in the Pakistani flag. It is happening even though the Indian government, over decades, has invested heavily in its lobbying and perception-building efforts. Maligning Pakistan has been a dominant feature of Indian foreign policy. The disclosure of EU DisinfoLab through the Indian Chronicles unearthed a 15-year operation comprising an Indian deep network based on coercion, deceit, and disinformation targeting western capitals and the UN to serve Indian interests by influencing policymakers primarily against Pakistan.⁶² What needs to be understood is that India is forcefully maintaining its illegal hold on the Kashmir territory by exercising years of coercive strategy with lobbying and perception building for irreversible changes in the occupied territory, which are being carried out under the guise of the curfew.

On Pakistan's part, the need is to adopt vigorous multi-track diplomacy, exercise well-informed lawfare, and sensitize multilateral fora, with Kashmiris taken into confidence. In the age of hybrid warfare, there is also a need to pre-empt kinetic and non-kinetic responses while having a strong economy and stable governance system. It will strengthen Pakistan's position in the international community and enable it to negotiate contentious issues, whether they be proverbial low-hanging fruits, such as Siachen and Sir Creek, or fundamental issues like Kashmir. India, after illegally annexing the disputed territory, is running a systematic and well-planned non-kinetic warfare in Gilgit Baltistan and Balochistan besides smearing a campaign against CPEC. In such hybrid warfare dynamics, a strong and resolute Pakistan can respond to these threats with acumen and logic and help Kashmiris seeking freedom from Indian illegal occupation.

References

- ¹ "Jammu and Kashmir in Legal Perspective." *European Foundation for South Asian Studies (EFSAS)*. Amsterdam: April 2017. Accessed at <https://www.efsas.org/EFSAS-Jammu%20and%20Kashmir%20in%20Legal%20Perspective.pdf>.
- ² Claude Markovits. 2004. *A History of Modern India, 1480–1950*. Anthem Press. 386–409.
- ³ "Jammu and Kashmir in Legal perspective," *ibid*.
- ⁴ Christopher Snedden. 2012. *The Untold Story of the People of Azad Kashmir*. New Delhi: Hurst & Co. 08.
- ⁵ Saeed Naqvi. 2016. *Being the Other – The Muslim in India*. New Delhi: Aleph Book Company. 173-189.
- ⁶ Snedden, *op. cit*.
- ⁷ Ved Bhasin. 2015. "Jammu 1947." *Kashmir Life*, November 17. Accessed at <https://kashmirlife.net/jammu-1947-issue-35-vol-07-89728/>.
- ⁸ Naqvi, *Being the Other*, p. 176.
- ⁹ *The Times*. London: 1948.
- ¹⁰ Horace Alexander. 1948. "India-Pakistan 1." *The Spectator*, January 16. Accessed at <http://archive.spectator.co.uk/article/16th-january-1948/6/india-pakistan-i>.
- ¹¹ Rifat Fareed. 2017. "The forgotten massacre that ignited the Kashmir dispute." *Al Jazeera*, November 6. Accessed at <https://www.aljazeera.com/news/2017/11/6/the-forgotten-massacre-that-ignited-the-kashmir-dispute>.
- ¹² Gowher Gillani. 2020. "Unfolding of the 1947 Jammu Massacre." *The Kashmir Walla*, November 13. Accessed at <https://thekashmirwalla.com/2020/11/unfolding-of-the-1947-jammu-massacre/>.
- ¹³ Naqvi, *op. cit*.
- ¹⁴ Sudhanshu Mittal. 2019. *RSS: Building India through Sewa*. New Delhi: Har Anand Publisher.
- ¹⁵ "Sangh Parivar had infiltrated Tribal Raiders in 1947, A New Book Claims." *Kashmir Life*, March 3, 2019. Accessed at <https://kashmirlife.net/sangh-parivaar-had-infiltrated-tribal-raiders-in-1947-a-new-book-claims-203586/>.
- ¹⁶ Mir Basit Hussain. 2017. "Jammu Massacre: When the Armed RSS Men had a Field Day." *FreePress Kashmir*, November 4. Accessed at <https://freepresskashmir.news/2017/11/04/jammumassacre70-when-the-armed-rss-men-had-a-field-day/>.
- ¹⁷ Prem Nath Bazaz. 1987. *Inside Kashmir*. New Delhi: Verinag Publishers.
- ¹⁸ Sajid Ali. 2019. "How, on this day 72 years ago, Jammu & Kashmir agreed to become a part of India." *The Print*, October 26. Accessed at <https://theprint.in/past-forward/how-on-this-day-72-years-ago-jammu-kashmir-agreed-to-become-a-part-of-india/311724/>.
- ¹⁹ Snedden. 2001. "What happened to Muslims in Jammu? Local identity, "the massacre" of 1947 and the roots of the Kashmir problem." *Journal of South Asian Studies* 24 (2): 111.
- ²⁰ Naqvi, p 188.
- ²¹ Text of Lord Mountbatten's Letter dated October 27, 1947. Accessed at <https://www.mtholyoke.edu/acad/intrel/kasmount.htm>.
- ²² UNSC. 1964. Resolutions and Decisions of the Security Council 1948. New York: Security Council Official Records. Accessed at <http://mofa.gov.pk/wp-content/uploads/2020/01/1948-Resolutions-38-39-47-51.pdf>.
- ²³ A. G. Noorani. 2014. *The Kashmir Dispute 1947-2012*. Oxford University Press.
- ²⁴ Ahmer Bilal Soofi, Jamal Aziz, Muhammad Oves Anwar, Ayesha Malik, and Shayan Ahmed Khan. 2019. "Legal Memorandum: The Status of Jammu and Kashmir under International Law." *Research Society of International Law: 07*.
- ²⁵ "Peace our Aim, Says Bhutto, Heart-Searching by Indians Urged," *Dawn*, August 13, 1965.
- ²⁶ Agreement between the Government of India and the Government of the Islamic Republic of Pakistan on Bilateral Relations (Shimla Agreement). Accessed at <https://peacemaker.un.org/indiapakistan-simlaagreement72>.
- ²⁷ P. R. Chari, Pervaiz Iqbal Cheema, and Stephen P. Cohen. 2007. *Four Crises and a Peace Process: American Engagement in South Asia*. Washington DC: The Brookings Institution Press.
- ²⁸ *Ibid*.
- ²⁹ Khurshid M Kasuri. 2015. *Neither a Hawk nor a Dove: An Insider's Account of Pakistan's Foreign Policy*. New Delhi: Penguin.

-
- ³⁰ Sumantra Bose. 2009. *Kashmir: Roots of Conflict, Paths to Peace*. Harvard University Press. 88-9. Also see A. G. Noorani. 2011. *Article 370: A Constitutional History of Jammu and Kashmir*. Oxford University Press.
- ³¹ Victoria Schofield. 1996. *Kashmir in Conflict: India, Pakistan and the Unending War*. London: I. B. Tauris.
- ³² Nyla A. Khan. 2014. *The Life of a Kashmiri Woman: Dialectic of Resistance and Accommodation*. New York: Palgrave MacMillan. 82.
- ³³ Bose terms the accord as Delhi's patronizing confirmation of IOJK's right to legislate on 'welfare measures, cultural matters, social security, and [Muslim] personal law.'
- ³⁴ Luke Harding. 2000. "Killing of Sikhs clouds Clinton visit to India." *The Guardian*, March 22. Accessed at <https://www.theguardian.com/world/2000/mar/22/india.kashmir>.
- ³⁵ Pankaj Misra. 2000. "Death in Kashmir." *The New York Review* 47(14). Accessed at <https://www.nybooks.com/articles/2000/09/21/death-in-kashmir/>. Also See: Gurpreet Singh. 2018. "India Owes Answers for The Killings Of 36 Sikhs and 14 Others in Kashmir." *CrossCurrents.Org*, March 19. Accessed at <https://countercurrents.org/2018/03/india-owes-answers-for-the-killings-of-36-sikhs-and-14-others-in-kashmir/>.
- ³⁶ Pervaz Musharaff. 2006. *In the Line of Fire*. New York: Free Press.
- ³⁷ Ashutosh, Misra. 2005. "The Problem of Kashmir and Problem in Kashmir: Divergence Demands Convergence," *Strategic Analysis* 29 (1): 33.
- ³⁸ Minna Heikura. 2020. "Journalism in Kashmir: State of Repression." *International Press Institute*, Mar 17. Accessed at <https://ipi.media/journalism-in-kashmir-state-of-repression/>.
- ³⁹ Rani Singh. 2016. "Kashmir: The World's Most Militarized Zone, Violence After Years of Comparative Calm." *Forbes*, July 12. Accessed at <https://www.forbes.com/sites/ranisingh/2016/07/12/kashmir-in-the-worlds-most-militarized-zone-violence-after-years-of-comparative-calm/?sh=4e6fce63124>.
- ⁴⁰ UNOHCHR. 2019. "Update of the Situation of Human Rights in Indian-Administered Kashmir and Pakistan-Administered Kashmir from May 2018 to April." *Office of the United Nations High Commissioner for Human Rights*, July 08. Accessed at <https://www.ohchr.org/Documents/Countries/IN/KashmirUpdateReport%208July2019.pdf>.
- ⁴¹ Ibid.
- ⁴² Andrew Connelly. 2019. "Kashmir's decade-high death toll a 'warning sign'." *The New Humanitarian*, June 11. Accessed <https://www.thenewhumanitarian.org/news/2019/06/11/kashmir-s-decade-high-death-toll-warning-sign>.
- ⁴³ OHCHR. "Report on the Situation of Human Rights in Kashmir." paras 79-85.
- ⁴⁴ JKCCS. "Annual Human Rights Review 2018." 10.
- ⁴⁵ *Armed Forces (Jammu and Kashmir) Special Powers Act, 1990* was passed by the Parliament of India on 10 September 1990 but was "deemed to have come into force" retrospectively from 5 July 1990. (India, *Armed Force (Jammu and Kashmir) Special Powers Act, 1990*. Accessed at http://www.mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/Armedforces_J&K_Spl.powersact1990.pdf).
- ⁴⁶ "India: Counterterrorism Raids Targeting Peaceful Critics," *Human Rights Watch*, October 30, 2020. Accessed at <https://www.hrw.org/news/2020/10/30/india-counterterrorism-raids-targeting-peaceful-critics>.
- ⁴⁷ Jefferson Gettleman, and Suhasini Raj. 2019. "India Revokes Kashmir's Special Status, Raising Fears of Unrest." *New York Times*, August 5. Accessed at <https://www.nytimes.com/2019/08/05/world/asia/india-pakistan-kashmir-jammu.html>.
- ⁴⁸ *RSIL Memo*, op. cit.
- ⁴⁹ Ibid, 06.
- ⁵⁰ Ibid, 07.
- ⁵¹ The Constitution (Application to Jammu and Kashmir) Order, 2019. C.O. 272.
- ⁵² Gazala Peer and Javed ur Rahman. 2012. "An Unpleasant Autonomy: Revisiting the Special Status for Jammu and Kashmir." *Economic and Political Weekly* 47 (23): 72-75.
- ⁵³ A.G Noorani. 2014. "Kashmir Union Negotiation on Article 370." In *Article 370: A Constitutional History of Jammu and Kashmir*. New Delhi: Oxford.
- ⁵⁴ "I'm Just Helpless: Concernaboutt Kashmir Mounts as Communication Lockdown Continues." *Washington Post*, August 6, 2019.

-
- ⁵⁵ Imran Khan. 2019. "World can't Ignore Kashmir." *New York Times*, August 30. Accessed at <https://www.nytimes.com/2019/08/30/opinion/imran-khan-kashmir-pakistan.html>.
- ⁵⁶ Shairee Malhotra. 2019. "Pakistan's anguish on Kashmir Elicits an Extremely Hollow International Response." *The Diplomat*, September 09. Accessed at <https://thediplomat.com/2019/09/pakistans-anguish-on-kashmir-elicits-an-extremely-hollow-international-response/>.
- ⁵⁷ Benjamin Parkil and Anjil Raval. 2019. "Saudi Aramco to acquire 20% of Reliance's oil refining unit." *Financial Times*, August 13. Accessed at <https://www.ft.com/content/c8ca3e72-bcc8-1e9-b350-dbood509634e>.
- ⁵⁸ AP. 2019. "Indian business ties underpin muted Arab response to abrogation of article 370, Kashmir situation." *News 18*, August 16. Accessed at <https://www.news18.com/news/india/indian-business-ties-underpin-muted-arab-response-toabrogation-of-article-370-kashmir-situation-2271907.html>.
- ⁵⁹ Mishra Himanshu. 2019. "Islamic nations that honored PM Modi with highest civilian award." *India Today*, Aug.25. Accessed September 12 at <http://www.indiatoday.in/india/story/islamic-nations-that-honoured-pm-modi-with-highest-civilianaward-1591334-2019-08-25>.
- ⁶⁰ Andrew Korybko. 2020. "How India is replicating Israel's settlement policy in Kashmir." *The Express Tribune*, June 29. Also see: Azad Essa. 2019. "India's annexation of Kashmir is straight out of the Israeli playbook." *Middle East Eye*, August 07.
- ⁶¹ "430,000 new domicile certificates issued as India enforces Modi's 'settler' scheme in occupied Kashmir." *Dawn*, August 30, 2020.
- ⁶² Gary Machado, Alexandre Alaphilippe and Roman Adamczyk. 2020. "Indian Chronicles: deep dive into a 15-year operation targeting the EU and UN to serve Indian interests." *EU DisinfoLab*, December 09. Accessed at <https://www.disinfo.eu/publications/indian-chronicles-deep-dive-into-a-15-year-operation-targeting-the-eu-and-un-to-serve-indian-interests/>.

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Resolving Kashmir Dispute Analyzing Various Approaches

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Abstract

No dispute has taken such a heavy toll of both neighbourliness and periodically emerging desire for normalization than what has been consistently done by the ongoing Kashmir dispute. The efforts to resolve the dispute have been regularly made by various quarters without any tangible outcome. Three types of approaches can be easily identified; bilateral, multilateral and third-party involvement. This article describes the contours of the dispute which is followed by a discussion on various approaches and outcomes.

Keywords: Dispute, Multilateral, Approaches, Resolutions, Peace.

The ongoing Kashmir dispute is the product of hurriedly worked out partition plan by the British empire. Not much attention was paid to the consequential impact of ill-planned partition of India. As far as the future of princely states was concerned, only scant attention was paid to the issue and a set of guiding principles announced without focusing on cases of possible violators of the guiding principles.

At the time of partition, there were 580 princely states with an area of approximately 712,000 square miles and with a population around 93.20 million.¹ The Indian Independence Act of 1947 clearly indicated that the His Majesty Government's rule over the states would lapse on 14th August 1947. Both the last Viceroy Lord Mountbatten and Secretary of State for India clearly advised the rulers to opt either for India or Pakistan. They forcefully stressed not to opt for an independent status as the British government would not recognize anyone as an independent state. Technically these states would become independent on 14th August 1947 with clear option either to join Pakistan or India according to the spirit and guiding principles contained in 3rd June 1947 plan. The guiding

principles of states' accession to the either India or Pakistan were laid down by Mountbatten on 3rd June 1947. These principles included the idea of geographical location and the ascertainment of aspirations of the people.

This meant that if a state is physically located next to territories that are forming Pakistan and the majority of its population is Muslim, who is aspiring to join Pakistan, a case for accession to Pakistan could be easily and convincingly made. Similarly if a state is located next to the territories that were to be part of India and the majority of population is Hindu and they are aspiring to join India, the case for joining India could also be justifiably made. Almost all of rulers of these states had given their decision by 14th August 1947 either to accede to one dominion or the other except a few. Among the states that had failed to decide by the 15th August to join either India or Pakistan included Jodhpur, Junagadh, Hyderabad and the state of Jammu and Kashmir.

The origin of Kashmir dispute was, in many ways, is the product of hurriedly worked out partition plan and Mountbatten's somewhat biased role in influencing many rulers of these state to join India disregarding, if the need be, the principles, he himself laid down, to facilitate the process of partition and accession of states.

Discretion to decide whether to join India or Pakistan was given to the ruler. But it was also stated that the decision of the ruler should be qualified by the geographical proximity, people's aspiration and religio-ethnic composition of the state. As far as Junagadh, Hyderabad and Jodhpur were concerned India insisted that these states should join India primarily because of the Hindu majority population in those states despite the fact that the rulers of Junagadh and Jodhpur opted to join Pakistan, whereas Hyderabad opted to stay as an independent state. By this criterion, Kashmir should have automatically joined Pakistan as it enjoyed overwhelming Muslim population and physically contiguous to territories forming Pakistan. However in the case of Kashmir India not only applied concerted political pressures on the ruler to accede to India and once the ruler of Kashmir had signed the instrument of accession, India relegated the guiding principles of geographic proximity and aspiration of the people to a secondary place and forcefully projected the legalistic approach as the primary basis for accession.

Policies

Compared to India's vacillating Kashmir Policy, Pakistan's Kashmir policy has all-along been quite extremely balanced and consistent. India has been changing its policy objectives and tactics with the passage of time according to periodic developments. Undoubtedly, Kashmir dispute is a complicated issue became of India that has exercised overwhelming influence over their policies since partition. While India views Kashmir as a Muslim majority state whose ruler opted to accede to India. India strictly refrained from applying the same principle to Junagadh whose ruler decided to join Pakistan. Instead India forcibly occupied the state. The Kashmiris freedom struggle is often termed by the Indians as Pakistani inspired rather than acknowledging it as a genuine expression of Kashmiris' desire for self-determination. To the Pakistanis, Kashmir dispute has become a symbol of Indian highhandedness and broken promises and commitments. What the Pakistanis argue is that the people of Kashmir are allowed to exercise their inalienable right of self-determination under a UN supervised plebiscite in accordance with the resolutions of 13th August, 1948 and 5th January, 1949. The intensified freedom

India has been consistently trying to inject well calculated moves to erode the special status it had given to J&K under its Constitution.

struggle in the late eighties and the early 1990s along with current developments in Kashmir are not only viewed as the expression of extreme discontentment of the Kashmiri people but also as a periodic assertion to secure their legitimate right of self-determination. All what Pakistan stresses is that the Kashmiris are allowed to exercise their right of self-determination as promised by the UN. India has been arguing that the intensification of the Kashmiris' freedom struggle since 1990 is not an indigenous. Compared to India, which has systematically eroded the special status it gave to the State of Jammu and Kashmir (J&K), Pakistan did not absorb either the Northern Areas or the Azad Kashmir though in case of the Northern Areas only recently a special status has been assigned as the Gilgit-Baltistan region. Determined to retain Kashmir as a part of the Indian Union, India has been consistently trying to inject well calculated moves to erode the special status it had given to J&K under its Constitution with the intention of finally merging the state completely

into the Indian Union. This was facilitated initially by British surrender of its impartial role in partition processes enabling India to gain the necessary foothold there in the state towards this end.

Over the last 70 years, Pakistan has periodically but successfully managed to internationalize the Kashmir dispute. Pakistan's multi-pronged approach facilitated the process of internationalization. To begin with, Pakistan allowed the local as well as the international press to cover the developments and consequences of the crisis on this side of the Line of Control (LoC). All interested visitors, journalists and human right

The advent of social media has further facilitated the projection of Kashmiri cause.

activists are allowed to visit Azad Jammu and Kashmir (AJ&K) and interview the unfortunate victims of the crisis. Second, Pakistani government intensified its efforts

to present the dispute to many international organizations such as United Nations (UN), Non Aligned Movement (NAM), Organization of Islamic Countries (OIC) etc. Third, many delegations consisting of parliamentarians, thinkers, analysts and journalists are periodically sent to various countries with a view to educate those governments. Finally, the government of Pakistan has established a Kashmir Committee to monitor developments in Kashmir as well as suggest policy measures to the government.

In addition to Pakistan's concerted efforts, many other factors also facilitated and contributed towards the internationalization of the dispute. To begin with many research organizations, foundations, institutes and universities are encouraged to hold seminars/ conferences both inside the country as well as arranging periodically such activities in other countries. Second, many members of Kashmiri diaspora living outside South Asia not only intensified their efforts to project the Kashmir dispute but also injected renewed enthusiasm among inactive members of diaspora and they began to regularly highlight the plight of the Kashmiris with a view to educate the public in at least those countries where they are residing. Third, marches are now regularly organized to highlight the Kashmir cause in Pakistan as well as in those countries, where the Kashmiri diaspora is temporarily residing. Fourth, the negative attitude of the Indian governments with regard to opening

Indian Occupied Kashmir (IOK) to international journalists, representatives of various human rights groups and OIC contact group inadvertently facilitates the process of internationalization of the dispute. Fifth, the acquisition of nuclear capability along with continuous hostile relationship between India and Pakistan works as a constant reminder of likely nuclear exchange between the two countries. Sixth, the advent of social media has further facilitated the projection of Kashmiri cause.

Compared to Pakistan's successful pursuit of internationalization of the dispute, India tried not only to paint it as an effort directed to highlight the Islamic character of the conflict but also to establish links between the freedom movement and terrorism. Undoubtedly these were and are crude attempts to divert the attention from the real issues. The employment of terms like international Islamic Mujahedeen tended to generate the impression that some kind of Islamic conspiracy exists which is continuously working against the established order.

Approaches

Many approaches based on negotiations exist but none of them would work if an involved party is determined to withhold its cooperation. Among the known approaches, these include bilateral, multilateral approaches and the involvement of a third party. Objective analysis leads us to conclude that the Kashmir dispute is essentially a political dispute requiring a political approach based on continuous negotiations. However it needs to be stressed that if any one of the involved parties is not genuinely interested in resolving the dispute, the political approach is unlikely to pay desired dividends. While the Pakistani and the Kashmiri people appeared to be genuinely interested to resolve the dispute, the Indians have repeatedly demonstrated that they are not interested in resolving the dispute in accordance with the UN resolutions.

Multilateral Approaches

It is well known that neither country can change the geography but both India and Pakistan can adopt policies aimed at securing the much desired normalcy. While the past is filled with series of broken promises,

wasted proposals, and missed opportunities, the efforts should be focused on to avail every opportunity to move towards the desired goal of attaining peace in the region.

The multilateral approaches include the UN, the Commonwealth and the OIC. It was India that took the case to UN and filed a complaint against Pakistan under Chapter VI of UN which relates to 'Pacific Settlement of Disputes', on 1st January, 1949. Initially the UN Security Council passed resolution asking both parties to desist from aggravation of the situation. Later through another resolution established UN Commission on India and Pakistan (UNCIP). Undoubtedly, the UNCIP made concerted efforts to resolve the dispute and even managed to secure the consent of both India and Pakistan and in consequence the UN resolutions of 13th August, 1948 and 5th January, 1949 were passed and accepted by both India and Pakistan. Taken together these resolutions entailed ceasefire, demilitarization and plebiscite. The ceasefire was quickly attained but the UN was unable to secure an agreement on the process of demilitarization. Demilitarization plan in the resolution suggested that the Pakistani force would be first withdrawn. The territories vacated by Pakistani forces would be administered by the local authorities under the supervision of the Commission. Following Pakistani withdrawal, India would withdraw bulk of its forces. The Commission even asked the two governments to present plans on their own for the withdrawal of forces. The proposal presented by India and Pakistan substantively differed from each other. When Pakistan asked for strength, composition, and location of Indian forces along with the withdrawal schedule, India refused.²

Having failed to secure an agreement on demilitarization, the UN Security Council decided to request the then President of the Security Council General A.G.L. McNaughton of Canada to discuss with Pakistan and India with the objective of securing their consent on a practical formula. General McNaughton worked out a feasible plan. The plan implied the 'withdrawal of all irregular forces from the disputed territory and to jointly establish and monitor law and situation which would be followed by pulling out the regular forces. The plan also called for the establishment of an interim administrative set up which not only would command the confidence of the people but would also make arrangement for conducting plebiscite under UN Security Council'.³ The

crux of the proposal was simultaneous withdrawal of forces. Pakistan was willing to accept with some provisions of minor importance but India refused to accept.

Following the failure of General McNaughton proposal, the UN decided to appoint a special representative to resolve the issue of demilitarization. The first UN representative appointed was Sir Owen Dixon. Dixon worked hard and presented many proposals but unfortunately was unable to secure Indian agreement. The Dixon report in many ways reflected his disappointment. He even appeared skeptical of the ability of the UN to force upon India any just solution.⁴

Following Dixon's failure to secure an agreement over demilitarization of Kashmir, the UN demonstrated little bit of reluctance to resume the debate over Kashmir immediately. One of the reasons for delay was the impending Commonwealth Prime Ministers' meeting which was scheduled to be held in early 1951. The Pakistani Prime Minister threatened to boycott the meeting unless the Commonwealth conference discusses the

Pandit Nehru used the change in Pakistan's foreign policy as grounds for the rejection of the already promised Kashmir plebiscite.

Kashmir dispute. The British government was somewhat reluctant to discuss as it was 'anxious to avoid taking sides in the conflict'.⁵ However, the Kashmir dispute was discussed informally and suggestions were made how to deal with the problem of demilitarization. The Australian Prime Minister Robert Gordon Menzies advanced three proposals, to station Commonwealth troops, to have a joint India-Pakistan force and finally allowing the plebiscite administrator to raise a local force.⁶ While Pakistan accepted all of proposals, India rejected all of them.

The next few years saw attempts being made to solve the dispute by direct negotiations between India and Pakistan without much success. With the publications of the news in 1953-54 that Pakistan has agreed to accept American military assistance, India began to back out of its commitment to hold plebiscite in Kashmir by asserting that military aid to Pakistan had upset the balance of power in the subcontinent which in turn has changed the entire context of the Kashmir negotiations. Pandit Nehru used the change in Pakistan's foreign policy as grounds for the rejection

of the already promised Kashmir plebiscite. Just because Pakistan signed a military assistance agreement with another country to cater for its security requirements and why the Kashmir's should be denied their legitimate right of self-determination. Although ostensibly Nehru tried to blame Pak-US arms aid as the major factor causing change in India's Kashmir policy the real reason was its own policy—summersault along with the ascendancy of Hindu revivalists and reactionaries. They were able to exert considerable influence over the policies of central government.

The adoption in the Constitution of Kashmir that the 'State is and shall be an integral part of the Union of India and Pundit Nehru's assertion in 1956 that he is no longer in favor in holding of plebiscite and influenced Pakistan to request UN Security Council on 2nd January, 1957 to take up the Kashmir issue again. The UN passed a resolution clearly indicating that 'any action taken by the Constituent Assembly of Kashmir would not constitute a disposition of the State'.⁷ On 14th February, 1957 UN passed a resolution requesting the then president of the Council Gunner Jarring to help the two governments' to secure an agreement and to consider Pakistani proposal revolving around the use of UN force.⁸ According to Jarring the issue of demilitarization should be taken to Arbitration along with other complaints. Again, India refused to accept but Pakistan accepted Jarring's proposals. In September, 1957 the Prime Minister of Pakistan announced that it would not only be willing to withdraw all the soldiers but also expressed to meet all Indian objections in order to facilitate the demilitarization process.

Recognizing the need to further explore the possibilities, the UN again sent Dr. Graham to the area with the objective of securing on agreement of both India and Pakistan. Dr. Graham announced new set of proposals but these were again rejected by India but were accepted by Pakistan. The UN Security Council did not discuss the case for next few years. The case was again brought to the attention of the Security Council by Pakistan in February 1962. The case was discussed but no resolution was passed because of Soviet veto.

The third multilateral forum which made lukewarm efforts to resolve the Kashmir dispute is the OIC. Having been disappointed by the UN's inability to resolve the dispute, Pakistan sought help from the OIC.

Recognizing the need to resolve the ongoing Kashmir dispute the OIC made concerted efforts towards this and even established a Contact Group which has been meeting almost regularly. However, it needs to be stressed here that group has not been able to make any headway towards the solution.

Bilateral Efforts

Just as multilateral approach failed to produce any tangible outcome, bilateral negotiations have also been unable to resolve the Kashmir dispute. Among the bilateral approaches, efforts at four occasions need to be discussed and highlighted. These are direct negotiation during 1953-56, six round of talks that took place between Sardar Swaran Singh and Zulfikar Ali Bhutto, Simla agreement and finally the peace process of 2004-2008. Failure of UN and UN's special representatives generated the feelings that it might be a worthwhile exercise to put the onus of settlement upon India and Pakistan. Not only Dr. Graham had proposed that India and Pakistan should discuss the dispute bilaterally, the Pakistan Prime Minister Nazimuddin initially stressed the need for resolution of Kashmir dispute in January 1953, later the new Prime Minister of Pakistan Mohammad Ali Bogra met Nehru informally in London during the coronation of Queen Elizabeth II in June 1953.⁹ The two prime ministers met for serious negotiations in Karachi on 25th July 1953 and the joint communiqué indicated that the two prime ministers have talked cordially but the discussion was primarily of preliminary nature. It was followed by another meeting that took place on 16th August 1953 in New Delhi and the two prime ministers agreed to settle the Kashmir dispute in accordance with the wishes of people of Kashmir.¹⁰

With the advent of Pak-US security pacts, Nehru began to blame Pakistan's receipt of American arms for sabotaging the cordiality of atmosphere and in consequence a breakdown in India-Pakistan negotiations took place. An astute observer of Kashmir Prem Nath Bazaz stressed that by the time security pacts came into existence, 'the Hindu revivalists and reactionaries' had acquired sufficient influence to radically alter the adopted policies of the Central government. Besides, India had already demonstrated its double standards. For instance, India condemned all those who wished to label China as the aggressor in Korean War on the grounds that it will only increase tension and reduce

the chances of a peaceful settlement.¹¹ Not only Indian troops were sent into Korea under UN banner, arbitration was recommended as a method of resolving the issue. Whereas in case of Kashmir, India vehemently opposed the presence of UN troops and vociferously rejected the submission of the Kashmir dispute to arbitration.

In 1962 Sino-Indian border war took place in which India was badly thrashed. The often proclaimed nonaligned India sought help from both US and UK and requested for weapons. At that juncture of history Pakistan asked its alliance partners to influence India for talks on Kashmir. Consequently six rounds of talks between India and Pakistan took place without any tangible outcome.

The third occasion that experienced bilateral discussions on the Kashmir dispute was during the negotiation process of Simla Agreement in July 1972. While the two countries discussed the Kashmir dispute but were unable to agree upon its resolution. Clause 6 of the Simla Agreement categorically stated that the two sides will meet to discuss at a mutually convenient time in future for a final settlement of Jammu and Kashmir.¹² Under clause 4(ii) of the Agreement the existing UN cease fire line was replaced by 'Line of Control' (LoC) resulting from the cease fire of 17th December, 1971. It further states that the LoC 'shall be respected by both sides without prejudice to recognized position of either side. Neither side shall seek to alter it unilaterally'.¹³ Pakistan's recognized position is that Kashmir is a disputed territory and dispute should be resolved in accordance with the UN resolutions. Indian position has been changing periodically in accordance with the suitability of given time. It also started with UN resolution, later it changed its position and currently Indian stress that it is an integral part of India.

Next occasion is that of peace process of 2004-2008 which focused on various issues including Kashmir. While both sides seriously discussed various aspects of the Kashmir dispute over the next four years (2004-2008), they were unable to develop any consensus over the dispute. The Pakistani sides mostly highlighted the need to resolve Kashmir dispute whereas the Indian side focused on cross border terrorism. The Pakistani President advanced many workable proposals to tackle the complex Kashmir dispute but none carried favor with the Indian side. Among those proposals four points formula attracted the attention of many on

both inside as well as outside South Asia. The proposal included the concept of soft borders, self-governance, demilitarization and a joint mechanism to resolve the complex issues. It seems that Pakistan regularly demonstrated flexibility and kept on putting forward different proposals to resolve the dispute whereas the Indians continuously made efforts either to evade the issue or focused on sabotaging all efforts towards the desired resolution of the dispute.

The November 2008 tragedy led to abrupt discontinuation of the ongoing dialogue process. While Pakistan made concerted efforts to resume the dialogue, India did not respond or even seriously considered responding to Pakistanis efforts aimed at resuming the dialogue. For next few years India opted to capitalize on the tragedy in securing sympathies of the world and painting Pakistan as a country sponsoring terrorism.

Third Party Involvement

Among the cases in which a third party was involved, three need to be highlighted here. Perhaps, the most important is the Indus Water Treaty. The unjust and unimaginative Radcliffe award confronted India and Pakistan with the problem of river water distribution. Without giving much thought to the fact that 'two-thirds of the irrigated areas and 40 million people dependent on them are in Pakistan', the award gave the head works of the major irrigation systems of Pakistan to India.¹⁴ Admittedly, Radcliffe was given assurances that the existing irrigation arrangements would be respected by the succeeding governments in both countries but soon after partition, India stopped the flow of waters to Pakistan.¹⁵ This created a problem of enormous gravity and brought the two countries to the brink of war. Although the two countries managed to provide a temporary respite but were unable to secure a permanent solution. Luckily at that stage the President of World Bank Mr. Eugene Black offered the good offices of the Bank for resolving the water issue.¹⁶ The continuous efforts of the Bank produced Indus Water Treaty which allocated three Eastern rivers (Ravi, Beas and Sutlej) to India with certain specified exceptions and three Western rivers (Indus, Jhelum and Chenab) to Pakistan.¹⁷ Not only the treaty was signed by both countries in September 1960 but also India promised 'to let flow for unrestricted use by her neighbor all the waters' of western rivers 'subject to the provision that some of these waters may be used by India in areas

upstream of the Pakistan border for development of irrigation, electric power and certain other uses spelled out in annexes to the treaty'.¹⁸ Undoubtedly not only efforts of Bank need to be appreciated, but credit must also be given to the President Eugene Black whose untiring efforts in securing the requisite consent of the two governments.

The division of rivers necessitated transfer of water from the major Western river to those areas which were catered by the three Eastern Rivers. It was decided to build eight link canals, two earth-filled dams, a power station, and 2500 tube-wells and drainage to overcome water logging and salinity in irrigated areas.¹⁹ While the treaty was viewed by the Pakistanis as a compromise as they had lost the waters of Eastern rivers, Nehru termed it as a memorable 'not only for the material benefits which it would bring to the cultivators in India and Pakistan but also for its psychological and even emotional effect'.²⁰

So far, the treaty has been working well with minor irritations which periodically emerged and handled by already provided mechanism in the treaty to resolve disputes. In this connection, the case of Baghlihar dam can be cited which was resolved under the mechanism provided in the treaty. However, in recent times not only the treaty has been subjected to biting criticism, but the violation of its provisions has also raised complex issues. Already the issues revolving around the construction of Kishanganga and Ratle dams on Neelum-Jhelum and Chenab rivers are being handled by the Bank. Currently Modi regime has been making wild statements and promises to annul the treaty causing further tension between the two countries.²¹

The second important case that has been resolved through the efforts of a third party is the Rann of Kutch case. The dispute over Rann of Kutch was inherited by both India and Pakistan. It was a dispute between the British

Historically Pakistan's Sindh province enjoyed administrative control over the Rann of Kutch

India and the state of Kutch. Since the border between the province of Sindh and the state of Kutch was not clearly defined during the British Raj,

there was scope for claims and counter claims. Consequently conflicting claims of India and Pakistan came into existence. Historically Pakistan's Sindh province enjoyed administrative control over the Rann of Kutch

but after acquiring independence Pakistan claimed the northern half of the Rann of Kutch whereas India laid claim to the whole of Rann of Kutch. The conflicting claims of the two new states resulted not just into a dispute but also armed clashes took place in the first week of April 1965. India launched an offensive operation against a Pakistani post at Ding.²² Not only the Indian army was unable to attain its objectives but it also began to experience reverses when the Pakistani forces launched its counter offensive. According to a well-known British newspaper the Indian army hurriedly left the area leaving behind even their 'homely things like pyjamas and boots and half eaten chappatis'.²³

In order to resolve the dispute, Pakistan, at the time, a three-point proposal was put forward by Pakistan envisaging (i) ceasefire (ii) restoration of the status quo (iii) negotiations to settle the Rann of Kutch dispute.²⁴ Instead of seriously considering the Pakistani proposal, the Indian leaders began to indulge in speeches promoting war hysteria and consequently hysterical outbursts of anti-Pakistan feelings began to dominate the headlines in the Indian media. The Indian Prime Minister even went to the extent of threatening Pakistan with military action 'on a battleground of India's own choice'.²⁵

Cognizant of deteriorating nature of the crisis, the British government decided to play constructive role in averting a major catastrophe. The British Prime Minister Harold Wilson managed to convince both India and Pakistan to sign an agreement which entailed to discuss the dispute bilaterally and if no compromise worked out, then it should be submitted to an arbitration tribunal consisting of three individuals. Both India and Pakistan would nominate a member of the tribunal and third would be nominated by the Secretary General of the United Nations. Not only India and Pakistan were unable to reach an agreement, but and in consequence a tribunal had to be formed. The tribunal announced its verdict in 1968 awarding 90 per cent of Rann of Kutch to India and 10% (about 800 square kilometers) to Pakistan.²⁶ India got much larger share than Pakistan, but it was mostly sea-marsh and frequently under water whereas Pakistani share included some crucial elevation points.²⁷

The third case in which the third party played significant role was the signing of the Tashkent Declaration. The 1965 war ended because of concerted UN efforts. Following the cease fire, the peace efforts started to

secure some kind of agreement. A third party role was successfully played by Union of Soviet Socialist Republics (USSR). The Soviets were able to play mediating role mainly because of two reasons. One the Americans had temporarily become unpopular with both India and Pakistan. Second, 'the gradual shift in Soviet policy from one of complete support of India to one of neutrality in Indo-Pakistan disputes' made her acceptable in the eyes of the Pakistanis. Through the untiring efforts of the Soviet Prime Minister, not only Tashkent meeting was held in January 1966 but and an agreement was secured known as Tashkent Declaration. In terms of concrete achievements, the declaration entailed 'withdrawal of forces to position held before August 1964' which was achieved by February 1966.²⁸ In addition, Tashkent Declaration provided for the resumption of diplomatic relations, exchange of prisoners of war, repatriation of refugees', restoration of economic and trading relations, resumption of communications, and discouragement of the hostile propaganda against each other.²⁹

Conclusion

A simple examination of the three approaches clearly indicates that the third party involvement has been successful with reference to some other issues. Thus this approach needs to be employed on the Kashmir dispute. Both India and Pakistan have met many times to resolve Kashmir issue bilaterally but most of the time they failed to reach an agreement. Among the four examples discussed under bilateral approach only one could be termed as partially successful while other bilateral talks to resolve the Kashmir dispute failed. Undoubtedly Simla Accord can be viewed as partially successful in terms of outcome of bilateral talks which not only enshrined the principle of bilateralism but also transformed the existing UN cease fire line into (LoC).³⁰ Apart from minor agreements covering some aspects of dispute, comprehensive discussion on the dispute, with a view to resolve the Kashmir dispute once for all, was left to future negotiations.

References

¹ For details see Pervaiz Iqbal Cheema, *Pakistan's Defense Policy*, (London: The Macmillan Press Ltd., 1990), pp.34-35.

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- ² See Korbelt, Josef, *Danger in Kashmir*, (London: Oxford University Press, 1954) pp.156-157.
- ³ See Burke, S.M., *Pakistan's Foreign Policy: An Historical Analysis* (London: Oxford University Press, 1973), pp.28-It is not too farfetched to assume that both parties have employed political as well as military approaches with a varying degree of emphasis. Until the peace process that began in 2004 and the current initiation of bilateral dialogue process, India seems to have opted to focus more on a military than a political approach. The freedom fighters claim that they have been compelled to take up arms by the state and Indian governments' policies, the Indian government had opted for a military approach right from the beginning of the crisis. The IHK had remained under the Governor's/President's rule for quite some time though half-hearted attempts to introduce the political approach had been made from time to time. Also see Josef Korbelt, *Danger in Kashmir*, Oxford University Press, 1954), pp.166-168.
- ⁴ Korbelt, op.cit., pp.174-175.
- ⁵ Korbelt, op. cit. ,pp.176-177.
- ⁶ Ibid.
- ⁷ Burke, op. cit., p.228
- ⁸ Ibid.
- ⁹ See Burke, Op. Cit.pp. 39-42. Also see Gupta, Sisir, *Kashmir: A Study in India-Pakistan Relations*,(Bombay: Asia Publishing House, 1966) PP.253-309.
- ¹⁰ Burke, Op. Cit., pp. 39-42.
- ¹¹ Ibid.
- ¹² See the actual text of Simla Agreement in Chari,P.R. and Cheema, PervaizIqbal , *The Simla Agreement 1972: Its Wasted Promise* (Colombo: Regional Centre for Strategic Studies, Manohar, 2001)pp204-6.
- ¹³ Ibid.
- ¹⁴ For details see G.W. Choudhury, *Pakistan's Relations with India 1947-1966* (London: Pall Mall Press, 1968) PP.155-169.
- ¹⁵ Ibid.
- ¹⁶ See Burke, Op.Cit., pp.11-13.
- ¹⁷ See Choudhury, Op. Cit, pp. 155-169.
- ¹⁸ Ibid.
- ¹⁹ Ibid.
- ²⁰ Ibid.
- ²¹ See 'Modi woos Punjab voters with pledge to annul Indus Waters Treaty' in Dawn, 28th Jan.2017.
- ²² Choudhury, Op. Cit., pp.289-290.
- ²³ Ibid.Dr. Choudhury quoted an article published in the Sunday Times. See' War in the Desolate Place' by Tom stacy in Sunday Times May 2, 1965
- ²⁴ Ibid, p.290.
- ²⁵ Ibid
- ²⁶ See 'The mysterious Rann of Kutch' by Isha M. Kureshi in Dawn, June 3, 2009.
- ²⁷ Burke, Op. Cit., p.526
- ²⁸ Ibid
- ²⁹ Choudhury, op. Cit.P.302.
- ³⁰ For a detailed discussion see Chari, P.R. and Cheema, Pervaiz Iqbal, *The Simla Agreement 1972: Its Wasted Promise* (Colombo: Manohar, 2001).

About Article and Author

This Article was first published in Margalla Papers, Volume-XX, 2016 and on NDU website in June 2021. It can be accessed at <https://margallapapers.ndu.edu.pk/site/issue/view/11/143>. The writer was scholar of international repute and remained Dean Faculty of Contemporary Studies at NDU Islamabad.

Re-Visiting the Traditional Conflict: Analysis of Kashmir Dispute USING Constructivist Framework

Mr. Zaid Bin Inam

Abstract

This article seeks to explicate the interpretative analysis of Kashmir dispute. The epistemological shift in the global politics requires the appreciation of endogenous and exogenous factors. The Kashmir conflict is a perpetual strand between India-Pakistan which re-assert the conflictual nature of political relations. Both the states employ respective ideational framework to legitimise their claim to achieve the respective political objectives. Pakistan espouses the ideational factors grounded on Two-Nation Theory to socially construct their narrative regarding the Kashmir dispute. In India, the differential identity of INC and BJP in terms of secular and ethno-nationalism respectively, shape the contemporary proclamation over the dispute territory. The change in the culture of anarchy from Hobbesian to Kantian seems distant after the revocation of the special status of Indian Illegally Occupied Jammu & Kashmir (IIOJK) by the BJP government. The constructive intervention of international society and regional organisations would be required to safeguard the geo-political and geo-economic interests of the regional states. Followed by empirical analysis, the way forward and future recommendations would be delineated to critically reconnoitre the discursive strategies employed by political leaders for understanding the non-material factors which shape the social reality of India-Pakistan relations.

Keywords: Constructivism, Kashmir Dispute, India.

Pakistan and India got independence from British rule in 1947, and the Kashmir, one of the princely states with Muslim majority, emerged with uncertainty regarding the accession to either India or Pakistan.¹ The Kashmir conflict is imbued with both exogenous and endogenous sources

which created a thaw between Pakistan and India since independence. With respect to exogenous sources, both the states favour maximalist approach to claim their national existence. Endogenous sources emphasis on heterogenous dimensions of Kashmir owing to multiplicity of religious and caste groups.

Over the last 74 years, Pakistan and India did not able to achieve the political consensus on Kashmir dispute. The Kashmir dispute has embroiled the South Asian region into uncertainties, likewise political and ideological apprehensions. The history of Pakistan and India is marred with social, ideological and political differences. The significance of binary identities, based on their respective socio-cultural milieu, led to the creation of India and Pakistan in 1947. James and Ozdamar analysed the relation between India and Pakistan, with respect to Kashmir conflict, through the simultaneous incorporation of domestic and external factors. The element of religion is important factor to comprehend the ethnic conflict in Kashmir.² In spite of many efforts, both UN resolutions and bilateral agreements, Kashmir conflict remains an unfulfilled promise. The imbalance of conventional power urges India to refuse the peace process, which forced Pakistan to neutralise the India's conventional might by acquiring nuclear weapons.³

Both the India and Pakistani state justify their claim based on their ideas, belief and identities. Likewise, India wants Kashmir to become a part of Indian Union to justify their staunch secular nationalism. People in Indian Illegally Occupied Jammu and Kashmir (IIOJK) are facing social and economic problems. After the Indian state revoked the article 35A and 370 on August 5, 2019, India deployed 700,000 forces to quell the demands put forward by Kashmir freedom fighters, which legitimise their protest on the basis of fighting holy war against the Indian hegemonic designs.⁴ After the formation of government by the Bharatiya Janata Party (BJP), India has been intensifying the political claim on Indian Illegally Occupied Jammu & Kashmir (IIOJK) to deprive the Muslim majority state from its right of self-rule. However, Pakistan believes that Kashmir should become its part because latter comprises a Muslim-majority area and concurrently uphold the spirit of UN resolutions to organise the plebiscite in Kashmir. This study aims to understand the role of constructivist approach in explaining the bilateral

relationship between Pakistan and India. The post-modern critique of traditional IR theories provided an ontological and epistemological ground to evaluate the Kashmir crisis. The non-traditional theories provide an interpretative epistemological position to examine the social reality through the subjective point of view.

Constructivism: Epistemological shift from Positivism to Interpretative Paradigm

The traditional theories in International Relations have explained the political imperatives using the positivist epistemological framework. As classical theorists explained, their focus primarily is to enhance the prospect of national interest.⁵ Likewise, the non-traditional theories, such as Marxism, Feminism and Constructivism, are pivotal to re-evaluate the underlying assumptions which resultantly shape the dynamic of global politics and multi-faceted kinds of worldview.⁶

The respective theoretical framework enables the researcher to analyse the different structural issues, such as gender-based politics, economic dimension of a conflict and binary division of identities to re-examine the political realities with subject to endogenous and exogenous factors. The gender-based political analysis will provide the impetus and structural support to sustainable peace process by mainstreaming the gender related issues and provide the policy makers with alternate social reality regarding how the international institution can ameliorate the cultural factors to support the inclusion of women in the decision-making process. In 1966, Berger and Luckman coined the concept of 'social construction of reality'.⁷ Constructivism reached the shores of International Relations in 1980s.⁸ In the study of international relations, one of the first ground breaking constructivist works was Onuf's "*World Of Our Making: Rules And Rule In Social Theory And International Relations*", published in 1989. Onuf argued the interests of international actors need to be explained by social interaction.⁹ Before bringing the material forces, the process of theorising the international politics in the system should begin with the "intersubjectively shared ideas, norms, and values held by actors".¹⁰

As Bhatia argued that governments, to gain legitimacy from the international and domestic community, frame the intra-state struggle in

terms of larger conflict, as “it is decidedly in the interest of some quasi-authoritarian governments to over-emphasise the militant character of their opposition, in the hope of US assistance.”¹¹ Constructivism provided a non-traditional way of interpreting the global political landscape amid the presence of conventional security contours i.e. material power. Instead of assuming reality as objective, devoid of discursive powers, the constructivist assumes an international system based on subjective reality formed by employing norms and values. The demise of Cold War provided an impetus to the non-traditional way of political analysis which can be explained using a constructivist approach while discounting the dominant realist and liberalist-based theoretical framework.¹²

The changing nature of identities corresponds with the perception towards the power dynamics in the international system. Certain assumptions define the theoretical contour of constructivism. First, the ideas, beliefs and identities of the state are socially constructed. Second, social factors (relations) define how we evaluate material factors such as military power. Third, the inter-subjective relations between states and actors define the basis of cooperation. Finally, the factor of changeability explains the variation in concepts in international relations over time.¹³ The constructivist framework treats the aspects of social reality like “ethnicity” with associated implications. They take into question why boundaries are drawn and maintained. And for reconciliation, would it be possible to deconstruct the division constructed through the social processes?

Genesis of Kashmir Dispute

The genesis of the Kashmir conflict emphasises the four major themes; “the question of accession, the question of aggression, the question of self-determination and finally, the question of UN resolution”.¹⁴ Both states initially pledged to decide the fate of Kashmir through a plebiscite under the auspices of UN resolutions. Pakistan on 1st January 1948 denied the use of its territory to launch military operations in Kashmir as India instituted a formal complaint against Pakistan, which alleged that the latter allowed the invaders to operate against Kashmir.¹⁵

After the partition of the Indo-Pak subcontinent, all princely states, except Kashmir, Hyderabad and Junagadh, had been acceded to either state based on the guidelines provided by the government.¹⁶ The longstanding and intractable Kashmir conflict between Pakistan and India has mired their economic, social and political relations. Though the root of the Kashmir conflict dates back to 1947, it has turned into a bone of contention in the bilateral relationship between Pakistan and India. At the time of partition, there were around 560 princely states under British India and Kashmir, a Muslim majority, was one of them.¹⁷ After the partitioning of the subcontinent into India and Pakistan, the delay in deciding the constitutional position of Kashmir, after the British left, was the root cause of the Kashmir conflict.

When Maharaja Hari Singh formally acceded to India, Mountbatten put a condition for the deployment of troops, in support for Maharaja, that the 'subsequent accession must be confirmed by a referendum'.¹⁸ On 2nd November, 1947 India's first Prime Minister Pandit Nehru, a Kashmiri himself, announced on All India Radio that "Kashmir future will be decided by the means of plebiscite".¹⁹ Prolong fighting between Indian and Pakistani troops continued well into 1948, culminated into ceasefire in 1949 mediated by UN to resolve the issue impartially and withdrawal of armed forces. In 1952, under the Delhi agreement, the special status of Kashmir was included under the Article 370 of the Indian constitution. In 1990s, the surge in uprising by Jammu and Kashmir Liberation Front (JKLF), which believes in sovereign Kashmir, roamed the streets and neighbourhoods of Srinagar carrying ammunitions. Indian security forces eventually fought a desperate battle to stem the tidal wave of insurgency and popular uprising sweeping the valley.

India claims that there is no need for plebiscite as people of Kashmir eagerly participates in state elections amid the presence of 600,000 to 700,000 Indian troops which cast aspersion in the narrative of free and fair elections. That means the ratio of deployment to people is 1 soldier for every 18 persons. Meanwhile, in Kashmir, around 89,000 people have lost their lives during the past two decades. Indian army has been accused of violating the human rights like torture, disappearances, and custodial deaths.²⁰

In 1990s, the Operation Tiger and Operation Shiva were launched by security forces to capture and kill suspected militants, resultantly, indiscriminate attacks on civilian escalated during the operations. So, the Indian state constructs the 'terrorist' through the securitisation process and legitimise its use of force. After independence, the Indian state had been facing a myriad of intra-state conflicts due to its large and varied demography.²¹ India's brutal crackdown on Kashmiri people is due to the government narrative, which primarily focused on abetment and direct sponsorship of the violence by Pakistan. Moreover, after the revocation of special status of Kashmir under article 370 and 35A by India, the region experienced unrest being augmented by the forces of resistance and freedom struggle movements.

Though the Indian constitution safeguard the democratic rights and freedom of speech, but the BJP-led government in New Delhi violated the fundamental social and political aspirations that led to growing alienation of Kashmiri people and the demand of secession from India by hardliners.²² Bharatiya Jana Singh stated that Kashmir is an integral part of India and any reference to the United Nations must be withdrawn. The revocation of the special status of Kashmir impacted the local civilians by cutting the communication and internet.²³ Moreover these actions under the state apparatus might augment the communal tensions and impact the escalation of violence along the Line of Control. The pivotal factor of historical animosity forces the two states to adopt conflictual nature towards each other. The conjoining of historical factors with discursive practices adopted by political elite further widens the gap of possibilities to achieve sustainable solutions.

After the 2014 general elections in India, the BJP came into power with support for associations that claim India as a Hindu nation. After the Pulwama attack and revocation of Article 370 and 35A, the nationalistic discourse and explicit disregard by India for previous agreements, the policymakers in Pakistan have condemned the move and subsequently called for OIC and UNSC to take up the issue to play a decisive role for peaceful resolution of conflict. On the other hand, the Indian government legitimised its constitutional move for the promotion of governance and commercial interests. The use of political violence by the state to quell the democratic voices and securitise the demands as de-

legitimate have further intensified the policies of state repression. In order to ameliorate the Hobbesian culture of anarchy, economic cooperation needs to be enhanced between Pakistan and India in order to augment the prospects of sustainable peace resolution.

Ideational Construction of Kashmir Conflict

Few researchers have investigated the role of ideational framework in the analysis of bilateral conflict. The Kashmir dispute is a perpetual conflict which has mired the two neighbouring states in adversarial relations and failed to actualise the predictions made by Jawaharlal Nehru and Mohammad Ali Jinnah about easing of tensions after partition.²⁴ It is imperative to analyse the norms, hostility and values to understand the driving force of their legitimacy for claim on Kashmir, rather primarily focusses on rational behaviour with prior understanding. Scholarly literature shows that after the Mumbai attacks and ascendance of Modi, the India foreign policy have undergone certain shifts in norms. The surgical strikes and demarches show the norms of non-interference have rescinded from the foreign policy behaviour of India.²⁵

The employment of constructivist framework to explain the Kashmir dispute demands the examination of ideational facts used by India and Pakistan to proclaim their legitimacy. The sperate Muslim identity on the basis of religion and cultural factors, advocated by All India Muslim League (AIML), formed the unit-level constructivist lens in contrast with predilections of the Congress party. The behaviour of the states who focused on identity formation primarily utilised three aspects: imagination, communication and constraint. The Indian National Congress (INC) imagined the unified India communicated by Gandhi and Nehru and constraint their ideological position in contrast to the demands of Muslim for separate homeland.²⁶

The regional historiography is imbued with multi-lingual societies, world literature, and adherent of major religions, which can be found in South Asia.²⁷ The division of societies into communitarianism (Hinduism and Muslims) and nationalism had further supported the narrative of independent states. Many follow the conventional version of communalism- “Muslim” Pakistan and “Hindu” India- to explain the bilateral animosities, while discounting the pluralistic cohesion prior to

the twentieth century. The two-nation theory provided a legitimate ground to Muslims to create an imagine community for Muslim to mobilise them against the atrocities of Hindu-dominated party. The Muslims during the pre-partition era created a binary category of themselves as “us” against the Hindus as “others”. Muslims strived to safeguard the political, social and cultural elements with respect to Muslim community. After the partition, Pakistan’s foreign policy is based on affirmative relations with the Muslim countries. The identity of Kashmiri, rooted in their cultural affinity of culture and religion to Pakistan, is important for Pakistan due to its strategic significance and ideological bond.²⁸

Pakistan enclosed its demand for Kashmir on the basis of its ideological appeal. Likewise, Loomba suggested that the state of Pakistan applies the religious Two Nation Theory to Kashmir Valley.²⁹ India, due to its secular constitutional outlook, legitimises its claim on Kashmir while discount the religious and sectarian politics. The Hobbesian nature of South Asian politics traditionally underscores the classical framework to explain the states’ relations.³⁰

Being an Islamic Republic, Pakistan has been a voice for Muslims in Myanmar, Afghanistan, Palestinians and Kashmir. The ideological synchronisation between Kashmiri’s Muslim and Pakistan’s Islamic ideology entrusted the same code of conduct and culture. This ensures the freedom of worship and lifestyle.³¹ India’s manifest secular regime encapsulate the conservative and Hindutva creed such as Bharatiya Janata Party (BJP) and Shiv Sena. Secular India is depriving the Muslims from observance of their religious rights.³² Pakistan claim to Kashmir is based on its Muslim-majority population in accordance with the pre-partition legal norms. Since, Viceroy Lord Mountbatten suggested the following guideline to princely states: “Normally geographically situation and communal interests and so forth will be the factors to be considered.”³³

Pakistan constructs the Kashmir issue under survival threat from India and commonality based on religious identity which legitimise its use of diplomatic efforts to compel the international community about the violations of human rights and UN resolutions by India. In contrast, the Indian state charged Pakistan with aiding and abetting the cross-border

terrorism in IIOJK. The ruling-government under BJP undermines the Simla agreement, signed after 1971 War, and according to Article IV on Geneva Convention, “the occupying forces shall not deport of its own civilian population into the territory it occupies”³⁴ For example, the ruling government in India, BJP, decide to settle Hindus in IIOJK, which is a violation of international legal norms.³⁵ From 1990 to 2014, Indian security forces have killed more than 900 individuals which tantamount to violation of human rights.³⁶ Indian state employs political violence in Kashmir to quell the dissenting voices against the state-propagated narrative. After the abrogation of special status of Kashmir, the means of communication and political space have shrunk to force the inhabitants to accept the state policies.³⁷

The ascendance of Bharatiya Janata Party (BJP) in the Indian political landscape is undermining secular status enshrined in the constitution. The construct of Hindu-ness and qualms about the separate status enjoyed by Kashmir, calls for scholarly attention to analyse the Hindutva-based nationalism, term *Hindutva* coined by V.R Savarkar, premised on golden Vedic age.³⁸ As succinctly iterated by Muhammad Mujeeb that, BJP has “skilfully promoted its agenda of a Hindu nationalist ideology and provided it legitimacy within the body-politic of the country.”³⁹ The revocation of the special status of Kashmir advances the Hindu-nationalist agenda of the Bharatiya Janata Party (BJP) as mentioned in their 2019 election manifesto and lessen the influence of Indian Muslims which are constructed as threat for national security.

The employment of soft and hard power by BJP-led government, based on multi-ethnic society and being a non-aggressive nation, has peddled the India’s cosmopolitan effect in materialistic and non-materialistic aspect. BJP-led government skilfully constructed an identity as a promoter of south Asian integration by delivering “strategic concessions”.⁴⁰

Role of International Society

Constructivism explores the identities in international relations shaped by actors like international organisations (United Nations), states and individuals.⁴¹ The democratic political structure of a state legitimises its domestic and foreign policy, which focuses on international norms and

customary traditions. Being a democratic country demands the adherence to international obligations, related to human rights and freedom of speech, to legitimise its policies. Since, India's employment of conditional support to coerce the Hari Singh to ascertain the future of Kashmir in favour of India went against the pro-Pakistani aspirations of many Kashmir. From 1948 to 1971, the United Nations passed 23 resolutions regarding the Kashmir dispute.⁴² It was India who initiated, and file complain in the UNSC. Pakistan support the UNSC resolutions to hold the free and independent plebiscite. The adherence to the legal obligations and UN resolutions constructs the identity of state as supporter of international order and enhance the strategic, diplomatic and political standing in international arena. The role of mediation by UNCIP was deferring to the norms of state sovereignty rather than engage in a genuine effort to advance the principle of self-determination.⁴³ Resultantly, the international society did not able to successfully resolve the Kashmir dispute which is important owing to geo-strategic and geo-economic interest of the regional states.

Looking into Future

The Kashmir conflict is an unfinished agenda between Pakistan and India despite wars and numerous cross-border skirmishes. The hegemonic design of India creates hindrances in implementing the UN-sponsored resolution. The Kashmir issue is not just an intractable dispute between Pakistan and India, but it also shows the ineffectiveness of the international community in advancing their efforts to resolve the conflict.⁴⁴ Contrary to the positivist nature of analysing international and regional politics, constructivism emphasises normative dimensions and the inclusion of norms, values and culture to understand the nuisances of inter-state conflicts. The geo-strategic and geo-political contention between Pakistan and India is unable to integrate the South Asian countries to develop policies for regional prosperity. The smouldering conflict of Kashmir had periodically impaired the bilateral relations. The economic cooperation and employment of soft power by Pakistan and India can ameliorate the escalating hostilities between the states owing to security-centric policies. The political determination and political will are equally important to solve the bilateral animosity using confidence building measures.⁴⁵

The role of international community and world powers is pertinent to mediate to facilitate the adherence to global norms of human rights. The South Asian Association for Regional Cooperation (SAARC) is a pivotal platform to improve the intra-regional trade and mobilisation of human resources. The increasing economic relations might pave the way for safeguarding regional stability. Even though the UN had a lacklustre record to mediate between India and Pakistan, the UN resolutions provided legitimacy to the Kashmiris with their distinct political identity. In Kashmir words like Plebiscite Front and Plebiscite became part of political discourse.⁴⁶ So, international mediation would be a preferable way to resolve the Kashmir conflict to maintain the prospects of impartiality and neutrality. The regional and international community must mediate to solve the Kashmir dispute for regional stability and to safeguard the economic interests of the regional states. The right course of action to develop a pragmatic and sustainable approach towards peace resolution is not premised on objective reality, but rather based on social reality through the shared understanding of political and economic models.

At the systemic level, the Shanghai Cooperation Organisation (SCO) needs to augment its political cooperation within and among the regional states by keeping in check the ideological-guided political practices to considerably frame the prospects for sustainable peace and stability in the region. The regional organisations were not able to construct a common identity premised on shared norms and values which overtake the local identity and construct a framework for mutual peace and economic cooperation.

The multi-faceted nature of conflicts needs to be appraised pragmatically to accentuate the fundamental perspective. The Kashmir dispute can also be viewed as a legal issue rather than a political manoeuvring tool to successfully adjudicate the conflict and develop a pro-peace narrative for conflict management. The intractable conflict is focused on more than one dimension, because the underlying factors responsible for the continuation of conflict may have political, cultural, economic and social variables. The Kashmir dispute is a multi-pronged conflict between India-Pakistan and India-religious militants to establish a theocratic state by waging religious war-Jihad.⁴⁷ The conflict resolution must be

approached by keeping into account the ground realities. To actualise the peace process, the stakeholders on both sides need to take into account both the endogenous and exogenous factors.

After the abrogation of the special status of Kashmir by the Indian state and to allow outsiders to buy and sell properties, the propensity of structural violence can be seen in Indian policymakers. The constitutional status guaranteed the special rights to the people of Kashmir. The Kashmir conflict required a sustainable peace process based on Problem Solving Decision Making (PSDM), a constructive approach which provides the possible options to actors to ensure the durable peace in the region.⁴⁸ Countries embroiled in intractable conflicts find it difficult to achieve sustainable peace. For both Pakistan and India to achieve peace, the domestic factors and what concession they can draw from each other are pertinent to start the conflict resolution mechanism. The two states would like to de-escalate the conflict in order to preclude the full fledged war due to the possession of nuclear weapons by both the states.⁴⁹ After the revocation of the special status of Kashmir, as enshrined in the political manifesto of BJP, the dynamic of interaction between the bilateral states has changed and Pakistan needs to put diplomatic and international pressure to re-evaluate their decision in order to give the right of self-determination to Kashmiris.

The media also needs to play a constructive role to improve the prospects of social reality in the region. The media from both sides needs to incorporate the narrative of inclusion rather exclusion and avoid the coverage of a conflict based on exaggeration. Media watchdogs on both sides needs to appraise the hate speech and focusses on constructive debate to outline possible points of engagement.

Conclusion

The article evaluates the Kashmir conflict by applying the constructivist theory to re-approach the dispute by analysing the multi-faceted dimensions. Contrary to the traditional belief regarding balance of power and power maximisation, the constructivist approach emphasises the role of values, norms and culture which might either escalate or de-escalate the political animosities between states. Pakistan and India

employ their respective narratives to claim the region of Kashmir. The perceived polarity has trapped both states in political constraints in particular, and uncertainty regarding regional stability in general. Both states need to develop a sustainable approach to achieve peace and likewise augment their political legitimacy in the international arena. The peace in the region is vital for economic and social prospects. The threat of security and prevalence of uncertainty owing to conflict might hamper the inflow of potential investments. The peace in Kashmir is not only beneficial to Pakistan and India, but it provides regional stability and augments intra-regional trade. Moreover, with the changing domestic politics in Afghanistan and the improbability of the power politics in the Asia Pacific, the international community and domestic political elites in Pakistan-India must forge reconciliations and conflict resolution attempts to ensure the safeguards of fundamental rights of Kashmiri people and the legitimacy of UN resolutions.

References

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- ¹ Alice Thorner, "The Kashmir Conflict." *Middle East Journal* 3, no.2 (January 1949): 164-180.p.165.
 - ² Carolyn C. James and Özgür Özdamar. "Religion as a Factor in Ethnic Conflict: Kashmir and Indian Foreign Policy." *Terrorism and Political Violence* 17, no. 3 (2005): 447-467. P. 448
 - ³ Tehmina Mahmood. "Peaceful Resolution of Kashmir Dispute: India's Avoidance." *Pakistan Horizon* 54, no. 4 (2001): 7-24. P:7
 - ⁴ M.A. Bashir. *Indian's Human Rights Track. In The Kashmir Imbroglio: Looking Towards the Future*. Islamabad: Islamabad Policy Research Institute, 2005.
 - ⁵ "Political Realism in International Politics," *Stanford Encyclopedia of Philosophy*, May 24, 2017, plato.stanford.edu.
 - ⁶ Knud Erik Jørgensen, *International Relations Theory: A New Introduction* (Palgrave, 2018).p.171
 - ⁷ Peter Berger and Thomas Luckmann, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge* (Doubleday 1966) p.15
 - ⁸ Theories of International Relations, eds. Scott Burchill, Andrew Linklater, Richard Devetak, Jack Donnelly, Matthew Paterson, Christian Reus-Smit and Jacqui True (Palgrave Macmillan, 2005).p.194
 - ⁹ Nicholas Onuf, *World of Our Making: Rules and Rule in Social Theory and International Relations* (University of South Carolina Press, 1989)
 - ¹⁰ Dale C. Copeland, The Constructivist Challenge to Structural Realism: A Review Eassay, *International Security* 25, no. 2 (2000):187-212.p.189
 - ¹¹ Michael V Bhatia, "Fighting Words: Naming Terrorists, Bandits, Rebels and Other Violent Actors," *Third World Quarterly* 26, no. 1 (May 2008): 5-22.p.13

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- ¹² Sarina Theys, "Introducing Constructivism in International Relations Theory," *E-International Relations*, (2018).
- ¹³ Knud Erik Jørgensen, *International Relations Theory: A New Introduction* (Palgrave, 2018).p.173-175
- ¹⁴ Ijaz Hussain. *Kashmir Dispute: An International Law Perspective* (National Institute of Pakistan Studies 1998).p.2
- ¹⁵ Ibid.p.11
- ¹⁶ Ijaz Hussain, *Kashmir Dispute: An International Law Perspective* (National Institute of Pakistan Studies 1998).p.13
- ¹⁷ Rashmi Sehgal. "Kashmir Conflict: Solutions and Demand for Self-Determination." *International Journal of Humanities and Social Science* 1, no. 6 (2011): 188-195. P.188
- ¹⁸ Ijaz Hussain, *Kashmir Dispute: An International Law Perspective* (National Institute of Pakistan Studies 1998).p.10-11
- ¹⁹ Ibid.p.188
- ²⁰ Rashmi Sehgal, Kashmir Conflict: Solutions and Demand for Self-Determination, *International Journal of Humanities and Social Science* 1, no. 6 (2011):188-195.p 188.
- ²¹ Akhil Gupta, The Political Economy of Post-Independence India; A Review Article, *The Journal of Asian Studies* 48, no. 4 (1989): 787-797. P.788
- ²² Aniban Acharya, India: from secular to sickular, in *Religion and politics in South Asia*, ed. Ali Riaz (New York: Routledge, 2021). P.110
- ²³ Ibid.
- ²⁴ Marc Unger, "Kashmir Constructivism: Indian Policy on Pakistan from Mumbai to Modi" (2019). *Politics, Philosophy, and Legal Studies: Student Scholarship & Creative Works*. 8.p.3
- ²⁵ Marc Unger, "Kashmir Constructivism: Indian Policy on Pakistan from Mumbai to Modi" (2019). *Politics, Philosophy, and Legal Studies: Student Scholarship & Creative Works*. 8.p.12
- ²⁶ Tariq Anwar Khan, Muhammad Imran Mehsud and Azam Jan, "Constructivism in India-Pakistan Relations: A Critique from Realism," *Pak. Journal of Int'L Affairs* 4, no. 2 (2021): 494-508. p.497
- ²⁷ Sugata Bose and Ayesha Jalal, *Modern South Asia: History, Culture, Political Economy* (Routledge 2004).p.2-3
- ²⁸ Ghulam Qumber, Waseem Ishaque, and Syed Jawad Shah, "Kashmir Crisis: A Critical Analysis of Indo-Pak Intercession." *Global Social Sciences Review* 2, no. 1 (2017): 67-78.p.70
- ²⁹ Deepak Loomba, "The Two Nation Theory and Kashmir." *World Affairs: The Journal of International Issues* (Kapur Surya Foundation) 23, no. 4 (2019): 130-137.p.130
- ³⁰ Javier Ghareman. "India-Pakistan conflict, Kashmir in relation to Constructivism and Post Colonialism Theory."p.4
- ³¹ Ghulam Qumber, Waseem Ishaque, and Syed Jawad Shah, "Kashmir Crisis: A Critical Analysis of Indo-Pak Intercession." *Global Social Sciences Review* 2, no. 1 (2017): 67-78. P.72
- ³² Ibid.
- ³³ Sarwar Hasan. *Pakistan and the United Nations* (Manhattan Publishing Co., 1960) p.80
- ³⁴ Claude Bruderlein, "Protection, Occupation and International Humanitarian Law and in the OPT," *Humanitarian Practice Network*, November 2004. odihpn.org
- ³⁵ Shamsa Nawaz, "Violation of the UN Resolutions on Kashmir." *Strategic Studies* (Institute of Strategic Studies Islamabad) 38, no. 1 (2018): 145-162. P.146.

-
- ³⁶ Jason Burke, "Indian Forces in Kashmir Accused of Human Rights Abuses Cover-up," *Guardian*, September 12, 2015
- ³⁷ Rebecca Ratcliffe, Kashmir: India's 'draconian' blackout sets worrying precedent, warns UN, *The Guardian* 8 August 2019.
- ³⁸ Thomas Blom Hansen, *The Saffron Wave: Democracy and Hindu Nationalism in Modern India* (Princeton, NJ: Princeton University Press, 1999), 77
- ³⁹ Muhammad Mujeeb Afzal, *Bharatiya Janata Party and the Indian Muslims* (Oxford University Press, 2014).pp.43
- ⁴⁰ Sreeram Chaulia, *Modi Doctrine: The foreign Policy of India's Prime Minister* (Bloomsbury 2016).
- ⁴¹ Kelly-Kate S.Pease, *International Organizations: Perspective on Global Governance* (Routledge, 2019).
- ⁴² Shamsa Nawaz, "Violation of the UN Resolutions on Kashmir." *Strategic Studies* (Institute of Strategic Studies Islamabad) 38, no. 1 (2018): 145-162.p.150.
- ⁴³ Stephen P. Westcott, "The Case of UN Involvement in Jammu and Kashmir." *E-International Relations*, 2020.
- ⁴⁴ Ghulam Qumber, Waseem Ishaque, and Syed Jawad Shah, "Kashmir Crisis: A Critical Analysis of Indo-Pak Intercession." *Global Social Sciences Review* 2, no. 1 (2017): 67-78.p.76
- ⁴⁵ Zahid Yaseen, Iqra Jatho, and Muhammad Muzaffar, "Pakistan and India Relations: A Political Analysis of Conflicts and Regional Security in South Asia." *Global Political Review* 1, no. 1 (2016): 1-9.p.7
- ⁴⁶ Victoria Schofield, *Kashmir in Conflict: India, Pakistan, and the Unending War* (Viva Publisher, 2004).
- ⁴⁷ Rodgrio Tavares, "Resolving the Kashmir Conflict: Pakistan, India, Kashmiris and Religious Militants." *Asian Journal of Political Science* 16, no. 3 (2008): 276-302.p.276
- ⁴⁸ Samra Farrukh Ansari, Maria Saifuddin Effendi, and Riffat Haque, "Problem Solving Decision Making Model In Kashmir Conflict Resolution: Prospects And Challenges." *NDU Journal*, 2019.p.3
- ⁴⁹ Bibhu Prasad Routray, "India-Pakistan Peace Process." *Journal of Asian Security and International Affairs* 1, no. 1 (2014): 79-105.p.98

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Modi's Plan of Action in Kashmir and Pakistan's New Political Map

Namra Naseer & Tahama Asad

Abstract

Pakistan and India, despite having a shared legacy of independence from colonialism, have not been able to coexist as peaceful neighbours. The current political imbroglio as the consequence of Modi's aggressive policies has made the Kashmir issue the most protracted and bloodiest conflict of the world. BJP's actions have practically set the stage for an altered demographic outlook of the Indian Illegally occupied Jammu and Kashmir. While the world is preoccupied with battling the COVID-19 contagion and despite condemnation by the international community and Pakistan, India continues to systematize its oppressive approach in occupied Kashmir. Drawing inspiration from the Israeli model of establishing Jewish settlements in occupied Palestinian territories, India too has now systematically attempted to deprive the people of Kashmir their majority status in their own land. Pakistan, meanwhile, has exhausted its diplomatic efforts to avoid a direct conflict with India and finding a pacific resolution to the Kashmir dispute. In this vein, Pakistan also released its new political map on 04 Aug 2020 that clearly identifies the entire State of Jammu and Kashmir including Azad Kashmir and IoK as "disputed territory" and also states that the final decision will be taken as per the UNSC resolutions. The paper analyses India's plans to demographically distort the territory of occupied Kashmir with the objective to ultimately wipe out its identity and evaluates the new political map released by Pakistan. The paper concludes by outlining steps towards peace between Pakistan and India.

Keywords: India, Pakistan, Kashmir, PM Modi, Revocation of Article 370 and 35A, Reorganization Order 2020, Demographic Shift, Identity Politics.

The outbreak of COVID-19 is being termed as one of the greatest triggering events of current times that might drastically change the

global political, economic, and social outlook. While the world is preoccupied with battling the COVID-19 contagion, the Indian government continues with its unilateral policies in Indian occupied Kashmir. India passed a new domicile law on 01 April 2020 which in effect guarantees a massive demographic transformation in Indian Illegally Occupied Jammu and Kashmir (IIOJ&K). Under the law, anyone who has resided in occupied Kashmir for 15 years or has studied for a specific period is eligible to be called a Kashmiri. In August 2019, the BJP led Indian government had revoked Article 370 and 35A from the Indian Constitution with the passage of the Jammu and Kashmir Reorganization Act, 2019.¹ Blatantly manifesting the BJP administration's disregard for the Indian constitution, these legislations have practically set the stage for an altered demographic outlook of IIOJ&K. Kashmiris are in danger of being reduced to a minority in their own land. Concomitantly, significant developments have taken place in both Pakistan and India on the anniversary of 05 August that would further deteriorate relations between the nuclear powers in South Asia. Pakistan unveiled a "new political map" of the country that includes Indian Illegally Occupied Jammu and Kashmir (IIOJ&K) as part of the country's territory for the first time.²

Seventy-two years have passed since Pakistan and India attained independence from their British colonial rulers. The two successive states, despite having a shared legacy of independence from colonialism, have not been able to coexist as peaceful neighbours. The major bone of contention that has marred the bilateral relationship between them is the unfinished agenda of the partition, that is the issue of self-determination of the State of Jammu and Kashmir. Since 1947, the Kashmiri people have been denied their basic right to life and security, and the right to choose. India is pursuing hard-handed policies against innocent Kashmiris to restrain their legitimate right to self-determination. Article 1 of the United Nations Charter protects the right of self-determination as a fundamental principle of the International Law. The right to self-determination is also the overarching principle of the International Covenant on Civil and Political Rights (ICCPR), to which India is a signatory. Until now, the UN Security Council has passed 18 resolutions, directly or indirectly related to the Kashmir dispute. None of the resolutions could be implemented because of India's obstinate

approach and false promises to the people of Kashmir and to Pakistan's leaders by its Prime Minister Jawahar Lal Nehru.

The Indian Government has used various methods to suppress the struggle of the Kashmiri people since 1948. In the cover of a series of draconian laws and Acts, India has committed brutalities, killings, force detentions, rapes and humiliations with impunity every day. Indian occupied Kashmir remains among the highly militarized regions in the world. India's refusal to seek a peaceful resolution to the Kashmir dispute has left the people of Kashmir deeply anxious and uncertain about their future and the chances of peace bleak between the two South Asian neighbours. The paper attempts to deliberate on stated issues as to how they are affecting the future of Indian Illegally Occupied Jammu and Kashmir and what will be the short and long-term implications of eventual demographic changes being introduced by India to obliterate the very identity of the people of Kashmir?

Genesis of Kashmir Dispute

The predominantly Muslim yet multi-religious and multi-cultural region of Kashmir has historically remained under four major rules: Hindu and Buddhist rule, Muslim rule, Sikh rule and the Dogra rule.³ The current political imbroglio that has made the Kashmir issue the most protracted and bloodiest conflict has direct roots in the commencement of the first Anglo-Sikh war in 1845. In conclusion to the war, the British got the possession of the state of Jammu and Kashmir (J&K). Afterward, under the Treaty of Amritsar 1846, Gulab Singh was given the possession of Jammu and Kashmir, Ladakh and Baltistan on a discounted sum of 7.5 million rupees by the British, hence establishing the Dogra Rule in Kashmir. It was the unfair policies of Gulab Singh and his successors that first sowed the seed of discontent in the Kashmiri Muslims and they rose to fight for independence.⁴ The latest wave of political consciousness to free Kashmir from autocracy and oppression started in the early 1930s and continues to date. In 1947, when the whole of the subcontinent got to exercise their right of self-determination and attained independence from the British colonial rule, the people of Kashmir remained constricted by India's neo-colonialism.⁵ The end of the British hegemony in India brought about a lapse of paramountcy and the 562 princely states along with India and Pakistan became technically and legally free. The

British Viceroy, Lord Mountbatten, however stated in his address to the Chamber of Princes on July 25, 1947 that though the states are theoretically free to choose their future, they cannot evade the geographical compulsions as well as the will of their subjects.

Since the only all-weather road that connected Srinagar to the world went from Rawalpindi, Pakistan and all the rivers of Kashmir flow into Pakistan, the demographic factor too, was largely if not decisively in Pakistan's favour.⁶ The Maharaja of Kashmir himself being a Hindu while keeping the fact in mind that the majority populace of Kashmir was Muslims, opted to remain independent and signed a standstill agreement with both India and Pakistan. It is also crucial to mention here that the unfair boundary distribution by the Radcliff Commission in 1947 gave the Muslim-majority tehsils (administrative units) of Gurdaspur District to India under the dictation of Lord Mountbatten which granted India the geographical edge to annex Kashmir. As A. G. Noorani, an Indian constitutional expert says that if it were not for the controversial Radcliffe Award, India would not have had any land access to Kashmir.⁷ A debate also persists in the literature about accession of Kashmir and Pakistan's aggression. Pakistan is accused of enflaming unrest in Kashmir by sending Pakhtoon tribesmen who fought the state government. Nonetheless, it was the anti-Muslim policies and autocratic behaviour of the ruling house that led to the revolt of the native Muslim cultivators in Poonch (Southwest of Kashmir proper) against the Dogra Rajput landowners. Their plight brought sympathy of their co-religionists in Pakistan, who crossed the border to support them which was followed by a massive movement of thousands of Pathan tribesmen.⁸

India has long built its case on Kashmir that the Maharaja of Kashmir had signed the Instrument of Accession to India on October 26, 1947 making it an integral part of India. Nonetheless, it remains a fact that even the signed Instrument of Accession provided the people of Kashmir the right to self-determination through a free and fair plebiscite. The accession presented to the world as a testimonial to India's military intervention in Kashmir on the invitation of Maharaja was itself conditional and provisional. The Nehru government had clearly stated in 1948 in the White paper on Jammu and Kashmir that once the soil of the State became clear of the invaders (the tribesmen) and normality is

restored, the people of Kashmir would decide their future by the recognized democratic method of a plebiscite or referendum. As similar stance was taken by Governor General Mountbatten who accepted the Instrument of Accession on behalf of the State of India. Lord Mountbatten declared that it is the wish of his Government that as soon as law and order restores in Kashmir and its soil gets cleared of the invader, the question of the accession of Kashmir should be settled by a reference to the people.⁹

Modi's Plan of Action in Kashmir

The people of Kashmir have always been the target of belligerent policies of the Indian government that disregard Human Rights with impunity. The element of violence has been the core aspect of Indian state policy towards Kashmir.¹⁰ Elections of 2014 and the advent of the Bharatiya Janata Party (BJP) in power have become a catastrophe for the people of Kashmir. Narendra Modi, a nationalist Hindu Prime Minister, bolstered his support among the Indian Hindus who are fascinated by the deaths of the Kashmiris and humiliate them by sharing images of tortured dead bodies as trophies.¹¹

Extra-Ordinary Military Powers

Prime Minister Modi has publicly announced several times that the Indian forces have been given a “free hand” to deal with Kashmiris demanding independence. Therefore, since 2016 particularly, the Indian forces are unhesitatingly killing, injuring, raping and blinding innocent Kashmiri people in a manner that has been recorded by the International Human Rights Watch as violations against the dignity of the Kashmiri people. The BJP government relies on the military force, the Central Reserve Police Force (CRPF) to quell the militancy and protests in the valley.¹² Indian forces have been given immunity from any legal action with respect to these laws.

- a. **Armed Forces Special Power Act (AFSPA):** First practiced in 1990 in Kashmir, it allows Indian forces to arrest any individual with arrest warrant, demolish their properties without any prior notice, and shoot any individual on suspicious bases and above all impunity from laws and court procedures.¹³

- b. **Disturbed Area Act (DAA):** This act was meant to restore the public order in the disturbed areas. According to this law any magistrate or police officer has invulnerability to use force even to the level that can cause death of the individual who is involve in disturbance in public order.¹⁴
- c. **Public Safety Act (PSA):** The Public Safety Act grants police complete authority to arrest any individual for 7 days and then present to court and if the court releases the suspect, the police can re-arrest the suspect and the process continue for years. Thousands of Kashmiris have been detained under these Draconian laws.¹⁵

Resettlement of Kashmiri Pundits

Historically, before the partition, during the Dogra rule, both Muslims and Kashmiri Pundits used to live together peacefully. There was no such religious divide between the two. As soon as the territory became the playground for the Indian government, they forcefully moved the Kashmiri Pundits from the Kashmir valley and settled them mainly in Jammu, so that they could easily use force against the Muslims in the Kashmir valley. The Pundits were used as a political tool at that time and are still being used by the Indian government to delay the plebiscite. Currently the government of India is building separate colonies for resettlement of Pundits in the valley. This would widen the sectarian schism between the Pundits and the Muslims of occupied Jammu and Kashmir. The resettlement of Pundits in the valley would lead to an increase in the population of Hindus as their children, who are seeking India's identity rather than that of Kashmir, will be forced to adopt the Kashmiri domicile. It is important to understand the reason why Modi is interested in resettling the Pundits. One reason is that he wants to make sure that the BJP comes to power in occupied Jammu and Kashmir in the next state elections.¹⁶ The increase in Hindu population in occupied Kashmir would ensure the victory of the Hindu party in the elections. Moreover, the resettlement of Pundits will revive religious and sectarian tension in the occupied state. It could be one of the tactics of the government of India to keep the state disturbed enough as an excuse to refuse any possibility of a plebiscite.

The fact that India has re-annexed occupied Kashmir and divided it into two union territories amply shows that India has no intention to return to the negotiation table with Pakistan for peaceful resolution of the Kashmir dispute. India thinks it has craftily solved the Kashmir issue, which it never considered a dispute and always refused to discuss it with Pakistan in the past. India has brazenly flouted its own international commitments with no regard whatsoever for the rights and sentiments of the people of Kashmir whose future it has utterly distorted.

Colonies for Retired Indian Soldiers in IIOJ&K

The Indian government is following the Israeli strategy to suppress the voices of the Kashmiri people by violating the international law. Shimon Peres, the then Foreign Minister of Israel, during his visit to India in 1993, advised the Indian government to “not be afraid or hesitate to populate Kashmir with people from all over India. Only a demographic change in Kashmir can help India to claim it”.¹⁷ The Indian government is planning to settle retired Indian soldiers in “Sainik colonies”; one such colony is already operational in Jammu. Thousands of Indian soldiers and their families will settle down in occupied Kashmir thus adding to the percentage of Hindu families with Kashmiri domicile. This will eventually turn Kashmiris into a minority in their own land.

Kashmiriat

India is in the process of destroying the identity of the Kashmiri people through biased policies, laws and regulations. The soldier’s colonies, the plan to settle back the Hindu Pundits and now the new domicile laws are all links of the same chain whereby India is stripping the people of Kashmir of their “Kashmiriat”. The Kashmiri identity, Kashmiriat, is a support system for the people and has remained for centuries, even under the Dogra and the Sikh Maharaja rules. India which professes to be a secular state has now converted the issue of the state of Jammu and Kashmir into a religious and sectarian issue. Peace has remained an elusive dream thus far for the people of Kashmir.

Indian Barbarianism in Kashmir

The scrapping of articles 370 and 35A by India on 05 August 2019 was not only the most radical political move in seventy years’ history of the

Kashmir conflict but also came at an unprecedented humanitarian cost to the people of Kashmir. After the abrogation of the articles, the Kashmir dispute has been further complicated. India tempered with the articles on the argument that it had hindered integration of the state to India. However, the state of Jammu and Kashmir was never to integrate with India without a due process of a plebiscite. India's action was met with extreme disappointment, unhappiness, and resentment not only in occupied Kashmir, but also in Azad Jammu and Kashmir and within Pakistan. The revocation of Article 370 and 35 (A) has been rendered illegal and unconstitutional even by legal experts in India itself.¹⁸

The new domicile law introduced by the Modi government in Illegally Indian occupied Kashmir exhibits Indian motives of changing the demographic structure of IIOJ&K. The J&K Reorganization Order was enforced with an immediate effect on 01 April 2020, under the mandate provided by Section 96 of the J&K Reorganization Act, 2019. The 2019 Act provided citizenship to the local people whereas the new law grants domicile to a wide range of Indians (under Clause 3A).¹⁹ It disempowers the state legislature of occupied J&K from ascertaining 'permanent residents' and their right to employment, as was provided under Article 35-A of the Indian Constitution. As indicated by the notice, any individual who has lived in J&K for a long time or has studied in the state for a long time and showed up either in Class 10 or Class 12 evaluation, will be qualified for residence approvals. Furthermore, clause 5A allowed the right of employment into gazetted and non-gazetted class IV jobs to J&K domiciles.²⁰

Pakistan's New Political Map

Pakistan has released a fresh official map of the country on 04 August, a day before the completion of a year of India's unilateral decision to revoke occupied Kashmir's semi-autonomous status. The Prime Minister Imran Khan announced the new "official map" after being approved by the federal cabinet. The map clearly identifies the entire State of Jammu and Kashmir including Azad Kashmir and IoK as the "disputed territory" and also states that the final decision will be taken as per the UNSC resolutions. The newly released map also reinforces Pakistan's claim on Junagadh and Manavadar. The map clearly rejects the illegal steps taken by India on 05 August last year.²¹

Foreign Minister Shah Mahmood Qureshi explained the changes made in the new map which includes Gilgit-Baltistan as well as Azad Jammu and Kashmir:

- The map reflects the will and aspirations of the people of Pakistan.
- It delineates over the depiction of the erstwhile FATA as a part of the Khyber Pakhtunkhwa Province.
- Pakistan has made clear, time and again, that it rejected India's tactics.
- The resolution to the Kashmir dispute, as printed on the newly released map, shall only stem from the United Nations Security Council Resolution of 1948.²²

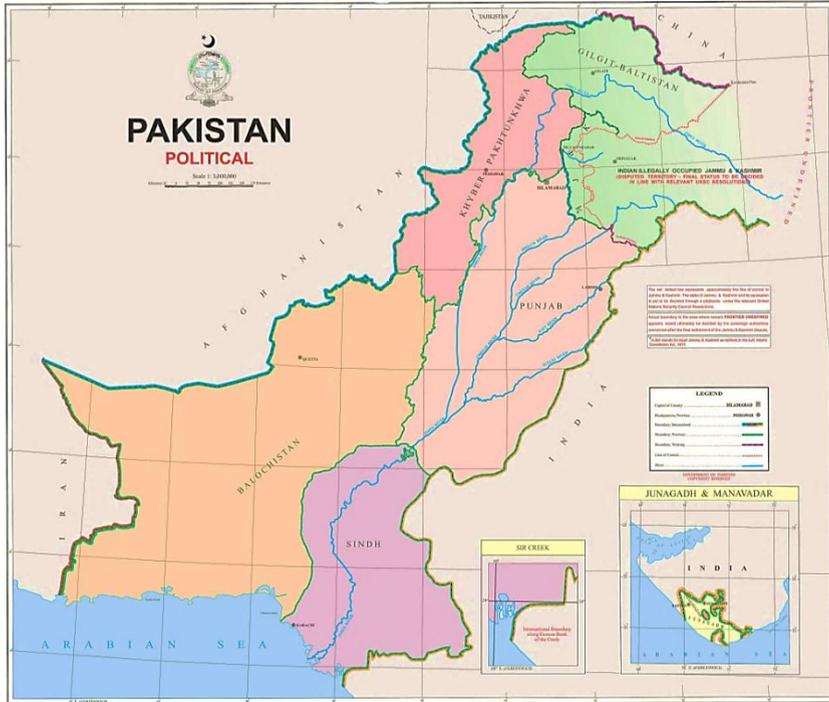
Foreign Minister Shah Mahmood Qureshi reaffirmed Siachin as Pakistan's territory and denounced Indian claims to have captured several acres of land that constitute Pakistan's exclusive economic zone. He re-asserted Pakistan's stand for pursuing political rather than military means for the resolution of Kashmir dispute.²³

India's Construction of "Ram Mandir"

On the Indian side, on 05 August, Prime Minister Modi placed a foundation stone for a Hindu temple in Ayodhya on the site of the historic Babri *Masjid*. Hindu mobs had demolished the Masjid in 1992, claiming it was built on the ruins of a temple for Lord Ram. Hindus and Muslims of India claimed ownership over the site for decades. In 2019, the Indian Supreme Court ruling decided to give the site to Hindus to construct a Ram Mandir, ending a decades-long legal battle. The dispute, which goes back more than a century, has been one of India's most controversial court cases. The Supreme Court gave Muslims an alternative plot of land in the city to construct a mosque. The timing for initiation of construction of the temple depicts lack of India's willingness to recognize its maltreatment and blatant discrimination against its Muslim minority. It is also symbolic of India's antagonistic attitude against Pakistan as it chose the first anniversary of re-annexation of occupied Kashmir to hold the ceremony with much pomp for the Ram

Mandir which reflects India's indifference for the religious sentiments of the Muslims in its own country.²⁴

Figure - 1



Source: <https://www.dawn.com/news/1572590>.

Demographic Shift in Kashmir

From the past seven decades, the people of Kashmir have been valiantly struggling for their freedom from the Indian oppression. The pellets and bullets once used for hunting animals have now become the fate of the helpless Kashmiris. India is involved in a brutal movement against innocent Kashmiris to restrain their legitimate right to self-determination. Article 1 of the United Nations Charter protects the right to self-determination as a fundamental principle of International Law. The right to self-determination is also an overarching principle of the

International Covenant on Civil and Political Rights (ICCPR), to which India is a signatory. Until now, the UN Security Council has passed 18 resolutions, directly or indirectly related to the Kashmir dispute.²⁵ The Indian Government has used draconian laws in the Indian occupied Kashmir to suppress the struggle of those who have been facing brutalities, killings, force detentions, rapes and humiliations every day. The International community and human rights institutions have failed to persuade India not to commit human rights violations against the people of Kashmir. India is manipulating the demography of occupied Kashmir to tilt any future referendum in its favour by creating conditions that would reduce the majority of the people of Kashmir into a minority or just at the margins so as to invalidate their collective voice. As per the census, the population of Muslims in occupied Kashmir has been changing since 1951.²⁶ India has been chipping away at the legitimate rights of the Kashmiri people through illegal and unconstitutional measures including killing and torturing Muslim population, leasing land to non-state subjects, abrogating Kashmir's special status and now changing the Kashmir's demographic character by settling non-Kashmiris in occupied Kashmir under the new domicile law and Reorganisation Order 2020. The strategy of the Indian government to change the demography has impacted the current socio-cultural environment within the occupied Kashmir. The resettlement of Pundits families would result in severe religious tensions. The multi-ethnic society of Kashmir is thus being turned into a mono-ethnic, religious and extremist society. In short, the BJP government is trying to Indianize Jammu and Kashmir.

The new domicile law will create a Palestine like situation in the South Asian region. This is not acceptable to the people of Kashmir or to Pakistan and should not be acceptable to the UN and the International community. The world is, however, turning more and more inwards as has been evident during the Coronavirus pandemic when each country fended for itself even within regional groupings considered to be more cohesive.

Since 1947, all Indian governments have failed under the illusion that Jammu and Kashmir is an integral part of India. They have somehow imprinted this illusion in the minds of the Hindu population living in

occupied Jammu and Kashmir, but the Muslims of Kashmir do not consider themselves as Indians. Their struggle to gain self-determination and accede to Pakistan has gone through many phases during the past 7 decades; they have remained determined in their quest for freedom and have suffered grievous wounds at the hands of the ruthless Indian forces but have vowed to never give up till their dream for freedom becomes a reality. The suppression of their rights by India has turned the valley into a warzone. The impact of this change would not only hinder the plebiscite process but it would also be a threat to their identity, Kashmiriat.

In the last one year there has been a war of narrative between Pakistan and India. The Indian action in occupied Kashmir last year had shocked the people of Kashmir and Pakistan. This is for the first time that Pakistan has labelled the entire State of Jammu and Kashmir as disputed territory. Pakistan's political map extends the border of the State of Jammu and Kashmir up to the Indian state of Himachal Pradesh as international border. This makes the Line of Control not just a military demarcation line but also a quasi-political dividing line. Pakistan has also clearly separated AJK from Gilgit - Baltistan. These changes bring the map closer to the political ground reality. The old map showed the ground situation as it existed in 1947, with a modification to reflect the Pakistan-China border agreement of 1963. The new map reflects the position as it is at present. Pakistan had so far refrained from showing the LoC in its political map in order not to compromise its stand under the UNSC resolutions. By making an appropriate reference to these resolutions, Pakistan has safeguarded that position. Various analysts speculate that the new map delegitimizes Pakistan's claim and undermines the right of self-determination which is to be exercised by the Kashmiris themselves. There is confusion as to whether the new map is a diplomatic/political gimmick or manifestation of a well-thought out strategy.

The alternate view says that the government of Pakistan has taken a right step. Hassan Aslam Shah, an International law expert has described this as a master cartographic stroke by Pakistan. The new political map also shows the disputed border between China and India in Ladakh as "Frontier Undefined" thus making evident that China is effectively also

party to the Kashmir dispute. Moreover, Pakistan's map is in conformity with the UN Security Council resolutions while India has been in complete defiance of the UNSC resolutions.²⁷ In view of the indifference shown by the international community to the plight of the people of Indian occupied Kashmir, a strong response was needed by Pakistan as a legitimate stakeholder in the resolution of the Kashmir dispute. PM Imran Khan, while launching the new political map reiterated that the Kashmir issue could be resolved only through implementation of the UNSC resolutions.²⁸ Adopting the new map was a necessary and an overdue step. The updated map depicts ground realities while preserving Pakistan's legal position embedded in UNSC resolutions.²⁹ The portrayal of the disputed territory in the new map reinforces its disputed status. It can be seen as an emphatic political statement by Pakistan.

To keep the emphasis on the resolution of the Kashmir dispute and dissuade India from pursuing its designs in occupied Kashmir, Pakistan would have to plan and mount a renewed campaign at the international level. By not engaging in any dialogues with Pakistan, Prime Minister Modi has adopted a visibly hostile and aggressive posture towards Kashmir and Pakistan. The Indian leadership statements about rethinking India's no first use of nuclear weapons policy and iterating claims on Azad Kashmir and the Chinese controlled Aksai Chin are a direct threat to regional peace and security. Tensions are running high on the de-facto border i.e. Line of Control (LoC), with an escalation in small firearm exchanges from both sides. The situation is visibly reverting to early 1950s as the status quo that has prevailed over the years due to strenuous efforts of international community and bilateral negotiations is on the brink of a breakdown.

Steps towards Peace

Interstate conflicts in South Asia have their own dynamism. The absence of mediators to end Pakistan-India issues seriously impedes any conflict resolution process. At present there is complete breakdown of communication between the two countries. This has the potential to lead to active hostilities on one pretext or another. India is looking to mount a false flag operation at any time. It is, therefore, extremely important to open channels of communication to avoid getting sucked into a hostile situation.

United Nations Military Observer Group in India and Pakistan (UNMOGIP) has somehow been successful in maintaining negative peace between Pakistan and India, but this does not end the work of the Mission. The UNMOGIP should help put an end to the killings of civilians at the LOC as well as in the valley. The mission can achieve this by encouraging both Pakistan and India to engage in dialogues and capacity building programs. Moreover, by persuading both countries to hold maximum peace building activities in IIOJ&K while providing humanitarian assistance to the people inside the occupied territory can help change the nature of the dispute to a considerably malleable form.

It is imperative to understand that Kashmir issue deserves a fresh and comprehensive perspective in the context of changing domestic and global realities. It will require synergized employment of all the elements of national power and proactive involvement of all relevant stakeholders and institutions on diplomatic, political and legal front. India has shut the door for dialogue with Pakistan. To expect that the Sino-India conflict may create an opportunity for the desired resolution of Kashmir is a distant possibility. While the situation continues to simmer, Pakistan should continue to raise the issue of the Kashmir dispute at the international level as much as possible hoping that one day the Modi government will fall giving way to a more reasonable dispensation in India which is sensitive to Kashmiri aspirations and sacrifices.

In addition, Pakistan should mount a well thought out campaign at the regional and international level to highlight the worsening humanitarian crisis in IIOJ&K and urge international humanitarian organizations to help Kashmiris being victimized by the Indian occupational forces. The case of IIOJ&K must be taken to both the International Court of Justice and the International Criminal Court for crimes against humanity being committed by India.

India has long accused Pakistan of providing arms and military training to the alleged insurgency in Jammu and Kashmir. India should allow journalists and international organizations into occupied Jammu and Kashmir, so they can assess the actual situation for themselves. The issue of sexual harassment and half widows in occupied Kashmir reveals the real picture of fascists Modi government. These are serious international crimes which violate the Geneva Convention of 1949 regarding non-

combatants and civilians. Kashmiri women and young girls have repeatedly expressed fears about sexual harassment, as the border security and Indian army soldiers raid homes at night time, take the men to nearby fields or parks and harass the females at homes, as has been reported by JKCCS (Jammu and Kashmir Coalition of Civil Society)³⁰. Absolute authority to the security forces and lack of accountability for the committed abuses has further worsened the situation. India has used all the means to suppress the Kashmiri movement and to shatter the spirit of Kashmiri people.

In parallel to persistent efforts at national and international level, Pakistan must also continue to strengthen the morale of the people of IIOJ&K by meaningful engagement with the world community on bringing an end to the human suffering of the people of Kashmir. UN agencies should be encouraged for involvement in the resolution of the crisis of Jammu and Kashmir. Pakistan should work with its friends to get a UNSC emergency session held on Kashmir. The defiance and revolt by the People of Kashmir can, however, provide Pakistan with a reason to opt for a military option. Of course, this option carries grave risks, even existential danger to Pakistan, but it cannot be ruled out in the face of India's unwillingness and obstinacy against negotiations, or third-party mediation and the deafening international silence.

Conclusion

India has always denied the legitimate basic rights of Kashmiri people and neglected the just and legitimate demand for self-determination. India does not permit the International humanitarian organizations to visit occupied Jammu and Kashmir to investigate the human rights violations in IIOJ&K. The Kashmir dispute has been regarded as a nuclear flash point between Pakistan and India, and with the RSS driven Hindutva policy, it is important to realize that any miscalculation and false propaganda can lead to a catastrophe. It is clear that the Kashmir dispute cannot be resolved through military means given the danger of a nuclear overhang. Peaceful means are the only way for a lasting resolution of the Kashmir dispute. It is also clear that India will not enter into dialogue with Pakistan on Kashmir. Rather India thinks it has successfully resolved the Kashmir issue by dividing the territory into three parts. For India, the people of Kashmir have little value. It is the

territory and its strategic location that holds importance for India, regardless of which political party is in power.

The United Nations, whose basic purpose is to ensure and maintain global peace, will have to take active interest once again in the peaceful resolution of the long festering dispute. Pakistan will have to work twice as hard to get the attention of the International community to the importance of a peaceful resolution of the Kashmir dispute and to stop India from taking unilateral and illegal steps to merge occupied Kashmir into India which is utterly in violation of the International law.

References

- ¹ "India Strips Disputed Kashmir of Special Status." BBC News. Last modified August 5, 2019. <https://www.bbc.com/news/world-asia-india-49231619>. 9
- ² "India Revokes Kashmir's Special Status." Breaking News, World News and Video from Al Jazeera. Last modified September 4, 2019. <https://www.aljazeera.com/news/2019/09/04/india-revokes-kashmir-special-status/>.
- ³ Rahman, Mushtaqur. *Divided Kashmir: Old Problems, New Opportunities for India, Pakistan, and the Kashmiri People*. Boulder: Lynne Rienner Pub, 1996.
- ⁴ Benny, Guido. "The Genesis of Kashmir Dispute." *Asian Social Science* 9, no. 11 (September 2013), 155-165. https://www.researchgate.net/publication/259497168_The_Genesis_of_Kashmir_Dispute.
- ⁵ Halder, Tamoghna. "Kashmir's Struggle Did Not Start in 1947 and Will Not End Today." Breaking News, World News and Video from Al Jazeera. Last modified August 15, 2019.
- ⁶ A. G. Noorani, *The Kashmir Dispute 1947-2012* (Oxford, New York: Oxford University Press, 2014).
- ⁷ Ibid.
- ⁸ Christopher Snedden, *Kashmir-The Untold Story* (HarperCollins Publishers India, 2013).
- ⁹ "Extracts from Nehru's Broadcast on 2 November, 1947." Mount Holyoke College. <https://www.mtholyoke.edu/acad/intrel/nehru.htm>.
- ¹⁰ Ipsita Chakravarty, "The Modi Years: What Happened to Kashmir in the Last Five Years?," <https://scroll.in/article/904790/the-modi-years-what-happened-to-kashmir-in-the-last-five-years>.
- ¹¹ "Wounds That Never Heal: What Torture in Kashmir Says about India," *Wounds That Never Heal: What Torture in Kashmir Says about India*, <https://www.trtworld.com/opinion/wounds-that-never-heal-what-torture-in-kashmir-says-about-india-26904>.
- ¹² Ibid.
- ¹³ "Indian Atrocities in Occupied Jammu & Kashmir," Embassy of Pakistan, Washington D.C, accessed June 8, 2019, <http://embassyofpakistanusa.org/wp-content/uploads/2018/12/Indian-Atrocities-in-Occupied-Jammu-Kashmir.pdf>.
- ¹⁴ Ibid.
- ¹⁵ "India: Global Standards on Police Use of Force Violated in Kashmir," Amnesty International Australia, last modified September 25, 2017, <https://www.amnesty.org.au/india-police-violence-kashmir/>.
- ¹⁶ Ibid.
- ¹⁷ Shaikh Tajammul-ul-Islam, "Demographic Changes in Kashmir", *Crescent International*, 1st May, 2017.
- ¹⁸ "India Cautioned Not to Change Status of Occupied Kashmir." *Dawn.com*. Last modified May 24, 2019. <https://www.dawn.com/news/1484223>.
- ¹⁹ Ibid.
- ²⁰ <https://theprint.in/india/modi-govt-redefines-jk-domicile-rule-extends-it-to-those-who-have-lived-in-ut-for-15-yrs/392596/>

-
- ²¹ Dawn com | Naveed Siddiqui, "In Landmark Move, PM Imran Unveils 'new Political Map' of Pakistan," Dawn.com, August 4, 2020, <https://www.dawn.com/news/1572590>.
- ²² Ibid.
- ²³ The Newspaper's Staff Reporter, "Pakistan Affirms Claim to IHK with New Map," Dawn.com, August 5, 2020, <https://www.dawn.com/news/1572694>.
- ²⁴ "Construction of Ram Mandir Begins in Ayodhya, Says Temple Trust." ThePrint. Last modified August 20, 2020. <https://theprint.in/india/construction-of-ram-mandir-begins-in-ayodhya-says-temple-trust/485859/>. <https://theprint.in/india/construction-of-ram-mandir-begins-in-ayodhya-says-temple-trust/485859/>.
- ²⁵ "Indian Atrocities in Occupied Jammu & Kashmir," Embassy of Pakistan, Washington D.C, <http://embassyofpakistanusa.org/wp-content/uploads/2018/12/Indian-Atrocities-in-Occupied-Jammu-Kashmir.pdf>.
- ²⁶ Ibid.
- ²⁷ Hassan Aslam Shad, "Pakistan's New Political Map: A Master Stroke?," Global Village Space, August 9, 2020, <https://www.globalvillagespace.com/pakistans-new-political-map-a-master-stroke/>.
- ²⁸ Malik Muhammad Ashraf, "The New Political Map of Pakistan," The Nation, August 7, 2020, <https://nation.com.pk/07-Aug-2020/the-new-political-map-of-pakistan>.
- ²⁹ Ibid.
- ³⁰ "JKCCS Paints a Grim Picture of Human Rights Situation in IOK." Kashmir Media Service. Last modified December 31, 2019. <https://kmsnews.org/news/2019/12/31/jkccs-paints-a-grim-picture-of-human-rights-situation-in-iok/>

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Kashmir Issue and Pak-Indian Press: Content Analysis of Leading Newspapers

Saqib Riaz, Babar Hussain Shah & Shakil Ahmad

Abstract

Kashmir issue has been a major conflict between Pakistan and India for the last seven decades. It has been taken up by Media groups in both countries with their respective portrayals and defined frameworks. Out of these media sources, print media have played a major role in building a narrative and adding to public perception-making. This study explored the portrayal of Kashmir issue by the print media in Pakistan and India. The study examined the dominant frames for the Kashmir conflict, used by the leading Pakistani and Indian press– Dawn, The News, The Hindu and The Tribune– in their coverage during the year 2013 and 2018. Also, the study created an understanding of the patterns according to which the aforementioned press groups gave coverage to Kashmir issue, enhancing their respective stances on the issue. The study found that the Pakistani print media gave more coverage to the issue, used favorable frames for Kashmir issue and freedom movement, and neutral frames for freedom fighters, whereas, negative or unfavorable frames for all three subjects were used in Indian print media. Pakistani media highlighted the complex situation of the Kashmir issue – the reasons for the conflict and the will of Kashmiri people regarding the settlement of dispute between India and Pakistan. Within the selected time, the study found that the Pakistani media legitimized the freedom movement and framed it as ‘Kashmiri Freedom struggle’, ‘Kashmiri Freedom Movement’, and ‘Jihad’, whereas, in Indian print Media, Kashmiri freedom fighters were depicted as armed groups of militants fighting for secession of Kashmir from India.

Keywords: Kashmir Issue, Plebiscite, Print Media, Content Analysis, Public Opinion.

In today’s global world, media has vital role in reporting the conflict of every nature and intensity. The public is often left with little or no

choice but to rely on its accounts which may prove fatally misleading because the public has limited knowledge about the conflicts that are unfolding through media and press. Having said that, world is increasingly dominated by media, moving the world away from acceptance of objective reality to agenda-driven truth. Ideally, media's role is to provide a conflict coverage which could attract serious concern from the international community. Reporting the conflict objectively as humanly possible may appear challenging in the context of ongoing conflict because of political or other influences that frames the rhetoric of the message and people may not feel obliged to question these constructed messages which not only generate but nurtures the logic of violence and war. Moreover, power of the media's coverage may prove stronger than the will of people and government, consequently, making the media and press as an actor which might complicate the attempts to resolve the conflict. This aspect also has generated considerable debates that should media stay detached from the horrific events unfolding or should it take up the stance and attach to the cause – even that of peace. The problem with practice of peace journalism within media is that it may involve in taking sides of the conflict, and the media becomes partial actor in conflict, consequently, its behavior has an effect on the way the conflict develops. Therefore, it is important to create queries on media's role in constituting the public sphere of the society – how that can be nurtured in such a way as to allow non-violent resolution of conflict. A conflict coverage that is destructive, leading to no effective resolution and doesn't allow any query about what conditions does news media on conflict coverage lead to destructive outcomes, is an implication of failure to facilitate the process of conflict management. Such aspect is present in various media coverage of conflicts in the contemporary world that are intractable and protracted in nature. And amongst all, it can be found in South Asia's decades old 'Kashmir conflict' which originated with the exit of British from subcontinent in 1947. The conflict of Kashmir simmers between two neighbors, India and Pakistan, both the countries have fought wars where the Kashmir issue has been igniting factor and thus, keeping both the states in a constant state of enmity.

South Asian media and press on Kashmir conflict is based on different agenda settings that are void of objective representation of conflict thus inviting for political narratives. Indians and Pakistanis tend to structure

their pattern of thinking about each other through the narrative endorsed by media and press. Most importantly, media reports of both countries on Kashmir conflict significantly shape the perception of common people in both countries by providing the coverage from different angles. Pakistani media, with the help of local press and media of Kashmir, presents killings and sufferings of Kashmiri people such as human rights abuses, casualties and migrations within and beyond the valley. Most importantly, Pakistani media precisely calls the attention of international community. Whereas, Indian media reports and narrates the situation with partial approach, consequently, true picture of Kashmir is largely untold thus creating the ideological divide between Kashmir and India. Such practices in conflict coverage have contributed to the growing sense of alienation among Kashmiris. Instead of questioning militarization, extremism and pro-freedom sentiments, Indian national media covers Kashmir issue purely as security issue, by following government's security-centric line that Kashmir is an integral part of India; the unrest is caused by so-called Pakistani sponsored militants. All in all, the biases and prejudices in Indian media and press are the root cause of being the biggest escalator in Kashmir conflict.

It is also pertinent to note here that Kashmir conflict and other issues are not only dealt through diplomatic talks, but also contested by communicating in a particular manner to strengthen the respective stance. Mass media significantly affects the public opinion as well as the patterns of thinking with the help of dominant frames which covers the ongoing conflicts and events. Theories of agenda setting and framing, embody these effects of mass media.¹ The theory of framing applies to different stages of the mass communication process.² Keeping in view the past research in communication studies, it can be inferred that media may set the public agenda about certain issues, by influencing public opinion.³ Since media communicates specific information in its frame, the perception of the audience is developed accordingly. Likewise, the readers develop their perception about Kashmir in the light of media frames through which they have been communicated. Frames are of vital importance in shaping public opinion in desired direction.

Framing of Kashmir Issue

Framing by media has a pivotal role in changing the minds of people. Ray Durga has conducted research on *Frames in the US print media coverage of the Kashmir conflict*. The study conducted by him focuses on coverage of the issue by the US media. The study concludes that all the dominant frames in the study elaborate the conflict in terms of war; which might provoke potentially nuclear war. The study reveals that Indians, Pakistanis and Kashmiris are mostly characterized with their religious identities – Indians as Hindus, and Pakistanis and Kashmiris as Muslims, which is a potential source of identity politics and the resulting crisis.⁴

The case of Kashmir has been poorly presented by Indian Media, which in other terms, is the distortion of realities to preserve their national interests. Hackett is of the view that the State exerts a field force over media representations of public affairs.⁵ This statement by Hackett is true and it supports the research, which implies Indian media has supported the narrative of Indian State.

This study has attempted to identify and analyze the terms that have been used by the Pakistani and Indian print media to describe the conflict and subsequently the frames and slants used for the actors involved in Kashmir issue.

Keeping in view the current situation of Kashmir issue, bilateral peace talks, back-door diplomacy, the importance of the media in highlighting Kashmir issue and also formulating public opinion on the said issue, the present study is designed to explore the extent to which Pakistani and Indian print media have been framing and highlighting Kashmir issue. In modern sense of Political diplomacy, the issues are contested through a propagation of particular narrative - the information warfare. In this context, it is the need of the hour to identify how Indian and Pakistani press groups present the case of Kashmir with all its originality, with the intentions to bring a peaceful resolution. How does the genuine Humanitarian crisis in Kashmir get coverage from Pakistani and Indian Print Media and what differences lie if comparative analysis of the said Press groups is considered?

By analyzing the content usage of Kashmir conflict in the print media of both the countries, and the study of frames over a period of two different years, this study helps in promoting a deeper understanding of how the Kashmir problem is portrayed in the English press. The study also unveils the journalistic approaches in which Print Media of these two countries cover Kashmir issue and identify their seriousness about the cause. The functional hypothesis of the study is that Pakistani print media gives more coverage to Kashmir issue, as compared to Indian media, and portrays Kashmir issue with a sense of positivity, for a just and lasting resolution of the Kashmir issue.

Since this study elaborates the positive and negative frames given by the newspapers of the study to the struggle of the people of Kashmir, therefore, it is important to operationally define the terms of positive and negative frames. In this study '*positive*' frame refers to news stories and other media content giving a positive image of the freedom struggle and the people of Kashmir, who have continuously faced the Indian atrocities. All news stories, features, columns and editorials published in favor of Kashmiri people and their struggle were considered as *positive frame*. The statements of the leaders of Kashmir movement, including Syed Ali Gillani, Mir Waiz Umar Farroq, Yasin Malik etc. were included in this category. On the other hand, all of the news stories showing a *negative image* of the people of Indian held Kashmir were included in the *negative frames*, including the news calling freedom fighters as militants or terrorists (Atankwad etc). The statements of the Indian government officials against the people of Kashmir and their struggle for independence were included in this category. The rationale for categorization of this positive and negative frames is substantiated by numerous UNSC resolutions, which recognize the right of the people of Kashmir to free and fair plebiscite, in order to determine their future and, thereby, the legitimacy of freedom struggle by the people of Kashmir.

Kashmir Issue in the Press of Indian Held Kashmir (IHK)

There are draconian laws in Indian Held Kashmir (IHK), which forbid press to portray actual picture of Indian atrocities in Kashmir. These laws are:

- Jammu and Kashmir Public Safety Act of 1987

- Jammu and Kashmir Distributed Areas Act of 1990
- Armed Forces Special Powers Act of 1990
- Terrorist and Disruptive Activities Act of 1990
- Prevention of Terrorism Act of 2002

A cursory contextual analysis (one month analysis, December 2013) of three leading newspapers of Occupied Kashmir, namely Greater Kashmir, Rising Kashmir and Kashmir Times reveals that Kashmiri press overall is unable to portray actual situation in Kashmir. It is revealed that the aforementioned newspapers have published only the reports and official statements of political leaders. It is also found that a significant number of official news stories originated from official sources in the newspapers are there, but critical analyses are scarce. Table 1 below elaborates the situation. There seldom appears a news story showing atrocities of the Indian army in Kashmir.

Table 1: Reporting of Kashmir Issue in Occupied Kashmir

Newspapers	Official News Reports	In-depth Analyses	Total
Greater Kashmir	15 (88%)	2 (12%)	17
Rising Kashmir	10 (72%)	4 (28%)	14
Kashmir Times	25 (96%)	1 (4%)	26

Theoretical Framework

Mass communication scholars emphasize that the field of mass media research passed through a series of paradigms in the 20th Century.⁶ Lazarsfeld and his colleagues in Columbia University’s Bureau of Applied Social Research in *The People’s Choice* and subsequent studies put forth hypodermic needle and magic-bullet models of 1920 and 1930. The Hypodermic model suggested that an intended message within the media frame is received directly and accepted completely, as it is presented. Although media effects were earlier considered simple, later it was found that those effects were much more complex in nature than

previously assumed and depended heavily on people's homogenous networks, which reinforced existing attitudes rather than changing them.⁷

The year 1970 marked the second major paradigm shift in research on political communication, when Noelle-Neumann's⁸ proclamation about the return of powerful mass media, coincided with George Gerbner's development of the theory of cultivation.⁹ Neumann's theory emphasized that the effect of powerful mass media is huge, since *consonance* works, by which he meant that if all media portray a particular case with various similarities, the information is perceived according to that pattern, resultantly, making public perception. Theory of Cultivation emphasizes the long term effects of being exposed to the media sources, which ultimately alienates one from realities and instead the media messages are perceived as real. Ironically, the two researchers had diametrically opposed political agendas, but came to similar conclusions.¹⁰

Agenda setting strongly correlates the emphasis that mass media place on certain issues (e.g. based on relative placement or amount of coverage) and the way in which the mass audiences attribute importance to same issues. Priming, in this regard, is a term that refers to "change in the standards that people use to make political evaluations." The concept of framing is based on the assumption that how an issue is portrayed in media reports and can have an influence on audience, by the way they understand the issue.¹¹This research also focuses on frames regarding Kashmir issue in the context of framing theory. Frames will elaborate how Indian and Pakistani media covered Kashmir issue. Frames will be constructed in the light of literature cited and contextual analysis of the newspapers' contents.

Research Questions

The study was conducted to investigate the following research questions:-

1. How and to what extent the Kashmir issue is portrayed in the print media of Pakistan and India?

2. What are the dominant frames in the coverage of Kashmir issue in Pakistani Press and Indian Press?

Methodology

‘Content analysis method’ was used to measure the portrayal of Kashmir issue in four newspapers, two from each country, Pakistan and India. The method is popular with mass media researchers because it provides an efficient way to investigate the content of the media, such as the number and types of commercials, the emphasis on a particular subject in the column or news sections and advertisements in broadcasting or in the Print Media.¹²

Since the study aims at exploring frames regarding Kashmir issue in Pakistani and Indian press, contents of the leading English newspapers of Pakistan and India have been compiled and analyzed for the current study. While analyzing content categories, the researchers focused on overall text and context of the news contents, in order to draw inferences about content categories. As op-ed pages play an important role in opinion building, the researchers analyzed only columns and editorials that appeared in these pages.

- a. **Sample Size.** All online editions of selected English newspapers for a specific period have been taken for content analysis. Contents of the editorial page pertaining to one year period i.e. 2013 were retrieved from the archives of these newspapers using the internet. However, to cross check the inferences, the newspapers of 2018 were also analyzed.
- b. **Period of Study.** The period of study was calendar years 2013 and 2018. The study period is significant for following reasons:
 - (i) The five year tenure of Pakistan People’s Party (PPP) government completed in the mid of 2013. Pakistan Muslim League (PML) government started after PPP regime. Period of study having an end and a start of two governments indicates whether or not there is continuance of press policy regarding Kashmir issue. The year 2018 was significant because there was another change in political power in Pakistan. The new

government of Pakistan Tehrik-e-Insaf (PTI) took over the charge by defeating the former government of Muslim League Nawaz (PMLN) in the national elections of 2018. Therefore it was significant to measure the extent and tone of media towards Kashmir issue.

- (2) Nawaz Sharif led government in Pakistan had nuclear tests in 1998 in response to Indian tests by the BJP led government in India. During this period, the two countries came to the brink of war in subsequent months. The period of study is quite significant, for there was again Nawaz led government in Pakistan and BJP in India. The period of Nawaz led government ended in 2018, while the BJP, seemingly, is going through the last days of its rule over India in 2019.
- (3) After 1999 Kargil war, General Musharraf took over the Government in Pakistan. During his nine years era, he promulgated many changes, introduced many new terms, faced extreme international political pressure and reviewed relations with India and other neighboring countries. Musharraf holding his own perspective of Kashmir issue, devised certain formulas for the solution of Kashmir problem. Musharraf policy is no longer in use and there are rival governments in Pakistan and India again.
- (4) PPP government, the successor of Musharraf regime, remained inactive regarding Kashmir issue during their five-year period from 2008 to 2013. But the change of government in 2013 in Pakistan had great impact on the politics of both the countries. Also an extremist political party is ruling in India, with an extreme Hindu fundamentalist agenda in her hands, which has put the stability and peace of the entire region in jeopardy. The year 2018 was important because several significant developments took place in both countries during this year.

- c. **Content Categorization Scheme.** It is necessary to devise a particular strategy and a standard to analyze the contents that we have extracted from the newspaper columns and editorial pages. Before analyzing the contents of all newspapers, the researchers conducted a pilot study regarding content analysis and contents formulation, where context was identified and units were coded. The articles were coded for keywords, expressions, phrases, and other framing devices that have been used to describe each “subject”. After identifying the frames on the basis of the keywords found and coded in the 414 articles under study, the researchers made a list of the frames evident for each subject and then compared the frames. In order to establish the reliability of the coding decisions, a random sample of articles was chosen and coded by the authors. In the pilot study, the total number of articles coded was forty one – ten from *Dawn*, fourteen from *The News*, seven from *The Hindu* and ten from *The Tribune*. The inter-coder reliability among the coders was computed with the help of Holsti’s formula.¹³ After establishing the inter-coder reliability, the authors proceeded to code all the 414 articles with the help of a coding sheet, categorizing the words in the articles according to the “subject” they described. This comprised of following three frames: 1. Friend/ Positive Frames. 2. Foe/ Negative Frames. 3. Neutral/ Impartial frames. A positive frame is one that portrays Kashmir issue as genuine issue and supports freedom movement and right of self-determination of Kashmiris, while negative frame is contrary to this image. The neutral frame means that news neither supports nor refutes Kashmir issue with reference to the people of Kashmir. All these frames were constructed and analyzed through contextual analysis of news contents.
- d. **Rationale for Selection of Newspapers.** The following newspapers have been selected for content analysis of this research:
- (i) **Daily Dawn.** *Dawn* is an influential newspaper of Pakistan with good track record, impartial news and

comments. Dawn not only enjoys large circulation, but also a reputation for being an independent newspaper.

- (ii) **The News.** *The News* is owned by Jang Group, which also owns Daily Jang and Geo News etc. It is published from Karachi, Lahore and Rawalpindi simultaneously. News has clear inclination towards Pakistan – India rapprochement and sponsored the famous TV program ‘Aman Ki Asha’, broadcast both from India and Pakistan.
- (iii) **The Hindu.** *The Hindu* is an English-language Indian daily. It has its largest base of circulation in southern India, and is the most widely read English daily newspaper in Andhra Pradesh, Tamil Nadu, Kerala and Telangana.
- (iv) **The Tribune.** *The Tribune* is an Indian English language daily newspaper, which is published from Chandigarh, New Delhi, Jalandhar, Dehradun and Bathinda. Owing to its popularity and a huge reader-base, the newspaper is taken for the study.

Data Analysis and Interpretations

Coverage of Kashmir Issue

Numbers of columns and editorials published in Pakistani and Indian Newspapers covering Kashmir issue have been tabulated as under:-

a. Pakistani Newspapers

Table 2: Comparison of ‘Dawn’ and ‘The News’ in 2013 & 2018

Newspaper	Columns	Columns	Editorials	Editorials	Total
	2013	2018	2013	2018	
Dawn	80	98	17	18	213
The News	123	110	19	13	265
Total	203	208	36	31	478

According to Table 2, it is clearly understood that proportion of *The News* regarding number of columns and editorials both is higher than *Daily*

Dawn, with the News having 265 column and editorials published and *Dawn* published overall 213 columns and editorials.

b. **Indian Newspapers**

Table 3: Comparison of ‘The Hindu’ and ‘The Tribune’ in 2013 & 2018

Newspaper	Columns 2013	Columns 2018	Editorials 2013	Editorials 2018	Total
The Hindu	63	55	10	16	144
The Tribune	76	74	26	32	208
Total	139	129	36	48	352

Table 3 shows that during the period of study, *The Hindu* and *The Tribune* published 352 columns and editorials that had the portrayal of the Kashmir issue and/or Kashmiri Separatist Movement and/or Kashmiri Freedom Fighters at least once. The Hindu published 63 columns in 2013 and 55 in 2018 and 10 editorials in 2013 and 16 in 2018. *The Tribune* published 76 columns in 2013 and 74 columns in 2018, while 26 editorials in 2013 and 32 in 2018. The above table indicates that the share of *The Tribune* regarding portrayal of Kashmir issue remained higher than that of *The Hindu* as the number of columns and editorials published by *The Tribune* was 208 (58.29 %), as compared to the number of columns and editorials published by *The Hindu* that was 144 (41.71 %) out of 352.

c. **Comparison between Coverages by Pakistani and Indian Newspapers**

Table 4: Comparison of Pakistani and Indian Newspapers

Country	Columns	Editorials	Total
Pakistan	411	67	478
India	268	84	352
Total	679	151	830

Table 4 indicates that the share of Pakistani press regarding portrayal of Kashmir issue remained higher than that of Indian press, which means,

the number of columns and editorials published by Pakistani newspapers was 478, as compared to the number of columns and editorials published by Indian newspapers that was 352. It indicates that *the Pakistani print media give more coverage to Kashmir issue as compared to Indian media.*

Portrayal of Kashmir issue in Terms of Dominant Frames

The succeeding paragraphs bring out how Pakistani and Indian print media have been portraying Kashmir issue. The following key letters / symbols have been used in the tables as mentioned against each:-

N= Number of Content

A = Foe/Negative Frames

B= Friend/Positive Frames

C = Neutral / Impartial Frames

a. Pakistani Newspapers

Table 5: 'Portrayal in Dawn' 2013 & 2018

Newspaper	Nature of Content	N	A	B	C
Dawn	Columns	178	10	138	30
	Editorials	35	01	24	10
	Total	213	11	162	40

Table 5 elaborates that only 10 (03.43%) columns were having frame foe, 138 (66.10%) friend and 30 (30.47%) neutral frames for Kashmir issue were used in *Dawn* columns, whereas, 01 (03.70%) foe, 24 (66.66%) friend and 10 (29.62%) neutral frames were used in *Dawn* editorials.

As a whole, Table-5 shows that *Dawn* used 11 (03.46%) foe, 162 (66.15%) friend and 40 (30.38%) neutral frames for Kashmir issue out of its total 213 frames.

Table 6: 'Portrayal in the News' 2013 & 2018

Newspaper	Nature of Content	N	A	B	C
The News	Columns	233	08	154	71
	Editorials	32	00	21	11
	Total	265	08	175	82

Table 6 shows that 08 foe, 154 friend and 71 neutral frames for Kashmir issue were used in *The News* columns, whereas, 00 foe, 21 friend and 11 neutral frames were used in *The News* editorials. *The News* used 08 (01.11%) foe, 175 (70.38%) friend and 82 (28.51%) neutral frames for Kashmir issue out of its total 265 frames.

b. **Indian Newspapers**

Table 7: 'Portrayal in the Hindu' 2013 & 2018

Newspaper	Nature of Content	N	A	B	C
The Hindu	Columns	118	75	20	23
	Editorials	26	17	05	04
	Total	144	92	25	27

Table 7 elaborates that 75 foe, 20 friend and 23 neutral frames for Kashmir issue were used in *The Hindu* columns, whereas, 17 foe, 05 friend and 04 neutral frames were used in *The Hindu* editorials. The above table further indicates that The Hindu used 92 foe, 25 friend and 27 neutral frames for Kashmir issue out of its total 144 frames. It is clearly evident from the above table that the coverage of The Hindu is more inclined towards negative frames.

Table 8: 'Portrayal in 'The Tribune' 2013 & 2018

Newspaper	Nature of Content	N	A	B	C
The Tribune	Columns	150	117	20	13
	Editorials	58	37	05	16
	Total	208	154	25	29

Table 8 elaborates that 117 foe, 20 friend and 13 neutral frames for Kashmir issue were used in *The Tribune* columns, whereas, 37 foe, 05 friend and 16 neutral frames were used in *The Tribune* editorials. This table further indicates that The Tribune used 154 foe, 25 friend and 29 neutral frames for Kashmir issue out of its total 208 frames. From the

above results, it can be inferred that the coverage of *The Tribune* is inclined towards unfavorable and negative frames for the struggle of Kashmiri people.

c. **Comparative Analysis of Indian and Pakistani Newspapers**

Table 9: Comparison of Pakistani and Indian Press for the Issue

Country	Nature of Content	N	A	B	C
Pakistan	Columns & Editorial	478	19	337	122
India	Columns & Editorial	352	246	50	56
Total		830	265	387	178

Table 9 shows that the Pakistani press used 19 and Indian press used 246 foe frames out of total 265 foe frames for Kashmir issue meaning, thereby, the share of Indian newspapers remained quite higher in foe frames. Table -9 also shows that Pakistani newspapers used 337 and Indian newspapers used 50 out of 387 friend frames meaning, thereby, the share of Pakistani newspapers remained significantly higher in friend frames. This table further elaborates that Pakistani newspapers used 122 and Indian newspapers used 56 out of total 178 neutral frames, meaning thereby, that the share of Pakistani newspapers remained higher in neutral frames too.

Above table also indicates that the overall portrayal of Pakistani newspapers regarding Kashmir issue is inclined towards favorable frames and Indian newspapers towards unfavorable frames. It can be inferred from above analysis that ‘the Pakistani print media cover Kashmir issue in positive frames’.

Overall results of Table-9 clearly indicate that Pakistani press used 78.21% positive frames in the coverage of Kashmir issue, while Indian Press used only 21.79% positive frames in the coverage of Kashmir issue. Hence, hypothesis is accepted that Indian press is portraying Kashmir issue through negative frames, whereas, Pakistani press is portraying it through positive frames.

Table 10: Brief Summary of Findings

Newspaper	Total Articles	Kashmir Issue	Kashmir Separatist Movement	Kashmir Freedom Fighters
Dawn	97	86	36	27
The News	142	137	30	18
Sub Total	239	223	66	45
The Hindu	73	60	23	33
The Tribune	102	90	39	50
Sub Total	175	150	62	83
Total	414	373	128	128

A careful examination of Table-10 reveals that in Dawn out of total 97 articles, 86 portrayed Kashmir Issue, 36 portrayed Kashmiri Separatist Movement and 27 portrayed Kashmiri Freedom Fighters at least once. In The News out of total 142 articles, 137 portrayed Kashmir Issue, 30 portrayed Kashmiri Separatist Movement and 18 portrayed Kashmiri Freedom Fighters at least once. Out of total 239 articles, in these two Pakistani newspapers, 223 portrayed Kashmir Issue, 66 portrayed Kashmiri Separatist Movement and 45 portrayed Kashmiri Freedom Fighters at least once.

This table also shows that in The Hindu out of total 73 articles, 60 portrayed Kashmir Issue, 23 portrayed Kashmiri Separatist Movement and 33 portrayed Kashmiri Freedom Fighters at least once. In The Tribune out of total 102 articles, 90 portrayed Kashmir Issue, 39 portrayed Kashmiri Separatist Movement and 50 portrayed Kashmiri Freedom Fighters at least once. Out of total 175 articles, in these two Indian newspapers, 150 portrayed Kashmir Issue, 62 portrayed Kashmiri Separatist Movement and 83 portrayed Kashmiri Freedom Fighters at least once.

All four newspapers of Pakistan and India had a total number of 414 articles which contained Kashmir related frames. Out of these 414 articles, 373 portrayed Kashmir issue and 128 each portrayed Kashmiri Separatist Movement and Kashmiri Freedom Fighters at least once. The articles in print media from either side might have the portrayal of only one subject, any two subjects or simultaneously all three subjects.

In summary, Pakistani press has portrayed more often the Kashmir issue as Pakistani newspapers published a greater number of news stories, columns and editorials about the issue of Kashmir.

Findings

The study provides a valid data that documents the nature and treatment of Kashmir issue portrayed by the leading newspapers of Pakistan and India. It has been found by the current research study that Pakistani newspapers give more coverage to the issue of Kashmir than the newspapers of India. It appears that because of suppression of speech in IHK, draconian laws and non-accessibility of free media to the people of Indian Held Kashmir, true picture of atrocities being committed in the occupied state are yet hidden from the people of the world at large. Even coverage by Pakistani press is through secondary sources, telephone calls, social media or Western press, due to lack of access to the people of IHK. The most significant finding of the study is that the leading newspapers of Pakistan published most of news stories, columns, editorials and articles with a significantly greater number of positive frames for the struggle of Kashmir movement and the activities and events happening in the Occupied Kashmir. The number of news stories, columns and editorials with negative frames for Kashmir issue was very little or ignorable in the newspapers of Pakistan. On the other side, Indian newspapers published most of the news stories, columns and editorials with negative frames for the Kashmir issue, including the events happening in Indian held Kashmir. The Indian newspapers, most of the times called the movement of Kashmiri people as insurgency and militancy. They also blamed the intelligence agencies of Pakistan for the support of freedom fighters of occupied Kashmir. The data of 2013 and 2018 shows that there is a shift in the paradigm of media coverage between the two years of the study, as it was found that the newspapers published a greater number of news stories and other media content in

2018, as compared to the year 2013, which indicates that Kashmir issue has received tremendous importance during the last few years. The findings also support the idea that the mainstream media follow the official policy line of the respective governments. It has further transpired through this study that Indian media is promoting jingoism and religious hatred in South Asia, whereas, Pakistani media overwhelmingly advocates for peaceful resolution of Kashmir issue.

Conclusion

This study was aimed at investigating how the print media of Pakistan and India portrayed the Kashmir issue. It examined the dominant frames for the Kashmir conflict used by the Pakistani and Indian press– Dawn, The News, The Hindu and The Tribune– in their coverage during the year 2013 and 2018. The study also focused on the frames used for Kashmiri Separatist Movement and Kashmiri Freedom Fighters in Pakistani and Indian newspapers. The coverage in all newspapers indicated that newspapers on both sides was driven by national narratives, rather than objectivity, neutrality and promotion of the causes of justice and freedom in the state of Kashmir. The portrayal of Kashmir issue was vigorously state-led, promoting their respective governments’ official perspective. Pakistani and Indian media have constructed the reality of the Kashmir issue, by making selected attributes of the conflict. The study found that the Pakistani print media gave more coverage to Kashmir issue as compared to Indian media. Pakistani newspapers, but generally used positive frames for Kashmir issue and neutral frames for freedom fighters, whereas, negative or unfavorable frames for all three subjects were used in Indian media. Indian press had causal interpretation of the issue. With overriding negative portrayal of Kashmir issue, the print media in India played rather an unsatisfactory role in the Kashmir conflict. Pakistani media vehemently highlighted the complex reality of the Kashmir issue – the desires of Kashmiri people and the reasons for the dispute between India and Pakistan. It is highly recommended, from ethical journalistic perspectives and for the sake of regional stability that the Kashmir issue must be portrayed with all the grave concerns and positive presentation, so that international peace-building actors may come up with an inclusive effort according to the true image of the depth of these crisis and resolve the issue for greater regional gains. It is also

strongly pleaded that access to journalists from the Western and neutral press should be given by both India and Pakistan, so that true picture of situation in IHK should come to light, which may help UN and humanitarian organizations to provide much needed help to hundreds of thousands of widows, orphans, incapacitated and disabled persons in IHK in particular and on LOC in AJK in general.

References

- ¹ William A. Gamson and Andre Modigliani "Media discourse and public opinion on nuclear power: A constructional approach" *American Journal of Sociology*, Vol. 95, no.4 (1989): 137-177.
- ² Robert M. Entman. Framing toward clarification of a fractured paradigm. *Journal of Communication*, 43 no.4 (1993): 51-58.
- ³ Mc Comb, Maxwell & Shaw, Donald. The agenda setting function of mass media. *Public Opinion Quarterly*, 36 (2), 176-187, 1972.
- ⁴ Ray Durga. *Frames in the U.S. print media coverage of the Kashmir conflict. Graduate Theses* (University of South Florida, 2004).
- ⁵ Robert Hackett. *News and Dissent: the press and the politics of peace in Canada*, (Ablex Publishing Corporation, 1991).
- ⁶ Denis McQuail, Peter Golding and Els De Bens (Eds.). *Communication Theory and Research* (Sage, 2005).
- ⁷ Dietram A. Scheufele and David Tewksbury. "Framing, agenda setting, and priming: The evolution of three media effects models." *Journal of communication*, 57 no.1 (2007): 9-20.
- ⁸ Noelle Neumann. "Return To The Concept Of Powerful Media." *Study In Broadcasting* (1973) 67-112.
- ⁹ George Gerbner, , and Larry Gross. System of cultural indicators. In *Public Opinion Quarterly* Vol. 38, No. 3, (1974): 460-461.
- ¹⁰ Scheufele, Dietram & Tewksbury, David. Framing, agenda setting, and priming: The evolution of three media effects models. *Journal of communication*, 57(1), 9-20, 2007.
- ¹¹ Ibid.
- ¹² Roger D. Wimmer and Joseph R.Dominick. *Mass Media Research: An Introduction* (4th ed.). (California: Wordsworth Publishing Company, 1979).
- ¹³ Ole Holsti. *Content Analysis For The Social Sciences And Humanities*. (Addison-Wesley Publishing Company, 1969).

About Article and Author

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Violence in Kashmir and Applicability of International Law on India

Mr. Baber Ali

Abstract

After World War II, the scope of International law (IL) has been much widened due to different nature of international scene. In this study, an attempt has been made to analyze the applicability of IL on India's ongoing violence in Kashmir. This attempt is incorporating the qualitative analyses of multilevel applicability of IL. Various branches of IL including the International Humanitarian Law and International Human Rights Law are taken with their exclusive status to analyze their applicability. International conventions are also put up in this study to have a comprehensive and multilayered perspective. Moreover, domestic law of India is also incorporated to explore how domestic legislation has violated the international norms. Before the analysis of the provisions of IL and its branches, a brief turbulent history of violence and suppression by Indian forces on Kashmiris is also analyzed with the help of empirical studies.

Keywords: Kashmir, India, Violence, International Law, Comprehensive, Turbulent.

Indian Held Kashmir (IHK) has been referred to and considered as one of the most perilous places in the world. History of this valley is a testimony to actuality that it had been convulsed in violence since the early times after the partition in 1947. Absence of conclusive resolution soared the agitation among people which periodically results in violent clashes with Indian law enforcement agencies. Furthermore, these agitations and consequences of the knock-out and drag-out clashes with Indian military ignited various movements at different times demanding full independence or accession to Pakistan. In order to curb such demands, Indian forces indulged in massive violations of International Law (IL), International Humanitarian Law (IHL) and International

Human Rights Law (IHRL) through ruthless extrajudicial killings, and instances of rape, torture and intentional assaults on Kashmiris and workers of international organizations.

This study is aimed at exploring the width of the scope of IL and its applicability on the on-going violence in IHK. Different dimensions of applicability of IL and analysis of legal provisions are the major segment of this study. Since international law has much broader scope, its several provisions with certain aspects are rightly applicable on the atrocities employed by Indian forces. Moreover, to crush the voices of Kashmiris calling for the right of self-determination, Indian forces boldly use prohibited weapons which automatically invoke IL in described scenario. IHL, a branch of international law, also has wider scope of applicability in its exclusive capability by terming the violent conflict in IHK as non-international armed conflict as it meets the requirements of widely accepted definitions of non-international armed conflict. Thereafter, IHRL also has potential of applicability and can also be widely employed after analyzing the catastrophic nature of Indian forces' crackdown resulting in indiscriminate and widespread killing of Kashmiris including callous shooting on peaceful protests. These crackdowns also include the burning of houses, shops and entire neighborhoods. Massacre of civilians, brutal torture and shooting on unarmed protesters, rape and detainees' extra-judicial summary executions have become the common course in valley which potentially invokes IHRL.

This study aims at finding answers to a number of questions. Therefore, on one hand it has been attempted to explore in this research how domestic law of India has its obligation with respect to international law. Furthermore, following questions have been raised and attempted to be answered:-

- To what extent, India's domestic law is endeavored to be implemented and scope of its applicability also has been analyzed in this study.
- How India is entailed with the certain restrictions because of domestic law in regard of IL, and

- How India is committing structured violations are part of the study, along with the domestic legislation of India with respect to IL and its implementation on IHK violence.

This is a purely analytical effort to overview the situation in Kashmir and applicability of IL. In this research, a slight epistemological attempt is employed by taking the assistance of statistical analysis that how many lives are lost so far by the operations of Indian forces. Law is considered as a prime focus of study for applicability in the valley. Whereas sources of data include International Law key texts, conventions and empirical data from reports of international organizations. International conventions and ratification by India constitute the primary portion of analysis. Intermittent ruthless and blight offensives launched by the Indian law enforcement agencies resulting in the huge destruction of both infrastructure and human lives invokes various provision of international law which desperately seeks applicability.

Brief Sporadic History of violence in Kashmir

From the very beginning, Kashmir has become disputed since inception of Pakistan and India. When the head of the state made temporary accession to India in October 1947 against the will of its Muslim majority people, resistance broke out. Occupation of Kashmir by Indian military flamed the incendiary of resistance leading to violent clashes of people with Indian forces. Hence, wish for peace and stability by Kashmiris was dashed in valley. Pakistan, which had certain interest in Kashmir and the only strategic competitor to India in this occupation, moved its troops in the valley and fought a war. By the intervention of United Nations, Pakistan withdrew its troops and India agreed to conduct free and fair plebiscite having positioned its army in Kashmir. From that day on, India did not hold the plebiscite and the continued presence of its army gave birth to various independence movements such as Jammu and Kashmir Liberation Front and All Jammu and Kashmir Plebiscite Front.

Thereafter, several wars were fought on Kashmir between India and Pakistan. However, elements of resistance against dominance of India remained. Last quarter of 20th century marked the era of full resistance by indigenous Kashmiris demanding the right of self-determination and also course of vigorous suppression by Indian army. Since 1980,

increment of demands for rights of self-determination was heavily marked in the history of Kashmir. Situation was intensively exacerbated on the presumed cognizance by Kashmiris that elections, which were held in 1987, were entirely rigged. The valley exploded with protests and demonstrations and Indian law enforcement agencies bluntly followed the course of atrocities. By employing ruthless tactics including rape, torture, firing on peaceful protests, massive killings, summary executions of detainees, imposition of curfew and extrajudicial killings, India could not curb the resistance completely. Later on, these tactics became the norms of the day in Kashmir.

In 1990, Kashmir again witnessed vicious clashes of its people with Indian forces and the same course of suppression was employed by the forces. In 1992-93, India launched a “catch and kill” campaign which further deteriorated the atmosphere of Kashmir. Various campaigns were launched by the Indian army to crush the resistance and mass protests emerging in form of different waves with different tactics but they all were demanding liberation of Kashmir from India. In each campaign, India followed the same course of ruthless action. According to Kashmir media service, almost 94,923 total killing was marked from the year 1980 to 21 August 2016 excluding the killing of terrorists which were declared by Indian army that may have been suspicious¹. Whereas South Asia Terrorism Portal claimed that total killing marked around 44,033 figure including terrorists². This factor, however, cannot be overlooked that every third civilian killed by security forces was declared as a terrorist. Furthermore, discovery of thousands of unmarked graves in Kashmir reinforced the testimony of common reports of “disappeared and missing persons”. Human Rights Commission of India State confirms the fact that more than 2000 dead bodies were found in unmarked graves³. Activists in the area claimed that they were all those people who had disappeared after being detained by the Indian forces.

In this brief chronology of violence, having its origin of eruption in 1947, mass violations of laws might be observed. No law in the world allows any state to carry out such atrocities in disputed territories. Short history of Kashmir shows that all uprisings by Kashmiris were attempted to be crushed by India forces resulted in hundreds of killings. Rising authoritarianism of India following the path of lawlessness itself lead to

several questions regarding the status of International law. Though international analysts are claiming that freedom movements have become obsolete and normalcy is returning by taking the insights of movement, questions arise demanding answers from practitioners of international law and its governing bodies⁴. This sporadic history of Kashmir filled with violence invokes various laws including IL, IHL and IHRL. Every outburst by Kashmiri people suffered with greater magnitude of barbarous tactics employed by the forces.

International Law and its Applicability on India

International law shall be termed in broader sense. IL does not only define the obligations to be performed by states regarding interstate relation, but also include the treatment of state towards individual within state⁵. Domain of IL is much wider enshrining all the issues of possible international concerns such as refugees, international crimes, migration, disarmament and treatment of prisoners. Certain aspects of IL are taken here to be analyzed for its applicability on India in the perspective of Kashmir. By narrowing down the scope of its practice, its capability of being applicable shall be threaded herein. Despite the disputed status of Kashmir, particular provisions of IL are rightly applicable whether Kashmir will be contested as disputed area or non-disputed area. However, India itself made the *de jure* declaration of “disputed Kashmir” by disobeying the charter VI of United Nations Organization (UNO). Although, Charter VI of UNO does not contain binding obligations, however India agreed on free and fair plebiscite. Applicability of IL, tracing back to 1949, was activated right on the moment when right of self-determination stemmed from an ongoing resistance in Kashmir. That resistance generated various movements such as Jammu and Kashmir Liberation Front (JKLF) demanding the independence or Tehreek-Huriyat, demanding the accession to Pakistan. All movements had a common characteristic that was the anti-status quo and demand of self-determination. Self-determination right is the right of individual or community to freely settle and decide their economic, cultural, political and social status. People were not only denied this right but also that demand was crushed by the use of force on part of India. Whereas, in resolution no. 47 of UN, India conceded to hold the plebiscite so that people of Kashmir could freely decide their fate.

International law clearly states that “individuals should not be arbitrarily deprived of their lives, and homicide should be deterred, prevented and punished.” However, India continued to exercise its arbitrary powers in form of course of atrocities and violating the IL.

Thereafter, by denying the entry of United Nations Military Observer Groups in India and Pakistan (UNMOGIP), India made an implicit negation of mandate of UN. Applicability of IL again arose with the noteworthy magnitude. India claimed that after Simla agreement of 1971, UNMOGIP has no legitimate value. However, Secretary General of UN “U Thant” diminished the ambiguity by clearing that UNMOGIP can only be terminated by decision of UN Security Council. A fact must be reminded that the UNO is a primary body which is developing international law. The counter-insurgency operations carried on by 57th battalion of Indian army include the genocide of Kashmiris in multiple forms including killing of group members and causing serious physical and mental damages to other group members. Discovery of unmarked graves of unidentified bodies implied genocide. The Resolution which was adopted by the General Assembly “Prevention and Punishment of the Crime of Genocide” in 1949 promulgated provisions on the prohibition of genocide. In Article II and III, genocide includes“

- *Killing members of the group*
- *Causing serious bodily or mental harm to members of the group;*
- *Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part*
- *Imposing measures intended to prevent births within the group*
- *Forcibly transferring children of the group to another group”.*⁶

All the above-mentioned practices by India forces in Kashmir have become the norm. Whereas India signed and ratified the genocide convention on November 29, 1949, deposited on 27 August 1959 and this convention is binding. These practices automatically invoke the applicability of IL. Furthermore, in article IV of genocide convention, all the persons committing genocide or any act mentioned in article III shall be punished including constitutionally responsible rulers, public officials

or private individuals. No responsible ruler or public official has been punished so far by authorities of India neither are pushed to do so by international community. Despite having a much broader scope, certain aspects and provision are rightly there to be analyzed by going through the “narrow down” process. On these basis, violence in Kashmir sought several questions on applicability of IL exclusively on the part of India as describe above.

Domestic law of India in the context of international Law

There are two theories regarding the implementation of IL on domestic level or national level: monolist theory and dualist theory. India follows the dualist theory implying that before the implementation of IL, it has to be passed through the legislative process of India⁷. In several states, ratification of international treaty or international obligation enshrining the international law automatically gets implementation on national level. However, case of India is different by following the dualist theory. It required the supplement of national legislation for the enforcement of international law. Furthermore, judiciary of India is not empowered for legislation. But its interpretation by Indian judiciary regarding the obligation under international law follow the provisions of constitution in the context of implementation of international law. In this way, India provided the supremacy to national law rather than international law. In article 51 of constitution, India by taking IL as directive principle clearly mentions that these are not enforceable and calling it a non-obligatory duty as far as Indian state is concerned while making legislation. Thus, by the article 51, international law has been declared as not applicable to Indian National Law⁸. Whereas, international law must be regarded in the supreme sense for the peace and stability in international arena.

By going through the brief overview of domestic law mechanism in the context of IL, it will be easy to understand the enacted and legislated law of India in support of international law and its applicability on Kashmir violence. There are certain laws which were made by India on national level to supplement and enforce the international law. Article 12 to 34 incorporated the fundamental rights including the rights which are declared non-revocable and cannot be suspended (e.g. article 21) even in the situation of emergency. However, India did not ever exercise these

laws in Kashmir and continued to oppress their rights which invokes the applicability of IL.

Moreover, India further passed the discriminatory laws such as Armed Forces Special Power Act (AFSPA) which empowers the law enforcement agencies and virtually makes them unaccountable. Security forces can arrest people without warrant and play the shoot at sight game in Kashmir. It was an open violation of standards of IL. Thus, AFSPA was passed against the whole spirit of IL invoking the applicability.

The Geneva Convention Act was passed by India under article 253 of the Constitution in 1960 for the implementation of Geneva Convention 1949 in India⁹. In article II of convention, it was clearly mentioned that convention shall be applied to all cases of war including all kinds of armed conflicts such as International Armed Conflict (IAC) and Non-international Armed Conflict (NIAC). Furthermore, it shall be applicable to all cases including partial or total occupation. In article III:

“All the persons who are not taking active part in conflict shall be treated humanly including the sick, wounded and detainees, contrary to Indian forces adventure in the form of summarily execution of detainees. Furthermore, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- Violence against persons, in particular murder of all kinds, mutilation, cruel treatment and torture;
- Taking of hostages;
- Outrages upon personal dignity, in particular humiliating and degrading treatment;
- The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples¹⁰.”

Same kind of acts are being practiced by Indian forces which have been described in the brief chronology of violence in Kashmir. The above

analysis of provisions of domestic law and international law implies the invocation of international law. However, India continues to exercise the course of violations on all spheres of law and has failed to extend punishment to violators of law in Kashmir.

Kashmir Conflict as a Non International Armed Conflict

Before analyzing the scope and application of IHL and IHRL on Kashmir, the term non international armed conflict (NIAC) should be defined in broader perspective so that the connection between the NIAC and IHRL, IHL could take place. Moreover, the concept of NIAC emerged with the introduction of IHL in 1949 in the form of Geneva Convention. However, application of IHL on violence in Kashmir is described in later portion. IHL and IHRL are the branches of international law, but in this study they are given separate portions rather incorporating them in international law, in order to have an in-depth analysis regarding their application on Kashmir violence. Because, armed conflict going on in Kashmir has much wider scope for the applicability of IL through different aspects and means. There are various definitions of armed conflict. However, International Committee of Red Cross (ICRC) claimed that there are two types of armed conflict in IHL:

- International armed conflicts, opposing two or more States, and
- Non-international armed conflicts, between governmental forces and non-government armed groups, or between such groups only.

IHL treaty law also establishes distinction between non-international armed conflicts in the meaning of common Article 3 of the Geneva Conventions of 1949 and non-international armed conflicts falling within the definition provided in Art. 1, of Additional Protocol II.

Another definition of Non-International Armed Conflict (NIAC) in IHL was provided by the Peace Research Institute, Oslo (PRIO) which is widely accepted as a 'contested incompatibility' between a state and internal opposition, regarding the government of the territory, where the use of armed force between the parties result in at least 25 battle related deaths per year¹¹. Like other definitions of NIAC, this definition was also not universally accepted. However, these definitions provide a greater

sense of understanding of NIAC. In later definition, the thresh hold was also defined. Now, keeping in view these, Kashmir conflict can be described as NIAC. Furthermore, this conflict resulted in thousands of the deaths annually also meets the criteria of PRIO definition.

Applicability of international humanitarian law in Kashmir perspective

In this portion, applicability of International Humanitarian Law (IHL) will be analyzed in its exclusive capacity on international level with application on India in the perspective of Kashmir. IHL, is the branch of international law. Primarily, the situations of armed conflict both at national level taking an armed conflict as non-international armed conflict or at international level taking an armed conflict as international armed conflict are dealt by the IHL.

IHL has three parts

- Customary International Law
- Geneva convention
- Hague convention

IHL was developed on the need of peace within states. After World War II, conflicts having internal characters within state were occurring within states leading to serious sufferings of individuals, groups and community. IHL has particular nature that deals only with the situation of armed conflicts and the conduct of warfare. Though its existence has been observed for centuries, yet it did not gain exclusive status dealing with NIAC before 1949. This law brought the violence of state within the scope of International law. Before 1949, there was a gap of law which could exclusively regulate armed conflicts. Adoption of Geneva Convention 1949 was considered as filling the lacunae of this kind of law. This law gathered momentum and adopted two additional protocols in 1977. Geneva Convention has history of three other conventions but article 3 was the common in all four Geneva conventions that provided the respect for humanity in armed conflict.

International Committee of Red Cross (ICRC) several time deposited the request for its access into Indian occupied Kashmir so that it could provide humanitarian services to the victims of NIAC. But, India refused to grant permission. ICRC is a unique kind of body which is neutral but has the mandate under IL to work. This organization primarily provides protection to all civilians who are living at the risk of armed conflict of both kind INA and NIAC. They also provide the medical assistance to affected people and several other services in conflict zone. In NIAC, they also visit to detainees and assist local medical personals. Refusal of permission for access in Kashmir by India to ICRC, having mandate under IL, also invokes the applicability of IL.

Geneva Convention was already analyzed in the domestic law of India regarding its applicability on Kashmir violence as it was passed by the Indian legislative organ and making it a national law. India ratified this convention in 1950. Thus, India falls in the domain of IHL by signing this convention. India's practices filled with suppression in Kashmir invoke the applicability of IHL. Furthermore, exclusive and narrow-downed human rights violations which have been committed by India will be discussed in next portion.

Non-recognition of Additional protocols by India

India does not recognize the additional protocols of Geneva Convention in 1977 which implied that India attempted to avoid the responsibility of protecting the human rights. However, additional protocols were a supplement to Geneva Convention. Article 3 of all four Geneva Conventions and article 1 of additional protocol II share several aspects.

Scope of article 3 in reference of article 1 of additional protocol II can be understand by the study the article 1 of protocol II. This article itself states that "this Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application"². Therefore, applicability of IHL cannot be denied as India has already signed the convention in 1949. By non-recognition of additional protocols, India cannot bring itself outside the scope of IHL.

Applicability of international human rights law in Kashmir

It is considered as set of rules which had international recognition. Its establishment was made by treaties or customs. On the basis of these, a person or group is entitled to be given fundamental and primary rights.

International Human Rights Law (IHRL) though is the branch of IHL, yet it also entails a different capacity for analysis. Indian forces' conduct and practice in occupied Kashmir invokes various provisions of IHRL. Its scope of applicability will be analyzed by singling out each violation in the context of different practices of atrocities.

IHRL also has been existed for long time. However, Geneva Convention 1949 provided it with internationally recognized status in the arena of IHL. There are several supplements to IHRL which were not only the treaty sources for its development, but also became the cause of its consolidation. Convention on Genocide 1948, Racial Discrimination 1965, Torture 1984 and Conventions on Civil and Political Rights and Economic, Social and Cultural Rights 1966 are the primary treaties of IHRL and supplements to its consolidation. There are various instruments on regional level in form of convention.

IHRL has an all-time applicability both in war and peace time. There are certain rights in this law which cannot be derogated in any condition. Before going towards its applicability on India regarding Kashmir violence, Human Rights Watch, Asia's report on Kashmir must be discussed. Human Rights Watch's report in details provided insights on on-going human right crisis in Kashmir.

According to the HRW, Indian forces are committing systematic violations of human rights¹³. Summary executions of detainees and extra judicial killings have become a matter of policy. All forces Including Border Security Force (BSF), Central Reserved Police Force (CRPF) and military force of India are involved in breaches of Human Rights Law. Frequent attacks on civilians, blind firing on peaceful gatherings of people, crack-down and play of "shoot at sight" have become the norm in Indian held Kashmir. This is the magnitude of violation of human rights carrying on by India Security Forces. International Media and other international organizations such as BBC, PHP and IHRC also released

similar kind of reports. Dignity of human beings is being trashed away and Kashmiris are witnessing human rights disaster by the lethal practices of forces which include the rape of girls and detainment of boys for molesting purposes claimed in HRW report.

Article 6 of The International Covenant on Civil and Political Rights 1966 (ICCPR) provide and ensures the right of survival and living whereas Indian forces are depriving Kashmiris of these rights in spite of signing the ICCPR convention¹⁴. Similarly, article 7 provides protection against inhuman treatment, article 12 provides freedom of movement and article 21 right to peaceful assembly are being suppressed by the Indian force invokes the applicability of IHRL. Article 6 of ICCPR was declared as right which even cannot be derogated in the time of emergency. Article 6 implying the arbitrarily deprivation of life has been systematically violated by Indian forces. Detail of Article 7 further clarified “inhuman treatment” in the context of torture, detainment, and baton charge frequently drilled by security forces explicitly violating the norms of IHRL.

Besides, International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) which further nourished the IHRL, Article I gives the people right of self-determination. This provision is the primary, indigenous and inherited demand of Kashmiris which is also being suppressed by India. Article 8 of ICESCR provides the right to strike, and exercise of this right by Kashmiris always resulted in indiscriminate shooting by security forces.

Conclusion

In Article I of Universal Declaration of Human Rights (UDHR), it was declared that “All human beings are born free and equal in dignity and rights. They are awarded reasons and conscience and should act towards one another in a spirit of brotherhood¹⁵.” International Law with different branches and wider scope seems to be the effective instrument for the protection of “Human Dignity” and United Nations Organization (UNO) seems to be the only international body having the mandate to implement the law. Conflict of Kashmir can be brought under the wider applicability of IL. In this study an attempt has been made to analyze the scope and applicability of IL on India in the context of Kashmir. Every

major branch of IL with its scope was given an exclusive status to overview wideness of the law and scope of its application. Undoubtedly, People of Kashmir are in dire need of assistance from the international community and organizations. This conflict is meeting all the requirements of applicability of IL, but implementation is under question. Domestic law of India, on many spheres and in many forms, is violating IL. IHL and IHRL also have exclusive applicability on India but no development has ever been made on international level exclusively for the Kashmiris. People of Kashmir are living in constant peril and deprived of fundamental rights.

It is a collective responsibility of the Indian state to ensure and respect UN conventions in all kind of situations. Article 1 which is common in all Geneva Conventions clearly makes states liable to respect the conventions. However, India seems to have failed to comply with these instructions. Absence of any sound mechanism of implementation of IL provides the courage to India to follow the endless arbitration in spite of violations of IL. There should be established a well-mechanized system for the implementation of IL. Or, at least, the established system should be utilized at all level for implementation. Effectual interference by UN should be exercised to make sure the compliance of IL by states.

Violence in Kashmir is the dark mark on the face of civilized developments in international landscape. Despite the existence of UNO, UN Security Council and other bodies having both international mandate and responsibility are giving deaf air to this cry. IL, IHL and IHRL having exclusive potential of applicability on Kashmir violence are required to be developed and implemented more frequently. So far, they are not protecting the rights declared in universal declaration and not serving humankind. Therefore, applicability of IL with all its types with exclusive potential and provision must be ensured by international bodies. In fact, other countries should also perform their roles to ensure respect for conventions or at least, raise the issue of disobedience of conventions. So that people of Kashmir could enjoy their rights and live in peace. It will add to the international peace and stability at international level.

References

- ¹ Nawaz, Shamsa. 2016. *Indian Held Kashmir: A Challenge for Human Rights Activists*. Issue Brief, Islamabad: Institute of Strategic Studies .
- ² South Asia Terrorism Portal. 2016. *Fatalities in Terrorist Violence in Jammu and Kashmir 1988-2016*. 31 August. Accessed September 7, 2016.
- ³ Scott-Clark, Cathy. 2012. "The mass graves of Kashmir." *the guardian*. 9 July. Accessed September 1, 2016. <https://www.theguardian.com/world/2012/jul/09/mass-graves-of-kashmir>.
- ⁴ Kanjwal, Hafsa. 2016. *Kashmiri Youth: Redefining the Movement for Self-determination*. Report, Doha: Al Jazeera Centre for Studies.
- ⁵ Orakhelashvili, Alexander. 2000. "The Position of the Individual in International Law." *California Western International Law Journal* 241.
- ⁶ United Nations Organization. 1948. "Convention on the Prevention and Punishment of the Crime of Genocide." *Convention on the Prevention and Punishment of the Crime of Genocide*. New York: United Nations Organization, 9 December.
- ⁷ Agarwal, Dr. Sunil Kumar. 2010. *Implementation of International Law in India: Role of Judiciary*. Seminar, Montreal: McGill University.
- ⁸ Government of India, Ministry of Law and Justice. 2007. "The Constitution of India." *The Constitution of India*. New Delhi: Ministry of Law and Justice, 1 December.
- ⁹ Ibid.
- ¹⁰ International Committee of Red Cross. 1949. "Geneva Convention." *Geneva Convention*. Geneva: International Committee of Red Cross, 12 August.
- ¹¹ Oskar N.T. Thomas & James Ron, Do Human Rights Violation cause internal conflict, The John Hopkins University Press (2007) Vol. 29, No.3 Human Right Quarterly.
- ¹² 1977. "Protocol additional to the Geneva Conventions of 1949." *Protocol additional to the Geneva Conventions of 1949*. Geneva: United Nations, 8 June.
- ¹³ Human Rights Watch. 1993. *The Human Rights Crisis in Kashmir, A Pattern of Impunity*. Research Report, New York: Human Rights Watch and Physicians for Human Rights.
- ¹⁴ 1966. "The International Covenant on Civil and Political Rights." *The International Covenant on Civil and Political Rights*. Paris: United Nations Organization, 19 December.
- ¹⁵ United Nations Organization. 1948. "Universal Declaration of Human Rights." *Universal Declaration of Human Rights*. Paris: United Nations Organization, 16 December.

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Kashmir Conflict: The Approach of Humanitarianism

Abeer Iftikhar Tahirkheli

Abstract

The Kashmir Conflict being internationally observed by the United Nations has 1948 resolution that becomes a festering wound of South Asia. The wars, military engagement, ongoing conflicts, terrorist attacks, drone strikes, brutally using pellet guns and chemical attacks, war crimes, killing self-determination of the people of occupied Kashmir, abusing minority rights, targeting religious communities and rape being used as a weapon of war these all are the signs of Modi fascism in the illegally Indian Occupied Kashmir (IOK). Revocation of the article 35A and 370 of the Indian constitution are turning in nothing but the situation going worst in the world of human rights. The nature of human rights is universal regardless of race, gender, religion etc. Human rights violations are a global issue; thereof, the world is facing catastrophic circumstances due to ignoring the main issue of humanitarianism in the conflict. This is happening because one of the protracted conflict zone of J&K seems not immune to humanity despite being captured by the world attention. In the present paper we shall be using the humanitarian approach to Kashmir conflict. The approach is being taken and critically analysed as conflict actors face daunting challenges in the resolution of Kashmir conflict between India and Pakistan. Kashmiris thus are becoming hopeless in their struggle for the right of self-determination.

Keywords: Kashmir Conflict, Human Rights Violations, Alternative Solutions, Humanitarianism.

Protecting and promoting human rights have always been a debate in the international community. Similarly, the one thing that hit the most is the violation of human rights in the world of politics. The battle between the two world's politics and human values are needed to be come in serious fear. The father of peace studies says peace practices are

not harmful¹. Earlier as we know the growth of humanitarianism helped looking into the need of international human rights adopted in the Universal Declaration of the Human Rights (UDHR) by the United Nations in 1948. Human rights based on humanitarianism initially talked about life, liberty and property, non-discrimination, freedom from arbitrary arrest and freedom of thought concerning civil and political rights in 18th and 19th century. In the 20th century, social security, healthcare, education and economic, social and cultural rights had been included. Later on in the post 1945, solidarity rights integrated into it, such as, self-determination, peace, development and environmental protection². In spite of the existence of human beings on earth made them entitled to human rights, it is absolute to provide a basic ground to live a human life. There are more dominating and other impeding factors to the approach of humanitarianism. The protection of human rights can never be achieved unless and until one must pay attention to transforming attitudes from abusive behaviour to humane behaviour. Such transformation of attitudes is needed in policy making. The ongoing global conflicts and violations particularly in occupied Kashmir and Palestine are being challenged by the concept of humanitarianism. Religious communities, ethnic minorities, unethical representatives and powerless are suffering greatly; this is all nothing but the realm of power in the realistic world. The Amnesty International, a human rights watch organisation, reports religious minority especially Muslims facing increasing demonisation by hardliner Hindu's in India³. In most instances, the game of power and absence of human rights can be simply illustrated as, at the diplomatic front, common exercise to make an alliance in terms of promoting core political interests. Non-acceptance, intolerance, ignorance, power game and personal political gains via the state's national interests are further deteriorating the situation.

The worst in the Kashmir conflict is the violation of human rights by leaving Kashmiris suffering for mental health and other issues since almost a decade. For Pakistan, the best Diplomatic option for supporting the cause is not responding as it should be. For Kashmiris, Resistance and freedom fighting are shaping little resolution against the ongoing Facist policies of India. International community keeping a hope of UN resolutions does not necessarily mean to answer the conflict situation. The main argument of this paper however is to make concrete move of

humanitarianism in policy making. The division of this paper contains the three main parts one is to evaluate the situation of human rights violation. Next is to elaborate alternatives in view of the worsening conflict situation and thirdly, thinking humanitarianism for making sure of its outcomes can be a applicable diplomatic move in the Kashmir conflict.

Human Rights Violations: Modi's government, International Community, Pakistan and Kashmiris

Since last three decades in IIOK, India has been playing the tactics of arriving into the area curbing the rights of self-determination of the Kashmiris. The violence they show behind the secular face acted as a fascist state towards its minorities: Sikhs, Muslims, Christians and Dalits. It is not Muslims who are murdered and tortured in Kashmir, it must be considered as a big portion of humanity that is facing genocide and war crimes. It is the high time for United Nations and international community to activate their early warning analysis system and intervene in this crisis immediately⁴. Then since 5th August 2019 Kashmiris are facing a crippling curfew and is a 'living hell' of anger and fear. The world is a silent spectator. There is a blackout of actual situation, no internet facilities and restricted on connection with the outside world.

How truly does India remain Indifferent Thinking it as an Internal Issue of India?

Various study show that the international human rights are set out in collection of UN conventions and other treaties. There is found no concrete political statements or policy making regarding protecting humanity worldwide, only framework and signing protocols and treaties under International Law would not help in any way. The world has witnessed Palestine issue that has been ignored and unlawful Israeli occupation has been justified. The issue expands through last seven decades and so does atrocities towards all ages of people. The Red Cross International reported that since March 2018, approximately 116 Palestinians have been assassinated by Israeli troops and over 13,000 suffered injuries in clashes on the Gaza-Israel border in protests against Gaza's deteriorating living conditions and the United States' decision to relocate its embassy from Tel Aviv to the contested city of Jerusalem. The

situation is becoming bad to worse as Israeli forces continue to curb Palestinian human rights and the casualties are increasing at exponential rate⁵. Human rights are devastatingly under fire and the violence is sporadic around the world. The case of IIOK is the daunting one where Indian army is using pellet guns, electric shocks, buckshots, tear gas and several other armed crimes on civilians to quell the protestors against atrocities. The UDHR, adopted in 1948 by the United Nations in the aftermath of the Second World War, is a single authentic document on human rights. The US left the United Nations Human Rights Council in 2018 accusing the hypocrisy and self-serving of the members was the main reason⁶. The case obviously depicts a different picture that is behind the US, holder of Veto power and influencer, pulling out of the council. India siding with Unipolar World Order at the cost of multipolar world. Besides, Israel, the Jewish state, is thus playing ambiguous role in India's conflicting situation with Pakistan; and, is to supply heavy weapons to India.⁷

Sparingly, in recognition of human rights, some developments have been made to secure human rights. The United Nations Human Rights Council, 47 member states are putting their efforts in preventing human rights violations all around the world. Palestine's sufferings and Kashmiris self-determination are to be negotiated to resolve and end the atrocities being committed toward the people of these disputed areas. In case of occupied Kashmir, the two regional giants have nuclear weapons which pose a threat to world peace and security. The international community in general, and the UN in particular, must take action since India is responsible for three violations in the valley. First, it opted to unilaterally eliminate Kashmir's special status, which is globally regarded as a disputed territory, and this conduct is also in violation of the UN resolution on Kashmir. Next, India's action is against the desire of the people of Kashmir, as it has been done violently and a decision has been pushed on them. The third and most serious wickedness is India committing crimes against humanity in the valley, while the international community appears to be in a policy crisis. This is why several news organizations and foreign media outlets have exposed crimes against humankind. As a result, the UN policy of R2P requires international attention and a quick reaction in Kashmir. The Right to Protection against four major crimes genocide, war crimes, ethnicity

cleaning, and a crime against is considered a doctrine to the protection of human rights or R2P. But either the doctrine can be partially understood as a righteous humane approach or human rights are a much greater scope than this doctrine. The forced insertion of J&K has broken India's claim to be a secular state. Gandhi also said that "Kashmir is a true beacon for India's secularism"⁸. This time India should also be equally focused in policy-making towards J&K without dragging the world into further intolerable situations.

The extent of the lockdown in IOK is unprecedented. The immediate reaction is rage, but the BJP administration is buying time, as shown by the European Parliament's decision to postpone a vote on a Kashmir resolution until after Modi's visit to Brussels in mid-March 2020⁹. This is the intention of the Modi government to react over EU stance with adverse economic consequences if the condemnatory resolution is passed. India has already taken punitive trade measure against Malaysia by cutting off oil imports and other goods. In response to the India daring attempt of the revocation of its constitutional articles Mahathir Muhammad at the September 2019 UN speech said that India "invaded and occupied" J&K which is a good sign of resistance against the massive human rights violation even though there seems no immediate settlement of Kashmiris sufferings and thus it is that year after year the situation becoming complicated with high unpredictability on grounds.

The revocation is serious to imperil peace and security in South Asia", Pakistan officials said at one of international news broadcast.

Neither the statement is satisfactory nor would the mild approach to reaching out to the UN secretary do anything. This is because the move is a deliberate attempt of India in the IOK to quench human rights entirely. Thereby, India has unwisely chosen to take advantage of Pakistan's diplomatic moves of approaching the international community for helping in the cause. For Pakistan, preparedness can be one option, however. The significant time that is unfavorable to waste should not become a pause in advocacy; rather, going beyond the national advocating campaign would be a better alternative. Much of the necessary steps lay in altering Pakistan's foreign policy dynamics itself. Adhesive decisions need to be taken into account immediately or without any further delay. Kashmiris are only to take resistance, nonviolent

freedom moves and seek support large from the International community and immediately by Pakistan.

Alternatives

Parties have to create flexibility in their stances to resolve issues amicably. This, however, should be an exercise needed to be practiced by the state officials, policymakers, and practitioners. Despite carrying several alternatives, there is substantial to deal with the conflicting situation more accurately through the practice of humanitarianism. The paper proposes a combination of alternatives to look deeply into the different dimensions of Kashmir Conflict as per the will of the parties which is the most essential part of global peace. The alternatives are:

- Diplomatic alternative
- Economic alternative
- Administrative alternative
- Legislative alternative
- Judicial alternative
- Military alternative
- Humanitarian alternative

Alternative-I: Diplomatic Alternative

A diplomatic alternative is an important indication to positive developments, peace efforts, disarmament mechanisms, structural and procedural resolution and different approaches to peace. If explained in the terms of the Norwegian sociologist Johan Galtung in his pioneering work devised the approaches to Peace: Peacekeeping, Peace-making, and Peace building. ¹⁰These may include intense diplomacy that reduces hostility between conflicting parties by signing a peace agreement, establishing a new improved relationship, taking peace initiatives, peace dialogues or talks, bargaining through other diplomatic means, such as mediation, which is an intervention process, and referring to Confidence Building Measures (CBMs). Since their independence, India and Pakistan

have shared confrontational behaviors and mistrust in their ties. It is therefore critical to emphasize that India and Pakistan have been in constant conflict escalation, crisis, and subsidization, and they are now back to business as usual.

Periodically, the post-Mumbai attacks phase conversations served little use since the trust gap was large and unbridgeable.¹¹ Over four years following the November 2008 Mumbai attacks, there was a complete collapse of relationships. After a diplomatic maneuver in 2010, the standoff between India and Pakistan following the Mumbai terrorist attacks was broken.¹² September 2013 was a period when India and Pakistan closely monitored tensions in Kashmir and aimed to revive the political peace process by evaluating changes in the dynamics of the modern peace process.¹³ India consistently accuses Pakistan of infiltration into Kashmir. The violence in Kashmir is the outcome of the Indian government's mishandling inside Kashmir. The terrible violence in IOK is unmistakably the result of Modi's determination to win the election and define the most challenging policy against Pakistan. According to Pakistan, Indian academics reject Modi's tough policies, claiming that strong methods against Kashmiri people would get India somewhere but India is on the wrong side of diplomacy and democracy and Washington¹⁴.

As a result, the subject of bilateralism remains debatable in occupied Kashmir. On the one hand, even though India seeks bilateral ties, it has unilaterally chosen its position on Kashmir, and India never considered the Kashmir problem to be a bilateral matter with Pakistan. On the international level, Indian diplomacy has an advantage by designating Pakistan as a terrorist-sponsored state, which the international world, particularly Israel, the United States, and its European allies, accepts. India has repeatedly rejected negotiations with Pakistan over Kashmir. India maintains that Kashmir is an inalienable part of the country and so is not negotiable. India has also filed complaints against Pakistan for waging a proxy war in Kashmir. On the other hand, Pakistan keeps arguing that the instrument of admission was an unjust act and that it was fraudulent and illegitimate. Pakistan has maintained its commitment to resolving the Kashmir problem through the UN vote. Pakistan offers moral and political support to the people of Kashmir for

speaking out for their right to self-determination. However, it is the Kashmiri people's right to exercise their human rights and self-determination, which are restricted under Indian control in Indian-administered Kashmir. The Simla Agreement on Bilateral Relations, signed in 1972, stated that the eventual solution of Kashmir should be done peacefully and bilaterally. The agreement is confused, neglected, and highly contested¹⁵.

Peace and diplomatic processes between India and Pakistan are complicated. Both sides are straining to exert influence on the international community since bilateralism has failed due to a growing trust imbalance. Unquestionably, both India and Pakistan have experienced internal political turmoil, rendering the peace effort ineffectual. There is widespread anxiety, which is why if India shows a desire to join CPEC, the UN resolution on Kashmir should be taken into account¹⁶. India seems hiding and making planned policies of its interest. India and Pakistan leadership can be defined in the views of Stephen P. Cohen. He in his book regarding India-Pakistan Conflict said that “two men with tired ideas and constraints that they cannot overcome, afraid to take the bold measures that could liberate them.”¹⁷. There is still a great chance of a peaceful resolution of Kashmir Conflict if the parties are generously willing to do so.

Apart from all, the alternative highlights these core points:

- Better and improved bilateral relations would be an essential attribute to getting a sustainable and peaceful resolution of Kashmir conflict.
- To mutually consider the right of self-determination of Kashmiri people.
- To negotiate to conduct a free and fair plebiscite in Kashmir as proposed by the United Nations Resolution of 1948.
- Track two diplomacy and sociocultural ties may be used to end the stalemate situation.
- Approaching the compromising strategy seems not capable of India-Pakistan relations as they are having complex

circumstances. Ostensibly, one of the core reasons for not compromising on the resolution of Kashmir conflict is both countries are sharing the geographic location of Kashmir. There is a lack of discipline at the diplomatic front pointing to the aggressive policies of India and a lack of continuity by Pakistan at the diplomatic front.

Practically, this solution may be implemented if both countries manage to talk for their improved relations, work together and compromise on the factual situation. This is to offer peacebuilding towards Kashmir conflict.

Alternative-II: Economic Alternative

The second is referring to having an economic solution to the Kashmir conflict. This area looks upon economic dealings in resolution, for example, the distribution of resources based on equality while giving Kashmiris their right of self-determination. This can be a precedent to a territorial settlement through drawing a cost-benefit analysis. The alternative suggests four points as under:

- The disputed Kashmir is to provide economic facilities and free movement to have livelihood for themselves.
- Economic development may be a high priority of both the parties, India and Pakistan; rather, they need to have an accord of economic priorities.
- It refers to the sharing of resources and providing greater autonomy to Kashmiri people.
- The existing territory would become permanent as per the mutual consensus.

With the recent lockdown due to the 370 Article amendment, Kashmir's economy has been badly hit, for example, 2.4 billion dollars in losses.¹⁸ India seems that if it sustains its economic development position, the gap between India and Pakistan would widen significantly, as India is rising and Pakistan is not. Pakistan has no other choice. Pakistan must decide whether or not to play this game with India. This is a regrettable

mentality that prevents the two parties from engaging in bilateral and productive peace negotiations, even though peace is equally necessary for India and Pakistan. However, the peace process of the nuclear rivals is scored as intensifying which is an alarmingly unstable situation for the region. In reality, the adoption of this resolution would result in a win-win situation for all stakeholders. This is certain to imply conflict resolution in the conflict.

Alternative-III: Administrative Alternative

This particular variant focuses on administrative words. DEMS, which stands for Directorial, Executive, Managerial, and Supervisory, is the name of this conceptual solution. The D stands for Directorial, which enshrines the necessity of directing the conflict to preserve the relationships between the opposing sides. The executive arm of the government will work with executive bodies as part of the E, which will create an executive council to resolve the problem. When presenting definite possibilities for settling the issue, the M is to take management bodies taking managerial tactics into account. At last, the S is to enhance the Supervisory role that would be through strong supervision of the actors in the Kashmir conflict such as the UNMOGIP's (United Nations Military Observer Group in India and Pakistan) position as an observer. The area contains five points:

- There is an urgent need for appointing a United Nations administrator who would direct the parties through peaceful means to minimize the growing violence in Kashmir.
- To minimize the harsh conduct of the Indian administration in Indian-Occupied Kashmir, a clear policy direction would be essential in resisting human rights violations.
- The area suggests establishing a joint executive council in the Indian-held Kashmir.
- Conflict managers would need to be chosen from both parties, the Indian and Pakistani sides. The managers would be able to prevent the issue from escalating and help to control it through administrative measures.

- It will be necessary for the Line of Control (LOC) truce to be maintained that the United Nations Military Observer Group in India and Pakistan (UNMOGIP) take a more active role in Indian-occupied Kashmir. This choice would be made by the global community, like the United Nations.

In practice, this would be a neutral option for all parties involved in dispute resolution. Although Kashmiris would not gain total freedom in this manner, they would be allowed to conduct their lives according to their preferences under UN administration conditions. The main fundamental parties, India and Pakistan, would not be overlooked under this system; each could safeguard their governed areas.

Alternative-IV: Legislative Alternative

The fourth alternative is carrying out the process of legislation concerning the legal terms under the legislative branch of the state. In this specific area, the United Nations may be able to play the role of executive government and so as, focusing on policy-making and the proceedings of laws and their implementations. India does not respect laws as a recent curfew was imposed in occupied Kashmir.¹⁹ For instances, this alternative solution offers five ways to exercise certain considerable laws as under;

- The issue of Kashmir being occupied by India should be given legal validity, and Indian soldiers should be withdrawn.
- To make laws such as to enhance the law and order situation in India-occupied Kashmir.
- There is a dire need to implement humanitarian law.
- Civilians who are required to safeguard the citizenship legislation bear duty. To achieve this, all Kashmiris would be granted citizenship.
- A specific law needs to be taken to resist or control using illegal means by the Indian forces and administration.

In occupied Kashmir the situation is alarming as the arrest of former Indian chief ministers, one of them is Mehbooba Mufti, who was in

coalition with Indian political party but suddenly she is locked up. This shows that India has detained people without a trial, without a charge, and goes beyond its constitutional limits. India forbids Amnesty International and the International Committee of Red Cross (ICRC) from entering Indian jails to see the appalling treatment Kashmiri political detainees are receiving.²⁰ Various initiatives at the global level structures/laws are ratified but not used for policy change. Legislation is denied or the violent situation is considered normal or too difficult to challenge the prevention of violence by India. The Indian government considers that International Laws cannot question the sovereignty and internal security matters and the laws do not apply to India as Article 22 of the Constitution of India talks about punitive detention or preventive detention, but what if arrest measures are made without any trial or simply it detains Kashmiri politicians. There are hardly any policies addressing the fallout of armed conflict. Such situations are considered as an offence/affront/abuse to the sovereign nature of the state due to closely linked histories of conflicts in South Asia.

Alternative-V: Judicial Alternative

This is the alternative to dealing with the Kashmir conflict through judicial proceedings. The judiciary would be responsible for dealing with the conflict through all the legal means involving the government. The Judicial branch of the government would act upon it. For Kashmir conflict resolution, legal cases such as Indian human rights violations in the Indian-occupied Kashmir would be under serious consideration, and on that, the parties may reach a specific settlement. This process is to prevail justice and is, therefore, all-inclusive of orders that have to be reached to the International Court of Justice (ICJ) and International Criminal Court (ICC) for criminal acts of Modi's government. This alternative would drive through the judicial process. Some procedures are as under:

- The parties need to accept the intervention of the ICJ and ICC in the disputed and violated zone of Kashmir.
- Not to deny basic freedom to Kashmiri people in Indian-occupied Kashmir, this is to provide equal opportunities for education, basic human rights, and justice to the Kashmiri

people. The government of India would necessarily come up to this essential point.

- The ICJ and ICC would need to play a vigilant role in Indian-occupied Kashmir. This would help in the reduction of human rights violations by implementing a humanitarian approach, where the Kashmiri people would not be deprived of basic human freedoms.
- A high-level commission can also be made to investigate human rights violations in IOK.

Through a hurried presidential decree issued on August 5, 2019, the government of India looted all constitutional rights held by the Kashmiri people for seven decades. An indefinite curfew has been enforced in Indian-occupied Kashmir, and the region's economy is under siege.²¹ Critics of India's Hindu nationalist-led government and Kashmiris both saw the action as the repeal of long-standing legislation, according to which Muslim-majority regions had limited autonomy or special status. This was a crude attempt to change the demography of Muslim-dominated Kashmir during occupation with Hindutva ideology.

Such serious situations can only be settled through the judiciary and judicial alternatives. So this area appears more suitable for Kashmiris as there could be a chance to acquire equal opportunities. The International Court of Justice should order the situation under the justice system bringing the collaboration of India and Pakistan. The purpose is to build tolerance and accept justice for all, the people of Kashmir, Indian as well as Pakistan.

Alternative-VI: Military Alternative

The purpose of this alternative can be dangerous. Although the military option is not appropriate and conducive to the nature of the conflict, still can be applied as a last resort as violation of human rights has been escalated even on the Indian occupied Kashmir. This is first to offer international military intervention in the area in order to control the escalating situation and stop violence. Notwithstanding, it has been observed that the Indian forces are taking control of the area by increasing military presence in Indian occupied Kashmir. To balance, it

would be practically good if the United Nations intervene through UN observers and send its peacekeepers and create deterrence in the violated zone. Through this, the balance of power would be possible. However, the implementation of this alternative would lessen the chances of a devastating war between the two nuclear powers of South Asia, Pakistan and India, having almost equal nuclear capabilities. Even international military assistance is not contributing enough in the warlike area but still, this option serves as a conflict management technique.²² To save the world to have catastrophic circumstances, both sides would require being capable enough to experience the less scary image of nuclear attacks, and restrain the use of mass destructive weapons. Indian state needs to accept military observation in the conflict zone. The IIOK has become world's largest inhuman military zone and in a state of despair for so long. Some specific points to approach this alternative are as under;

- To have joint military exercises and reduce the Indian military and accept the United Nations intervention or allow Pakistan for deploying its forces in an equal numbers as that of India.
- The United Nations peacekeeping forces are to be deployed for a decade or longer. This is due to observing the law and order situation that is now facing instability in the Indian-held Kashmir.

In power politics and personal gains are simply the root causes of increasing human rights violence across the world. In a more practical way whenever one sees the situation going bad to worse, the immediate alternative would be to take control of the situation. This solution should be the last option in the case of Kashmir conflict. Notwithstanding, the study is the approach of humanitarianism way out to the Kashmir conflict. Thus, the core objective is to seek a humanitarian alternative towards the conflict as wars between the two sides have not brought any results in fact hampered the progressivism and development which directly impinges the people's rights.

Moreover, the policy-making should be responsible to carry out humane policies that must consider the needs of all the parties when choosing the best alternative for resolving IOK issue. The representatives need to create a sense of responsibility and justifying the peculiarity of the

alternative that is required to be accepted and led to achieving fruitful results. The issue of implementation of peaceful policies still has no concrete direction amidst several proposed solutions. On the contrary, one solution cannot be attributed to a sustainable resolution as conflict gives a hundred dimensions to look deeply into it. Meanwhile, seeking to approach humanitarianism in the deteriorated situation of occupied Kashmir might bring alternative approaches to better outcomes. However, the humanitarian approach can bring a peaceful resolution with a little compromise on the positions of the parties. This would help out the resolution to come closer to any practical stage. Whereas the absence of human rights initiates insecurities causing the hostile state relations which is evident from the measures of last 74 years.

Alternative-VII: Humanitarian Perspective

One of the first thing is that avoidance is a strategy of negotiation using by India to carry out its actions of immoral cleverness. India is avoiding to come to the main issue more often just to avoid taking about the solution. Humanitarian perspective is one which allows conflict parties to deal the conflict in a peaceful way. Violence in Kashmir or human rights violations are becoming a catalyst to grave circumstances require humanitarianism that imperative for peace and sustainable. By and large, the humanitarianism is therefore required to fulfilling all the basic human needs of the Kashmiri people immediately. In the political spectrum, it emphasizes on humanizing all the government's policies on the state of Jammu and Kashmir. Peace studies suggests a model of problem solving and decision making in the Kashmir Conflict resolution objected to combine multiple tactics to achieve peace paradigm.²³ This mainly can enhance the chances of peaceful resolution of protracted socio-ideological Kashmir conflict particularly. Peace studies support liberalism, the one broader concept catering to the tenets of democracy, democratic peace and human security.²⁴ This alternative perspective can be suitable to the Kashmir conflict if not neglecting positions of the either parties or preserve political gains over the concentrated humanitarian ways. It is feasible to adopt humanitarianism and learning the universal nature of humanitarianism in conflict dealings. So far, parties' unwillingness is the major hindrance to humanitarian assistance in the Kashmir conflict.

Furthermore, the needs of a mature mindset and decision making in a perplexing issue of 'Women's Security and the Will of Protection' in conflicted zones are untreated. Human behavior is unpredictable but can be predictable with wise and timely decisions. The heinous incident happens and the persistent attack on women in the Kashmir Conflict goes on.²⁵ That act as a multiplier, and unavoidable worries of other parts of society reemerge for multiple reasons. Neither society could help them stay stronger nor could the only will of protection of conflict parties do anything, in a vicious or immoral phase of the world. The problem cannot be eliminated at once. It is because of its deep-rooted causes and untrained and morally uneducated mindsets. The offended minds preferably need to be inoffensive. Conflict parties should proceed with standing in support of the female stuck in conflict zones; rather, feeling upset, queasy, and nauseated themselves. There is a high need for 'timely, sensible and courageous actions' by conflict actors including international community, not at all bold moves of women are 'all-required'. They can have peaceful protests, but should not need to come on the streets for the rights of self-defense, that can probably or surely motivate the 'evil ego' of attackers. Humanitarianism claims that the responsibility should be taken by the responsible.

Humanitarian approach is an ultimate instrument in ending hostility and resolving disputes. Recent, an example of Abiy Ahmed Ali, Ethiopian Prime Minister who won the 2019 Nobel peace prize for his work in the spectrum of human rights, democratic reforms and mediation in regional disputes. He tackled outstanding human rights challenges and enhance reforms on the basis of humanitarianism, cooperation and collective growth. His efforts for taking a resolve on two-decades-long stalemate and sign a peace agreement with Eritrea, a neighboring country. The outlook is that "Abiy Ahmed in Ethiopia has started significant reforms that give many people hope for a better living and a brighter future, even if there is still more work to be done."²⁶ Inhumane policies cannot resolve the Kashmir conflict and the stalemate will continue. More than half a million Kashmiris face great human loss and a dent to humanity in occupied Kashmir. In this situation. The Kashmiri women are the biggest victims of inhumane policies. They have been suffering in terms of mental, physical and psychological trauma.²⁷ The states of Pakistan and India have sabotaged the development of their countries by building

their military arsenal and all the time on the verge to start a war. The situation becomes worst every second and a minute for the two nuclear states. Adoption of a humanitarian alternative solution would be the most acceptable resolution because there is nothing the parties can agree on. It caters to contending parties who are experiencing practical issues learning about the dispute, especially those who are thinking about death. The humanitarian approach is indeed a civilized attitude firmly committed to peace and human security.

The world unfolds humanitarianism despite fighting on an ideological basis. Humanitarian law and the concept of the Responsibility to Protect (R2P) are humanitarian approaches to intervening in any international conflict. Regardless, the alternative has the potential to influence peace; it can shift the disputing parties' views, which are ingrained in the conflict and inflexible. In context to this, humanitarian assistance is required to be provided to the people of Kashmir and endorse to the international level by compromising on certain egotistic political aims. The R2P is a United Nations philosophy that states that the UN has accepted responsibility for ensuring global peace under international humanitarian and human rights law. The R2P is triggered when there is a threat of genocide, war crimes, ethnic cleansing, or crimes against humanity. More practically this solution might not be accepted sooner but is the only peaceful resolution. The point is humanitarianism has no boundaries; therefore, all of the aspirations of the Kashmiri people may be met by using the components of humanitarianism. Humanity can necessarily be considered as a combining factor in the Kashmir conflict that would generate common ground to all.

Additionally, the UN is in charge of preserving world peace and security. Adopted resolution in 1948 Cease hostility, Maintain environment for holding plebiscite will of the people, Accession will be decided though the plebiscite, Minorities should be protected and no victimization. 1964 French president statement acknowledged that “The India-Pakistan question remains the agenda of the security council”. However, Simla agreement between India and Pakistan claims that Final resolution would be made through bilateral means but with no timeframe. Bilateralism is no longer a trust between the rival neighbors and it is also not good for Kashmiri even not a signatory reduced International

standing turning in the conflict as an international issue. International law and the UN resolution has no binding force seems UN fails on its own. India nullifies all the possible brings of negotiation and cooperation abrogating article 35A and 370 compromising on the safeguard of the demographic status of J&K as a Muslim majority in India allows Indians to buy properties. According to Pakistan's Ministry of Foreign Affairs Push Hindutva agenda in IIOK is further Inciting Religious sentiments. It is hopelessly confusing to main diplomatic balance and avoids allegations simultaneously. Article 1 of the Universal Declaration of Human Rights states that "human beings are born free and equal in dignity and rights", and should be improvised in policy-making to secure the live sod Kashmiris. The message of peace should be clear that is conflict parties stand for Humanity! Resist genocide! Prevent war! Telling the world ready to explore every opportunity for peace and stability in the region.

Conclusion

Can we improve on human rights before we pass it on? Despite the much ignorance of the abuses of human rights, Human Rights Watch has stressed out to immediately take actions on the recommendations provided to Indian administration by the United Nations on human rights in the IIOK. Myanmar, the perpetrator of Rohingya Muslim minorities, is becoming a member of the Council for the very first time and committed to saving the rights of the people. This transformation comes as a major development in humanitarianism as an authoritarian mindset approaching humanitarian ways. In the resolution of such grave consequences in the occupied Kashmir: social unrest and injustice, brutal and inhuman policies, high trust deficit, rape and killings of innocent people's lives, lack of political stability and arrests of Kashmiri politicians, lack of social and economic development, the transformation from abusive to human behaviour would not only help the countries to protect human rights but also to save the whole humanity, and ensures peaceful co-existence of the states in the world. Human rights commissions and organizations should be allowed for International intervention and investigations in the war-torn area.

The international community needs to promote common values of human rights and disrespect inhumane policies, in particular, to secure the state relations of becoming bad to worse. This could be an alternative

peace perspective pertaining to all aspects of conflict focuses on collective growth and shaping the future together. The approach can be subjected to promote cooperation with better interaction rather than using political, military or diplomatic dealings in the conflict. Human psychology is immensely involved in Kashmir conflict so as these suggestions can be required to proceed towards the conflict in a humanitarian manner. This line of action would be highly demanded and constructive to the resolution of Kashmir conflict in a definite way. As Indian leadership is playing its repeated stance of bilateralism and IOK their internal matter, Pakistan should come up with the systematic diplomatic moves also. Pakistan's strong diplomacy and economic independency can have a huge impact taking Kashmir issue towards the peaceful resolution. Pakistan today, no doubt, is ready to respond Indian brutality in Kashmir militarily that would not be suitable for the global peace. Resistance of using a military option by Pakistan and referring to its leaderships' peace approach' Antonio Guterres, the UN General Secretary , during his recent visit to Pakistan tweeted that "Pakistan is one of the most constant and dependable contributors to UN peacekeeping operations worldwide".²⁸

Pakistan puts its efforts and does not neglect the Kashmir cause at International level. It propagates Indian political and military atrocities in the region. Militarily, Pakistan has a firm plan of action. International community is not answering the calls from Pakistan in the context of Kashmir, but Pakistan makes them informed of the actual situation in IOK. The time witnesses international community is taking India's preferences at economic front, but the brutality cannot be supported because the call for humanitarian action is emerging rapidly at the International stage. Things already go out of hand though and turn into a major crisis the UN will undoubtedly have to intervene and take control of the situation confronting the enemy of humanity. ²⁹

References

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- ¹ Galtung, Johan. "Violence, Peace, and Peace Research." *Journal of Peace Research* 6, no. 3 (1969): 167-91. Accessed January 8, 2023. www.jstor.org/stable/422690.

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- ² Andrew Haywood, "human rights and humanitarian intervention", Global Politics, chapter 13.
- ³ India 2017/18. The Amnesty International Report 2017/18. Accessed on February 25th, 2023. <https://www.amnesty.org/en/countries/asia-and-the-pacific/india/report-india/>.
- ⁴ The Peace Studies' view on Violence in Indian Held Kashmir. In the discussion with Dr Maria Saifuddin Effendi, assistant professor of Peace and Conflict Studies at National Defence University, Islamabad. She is also one of the founders of Peace Studies in Pakistan.
- ⁵ Human Rights Watch Report. Israel and Palestine: Events of 2019. Accessed on March 21st, 2023. <https://www.hrw.org/world-report/2019/country-chapters/israel/palestine>.
- ⁶ Imogen Foulkes. "Why did the US leave the UN Human Rights Council?". BBC News, June, 2018. Accessed on April 5th, 2023. <https://www.bbc.com/news/world-us-canada-44552304>.
- ⁷ Robert Fisk. "Israel is playing a big role in India's escalating conflict with Pakistan". The Independent, February, 2019. Accessed on January 23rd, 2023. <https://www.independent.co.uk/voices/israel-india-pakistan-conflict-balakot-arms-trade-jaish-e-mohammed-a8800076.html>.
- ⁸ The Routledge Handbook of the Responsibility to Protect edited by W. Andy Knight, Frazer Egerton.
- ⁹ M. Saeed "Modi's War Bluff". The News, 12 February, 2022.
- ¹⁰ Johang Galtung, "Three Approaches to Peace : Peacekeeping, Peace-making, and Peacebuilding", Peace, War and defense: essays in peace research, Vol 2. Copenhagen 1976.
- ¹¹ Hilali, A. Z. "Confidence- and Security-Building Measures for India and Pakistan." Alternatives: Global, Local, Political 30, no. 2 (2005): 191-222. Accessed January 8, 2023. www.jstor.org/stable/40645155.
- ¹² India offers to resume talks with Pakistan", BBC, 4 February, 2010. <http://news.bbc.co.uk/2/hi/8498556.stm>.
- ¹³ India and Pakistan trade accusations over 'Kashmir violations", BBC, 13 August, 2013. <http://www.bbc.com/news/world-asia-23662911>.
- ¹⁴ Editorial, "Brutal repression in Kashmir", Dawn, 23 April, 2017. <https://www.dawn.com/news/1328633/brutal-repression-in-kashmir>.
- ¹⁵ Rana Ayuub, "India's crackdown in Kashmir has paralyzed and silenced entire communities". Washington Post, Oct. 23, 2019. <https://www.washingtonpost.com/opinions/2019/10/23/indias-crackdown-kashmir-has-paralyzed-silenced-entire-communities/>.
- ¹⁶ Rajesh Rajagopalan, India's Strategic Choices: China and the Balance of Power in Asia. Carnegie India, September 14, 2017. <https://carnegieindia.org/2017/09/14/india-s-strategic-choices-china-and-balance-of-power-in-asia-pub-73108>.
- ¹⁷ Stephen Cohen, Shooting for a Century: The India-Pakistan Conundrum. Washington, D.C.: Brookings Institution Press, 2013. <http://www.jstor.org/stable/10.7864/j.ctt4cg8gm>.
- ¹⁸ The economic Times. 5th December, 2019. [HTTP//EconomicTimes.Com](http://EconomicTimes.Com).
- ¹⁹ Curfew continues after India removes Kashmir special status", Al Jazeera, August 7, 2019.
- ²⁰ Yashraj Sharma, "Detained in Kashmir", Foreign Policy Magazine, September 9, 2019. <https://foreignpolicy.com/author/yashraj-sharma/>.
- ²¹ Kashmir conflict: Woes deepen as lockdown stifles economy, BBC October 8, 2019. <https://www.bbc.com/news/world-asia-india-49956960>.
- ²² CSIS, "Not Contributing Enough? A Summary of European Military and Development Assistance to Ukraine since 2014", September 26, 2019.

<https://www.csis.org/analysis/not-contributing-enough-summary-european-military-and-development-assistance-ukraine-2014>.

- ²³ Samra Farrukh Ansari, Dr Maria Saiduddin Effendi, and Dr Riffat Haque, "Problem Solving and Decision making model in Kashmir Conflict Resolution: prospects and challenges, NDU journal. Volume XXXIII, 2019. <https://ndu.edu.pk/ndu-journal/pub/01-Problem-Solving.pdf>.
- ²⁴ Hegre, Håvard (2004) the Limits of the Liberal Peace. PhD thesis, Department of Political Science, University of Oslo, Oslo. <https://www.prio.org/Publications/Publication/?x=3179>.
- ²⁵ <https://www.amnesty.org/en/countries/asia-and-the-pacific/india/report-india/>.
- ²⁶ Al-Jazeera, Ethiopian PM Abiy Ahmed Ali wins Nobel Peace Prize. 11 October 2019.
- ²⁷ Adnan Bhat, "Kashmir women are the biggest victims of this inhumane siege", Al Jazeera, August 21, 2019. <https://www.aljazeera.com/indepth/features/women-biggest-victims-inhumane-siege-190820122327902.html>.
- ²⁸ Pakistan Horizon Retweeted, February 16, 2023.

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Jammu and Kashmir Issue Revisited

Ambassador (Retired) Ali Sarwar Naqvi

Abstract

The subject of Jammu and Kashmir is the oldest unsettled dispute in the world. It is a nuclear flashpoint between two nuclear armed rivals of South Asia i.e. India and Pakistan. To resolve this issue, numerous attempts have been made at bilateral and multilateral levels but in vain. Both states have waged wars over the disputed territory which strained their mutual relations. Indian exertion of force to strengthen its control over the valley has always been questioned by Pakistan, which bolster Kashmiri's demand for their right of self-determination, recognized in various United Nation Security Council Resolutions. This paper attempts to revisit and analyze the origins of Kashmir dispute, its influence on Indo-Pak relations and the impact of revocation of the special status of Jammu and Kashmir in the Indian constitution. It also contains an analysis of Prime Minister Modi's policy towards Jammu and Kashmir and the recent abrogation of Article 370 and 35 A which brings the issue up-to-date and highlights the grave situation now created by the Indian government.

Keywords: Pakistan, India, Jammu and Kashmir, South Asia, Unsettled Dispute, United Nation Security Council Resolution, Pulwama Crisis, Article 370 and 35 A.

In recent years, the word Kashmir became synonymous with death, destruction and genocide. The root cause of Jammu and Kashmir issue however lies in partition plan of India executed by Lord Mountbatten in August 1947. Over the course of years, the problem has morphed into a multi-faceted dispute between two nuclear armed rivals, India and Pakistan. Jammu and Kashmir, bordered by Afghanistan, China, India, and Pakistan, is a landlocked region in South Asia. Cradled in the huge Himalayas and nourished by rivers such as the Indus, Sutlej, and Jhelum, Kashmir has been frequently defined as a "Paradise on Earth" in popular literature. Nevertheless, the Indian military oppression of the Kashmiri

people and its suppression of their struggle for liberation has given this paradise the moniker of 'Hell on Earth'. Majority of people of Jammu and Kashmir has been forced to live under oppression for the last seventy years. The situation has become particularly worse in the last three decades.¹ To get a better understanding of current situation regarding Jammu and Kashmir dispute, it is necessary to be aware of the region's history.

The Beginning of Jammu and Kashmir Dispute

The princely state Kashmir was, at first, annexed in 1846 by the East India Company and given to the Maharaja, Gulab Singh, belonging to the Dogra dynasty in exchange of a payment of Rupees seven and a half lakhs. During the British exit from the Indian subcontinent, the ruler of Kashmir, Maharaja Hari Singh, a descendent of Gulab Singh, wished to remain independent.² A few other princely states also had similar plans.

The 1947 Indian Independence Act was basis for the establishment of two autonomous states, India and Pakistan. The decision was that the areas with majority population of Muslims would create Pakistan, however, the areas with majority population of non-Muslims would mainly become part of India. On the eve of Indian sub-continent's independence, there were over 560 princely states. These states were governed by Paramountcy Law which gave certain degree of freedom to the rulers to administer their respective states. Following the transfer of power, Paramountcy Law was rendered redundant and the princely states became independent lawfully and the princely states had the choice to join any of the two states or remain independent.

“They can accede to any one of the dominions or they can remain as an autonomous state by arranging suitable political provisions with their more authoritative Dominions.”³

According to section 7 [1-b] of the Indian Independence Act of 1947, the authority of the British Crown over the Indian princely states ceased to exist and with it all treaties and agreements between them. However, division of India into 560 independent countries, some of which comprised a territory of few square miles, was abhorrent to the Viceroy.

He, therefore, advised these states to join any one of the two dominion states. The Viceroy also came up with some recommendations regarding decision on which of the two a princely state should accede to. He said, “while acceding, a princely state must take into consideration the factors such as geographical location, the interests of its community and so forth.”⁴

Hence, states falling within Indian territory, with a non-Muslim majority in its population acceded to India except for two states, the Hyderabad and Junagadh while the states having Muslim population in majority acceded to Pakistan. The princely state of Jammu and Kashmir was contiguous towards both Pakistan and India. Its population comprised mostly Muslims, but the ruler was a non-Muslim. It was therefore in a unique position to choose to join either India or Pakistan but deep down, the Maharaja wanted to make his state recognized as an independent country.

The Maharaja therefore did not immediately decide which state he should accede to. In order to buy some time, he offered to mark a standstill agreement with both the countries, India and Pakistan. While India dithered, Pakistan signed the agreement with him. Following the propositions of agreement, the management of the railways, postal and telegraph of the Jammu and Kashmir remained with Pakistan government. While all this was going on, the Maharaja asked his Muslim subjects to disarm and began encouraging the Hindus and Sikhs, from East Punjab in India, to settle in Kashmir. In response, the Kashmiris remonstrated against the decision of Maharaja. This protest became aggressive and turned into a resistance movement with time. It resulted into a guerrilla movement, gaining the strength from Poonchis (almost 70,000) that served during the World War II in the British Indian Army.⁵ This suppression committed by both the Maharaja’s forces, the Sikh and groups of Hindus gave a new impetus to the desire of Muslims from Kashmir and Pakistan. Feelings ran high and on 22nd October 1947, the tribesmen from the Pakistani tribal areas, entered into the Jammu and Kashmir to support their co-religionists. Unable to resist the combined strength of Kashmiri and Pakistani tribals, the Maharaja of Kashmir approached India for help. He is reported to have signed the state’s Instrument of Accession, on 26th October 1947, but the facts of signing of

this agreement differ and there is some doubt as to whether it was actually signed.⁶

According to British historians, such as Alastair Lamb and Sten Widmalm, the Instrument of Accession was not signed, but forged later on.⁷ Under the cover of the Instrument of Accession, India air lifted troops to the Jammu airport and stationed their forces in various areas throughout the valley of Jammu and Kashmir. This forced accession was rejected by the people of Kashmir with stiff resistance against the occupation of their land by the Indian military forces which became full-fledged guerilla movement after a few weeks.⁸

United Nations Mediation and Resolutions

This forced accession of Jammu and Kashmir led to a brief armed conflict between Pakistan and India in 1948. Subsequently, as the security situation deteriorated, the Jammu and Kashmir issue was brought to the United Nation (UN) by India. The Indian Representative to UNSC, Mr. P. P. Pillai, directed the case to the President of the United Nation in the form of a complaint against Pakistan and asked the Security Council to prevent Pakistan from intervening in Kashmir. India based its case on the Maharaja's state accession to India. It began with a debate in the Security Council entitled "The Kashmir Question", which later turned into "The India-Pakistan Question."⁹

India claimed that Jammu and Kashmir, which is an Indian territory, was attacked by Pakistani citizens and tribes. India also said that, despite the accession of the state, it was prepared to hold a referendum to confirm the wishes of the people and to abide by its results. In response, Pakistan refused its engagement in the conflict and counter-argued that India acquired state through "fraud and violence" and that India was committing "genocide" against Muslims.¹⁰ Since then, the issue has remained on the agenda of the UNSC and for the last seven decades, no referendum could be held to determine the will of the people of Jammu and Kashmir.

Under Resolution 39 of UNSC, the United Nations Commission on India and Pakistan (abbreviated as UNCIP) was created in January of 1948 for investigating the issue of Jammu and Kashmir as well as assist the parties

of conflict to reach a settlement. An outcome of the Commission's assessments were two resolutions of UNSC which were adopted on 13th August 1948 and 5th January 1949 where the first called on both conflicting parties to "reaffirm their desire to determine the future of Kashmir according to the will of the people."¹¹ The 5th January 1948 UNSC resolution ruled that administrations of India and Pakistan had accepted the principle that the state's accession to either India or Pakistan would be made on the basis of a method of democratic, free and impartial plebiscite. Subsequently, the UNSC adopted 'Resolution 80' and terminated UNCIP on 14th March 1950, instead a mediator was appointed to assist the two nations in demilitarizing the state of Jammu and Kashmir.

Later on, Sir Owen Dixon was nominated as a United Nations representative for Kashmir conflict. He put forth what is called "the Dixon Plan". According to this plan, Ladakh was given to India, the northern areas and the PAK (Pakistan administered Kashmir) to Pakistan. However, Jammu was divided between the two countries and there was a recommendation of referendum that it should be held in the Kashmir valley.¹² This plan fell through because Indian Prime Minister Nehru refused to abide by the conditions in accordance to which the plebiscite was to be held, and the United Nations Commission on India and Pakistan failed (UNCIP). So far, the disputed territory of Jammu and Kashmir has come under discussion in the Security Council no less than eighteen times. Most recently, it has come under discussion on August 16, 2019. The time line of resolutions is as under:

UNSC Resolutions	Details
UNSC 38 (Jan 17, 1948)	Call upon the government of India and Pakistan to refrain from in any way aggravating the situation in Kashmir and deploy and means at their disposal to improve it.
UNSC 39 Jan 20, 1948)	Setup a commission of three members; one to be chosen by Indian, one to be chose by Pakistan and the third to be chosen by the other two members of the commission. The Commission was to write a joint

	letter advising the Security Council on what course of action would be best help further peace in the region.
UNSC 47 (21 Apr 1948)	Question of accession of Jammu and Kashmir should be decided through democratic methods of free and impartial plebiscite
UNSC 51 (Jun 3, 1948)	Reaffirmed previous Council resolutions on the India-Pakistan conflict
UNSC 80 (Mar 14,1950)	To exercise all the power responsibilities devolving upon UNCIP by reason of existing resolutions of UNSC and by reason of agreements of parties embodied in UNCIP resolutions of 47 and 51
UNSC 91 (Mar 30,1951)	Reminding government and authorities concerned of the principle embodied in UNSC resolutions of 47, 1948, 1949 and 80 that final disposition of the Jammu and Kashmir will be made in accordance with the people.
UNSC 96 (Nov 10, 1951)	Received a report by Mr. Frank Graham, demilitarization program was noted with approval. The council noted the declaration by both India and Pakistan that they would work for a peaceful settlement, continue to observe a cease-fire and accepted the self-determination principle that the accession of J&K should be determined by a free and impartial plebiscite.
UNSC 98 (Dec 23, 1952)	Recalling the provisions of previous UNCIP resolution provided question of accession would be decided through democratic method conducted under the auspices of the UN.
UNSC 122 (Jan 24,1957)	Reaffirm the affirmation in its resolutions of 47, 51, 80, 91 and 98

UNSC 123 (Feb 21, 1958)	President of the Security Council visit the subcontinent and along with the governments of India and Pakistan examine any proposals which were likely to contribute to the resolution of the dispute.
UNSC 126 (Dec 2, 1957)	It requests that the governments of India and Pakistan refrain from aggravating the situation and instructs the United Nations Representative for India and Pakistan to visit the subcontinent.
UNSC 209 (Sep 4,1965)	The Council calls to take all steps necessary to immediately cease fighting and return to their respective sides of the line.
UNSC 210 (Sep 6,1965)	The Council calls on the parties to cease hostilities in the entire area of conflict immediately and withdraw all armed personnel to the positions they held before August 5, 1965.
UNSC 211 (Sep 20,1965)	After the calls for a cease-fire in resolutions 209 and 210 went unheeded, the Council demanded that a cease-fire take effect at 0700 hours GMT on Sep 22 and that both forces withdrawal to the positions held before August 5.
UNSC 214 (Sep 27,1965)	Expressed concern that the case-fire call for in resolutions 209, 210 and 211 was not holding, the Council demanded that the parties honour their commitment, cease -fire and withdraw all armed personnel.
UNSC 215 (Nov 5,1965)	Demanded that representatives of India and Pakistan meet with representatives of the Secretary General to purpose schedules for the withdrawals.
UNSC 303 (Dec 6,1971)	After a lack of unanimity at the 1606 th and 1607 meetings (call following a deterioration in relations between India and Pakistan over a series of incidents, including Jammu and Kashmir, and the additional

	strife in East Pakistan) of the Council, the Council decided to refer the question to the General Assembly.
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Indo-Pak Wars and Border Disputes over Kashmir

Due to the non-resolution of dispute between the two neighbors neither India nor Pakistan withdrew their forces from Jammu and Kashmir, effectively dividing the state in two parts - Pakistan administered and Indian occupied Kashmir shown in today's maps. India describes Kashmir as its "Atoot Ang" (an essential part), and Pakistan terms Kashmir as "Shah Rag"¹³ (jugular vein). Both countries have fought three wars to resolve the dispute and cross border exchange of fire is a daily affair.

Although since 2003, India and Pakistan managed to maintain a fragile ceasefire, both countries frequently exchange bullets at the LoC in Kashmir. Both countries accuse the opposite side of border for ceasefire violations and claim that they only retaliated after the fire was initiated by the other side. A surge in border clashes that began in late 2016 and continued into 2018 has killed 90 soldiers and 67 civilians¹⁴.

Kashmir Freedom Struggle: 1980's and 1990's

After decades of India's control, often by using oppressive measures, Kashmiris have become persuaded that they would never be given their promised right of self-determination by India. Later on, the struggle for Kashmir's freedom again came to the world's notice in late 1980's,¹⁵ gaining impetus from success of the Mujahideen in the Afghan war against the Soviet forces during this period. Success of the Afghan Mujahideen, against a superpower, was a huge source of stimulus for freedom fighters of Kashmir. Recently, freed Central Asian states after the disintegration of USSR added to the momentum of the Kashmiris struggle. They now believed that their struggle against Indian forces like the Mujahideen in Afghanistan will also one day win them their right of self-determination¹⁶. The protests were initially nonviolent, but India used force to crush the freedom movement, killing thousands of Kashmiris.

Kashmir Freedom Struggle: Post 9/11

Post-9/11, the presence of the US in Afghanistan drastically transformed the security environment of the region of South Asia and forced India and Pakistan to adapt their foreign as well as the security related policies in harmony with the latest developments in the region. International community became intolerant of terrorism after the event of 9/11 which was misused by India to portray Kashmir struggle as Pakistan sponsored terrorist acts. An attack on Indian Parliament was termed as “the Indian 9/11”.¹⁷ India blamed Pakistan and asked to take strict actions against Pakistan based groups, such as Lashkr-e-Tayyibba and Jaish-e-Muhammad. Relations strained between India and Pakistan resulted in deployment of troops along LoC augmented the border tensions. Amid tense environment, the SAARC summit 2004 served as a tension defuser in Indo-Pak relations when the Prime Minister of India attended the Summit in Islamabad in January 2004.¹⁸

However, in October 2010, the Kashmir freedom movement took another turn when Burhan Wani, a young boy of 15 years, joined the armed struggle to avenge the humiliation of being publicly beaten by Indian forces along with his brother. Burhan was amongst the new generation of educated as well as young fighters in the freedom movement of Kashmir. In 2011, Burhan had gained popularity through social media as the commander of the largest native freedom fighter organization of Kashmir - Hizbul Mujahideen. Burhan Wani used modern technology to promote Kashmir's cause on the internet and was an icon of the Kashmir freedom fighters on social media from 2011 to 2016¹⁹. On July 8, 2016, the Indian security forces martyred Burhan Wani. Burhan's martyrdom infuriated his young followers and infused fresh life to the Kashmiri freedom struggle. The Indian security forces however termed Burhan's martyrdom a huge success in their fight against 'Kashmiri armed insurgents'. A large number of young Kashmiri fighters joined the movement after Burhan Wani's death.

The news of Burhan's killing by Indian security forces spread like wildfire throughout IOK. On 9th July 2016, fierce protests erupted throughout the valley of Kashmir. During the longest curfew in the history of IOK which lasted nearly 53 days, clashes erupted between Indian forces and protesters, killing nearly 100 and, injuring almost 15,000 Kashmiri.²⁰

Narendra Modi and Kashmir Policy

Indian Prime Minister, Narendra Modi, and his Hindu nationalist, Bharatiya Janata Party (BJP) has been opposing Article 370 and 35 A in the Indian constitution since long. Revoking these articles was proposed in the party's manifesto during 2019 elections. After winning a massive mandate and forming government once again in April-May of 2019 Lok Sabha elections, Mr. Narendra Modi's administration wasted no time in acting on his election promise. On August 5, 2019 Interior Minister Amit Shah introduced the bill in Indian parliament amid loud protests from the opposition as well as regional parties in J&K.²¹ According to this bill, the state will be divided into two separate union territories of Jammu & Kashmir, with its own government, and Ladakh, which will come under direct control of central government and will have no legislature of its own. They argued that the articles needed to be scrapped to integrate Jammu and Kashmir in India. India's blatant attempt to alter the status of disputed territory of Kashmir through a Presidential decree in stark violation of its own constitution and all democratic norms has once again brought South Asia to the brink of a serious crisis. It was also in violation of the Security Council designation of the area as disputed territory.

Looking back, Mr. Modi's Bharatiya Janata Party (BJP) has, since 1984, argued that Kashmir's status as special state in the constitution of India was a mistake as old as the Indian state.²² To paint the picture of his India, Modi has opted for a canvas filled with gruesome colours of violent extremism, radicalization, strict exclusivism, religious bigotry and expansionism. Given the hyper-nationalism and jingoism being drummed up by Modi and threats to forcibly annex the Pakistani controlled part of Jammu and Kashmir and the public commitments made by Pakistani leadership to forcefully respond to any Indian aggression has created a dead end predicament from which there would be no escape. The inflammatory rhetoric by the Indian side and deeply emotional sentiments in support of the Kashmiris in Pakistan has created a situation that is ripe with the potential to blow out of control.

India's revocation of Article 370 and 35-A is manifestation of the Narendra Modi-led BJP government's Hindutva ideology, which is aimed at "saffronising" India and turning it into a Hindu-dominated

“Hindustan”. The Indian Constitution provided the disputed territory of Jammu and Kashmir with limited degree of autonomy for 70 years. In India’s Constitution, Article 370 gave IOK autonomy in all areas except defence, communication and foreign policy, while Article 35-A gave the right of residence to ‘permanent residents’ of Kashmir only. It is pertinent to mention that Jammu and Kashmir is the only state in India having a Muslim majority. The changes are aimed at altering demographics in the valley and change the Muslim majority characteristic of the state.

What seems to have apparently encouraged the extremist Hindu dispensation in India to take this action is the apathy of the international community towards the plight of the Kashmiris, who were being openly subjected to brute force. The use of pellet guns blinded and seriously injured unarmed civilians under the guise of counter-terrorism operations. India’s claim of “surgical strike” across the LoC in September 2016 was applauded by many in the West, despite Pakistan showing to the media representatives that India had made a false claim. Had India been cautioned by the international community then it would not have been emboldened to carry out aerial bombardment inside Pakistani territory in February 2019. Pakistan had to retaliate, and quickly took some reconciliatory steps to de-escalate the tension.²³ In the process, two Indian aircraft were downed, one of which fell on the Pakistani side, and its pilot captured.

With the division of valley in separate states of Jammu and Kashmir, and Ladakh union territories, India has also violated the bilateral Simla Agreement where Article 4 (ii) prevents both, India and Pakistan, from changing status of the Line of Control individually. Although, Pakistan has never accepted the legality of Article 35-A and 370; however, these articles aimed to preserve demographic character of Jammu and Kashmir. Most importantly, revocation of Article 370 and Article 35-A is violation of UN resolutions, as Security Council Resolution 122 of 1957 observed that the assembly of the Jammu and Kashmir National Conference could not constitute a solution to the problem, or any steps taken to frame the future and affiliation of whole Jammu and Kashmir, contrary to defined in UNSC resolutions 91 which had been adopted earlier.²⁴ Therefore, any measures that are claimed to be taken on behalf of the residents of Jammu and Kashmir lack legal credence.

During Pulwama Crisis, the US role was minimal while Russia, China and some of the Middle East countries played some behind-the-scenes role in the defusion of the crisis. China itself is protesting against turning of Ladakh into a union territory by India. The crisis would become far more complicated with a serious potential for escalation that may not provide sufficient time for the international community to exercise a restraining influence over the contending parties. The consequences of such an escalation for not only South Asia, but the world in general, are all too well known to be repeated here.

Recently, the UNSC held an informal closed-door meeting at the request of Pakistan and China and advised both India and Pakistan to exercise caution. It may meet again formally to take up the issue which has remained on the UNSC agenda for almost seven decades. International outrage against the human rights violations by the Indian security forces, inside the Jammu and Kashmir, have also been expressed in the various reports of the UNHRC as well as the statements issued by the European Union (EU). Subsequently, on August 30, 2019, during a meeting with Indian Minister for External Affairs, the High Representative of EU stressed on importance of steps to restore the rights and freedoms of the population in Kashmir. EU states that our position remains unchanged on Jammu and Kashmir and these states are concerned about the on-ground situation where Kashmiri people are deprived of fundamental freedoms such as the freedom of movement and means of communication.²⁵ However, the United Nation High Commissioner for Human Rights (abbreviated as OHCHR) released a 43-page detailed report on 8th of July, 2019²⁶ which raised serious concerns regarding the abuses of human rights committed by Indian security forces in IOK where excessive use of force caused numerous casualties, arbitrary detentions and blinding through the use of pellet guns.

India will one day have to lift the curfew and Kashmiris, including those who once gave their loyalty to the Indian State, will come out in large numbers to protest against the present Indian action. Given the track record of the Modi Government's handling of past demonstrations, and with increased numbers of troops available to them, the authorities are likely to use increased force to suppress dissent; large-scale violence and

bloodletting is not an unlikely result. As has happened in the past, the Indian authorities will blame Pakistan for inciting violence and respond with increased military actions along the LoC with the accompanying potential for escalation.

Conclusion

Evidently, the Jammu and Kashmir conflict and Kashmir freedom struggle has evolved over time. As Burhan Wani said, “when you talk about anti-Indian sentiment here, maybe 70 years ago it was just on our tongue but not deep inside us. Then it went in our blood. Now it’s in the genes. With every generation it is getting stronger”.

Kashmir conflict has transformed from a rather simple dispute of territory to a more complex political, religious as well as cultural concern. It has deprived Kashmiris of their right of self-determination. Hence, a resolution of just territorial issue would prove to be insufficient.

The already delicate strategic stability in South Asia, with its non-existent crisis management and restraint mechanisms, is now under severe stress. With the induction of additional troops, India may feel confident of its capability to launch new cross-border military actions but, in an environment of frayed tempers and charged emotions, they would surely escalate very quickly. Given the emotionally-charged atmosphere and the public expectation for a befitting response to any Indian aggression, the Pakistani leadership would be left with little other option. Pakistani Prime Minister Imran Khan has made it clear that his country would respond strongly to any further military adventurism by India. To further complicate matters, in a statement symbolically made from India’s nuclear testing site at Pokhran in the Rajasthan desert, the Indian Defence Minister hinted at India abandoning its much-vaunted “No First Use” nuclear policy (although Pakistan has never given much credence to that policy).

The current crisis could bring both India and Pakistan closer to a full-scale war which can turn into a nuclear war. Therefore, the international community should fulfill its obligation to enforce the UNSC resolutions for peaceful resolution of the Kashmir problem. It must consider the issue as an urgent crisis which needs to be defused and a solution found

for the Kashmiri people who are desperately awaiting international intervention.

References

- ¹ Duschinski, Haley, Mona Bhan, Ather Zia, and Cynthia Mahmood. 2018. *Resisting Occupation in Kashmir*. Pennsylvania: University of Pennsylvania Press. https://books.google.de/books/about/Resisting_Occupation_in_Kashmir.html?id=WaBODwAAQBAJ&source=kp_book_description&redir_esc=y.
- ² Aziz, Zaib-Un-Nisa. 2019. "The pursuit of Kashmir." *Herald*. February 02. <https://herald.dawn.com/news/1153341#targetText=Jammu%20and%20Kashmir%20was%20a,a%20payment%20of%207%2C500%2C000%20rupees>.
- ³ Noorani, A.G. 2014. *The Kashmir Dispute 1947-2012*. Karachi: Oxford University Press.
- ⁴ Azmi, Aqil Ahmad. 1990. *Kashmir, an unparalleled curfew*. Zyzzyva Publishers. https://books.google.com/books/about/Kashmir_an_unparalleled_curfew.html?id=hoZuAAAAMAAJ
- ⁵ Hussain, Ijaz. 1998. *Kashmir dispute: An international law perspective*. Islamabad: Quaid-i- Azam University.
- ⁶ Mangrio, Naghma. 2012. "A Historical and Political Perspective of Kashmir Issue." *The Dialogue*, September: 255-264. http://www.qurtuba.edu.pk/thedialogue/The%20Dialogue/7_3/Dialogue_July_September2012_255-264.pdf.
- ⁷ Lamb, Alastair. 2002. *Incomplete partition: the genesis of the Kashmir dispute, 1947-1948*. London: Oxford University Press. https://books.google.com/books/about/Incomplete_Partition.html?id=V19WAAAAYAAJ&source=kp_book_description.
- ⁸ Snedden, Christopher. 2015. *Understanding Kashmir and Kashmiris*. London: Oxford University Press. https://books.google.com/books/about/Understanding_Kashmir_and_Kashmiris.html?id=s5KMCwAAQBAJ&source=kp_book_description.
- ⁹ Lamb, Alastair. 1991. *Kashmir: A disputed Legacy*. Wiltshire: Roxford Books.
- ¹⁰ Tehsin, Muhammad, and Adnan Bukhari. 2017. "Kashmir Uprising: Indian Approach and Regional Stability." *NDU Journal* 33-45. https://ndu.edu.pk/issra/issra_pub/articles/ndu-journal/NDU-Journal-2017/Journal_2017.pdf.
- ¹¹ Kokab, Dr. Rizwan Ullah, and Rozina Nazli. 2013. "United Nations and Peacekeeping in the Oldest South Asian Conflict." *Research Journal of Social Science and Management* 03 (04): 15-18.
- ¹² Cheema, Musarat Javed. 2015. "Pakistan - India Conflict with Special Reference to Kashmir." *South Asian Studies* 30 (1): 45-69. http://pu.edu.pk/images/journal/csas/PDF/4%20Mis%20Musarat%20Javaid_30_1.pdf.
- ¹³ Khurshid, Tooba. 2017. "United Nations Security Council Resolutions: Status of the People of Jammu and Kashmir." *The Institute of Strategic Studies* 100-122. http://issi.org.pk/wp-content/uploads/2017/01/SS_Tooba_Khurshid_No-4_2016.pdf.
- ¹⁴ Jacob, Happymon. 2016. "The Kashmir Uprising and India-Pakistan Relations: A Need for Conflict Resolution, Not Management." *Asie. Visions* (The Institut Francais des Relations Internationales (IFRI)) 90. https://www.ifri.org/sites/default/files/atoms/files/kashmir_uprising_india-pakistan_relations_jacob_2016.pdf.
- ¹⁵ Kapur, S. Paul. 2010. *India, Pakistan, and the Bomb: Debating Nuclear Stability in South Asia*. Columbia: Columbia University Press. https://books.google.de/books/about/India_Pakistan_and_the_Bomb.html?id=OJOnVLSkiP8C&source=kp_book_description&redir_esc=y.
- ¹⁶ Cronin, Audrey Kurth. 2009. *How Terrorism Ends: Understanding the Decline and Demise of Terrorist Campaigns*. Princeton University Press. https://books.google.de/books/about/How_Terrorism_Ends.html?id=E-bTT2DXZoEC&source=kp_book_description&redir_esc=y.
- ¹⁷ Pervez, Muhammad Shoaib. 2013. *Security Community in South Asia: India-Pakistan*. Routledge. https://books.google.de/books/about/Security_Community_in_South_Asia.html?id=ha5-6udOXeAC&source=kp_book_description&redir_esc=y.

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- ¹⁸ Davis, Z. 2011. *The India-Pakistan Military Standoff: Crisis and Escalation in South Asia*. Springer. https://books.google.de/books/about/The_India_Pakistan_Military_Standoff.html?id=odXHAAAAQBAJ&source=kp_book_description&redir_esc=y.
- ¹⁹ Nabeel, Fahad, Hassan Riaz, and Zeeshan Muneer. 2016. "The martyrdom of Burhan Wani and the recent Indian violence." *Center for Strategic and Contemporary Research* 4-8. <https://cscr.pk/pdf/rb/BurhanWani.pdf>.
- ²⁰ Shah, Fahad. 2019. "Burhan Wani's killing could fuel a new-age militancy in Kashmir." *Daily O*. July 2016. Accessed 09 10, 2019. <https://www.dailyo.in/politics/burhan-wani-kashmir-hizbul-mujahideen-omar-abdullah-millitancy-social-media-tral-srinagar/story/1/11659.html>.
- ²¹ Tristam, Pierre. 2019. *Text of 1949 UN Resolution Calling for Referendum on Kashmir*. January 26. Accessed 09 06, 2019. <https://www.thoughtco.com/un-resolution-referendum-on-kashmir-2353455>.
- ²² Zulfqar, Saman. 2016. "Kashmir: Nature and Dimensions of the Conflict." *Journal of Current Affairs* 01 (1 & 2): 51-65. https://www.ipripak.org/wp-content/uploads/2016/11/Article4_Saman-Zulfqar-18-Nov-2016.pdf.
- ²³ Salik, Naeem Ahmed. 2019. "Kashmir and the Abrogation of Article 370: A Pakistani." *Future Directions International*, August 27: 2-5. <https://ciss.org.pk/PDFs/Abrogation-of-Article-370-A.pdf>.
- ²⁴ Khan, Raja Muhammad. 2015. "Kashmir Dispute: A legal Perspective." *NDU Journal* 135-160. https://ndu.edu.pk/issra/issra_pub/articles/ndu-journal/NDU-Journal-2015/07-Legal-Perspective-of-Kashmir.pdf.
- ²⁵ European Union. 2019. "Speech on behalf of the High Representative/Vice-President Federica Mogherini at the European Parliament plenary debate on the situation in Kashmir." *European Union External Action*. 09 18. https://eeas.europa.eu/headquarters/headquarters-homepage/67477/speech-behalf-high-representativevice-president-federica-mogherini-european-parliament-plenary_en.
- ²⁶ Human Rights Watch. 2019. "Kashmir: UN Reports Serious Abuses." *Human Rights Watch*. July 10. <https://www.hrw.org/news/2019/07/10/kashmir-un-reports-serious-abuses>.

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How the Indian Public Opinion can Transform BJP'S Kashmir Policy?

Dr. Moonis Ahmar

Abstract

India claims to be the world's biggest democracy with 1.3 billion population. Constitutionally a secular state, images of violence unleashed against the minorities particularly Muslims, causing gross human rights violation in its occupied Valley of Kashmir, is a major contradiction which one can observe in India today. One can argue that Prime Minister Narendra Modi's act of August 5 got the endorsement from both houses of Indian parliament despite the fact that in Rajiya Sabha (upper house) BJP lacks majority. Except Communist Party of India, a section of Congress party and couple of left oriented political groups, other political parties rendered their support for revoking article 370 and 35-A. Modi's level of confidence which he expressed after August 5 2019 in dealing with dangerous situation in the Indian occupied Kashmir and growing international criticism is primarily because of what he perceived the support from the majority of people. This paper will examine the dynamics of Indian public opinion in 'new' India shaped by Hindu nationalism and the marginalization of political pluralism, tolerance and secularism. Will Modi's Kashmir policy be effectively challenged by those who fear their country drifting towards an authoritarian, fascist and Hindu extremist state? Can the Indian media and civil society come up with a strong counter narrative rejecting BJP/Shiv Sena ideological thrust on secular India? How the voices of dissent on Modi's Kashmir policy will get an impetus if India is bogged down in occupied Jammu and Kashmir (J&K) and faces physical casualties in the event of a guerrilla warfare?

Keywords: Democracy, Political Pluralism, Fanaticism, Extremism, Article 370 and 35-A.

Only internal dynamics of India can force the Modi regime to reverse its act of August 5 2019 which ended special status of Indian

controlled Jammu & Kashmir (J&K) by revoking article 370 and 35-A. When the Indian Prime Minister Narendra Modi addressed an audience at the Red Fort, Delhi on the occasion of Indian independence day on August 15 2019,¹ he tried to justify his government's act of August 5 ending special status of occupied J&K, the crowd was jubilant. Yet, outside the Red Fort, countless Indian citizens expressed their chagrin over the manner in which the special status of J&K was revoked and the entire Muslim – dominated Valley is converted into a big prison where more than 8 million people are holed up and deprived of basic necessities of life.

In a country like India which claims to be the world's largest democracy with 1.3 billion population and constitutionally a secular state, images of violence unleashed against the minorities, particularly Muslims causing gross human rights violation in its occupied Valley of Kashmir, are a major contradiction which one can observe in India today. One can argue that Prime Minister Narendra Modi's act of August 5 got the endorsement from both houses of Indian parliament despite the fact that in Rajiya Sabha (upper house) BJP lacks majority. Except Communist Party of India, a section of Congress party and couple of oriented political groups, other political parties rendered their support for revoking article 370 and 35-A. Modi's level of confidence which he expressed after August 5 in dealing with dangerous situation in the Indian occupied Kashmir and growing international criticism is primarily because of what he perceived the support from the majority of people of his country.

As days are passing, voices of dissent and anger are being raised in India against the harsh act of August 5 which neither redeemed the consequences nor bothered to take different stakeholders of Indian occupied J&K on board. It is logically asked by critics that if India claims to be world's biggest democracy why it acted in an authoritarian manner by abolishing special status of occupied J&K and unleashing worst type of atrocities in the form of imposing curfew, using barbaric methods to crush popular demonstrations and depriving the residents of Muslim majority in the Valley of Kashmir of means of communications, medicines and other essential items? Images of excessive use of force by the Indian security forces in occupied J&K certainly contributed to raising

the consciousness of an ordinary Indian of the unrestrained quelling of popular unrest against revoking special status of J&K.

This paper will examine the dynamics of Indian public opinion in ‘new’ India shaped by Hindu nationalism and the marginalization of political pluralism, tolerance and secularism. Will Modi’s Kashmir policy be effectively challenged by those who fear their country drifting towards an authoritarian, fascist and Hindu extremist state? Can the Indian media and civil society come up with a strong counter narrative rejecting BJP/Shiv Sena ideological thrust on secular India? How the voices of dissent on Modi’s Kashmir policy will get an impetus if India is bogged down in occupied J&K and faces physical casualties in the event of a guerrilla warfare?

These are the questions which are raised by those circles who are highly concerned about the prevailing dangerous situation in the Indian – occupied J&K after scrapping article 370 and 35-A. India, which is a country of 1.3 billion people certainly cannot afford to prolong its ruthless and cruel policy particularly in the Muslim dominated Valley of Kashmir because it will have a serious negative implication on those Indian states where non-Hindu religious minorities live in large number. But, reversal of Modi’s Kashmir policy largely depends on how the Indian public opinion plays a role in this regard and how the print and electronic media sides with truth and justice instead of oppression.

Why India Ended J&K’s Special Status?

The Indian Prime Minister Narendra Modi in his speech from Red Fort Delhi on August 15 2019 boasted that article 370 and 35-A which no Indian regime could scrap in the last 70 years, was revoked by him in first 70 days of his second term. On August 5 when the Indian Home Minister and Secretary General of BJP Amit Shah presented the presidential ordinance in Rajiya Sabha (upper house) of the Indian parliament entitled, “Jammu and Kashmir Reorganization Act” ending special status of Indian – occupied J&K enshrined in original article 370 and safeguards for the local population in terms of not altering demographic complexion, it was passed². Lok Sabha (Upper house) also passed the ordinance which led to a grave crisis not only in the Indian occupied J&K but in the region and in the world as a whole.

Why the Indian Prime Minister was so confident in justifying the revocation of Article 370 and 35-A during his independence day speech delivered from Red Fort Delhi on August 15, 2019. Compromising Mr. Modi became when during meeting with American President Donald Trump in Paris on August 26, 2019 on the sidelines of G-7 summit, he expressed his willingness to discuss with Pakistan the unresolved issue of J&K. From August 5 the state of jubilation in India by an ordinary Indian and also BJP supporters on ending special status of occupied J&K is being gradually replaced with pessimism. One can figure out two major reasons to understand why the Indian state proceeded with the unilateral revocation of articles 370 and 35-A. First, New Delhi chose the timing of taking such a drastic step on J&K when it calculated that there will be muted international reaction because of India's enormous economic and trade ties with major countries of the world. But the Indian Prime Minister failed to redeem Pakistan's successful diplomatic initiative to take the matter to the UN Security Council and the UN Human Rights Commission meeting in Geneva and expose India's grave violation of human rights by imposing curfew, cutting communication lines, excessive use of force including pellet guns against unarmed protestors, arrest of more than 4,000 Kashmiri Muslims and detention of even moderate Kashmiri leadership composed of former chief ministers of Indian occupied J&K Farooq Abdullah and Mehbooba Mufti.

India, by unilaterally revoking the special status of J&K, provided a unique opportunity to internationalize the Kashmir conflict and unleashing global condemnation of brutal Indian suppression of Kashmiri protests in the Muslim dominated Valley. Second, the Indian state thought that Muslim Kashmiris will not be able to effectively resist ending special status enshrined in article 370 as putting the Valley under siege by military and paramilitary will break the back of Kashmiri resistance. But India gravely miscalculated the reaction of Kashmir Muslims and is now facing a difficult situation.

India's confidence and resolve to do away with article 370 and 35-A can be examined from three perspectives. First, the landslide electoral triumph of BJP in April-May 2019 general elections gave a new impetus to RSS/BJP thought process on undoing special status given to J&K. In his first term as Prime Minister, Narendra Modi created ground for implementing the

manifesto of BJP which categorically called for undoing 370 which gave special status to J&K and 35-A which gave protection to local Kashmiris from the influx of Indian nationals by disallowing them to buy property and cast vote in local elections. After seeking re-election, Narendra Modi along with other BJP stalwarts including Amit Shah, Secretary General and Home Minister decided to proceed with their intended action. Second, the drastic step to scrap article 370 and 35-A was taken by the Modi regime when it calculated that Pakistan will not be able to effectively retaliate because of its weak economy and political polarization between the government of Tehreek-e-Insaf and main opposition parties, Pakistan Muslim League (N) and Pakistan People's Party. It is another reality that the BJP government underestimated the reaction of Pakistan and the international community. Not only Pakistan was able to take a firm, bold and courageous position against India's August 5 action, it also managed to mobilize international players express their reservations and discontent against scrapping special status of J&K; imposition of curfew; communication lockdown in the form of ban on internet and television channels and serious human rights violations conducted by the Indian security forces against Muslim Kashmiris of the Valley by the use of pellet guns, tear gas, forced detention of around 4,000 people particularly the youths.

The BJP government failed to redeem the reaction of United Nations Security Council and European Union as the grim situation in the Indian – held Valley of Kashmir was discussed in detail. Furthermore, major powers including Russia and China also made it clear to India that it should keep in mind abnormal situation created in J&K after the harsh and illegal act of August 5. Third, perceiving that it has good equation with world powers, the Modi regime proceeded with ending special status of its occupied territories of J&K. In order to neutralize the Chinese support to Pakistan in the UN Security Council, the Indian Minister of External Affairs, Jayashanker Subramanian, who is considered as a Sinologist, paid an official visit to Beijing. To his utter dismay, China refused to accept New Delhi's position on revoking 370 and 35-A and asked India to seek a peaceful solution to J&K issue by ending its military crackdown and reverse its step against special status of J&K.

There is a question that why India did not end special status of Jammu & Kashmir enshrined in 370 and laws protecting the identity of local Kashmiris from the influx of Indian nationals in 1989 when the Kashmir 'Intifada' began? The BJP stalwarts respond by stating that in 1989 their country was economically weak and the world was also passing through a process of transformation because of the collapse of the Berlin Wall and the subsequent end of the cold war. In 1989, the fragility of Indian economy was evident from the fact that the country had less than 1 billion U.S dollars of foreign exchange reserves and political stability was also questionable because of the subsequent collapse of V.P. Singh's government. Whereas, in 2019, India was economically quite powerful with foreign exchange reserves of US \$ 420 billion and economic growth rate of around 6 percent. India will soon supersede Britain as the world's fifth largest economy and will be a technological hub. Domestically, there is a strong government by BJP which has two-third majority in the lower house.

At the international level, India is well connected and has good equation with global players. Therefore, unlike 1989 when popular uprising in its held parts of J&K began, in 2019 it is in a position to implement BJP's manifesto which calls for revoking article 370 and 35-A. In its essence, in 1989, India was not in a position to take such a big decision of ending special status of J&K but in 2019, the surge of Hindu nationalism and the use of 'Hindu card' by BJP and its ally Shiv Sena in electoral politics created ground for absorbing J&K in the Indian union. As a result, BJP faced no resistance in both the houses of parliament where even some non-BJP members also rendered their support for the presidential ordinance "Reorganization of Jammu & Kashmir."

All the three calculations which were made by the BJP government before ending special status of its occupied J&K failed. Despite the support which the Modi regime got from the parliament and some political parties of its August 5 act, Congress I, Communist Party of India and other opposition parties expressed their resentment over the manner in which the BJP government took harsh measure by unilaterally revoking 370 and 35-A. Opposition parties rejected Modi regime's Kashmir policy particularly when the Kashmiris were not taken into confidence before ending special status of J&K. The Indian government also miscalculated

the world reaction as protest marches and demonstrations in different world capitals and elsewhere against the Indian atrocities against Kashmiri population in the Valley exposed the myth of Indian democracy. With each passing day, international human rights organizations and other civil society groups condemned the Indian brutalities in the occupied Valley like imposition of curfew, communication lockdown, siege and surge operations, use of pellet guns against peaceful demonstrators, arrests of children and preventing medical supplies to local population. New Delhi knows that in case of the withdrawal of curfew, the entire Valley would politically explode resulting into widespread violence.

Indian Voices against Modi's Kashmir Policy

The only cogent force which can compel Modi regime to reverse its brutal actions in its occupied parts of Jammu & Kashmir is the Indian public opinion. It is true that with the surge of Hindutva and the patronization of fanatic Hindu groups involved in lynching of Indian Muslims on suspicion of cow slaughter; targeting Christians and Sikhs because of their faith and most importantly brutal suppression of Kashmiri Muslims for their freedom struggle, mainstream Indian public opinion failed to raise their voice against the erosion of secularism and democracy in their country. Yet, in the recent past, one can gather saner voices in India condemning the manner in which the BJP government has transformed India as a country where tolerance, religious diversity, political pluralism and multiculturalism seem to have become a victim of a changed political culture and replaced with religious intolerance, bigotry and extremism.

On September 5 2019, the Indian chapter of Amnesty International led by its head Aakar Patel launched a campaign entitled “Kashmir”. A forceful statement which was uploaded on its website, termed the “telecommunication blackout in the disputed region as an outrageous and protracted assault on civil liberties of Kashmiris and said its global campaign was an attempt to highlight the human cost of the draconian measures introduced by the Narendra Modi government.³” The statement lamented that, “the blackout has now been a month old and cannot be prolonged any further by the Indian government as it has grossly impacted the daily lives of Kashmiri people, their emotional and mental wellbeing, medical care, as well as their access to basic necessities

and emergency services. It is tearing families apart. Naya (new) Kashmir cannot be built without the Kashmiris. The country is yet to hear from Kashmir after a month of being repeatedly told by the Indian government that all is normal. This is not normal. Let Kashmir speak.”⁴ Earlier on June 12 this year, Indian authorities prevented the Indian chapter of Amnesty International to hold an event to release a report on the activists detained in J&K on the pretext of prevailing law and order situation. However, the report was released online.

In its August 16, 2019 online edition of *India Today*, “over 200 writers and cultural activists on Friday slammed the Central government's decision to revoke Article 370, which granted special status to Jammu and Kashmir, saying that it made a mockery of democracy. The writers and activists said that the government has made a mockery of the democracy by splitting Jammu and Kashmir into two union territories. The writers and activists also said that by revoking the special status granted to J&K and dividing the state into two UTs, the government has violated the solemn promises made to the state. The signatories include Amitav Ghosh, Nayantara Sahgal, Perumal Murugan, Ashok Vajpeyi, TM Krishna, JV Pawar, Bezwada Wilson, Amit Chaudhuri, Shashi Deshpande, Sharankumar Limbale, P. Sainath, Damodar Mauzo, Dalip Kaur Tiwana, Bama, Sambhaji Bhagat, Jerry Pinto and many others, working in different parts of India and elsewhere, and working in many languages”.⁵ The statement explained the gravity of situation in Indian occupied Valley of Kashmir since unilateral and illegal act of August 5 by regretting that, “by revoking the special status of Jammu & Kashmir and splitting it up into two union territories, the central government has made a mockery of democracy. It has violated the solemn promises made to the state of Jammu & Kashmir by the Union of India during the accession of the state in 1947. The abrogation of Article 370 of the Constitution and the breakup of the state has been executed unilaterally, clandestinely and coercively. The people - across religious, cultural, ethnic and ideological segments - have not been consulted. Indeed, the unprecedented security and information clampdown in the state since August 5, 2019, is proof of the government's fear of popular discontent and democratic dissent.”⁶ Gradually, one can observe the surge of Indian dissent from unilateral action of Modi regime revoking 370 and 35-A and cutting off the Valley from the rest of India by imposing curfew and taking other punitive

measures to make the lives of local people miserable. Most importantly, Indian writers expressed their solidarity with Kashmiri people.

Another incident which discredited the Indian state's adherence to democracy took place on August 23 when a delegation of 12 opposition leaders from eight political parties including Rahul Gandhi and Ghulam Nabi Azad from Congress, were stopped by authorities at the Srinagar airport to visit the city. Opposition leaders had flown from New Delhi to Srinagar to get firsthand information about the plight of Kashmiri people facing lockdown and curfew since August 5. The delegation comprised the Communist Party of India (CPI) leader D. Raja, Communist Party of India (Marxist) Sitaram Yechury, Congress leaders Ghulam Nabi Azad, Anand Sharma and K.C. Venugopal, Loktantrik Janata Dal (LJD) Chief Sharad Yadav, Trinamool Congress leader Dinesh Trivedi, DMK's Tiruchi Siva, Nationalist Congress Party (NCP) leader Majeed Memon, RJD's Manoj Jha and Janata Dal Secular's D. Kupendra Reddy⁷. Commenting on government's decision to disallow opposition delegation to visit Srinagar, Congress leader Ghulam Nabi Azad lamented that, "The government says situation in J&K is normal. But then they don't allow leaders to visit? Haven't seen such a contradiction. If things are normal there, why aren't we allowed to visit?"⁸ Rahul Gandhi expressed his regrets for his deportation to Delhi by saying that he got the invitation to visit Srinagar from Satya Pal Malik, the Governor of J&K. Rahul Gandhi in his tweet stated that, "Some days ago I was invited by the governor to visit J&K. I accepted the invitation. We wanted to get a sense of what people are going through, but we weren't allowed beyond the airport. Press people with us were mishandled, beaten. It's clear that the situation in J&K isn't normal."⁹ Ghulam Nabi Azad minced no words when he said that, "We weren't allowed to go to the city, but the situation in J&K is terrifying. The stories we heard from the passengers of Kashmir present in our flight, would bring tears even to a stone."¹⁰ Rahul Gandhi dispelled the allegation from occupied J&K Governor that he was going to Srinagar to do politics and hence it was not in the public interest to allow him and other opposition leaders exit from the Srinagar airport.

As days are passing, the Indian government is being exposed both at home and outside because of two main reasons. First, the contradiction in what it claims and the reality which one can see on the ground in the

occupied Valley of Kashmir. If the situation is normal in the valley of Kashmir, as claimed by India, then why there is curfew, communication lockdown, TV channels are off air, excessive force including pellet guns are used to quell peaceful protests and thousands of people have been arrested since August 5? It is this contradiction which has put India in an embarrassing position.

Ironically, India puts the blame on Pakistan for restrictions imposed on the Valley of Kashmir since August 5. Allegations of threat of terrorist attack across the border are being mentioned by India for keeping the Valley locked down. In his interview given to NDTV, India's national security adviser Ajit Doval "blamed the crippling month-long lockdown in held Jammu and Kashmir on Pakistan." He justified indefinite attack on civil liberties on cross border communication intercepts suggesting the possibility of a terrorist attack. In his interview he alleged that "Pakistan is trying to create a situation of instability so that it can take advantage and people can't come out, and then it will say people themselves are observing civil curfew. Communication is very important but not at the cost of human lives. We cannot start mobile (connections) so that terrorists get freedom to communicate. We would like all restrictions to go but it depends on how Pakistan behaves."¹¹ About arbitrary detention of Kashmiri political leaders he said that, "don't have any time period in place as to how long political leaders will be detained. We don't want anyone to get hurt, but things and situation on ground is getting better. We have been very careful about the entire situation. No human right has been violated."¹² Ajit Doval's narrative in his interview with NDTV is far from the reality because not only Amnesty International but also UN Human Rights Commission adopted a highly critical approach on India's gross human rights violation in its occupied parts of Jammu and Kashmir. Blaming Pakistan for India not lifting inhuman restrictions imposed since August 5 amounts to escaping from its own responsibility. The Modi regime is in a perpetual state of denial of human rights violations in occupied Valley of Kashmir and cannot face documentary evidences in this regard.

Is Paradigm Shift Possible?

How far transformation in the Indian public opinion on BJP's Kashmir policy can lead to a paradigm shift and alleviate the plight of the people

of J&K whose sufferings have no parallel? Can enlightened, democratic and secular forces in India reverse the process of Hindu fanaticism and inhuman crackdown on Muslim Kashmiris since August 5? These are the questions which are often asked by those who are highly perturbed over outbreak of hostilities between the two nuclear armed neighbors, India and Pakistan.

There are two schools of thought pertaining to the surge of Hindu fanaticism in India which is termed as a major cause of militancy against Indian Muslims and absorbing India's only Muslim majority state of Jammu & Kashmir in the Indian union. First, there is marginal likelihood of reversing the process of Hindu fanaticism and extremism which has become part of the Indian culture. The rise of BJP from getting 2 seats in 1984 November general elections to 303 seats in April/May 2019 polls is a reflection how Indian society has changed over the past three decades. And it is not BJP which was held responsible for the demolition of Babri mosque on December 6, 1992¹³, but its collaboration with key Hindu extremist groups like Shiv Sena, Rashtriya Sevak Singh (RSS) Bagrang Dal and Sangparivar is quite obvious. When BJP and its related Hindu chauvinistic and extremist groups openly call for absorbing J&K in the Indian Union and transform that Muslim majority area by permanently settling non-Muslims, particularly Hindus, one can rightly understand their dangerous mindset. The support which BJP got from various opposition parties in getting the "Reorganization of Jammu & Kashmir Act" passed from the Indian parliament and marginal opposition against its brutal and suppressive measures in its occupied Valley of Kashmir shows that there is little possibility of paradigm shift in New Delhi's policy as far as its occupied territories of J&K are concerned.

Contrary to the first school of thought, the second school of thought is optimistic that the conscious of silent majority of Indian society will speak against the injustices and oppression in which the Indian state is involved particularly in the Muslim dominated Valley of Kashmir. This school of thought considers the revocation of 370 and 35-A a direct attack on Indian democracy and secular identity which threatens the very survival of Indian state. For them, India, because of its religious and cultural diversity cannot allow the imposition of one particular ideology based on Hindu fanaticism on other communities. The August 5 acts of

the Indian state is a major test case for India today as separatist movements in the country will get an impetus when India is drifting towards extremism.

Large scale criticism launched at the international level particularly by Amnesty International and UN Human Rights Commission meeting held in Geneva will definitely give strength to Indian civil society and human rights organizations to augment their pressure on the Indian government to reverse unilateral actions of August 5 and restore normalcy in the Muslim dominated Valley of Kashmir by lifting curfew, restoring communication lines particularly internet and cell phones, stopping the use of pellet guns on peaceful protests and releasing of thousands of Kashmiris arrested by the Indian security forces since August 5.

It was rightly said by Shashi Taroor who is former UN under-secretary-general and former Indian Minister of State for External Affairs and Minister of State for Human Resource Development and currently Chairman of the Parliamentary Standing Committee on External Affairs and an MP for the Indian National Congress that, “by asserting direct government control over Kashmir, India's prime minister is remaking the country in the image of his chauvinist party. The new India is a far cry from the land of Mahatma Gandhi and Jawaharlal Nehru, who preached non-violence, religious co-existence, and the acceptance of difference”.¹⁴ He further laments that, “worse, the decision was submitted to Parliament, where the ruling Bharatiya Janata Party (BJP)’s majority guaranteed its prompt passage, without consulting the local political parties. The state’s democratically elected political leaders were placed under arrest for “preventive” purposes. Educational institutions were closed, and communications – television networks, mobile phones, landlines, and the Internet – were shut down. Even if the government can convince skeptics that it is adhering to the letter of the law, its decision betrays the spirit of Indian democracy”.¹⁵ Saner voices in India will make sure that fundamental cardinals of social justice, political pluralism, religious tolerance, rule of law and secularism which formed the basis of Indian state are saved from total destruction. The battle of the future of India as a democratic state will be fought in Indian seats of learning, media, civil society, judicial and political institutions. It will be a long

battle because over a period of few decades the ultra-right wing Hindu extremism groups have penetrated deep inside Indian state and society.

Furthermore, according to the news reports, “A five member team of eminent activists, journalists and civil society members recently returned from Kashmir. The all-woman team has now shared its findings on the situation on the ground in the region that still remains by-and-large cut off from the rest of the country, the communication blackout enabling unspeakable excesses against the local population by the military. The team comprising Annie Raja, Kawaljit Kaur, Pankhuri Zaheer from National Federation Indian Women, Poonam Kaushik from Pragatisheel Mahila Sangathan and Syeda Saiyidain Hameed from Muslim Women’s Forum visited Kashmir between September 17 and 21. Apart from Srinagar, the women visited several villages in Shipian, Pulwama and Bandipora to take stock of ground realities. They have now released their report based on eyewitness accounts and case studies of those who have actually suffered”.¹⁶ Gender based organizations in India are increasingly playing an active role to expose the Modi regime of gross human rights’ violations in occupied Valley of Kashmir particularly the cases of dishonoring Kashmiri women by the Indian security forces. The fact finding report referred above contains documentary evidence of how brutalities inflicted on the unarmed population of the Valley of Kashmir is giving a bad name to India and tarnishing its image as a democratic country.

The Indian Prime Minister, Narendra Modi may not have read history but through his extremist ideology based on transforming India as a ‘Hindu state’ he is making history. But it will be a wrong kind of history because of transformation of India to an authoritarian and undemocratic state targeting religious minorities and widening political schism between his school of thought and those who challenge him.

A major test case for an independent judiciary in India lies with the Supreme Court where several petitions have been filed challenging the revocation of 370 and 35-A and punitive measures taken by the Indian state to deprive around 8 million people living in the occupied valley of basic human rights. On September 16, the Indian Supreme Court Chief Justice Rajan Gogoi presiding a bench composed of Justices S. A. Bobde and S. A. Nazeer hearing petitions filed on restrictions on J&K, media

restrictions and 370. While the Indian Attorney General denied communication lockdown or media restrictions, the court said that “Jammu and Kashmir should make every effort to restore normalcy in the state that has been under lockdown for over 40 days. The court then went on to add that restoration will however be done on a “selective basis, keeping in mind national interests”. Chief Justice of India Ranjan Gogoi said, “We are not passing any orders. We are saying restore keeping in mind national security” and added, “We have said all facilities should be restored keeping in mind national security. We are not carving out exceptions for any category.”¹⁷ While hearing a petition, Chief Justice Ranjan Gogoi expressed concerns and sought a report from the Jammu and Kashmir High Court chief justice on allegations that people are finding it difficult to approach the high court.¹⁸ “It is very serious if people are unable to approach the high court. I will myself visit Srinagar.” Chief Justice of Indian Supreme Court had suggested to petitioners that they should approach J&K high court for seeking compensation of their grievances about human rights violations and other restrictions but took a strong notice when his attention was drawn by Huzefa Ahmadi that it was not possible to approach J&K high court.¹⁹

If there was a paradigm shift since 2014 when Narendra Modi became the Indian Prime Minister and embarked on vicious plan to transform India as a Hindu state, it will take another decade or so to strive for another paradigm shift which can reverse the process of Hindu fanaticism and extremism. What has happened in the Indian occupied Jammu & Kashmir since August 5 is a sad reminder of the weakening of tolerant, democratic and secular forces in India as their failure to prevent Hindu ultra-nationalists from coming to power provided enough space to those who got only 2 seats in 1984 general elections but won a landslide victory in 2019 polls.

The Way Forward

From any standpoint, Jammu & Kashmir is a major test case for the future of Indian democracy and national unity. Even if India is able to keep the land of J&K by force, the people of occupied state, particularly the Muslim dominated Valley, will never have positive feelings for a country which is held responsible for their endless ordeals and predicament.

When the regime of Nazi Socialist Party under Chancellor Adolf Hitler embarked on genocide of Jews and other non-Aryan races, the silence of German people further encouraged him to continue with ethnic cleansing on Semitic people. So was the case with Serbia which launched ethnic cleansing of Bosnian Muslims and Croats during early and mid-1990s. Had the people of Serbia risen against genocide and ethnic cleansing in Bosnia-Herzegovina by Serbian forces, thousands of innocent lives would have been saved. More or less similar situation is occurring in the Indian – occupied Valley of Kashmir where the deployment of around one million military and paramilitary force is involved in massive human rights’ violation including brutal siege and search operations, detention of thousands of Muslim Kashmiri youths, use of pellet guns against peaceful protestors and imposition of curfew since August 5. Raising of voice against grave human rights’ violations in India is gradually picking up but it is yet to be seen how effective it will be to exert pressure on Modi regime to take a backfoot on its J&K policy.

Along with voices in India against explosive situation in the Indian occupied Valley of Kashmir, what matters is the role of the UN Security Council, European Union, OIC and other international organizations to take a serious notice of the plight of Kashmiris living in a huge prison in the Indian – occupied Valley of Kashmir since August 5. The erosion of international morality and ethics may be one of the reasons behind lukewarm support of international community for the beleaguered Kashmiri population living under the siege of Indian military.

Pakistan needs to closely examine major trends in India as far as support and opposition of Prime Minister Narendra Modi’s Kashmir policy is concerned. So far, one can see tilt in favour of his August 5 scrapping of 370 and 35-A ending special status of Indian occupied Jammu & Kashmir, but that support is slowly diminishing because of pouring of reports particularly from Muslim dominated Valley of Kashmir of lockdown, serious human rights’ violations and total defiance of local population against the Indian military presence. For Pakistan, along with international pressure on India to reverse its August 5 act, change in the Indian public opinion transforming it into a pressure group composed of civil society groups, human rights organizations, intelligentsia and saner

elements of society provides a ray of hope to normalize conditions in turbulent and volatile valley of Kashmir.

The role of public opinion is of essence in shaping India's Kashmir policy and those in India who express their solidarity with the suppressed and oppressed population of Indian – occupied J&K. For them, searching and expressing of truth is fundamental to save their country as a democracy. It is this segment of Indian society which is challenging BJP's Kashmir policy because it thinks that unilateral imposition of decision in the form of ending special status of J&K will be counterproductive and a major threat to the survival of Indian state.

References

- ¹ *The Indian Express* (New Delhi), August 15, 2019.
- ² "Article 370 scrapped: J&K to be split into union territories," <https://www.khaleejtimes.com/international/india/article-370-to-be-removed-in-jk-amit-shah-proposes> accessed on September 20, 2019. Also see, "India revokes occupied Kashmir's special autonomy through rushed presidential decree," *Daily Dawn* (Karachi), August 5, 2019.
- ³ See news item, "Amnesty's Indian chapter launches drive against Kashmir blackout," *Daily Dawn* (Karachi) September 6, 2019.
- ⁴ *Ibid.*,
- ⁵ <https://www.indiatoday.in/india/story/mockery-of-democracy-over-200-writers-activists-write-on-kashmir-situation-1581563-2019-08-16> accessed on September 10, 2019.
- ⁶ *Ibid.*, Also see "Indian intelligentsia, writers, activists says Modi's decision on IHK a mockery of democracy," in *The News International* (Karachi), August 17, 2019.
- ⁷ "Kashmir: Rahul Gandhi and his delegation sent back from Srinagar to Delhi" in *Gulf News* (Dubai) August 24, 2019.
- ⁸ *Ibid.*,
- ⁹ "Situation in Kashmir clearly isn't normal: Rahul Gandhi after being sent back from Srinagar" in *The India Today*, August 24, 2019 quoted from <https://www.indiatoday.in/india/story/situation-in-kashmir-clearly-isn-t-normal-rahul-gandhi-after-being-sent-back-from-srinagar-1591218-2019-08-24> accessed on September 10, 2019.
- ¹⁰ *Ibid.*,
- ¹¹ See news item, "India blames Pakistan for Kashmir lockdown," in *Daily Dawn* (Karachi) September 8, 2019.
- ¹² *Ibid.*,
- ¹³ A. G. Noorani, "The BJP's designs" *Daily Dawn* (Karachi) September 21, 2019.
- ¹⁴ Shashi Taroor, "Narendra Modi's New Model India" in Project Syndicate, *The World's Opinion* Page, <https://www.project-syndicate.org/commentary/modi-indian-clampdown-in-kashmir-by-shashi-tharoor-2019-08> accessed on September 12, 2019.
- ¹⁵ *Ibid.*,

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- ¹⁶ “All-women team releases fact finding report on Kashmir,” September 24, 2019. <https://countercurrents.org/2019/09/all-woman-team-releases-fact-finding-report-on-kashmir> accessed on September 26, 2019.
- ¹⁷ See news item, “Supreme Court says normalcy to return to Kashmir but with national security in mind,” *India Today Web Desk* (New Delhi) September 16, 2019.
- ¹⁸ *Ibid.*,
- ¹⁹ “India’s top judge may visit Srinagar over courts accessibility,” in *Daily Dawn* (Karachi) September 17, 2019.

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It is Not Just Kashmir, It is Pakistan

Ambassador (Retired) Sardar Masood Khan

Abstract

The Indian Government's unlawful steps on August 5, 2019 to reoccupy, bifurcate, annex and colonise the Indian Occupied Jammu and Kashmir (IOJK), have been rejected by the state's people and excoriated by the international community. A punitive security lockdown has exacerbated human rights crisis in IOJK. India's threats and brinkmanship have pushed the region to the brink of a nuclear war. Pakistan reacted vigorously at the national and international levels. In pursuance of its fascist Hindutva doctrine, the BJP has threatened to "retake" Azad Kashmir, attack and disintegrate Pakistan and persecute India's Muslim population. In view of the situation, Pakistan faces a new challenge and opportunity to defend the rights of the people of the IOJK and find a just solution of the Kashmir dispute. It is also an opportune time for Pakistan to redesign its strategic parameters to safeguard its own sovereignty and territorial integrity and emerge as a leading military and economic power in the region and beyond.

Keywords: Jammu and Kashmir, Occupation, Colonisation, International Law, World Reaction, Pakistan's Reaction, Appeasement, Hindutva, Nuclear War, Diaspora, Pakistan's Policy Reset.

India declared war on the Indian Occupied Jammu and Kashmir (IOJK) on August 5, 2019. There were already 700,000 India troops deployed in the occupied state; and in the preceding weeks additional 180,000 paramilitary forces, including a Rapid Action Force, were rushed to the territory. Hindu pilgrims and tourists were asked to leave the region. All schools, colleges and academic institutions were closed down. With these preparations, the Bharatiya Janata Party (BJP)-led government invaded the IOJK, re-occupied it and laid a brutal, long and asphyxiating military siege to the territory. The BJP stripped the 'state' of its symbols of cosmetic autonomy: a separate flag, an assembly, a

constitution; and rescinded an article of the Indian constitution that gave the people their privileged rights to education, employment, resistance and acquisition of property.

The Indian forces invaded, re-occupied, bifurcated and colonised the territory. In the execution of this nefarious plot, no attempt had been made to seek the consent of the Kashmiri people. The act was performed with stealth. This was an ambush to disenfranchise 14 million people *en masse*, which in fact was the first and worst instance of this kind in the 21st century.

The BJP-led government made its intention known to divide the big chunk of the state under its occupation and settle Hindus from all over India in its divided parts in order to turn its Muslim majority to a minority. Then, on October 31, 2019, it went on to separate Ladakh from Jammu and Kashmir and designated the two territories as Union Territories - like Chandigarh and Puducherry - that would be governed by the Federal Government. The status of the union territories is not more than municipalities, which are ruled directly by the central government. India went one step further. On October 31, it issued fake maps to include Gilgit-Baltistan and Azad Jammu and Kashmir in the so-called union territories of Ladakh and Jammu and Kashmir, respectively. These are the most blatant examples of “settler colonialism” and irredentism. India has also publicly admitted that it intends to replicate Israeli illegal settlements on the lines of the West Bank and the Gaza Strip. The Indian unilateral actions violate the principle of *uti possidetis juris*; the internal and external boundaries of states emerging from decolonisation will remain unchanged. In case of the state of Jammu and Kashmir, this is a double imperative because its fate has not yet been decided by its people.

The steps that India took constitute war crimes, crimes against humanity, genocide and ethnic cleansing. They violate the United Nations Security Council resolutions on Jammu and Kashmir, passed from 1948 to 1957, that had declared the entire state of Jammu and Kashmir as disputed, whose future had to be determined by the people of the state through a UN-supervised referendum.

Rule 130 of the customary International Humanitarian Law prohibits states from deporting or transferring parts of a civilian population into a territory they occupy. Such illicit transfers, which India has announced to change the demographic composition of IOJK, contravene the Fourth Geneva Convention, Additional Protocol I, the Statute of the International Criminal Court, UN Security Council resolutions 446, 452, 465, 476 and 667, and the recommendations of the Special Rapporteur on the Human Rights Dimensions of Population Transfer, including the Implantation of Settlers and Settlements.

The Indian government also tweaked and twisted its own constitution to revoke Article 370. The article could not have been repealed without the consent of the Jammu and Kashmir Constituent Assembly, which was dissolved in 1957 thus making this article a permanent part of the Indian Constitution; or without the consent of the Jammu and Kashmir Assembly/Government, which had ceased to exist in June 2018. At the time of the repeal of Article 370, the IOJK was under the President's rule and the BJP government with a sleight of hand amended Article 367, which pertains to the interpretation of the Constitution. The modifications in this article made two significant changes: (1) reference to the Government [of Jammu and Kashmir] shall be construed as including references to the Governor of Jammu and Kashmir; and (2) the 'Constituent Assembly of the State' will be understood to mean 'Legislative Assembly of the State'. Thus, the path was cleared for a constitutional fraud and use of unfettered force in IOJK.

Leave aside the fine points of international law that India has flagrantly trampled. On August 5, India imposed a punitive security lockdown and communication blockade on the besieged people of IOJK. An information blackout reinforces a catch-all gag order. Anybody who says that the situation in IOJK is not normal runs the risk of being dubbed as traitor. In their zeal to penalise Kashmiris collectively, the occupation forces have cast aside all norms. The broad sweep of the draconian laws - the Armed Forces Special Powers Act and the Public Safety Act - and absence of any judicial intercession have empowered the occupation forces to detain the entire political leadership which includes the Hurriyet leaders, collaborationists and political activists. The occupation forces' chosen targets are young boys who are picked up randomly to

spread terror. The National Federation of Indian Women, after a visit to IOJK despite restrictions, established that 13,000 young men and boys between the ages of 13 and 28 had been detained and had in fact been forcibly disappeared.¹ The real number of detainees is much more. These detainees have been moved to the jails in northern India, without any charge, where they are being tortured. Kashmiri women, because of their fair skin, have been fetishised and the followers of the Rashtriya Swayamsevak Sangh (RSS) are projecting them as “spoils of war” because India has “conquered” Kashmir.

The BJP’s contention is that whatever it has done in IOJK is lawful, the situation post-August 5 is normal and the measures taken will usher in an era of prosperity and stability. This reminds us of Martin Luther King’s words on Hitler’s actions: “We should never forget that everything Adolph Hitler did in Germany was “legal” and everything the Hungarian freedom fighters did in Hungary was “illegal”. In a massive campaign, the BJP and RSS are weaponising and instrumentalising the exodus of the Pandits from Kashmir in 1990s, choreographed at that time by the Governor, to justify establishment of illegal settlements in Jammu and Kashmir and to punish Kashmiris.

What is evident is that through these brazen actions India is seeking exceptionalism for itself as an emerging world power. Its outrageous invasion and occupation of a disputed territory is designed to demonstrate that it is above the international rule of law and has operated under the assumption that the most powerful nations, inside and outside the UN Security Council, will acquiesce in India’s perilous expedition in IOJK, though this is bound to have dire consequences.

Until recently, the trope of exceptionalism was reserved for the United States, for instance, as Madeleine Albright’s “indispensable nation” or Ronald Reagan’s a “shining city on the hill”. The American proponents projected their nation’s exceptionalism as a positive force, though detractors disagreed. On the contrary, the BJP hardliners, which have lately touted India as a competitor of the US, have sought endorsement of their war crimes and evil deeds in Gujarat, brutalisation in IOJK, persecution of 200 million Muslims and other minorities in India, and neo-Fascist Hindutva which advocates Hindu exclusivism, Xenophobia, intolerance and violence. Since the ascendancy of Narendra Modi, India

has been proclaiming its 'exceptionalism' and 'strategic autonomy', though many would look askance at such a self-adulatory portrayal. This quest for exceptionalism, without a doubt, undermines the world order which was fashioned after World War II and is symbolised by the United Nations.

Emboldened by its hubris, India is trying to subjugate the people of IOJK through the use of force and threaten Pakistan with aggression and annihilation. The Indian Defence Minister has threatened to "retake" Azad Kashmir Kashmir and talked about disintegration of Pakistan. A senior RSS leader, Indresh Kumar, has stated "Before 1947, Pakistan was not on the world map, I believe it will not be on the world map again. And, it can so happen that we will celebrate Babu Jayanti and Hindi Diwas in Lahore, do you agree?"² This is not empty rant; this is what the RSS and BJP are preparing for. The BJP knows full well that the Azad Jammu and Kashmir (AJK) never belonged to India even before India's occupation of the remaining part of the state. AJK was liberated by its valiant people in a military campaign from June to October 1947. Similarly, Gilgit-Baltistan was liberated by its own people in November 1947. Later, Azad Kashmir forces, in collaboration with the tribals from Pakistan and Pakistan army, repulsed Indian operations to capture these territories. Today, both AJK and G-B form a strong defensive bulwark of Pakistan.

The same Defence Minister has said that India could revise its *No First Use* nuclear doctrine to pave the way for attacking Pakistan with nuclear weapons *first*; and Modi in April 2019 infamously bragged that he would wipe Pakistan out with the "mother of nuclear bombs."³

A nuclear war by India would not just be directed against Jammu and Kashmir and Pakistan; it would impact the region and the globe at large. Meanwhile, Modi has the dubious distinction of being the only head of government of a nuclear weapon state who has so irresponsibly indulged in nuclear sabre-rattling. Seeking exceptionalism or sheer tomfoolery?

Nuclear experts are taking nuclear signalling seriously. *Science Advances* in its October 2019 issue made the following chilling assessment:

“Pakistan and India may have 400 to 500 nuclear weapons by 2025 with yields from tested 12- to 45-kt values to a few hundred kilotons. If India uses 100 strategic weapons to attack urban centers and Pakistan uses 150, fatalities could reach 50 to 125 million people, and nuclear-ignited fires could release 16 to 36 Tg of black carbon in smoke, depending on yield. The smoke will rise into the upper troposphere, be self-lofted into the stratosphere, and spread globally within weeks. Surface sunlight will decline by 20 to 35%, cooling the global surface by 2° to 5°C and reducing precipitation by 15 to 30%, with larger regional impacts. Recovery takes more than 10 years. Net primary productivity declines 15 to 30% on land and 5 to 15% in oceans threatening mass starvation and additional worldwide collateral fatalities.”⁴

Experts have ruled out a so-called ‘limited nuclear war’ between India and Pakistan. If such a war takes place it would cause devastation all around the world. The range of destruction would include radioactive fallout, slow, painful deaths of hundreds of millions of people as a result of radiation, extreme weather patterns, firestorms, plummeting temperatures, failing crops, refugee outflows and global recession.⁵ This all sounds like an apocalypse.

What is next on India’s anti-Pakistan agenda? A water war? India has publicly stated that it could revoke the Indus Water Treaty between India and Pakistan and divert the waters from the rivers allocated to Pakistan under the treaty.

In our times, however, a threat even more lethal than the nuclear Sword of Damocles is the rise of *Hindutva*, which may well become a trigger for a nuclear Armageddon. From whichever angle you look at the violent, warped doctrine of *Hindutva*, there is nothing benign about it, not even for its own proponents and followers. Even its most neutral definition characterises it as an ideology seeking the hegemony and supremacy of Hinduism or a Hindu way of life. If it were a cultist *idée fixe* nobody would give a second thought to it. But it is in fact a political religion that is patently Islamophobic and Christianophobic; and it endorses open and disguised violence to achieve its objectives. What’s more, the BJP and its ideological affiliates and muscleman entities - the RSS, Bajrang Dal, Vishva Hindu Parishad and Shiv Sena - all have formed a

communion of communal hatred and especially designated IOJK, AJK, Pakistan and Indian Muslims in India as objects of their wrath.

So a war, which is simultaneously civilisational, ideological, military, political and economic, has been imposed on Pakistan. Already inside its territory, Pakistan is fighting India-sponsored proxy wars and terrorism, as well as hybrid warfare. Pakistan has no choice but to respond to these hostile acts in self-defense. This past year, 2019, has been the worst year for more than half a million people of AJK living along the Line of Control (LoC) with 61 civilians killed, nearly 300 critically injured and disabled, infrastructure destroyed. After several years, Indian forces also used banned cluster munition, which claimed children's lives.

For the rest of the world, Hindutva is a distant menace; for Pakistan and Kashmiris an existential threat. The BJP is secure in the belief that its pivot to the rising tide of the ethnic, supremacist nationalism in the West will underwrite its bestiality and depredations in IOJK and its anti-Muslim drive in India. This evil plot must not be allowed to succeed.

All is not dark. China, Turkey, Malaysia, Iran, Germany, Sweden, Finland and many other nations have courageously spoken up for the Kashmiris and called out India for its precipitate and oppressive actions in Kashmir. For the first time in decades, the taboo that India cannot be held accountable for its heinous crimes in IOJK has been broken by the mainstream international media, reputable parliamentarians and human rights defenders of the US, Europe and South East Asia. The US Congress has held two public hearings and a resolution on the situation in Kashmir has been tabled in the House of Representatives. The British and European Parliaments have held plenary debates to express their grave concern about the situation in Kashmir; and the French Parliament convened its first ever conference on the human rights and humanitarian conditions in the occupied state. The British Members of Parliament (MPs) and Members of European Parliament (MEPs) have been most vocal. In the US, scores of Republican and Democratic senators and congressmen have expressed their indignation over India's conduct in IOJK through compelling statements and communications and some of them have urged the US President to intervene.

In September 2019, the Organization of Islamic Cooperation (OIC) issued a strongly-worded communique demanding that India retrocede the territory of IOJK to its people, reverse the illegal steps it took on August 5 and stop human rights violations in the territory; and that the UN play its role to resolve the Jammu and Kashmir dispute in accordance with its own resolutions. The OIC's Independent Permanent Human Rights Commission (IPHRC) has held a special session on Kashmir.

Turkish President Recep Tayyip Erdogan and Malaysian Prime Minister Mahathir Mohamad raised the issue at the UN General Assembly with clarity and conviction. While President Erdogan called for diplomacy to resolve the issue, Prime Minister Mahathir termed Indian action in IOJK as invasion and occupation and appealed to all to respect the UN Security Council resolutions on Kashmir. India threatened both countries with sanctions but their leaders stood their ground. Seriously alarmed at the situation in IOJK, on August 16, 2019, China, despite India's aggressive lobbying, at the request of Pakistan, facilitated a meeting of the UN Security Council on Kashmir, which took place after a lapse of fifty years. A second meeting in December 2019, again facilitated by China, was postponed because the UN Military Observer Group in India and Pakistan (UNMOGIP) was apparently not "ready" with its report. On August 21, expressing concern about the situation in Kashmir, the Iranian supreme leader Imam Khamenei called on India to "adopt a just policy towards the noble people of Kashmir and prevent the oppression & bullying of Muslims in this region"⁶.

Most importantly, in the world media, Kashmir gained unprecedented visibility and attracted worldwide condemnation for the use of excessive force, torture and telecommunications blockade imposed by Indian forces. The Indian chokehold on the world media was loosened. Shocked by India's ruthless offensive, reminiscent of Hitler's invasions of Germany's neighbouring countries during the Second World War and India's own swift occupation and annexation of the IOJK in 1947, leading newspapers and TV networks reacted censoriously heaping opprobrium on India. Media outlets highlighted the plight of the besieged Kashmiris, their aspirations for freedom and self-determination, and their rejection of Indian occupation; and decried Hindutva. The New York Times,

Washington Post, Wall Street Journal, LA Times, Bloomberg, The Guardian, Financial Times, Global Times (China) - all wrote scathing editorials, some of them by the full body of their editorial boards. Story after story by news agencies - Reuters, AP and AFP - as well as BBC, Al Jazeera, TRT, CNN and others excoriated India, and despite severe restrictions inside IOJK managed to get footage on torture, intimidation and miserable life under occupation. Indian officials' spiel and fake stories planted by the pro-Government vendors and embedded journalists were dismissed. The New Yorker's Dexter Filkins, who managed to sneak into IOJK with the help of Indian journalist Rana Ayyub, published a macabre account of the Gujarat massacres in 2002 under the supervision of Narendra Modi, and linked it to the impending fresh genocide and pogroms in IOJK.⁷ Moreover, themes of Kashmir as a nuclear flashpoint, the most dangerous place on earth, one of the most militarised zones in the world, and a tripartite dispute between Pakistan, India and Kashmiris - were reinforced in editorials and reporting. The emphasis was on ending the curfew, not reversing the illegal steps India had taken. Exhortations for a definitive solution of the Jammu and Kashmir dispute were scant.

The Indian opposition parties, some regional parties, civil society and human rights organisations from across the country opposed and protested against the revocation of Articles 370 and 35 A, as well as the inhuman and degrading treatment to which the Kashmiris were being subjected. There was a genuine outpouring of sympathy for Kashmiris in these circles, though their political paradigm too did not brook any form of self-determination beyond the limited autonomy that was given under Article 370. Some rights' organisations took grave risk to gather authentic information about oppression by visiting IOJK. The Congress Party, which itself has soiled record on Kashmir, was obviously trying to get political mileage out of this crisis, while some of its party members genuinely believed that the delicate equilibrium they had worked out on Kashmir would unravel because of the BJP's rash decisions. The popular reaction in India after August 5 was much larger in volume and intensity than the principled positions that used to be taken by politicians like P. Chidambaram and Yashwant Sinha or the lone voices of intellectuals like Arundhati Roy and Pankaj Mishra. Nobel laureate Amartya Sen also castigated the Modi-led government for revoking

“special status” of Jammu and Kashmir and splitting it into two Union Territories and added that “it should have been up to Kashmiris to decide on the rights of land use in the state as it was their land...”⁸

The most disappointing response in the aftermath of August 5 was the conduct of the UN Security Council and most powerful nations on earth outside the Council. They were either consciously reticent or ambivalent in their statements on Kashmir. President Trump’s offer of mediation, made during Pakistan Prime Minister’s visit to Washington in July 2019, had kicked off euphoria in Pakistan and furore in India, but ultimately the offer turned out to be a lackadaisical initiative. Despite calls from many British MPs, the UK, hugely distracted by Brexit, only managed to say that it was “following the developments closely and support[s] calls for the situation to remain calm.”⁹ The UN Secretary General counselled “maximum restraint”; and the UN Security Council did not convene a meeting of the Council on its own in accordance of the provisions of the Charter. These lukewarm but carefully crafted responses conformed to the pattern of *appeasement* of India because of Washington’s strong alliance with India and the Western countries’ growing economic and strategic ties with Delhi. The eerie similarity of Modi’s action in IOJK with the 1938 Munich Agreement, which paved the way for Hitler’s land grab of Czechoslovakia and Poland, was striking. Little thought was given to the fact that this kind of appeasement of a rising supremacist power could be as dangerous as it was in the last century. With the moral fibre of the world order withering and international legal regime frayed, *realpolitik* prevailed.

Pakistani nation’s response to Indian aggression in IOJK was robust and the unmistakable signal was of unity and solidarity with the people of IOJK. Mass rallies were held, conferences were organised and joint resolutions were passed by the Pakistan Parliament and the AJK Assembly. Every citizen was imbued with the spirit to defend Kashmiris in IOJK by harnessing all means. The Pakistani and Kashmiri diaspora community stood for the rights of the people of Jammu and Kashmir and created a truly global wave for the freedom of Kashmir. The Prime Minister of Pakistan, on October 27, 2019, made a passionate appeal to the world leaders assembled at the UN General Assembly to save the people of IOJK from genocide and the world from the scourge of war.

Pakistan's Foreign Office reached out to world capitals and leaders. This international spotlight on Kashmir, combined with the media's close scrutiny of India's scorched earth policy in the occupied territory, was probably instrumental in staying the oppressor's hand and thus Kashmiris were, for the time being, saved from an instant and massive carnage on the scale India had planned. But despite worldwide criticism and pressure, there were no signs that India would reverse its course of annexation and colonisation of the disputed region. This also demonstrated the limitations of political and diplomatic endeavours in regard to the putatively intractable dispute of Jammu and Kashmir.

For India Jammu and Kashmir is *lebensraum*, a geographical space that it needs to fulfil its strategic and doctrinaire ambitions; for Jammu and Kashmir and Pakistan, it is the fate of the 20 million people who will determine their own political destiny. The BJP has already unveiled its plans to uproot, dislocate, displace and even exterminate Kashmiri Muslims, as well as repopulate Hindus from India, in order to effectuate proposed demographic changes. The occupation forces are generating so much stress that Muslims in IOJK would be forced to flee, migrate and seek asylum. A fresh refugee movement across the LoC cannot be ruled out. Already, there are 40,000 refugees in AJK camps who have been coming since the Indian crackdown in 1989.

The BJP-RSS plans are canny and demonic. In one go, they would seek to delegitimise their erstwhile loyalists - Abdullahs and Muftis et al - and Hurriyet leaders and try to create a new political class through a spurious electoral mechanism in the so-called union territory of Jammu and Kashmir¹⁰. The centre would also redesign and redraw constituencies in Jammu and the Valley of Kashmir to enhance Hindu seats so as to form a government headed by a Hindu Chief Minister. The so-called West Pakistan refugees, the Hindus who migrated in 1947, will be given rights on par with the original inhabitants of Jammu and Kashmir, thus further increasing the ratio of Hindu population.

Securitized Sainak colonies (of ex-servicemen) would be constructed not only in Poonch and Rajauri but also in the Valley; and work on the Pandit colonies has begun. Besides, the Statistics Act, SARFAESI¹¹ Act, development projects, industrialisation and even repair and

reconstruction of Hindu temples would be used manipulatively to alter demography and induce inflow of Hindus to IOJK.

Does the preceding analysis suggest that the die has been cast and the Indian actions are irreversible? On the contrary, India's reoccupation of IOJK and its massive atrocities will have grave repercussions. The entrapped people, as of now, are fighting back through peaceful resistance and civil disobedience (Kashmiri farmers have not sold their crops of apples, walnuts and saffron worth billions of dollars; and they have curtailed business timings to deny cooperation with the occupiers). The entire territory is seething with anger like a volcano about to erupt.

The BJP-RSS agenda of communalising Indian politics by disenfranchising Muslims and other minorities, securing a decision from the Supreme Court to construct a Hindu temple on the site of the demolished Babri mosque and passing the Citizenship Amendment Act has backfired. Students and a cross-section Indian citizens are sending a clear message to the BJP and RSS that enough is enough and that they would not countenance the BJP's doctrinal overstretch without reaction.

A series of measures taken by the BJP-led government are deliberately incendiary and revisionist, which directly infringe the right to self-determination of the people of Jammu and Kashmir and threaten Pakistan's security.

Pakistan must recognise this challenge and change its national mindset in order to realise its full potential as a great, powerful and prosperous nation. This would be accomplished by working on military preparedness, fast-paced economic development, knowledge creation and knowledge economy, investment in science and new technologies, and conscious endeavours to forge national unity. There is no preferred sequential order in prioritising these goals. They all are necessary and can move ahead simultaneously, as long as they are backed by political will to aggregate the interests of the masses, because no nation can reach its destiny without assured and holistic human development.

Freedom for Kashmir cannot be won from a position of weakness. We need cutting edge conventional and strategic capabilities to deal with any regime in Delhi. Peace itself would be feasible from a position of

strength, not merely through unilateral overtures. Talking about preparedness for war is not scaremongering but a realistic acknowledgement of the ground realities that a war imposed on multiple fronts has to be fought back either on the basis of parity or asymmetrically. Its bravado and bluster notwithstanding, India may not mount a conventional attack against Azad Kashmir but it would be prudent to continue to war-game such a scenario from both civilian and military angles. There is no short cut to great power stardom, while the ground is cut from under your feet. By issuing fake maps on October 31, 2019, India is flaunting its ambition to cut off direct Pakistan-China border and be a contiguous neighbour of Afghanistan and Central Asia. To some this may appear outlandish, but why take such projections lightly when the empirical evidence suggests otherwise. Military preparedness is not just the readiness of the armed forces but of the entire nation, especially youth, which at the moment constitutes 64% of the entire population or roughly 130 million-strong youth bulge.

The contours of Pakistan's foreign policy were shaped in the Cold War, which essentially remain the same. We have seen many nations walk past that era and attain unbelievable progress and prosperity. The ideological grooves have changed begging us to make adjustments. Some initial steps have already been made in that direction by engaging Russia. The time is ripe for making a shift towards pragmatism and coming out of a time warp. The needle must move forward. It goes without saying that all successful foreign policies have to be centred on economic development, and this is no rocket science if we make a determined effort to liberate our polity and economy from crony capitalism, rent-seeking and feudalism. In the recent past, our middle class has grown exponentially, but its contribution to the national exchequer and documented economy is nearly zilch, which compels us to seek external bailouts at the expense of national prestige and dignity and condemns us to a vicious cycle of chronic underdevelopment. We must astutely develop our indigenous economic sinews and seek external partnerships that will wean us off one-sided dependencies.

The scenario painted above is not pessimistic. Pakistan has reached a high threshold of nuclear capability, economic performance and

educational knowhow. What it needs is a spurt towards a critical mass and high quality. This is possible.

Pakistan also needs to burnish its image and project its soft power. While Pakistan may have been deficient in these areas, one mustn't forget that a whole industry has been employed by India to tarnish Pakistan's image. BBC has reported that a global network¹² of 265 pro-Indian fake websites and think-tanks across 65 countries has been lobbying and disseminating propaganda against Pakistan, with the aim of influencing decision makers in Europe. Pakistan does not have to emulate India's fake methods; instead, it should develop and strengthen its own body of writers to craft an authentic narrative about Pakistan. Pakistan ought to proactively dispel the misperception spread by India that it is isolated diplomatically. As a pivotal state, Pakistan is fully integrated into the international system. We also need to counteract and foil India's legal manoeuvres in the UN Security Council, the Financial Action Task Force (FATF) and the International Financial Institutions (IFIs) by learning and leveraging *lawfare*.

Our Kashmir policy should have both short-term goals and long-term strategy. Pakistan must acknowledge that an attack on any part of Jammu and Kashmir is an attack against its people and its sovereignty. If restraint is imperative, then it must be exercised in the form of *recessed deterrence*. The Kashmir dispute became international in 1948; it should have remained in that domain. By bilateralising the issue, India created an illusion of a possible solution, which in their mind was maintaining the status quo. After August 5, the dispute and its story has moved back to the international arena where it belongs and where it should stay. Our success in the international forums, especially in the UN Security Council and Human Rights Council, will be directly proportionate to our perseverance and ingenuity in multilateral forums. No false sense of bonhomie, back door diplomacy, or out-of-the box franchises or third party mediation should be entertained that do not put the will of the Kashmiri people and their right to self-determination in the centre. This would not be a diplomatic stranglehold but a formula for waiting for the right moment for engagement and decision-making. Before that, unilateral, gratuitous and unsolicited concessions will undercut the

rights of the people of Jammu and Kashmir and undermine Pakistan's sovereign interests.

Pakistan and the Kashmiris have found a new space and opportunity in the realm of communication, post-August 5, which must not be wasted at any cost. The world is relatively attentive and amenable to our point of view and Kashmiris' perspectives. To take full advantage of this opportunity, Kashmiris should be associated with the campaigns for diplomatic outreach.

Finally, we should make full use of the strengths of our diaspora community who have acquired political traction and economic clout in their new countries and act as bridge-builders *vis-a-vis* our foreign interlocutors. They can fathom depths that formal diplomacy cannot. Besides, they help us internationalise the Kashmir dispute outside the multilateral forums amongst global citizenry, Parliaments, think tanks and foreign affairs councils.

Every calamity presents a rare opportunity. The appalling actions of India on August 5, 2020 and thereafter give us our Vietnam moment. If we do not use it, we will lose it.

References

- ¹ *Alienation Was Always There, Now It's Complete': Activist Annie Raja after Visiting J&K*, Outlook, September 26, 2019.
- ² Business Standard, India, September 13, 2019.
- ³ *India Threatens Pakistan With Mother of Nuclear Bombs ; Where's Trump?* CNN, April 18, 2019
- ⁴ *Rapidly expanding nuclear arsenals in Pakistan and India portend regional and global catastrophe*, Science Advances, October 2, 2019.
- ⁵ *When It Comes To India and Pakistan, "Limited" Nuclear War Does Not Exist*, The National Interest, November 19, 2019
- ⁶ Tweet, August 21, 2019
- ⁷ *Blood and Soil in Narendra Modi's India*, The New Yorker, December 9, 2019
- ⁸ 'As an Indian, I am not proud': Amartya Sen criticises Centre's decisions on Jammu and Kashmir, scroll.in, August 20, 2019
- ⁹ *UK MPs ask PM Johnson to condemn India*, The News, Pakistan, August 7, 2019
- ¹⁰ It has been declared that Ladakh will have no legislative assembly
- ¹¹ Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
- ¹² *Pro-Indian 'fake websites targeted decision makers in Europe'*, BBC.com, December 16, 2019

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Accountability for Indian Atrocities in IIOJK through Universal Jurisdiction

Ahsan Qazi

Abstract

*The past seven decades of humanitarian and human rights violations inside IIOJK have been well documented and highlighted from time to time. However, the conversation often stops there with no mention of the accountability of the perpetrators of the violations and how they can be brought to justice. This paper carries the conversation forward by highlighting the use of Universal Jurisdiction to ensure the accountability of the perpetrators. This paper offers how in the context of IIOJK, traditional approaches of ensuring accountability such as the International Criminal Court or Ad-Hoc Tribunals are not viable and instead the exercise of Universal Jurisdiction becomes essential as the perpetrators may be tried despite their immunity *ratione materiae*, and even in *absentia*. The effective exercise of Universal Jurisdiction hinges on the prior establishment of fact-finding mechanisms to ensure collection of evidence that link the crimes with the perpetrators and accordingly steps must be taken to ensure their establishment. The events of 5th August 2019 warrant Pakistan to undertake a new approach and take steps to ensure accountability.*

Keywords: Universal Jurisdiction, Geneva Conventions. Illegally Indian Occupied Jammu and Kashmir. Fact Finding Mechanisms. Evidence. Universal Jurisdiction in *absentia*. Functional Immunity, Customary International Law.

The history of oppression inside IIOJK has been well reported - going even past 1947.¹ This centuries long oppression took a new turn in the aftermath of 1947 i.e., occupation by India. This occupation has seen a widespread and systematic campaign of crimes against humanity, war crimes as well as various human rights violations perpetrated against the ethnic Kashmiris inside IIOJK as have been reported by various

international actors from time to time. However, on 14 June 2018, the Office of the United Nations High Commissioner for Human Rights ("OHCHR") released the 'first-ever' report on the situation on human rights in both 'Indian-Administered Kashmir and Pakistan-Administered Kashmir'.² The report was significant because it was the first time in the region's history that the aforementioned 'widespread and systematic' nature of the atrocities being perpetrated inside IIOJK were documented such as the use of excessive force by Indian police forces, usage of pellet guns on civilians, civilian killings, arbitrary detentions and torture.³

One year later, on 8 July 2019, the OHCHR released a 'second' report which, once again, documented in great depth, incidents of human rights violations inside IIOJK from May 2018 to April 2019.⁴

Shortly thereafter, on 5 August 2019, the Indian Government revoked the 'special status' of Jammu & Kashmir by abrogating Article 370 of the Indian Constitution⁵ and imposed a repressive state-wide 'lockdown' wherein internet and telecommunications were shutdown, political leaders were arrested, and freedom of movement was severely curtailed.⁶ The situation has been likened to a siege.⁷

The back-to-back reports and the events of 5 August 2019 have brought attention to the fact that India has historically and continuously acted with absolute impunity inside IIOJK. Indeed, as the OHCHR reports note "several 'special laws' enacted in the territory such as the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 (AFSPA) and the Jammu and Kashmir Public Safety Act, 1978 (PSA) 'created structures that obstruct the normal course of law, impede accountability and jeopardize the right to remedy for victims of human rights violations.'"⁸

This in turn has led to calls for 'accountability' for the perpetrators of the atrocities and accordingly Pakistan's traditional approach regarding IIOJK as a matter that can only be resolved through UNSC Resolutions must be re-evaluated and reconsidered and a different strategy must be employed to ensure that the perpetrators of the atrocities inside IIOJK are held accountable for their actions.

This Article will examine one such legal strategy that may be employed to address the issue of 'accountability' or the perpetrators inside IIOJK

i.e., exercise of Universal Jurisdiction. It will first discuss the notion of universal jurisdiction, its relevance and legal basis and then address the potential challenges that would need to be overcome to successfully pursue this option before concluding with what steps should Pakistan take.

1. **Universal Jurisdiction**

The generally accepted definition of universal jurisdiction is that it is 'the jurisdiction to establish a territorial jurisdiction over persons for extraterritorial events'⁹ where neither the victims nor offenders are nationals of the forum State. The rationale behind the exercise of universal jurisdiction is that certain crimes are so atrocious in nature that each State has a vested interest in its suppression and punishment despite the absence of a nexus with the Forum State, otherwise its perpetrator may escape punishment.¹⁰ Accordingly, universal jurisdiction enables all states to fulfill their duty to prosecute and punish the perpetrators of war crimes, crimes against humanity as well as other human rights violations.

1.1 Importance of Universal Jurisdiction

As described above, the situation inside IIOJK is one where the territorial State of the perpetrator is unable or unwilling to act, and normally in such situations, victims would seek assistance through the intervention of an international jurisdiction or through the permanent International Criminal Court (ICC). However, international jurisdictions are constrained by a limited mandate specific to a territory or to a conflict of a State party, and the jurisdiction of the ICC is limited to crimes committed after 01 July 2002. The ICC also only has territorial jurisdiction over states parties to the ICC Statute which India is not. Situations like these result in what the Office of the Prosecutor has termed as 'risk of an impunity gap'¹¹ and that elimination of this risk requires 'national authorities, the international community and the ICC work together to ensure that all appropriate means for bringing other perpetrators to justice are used.'¹² Accordingly, the only way to combat this lacuna is for States to exercise universal jurisdiction over such perpetrators.

1.2 Legal Basis for the Exercise Universal Jurisdiction

Universal jurisdiction may be exercised either through invocation of treaty-based obligations or by invocation of customary international law obligations or through implementation of domestic legislation. When it comes to treaty-based obligations, two distinct crimes are explicitly identified in international conventions over which universal jurisdiction may be exercised: The first concerns grave breaches of the provisions of the four Geneva Conventions of 1949.¹³ The second is piracy *iure gentium* under the UN Convention on the Law of the Sea.¹⁴ However, this discussion is only confined to the former crime.

Both offences have been subjected to universal jurisdiction at least since the 19th century under customary international law, each on a different theoretical basis. Grave breaches are not perpetrated on locations beyond the jurisdictional reach of States; however, their heinous and repugnant nature sufficed in order for the international community to consent to clad them with universal jurisdiction.¹⁵

Additionally, to make this principle effective, States are required to establish universal jurisdiction for war crimes in their national legislation.¹⁶ Currently, a number of States around the world have enforced legislation on universal jurisdiction to hold perpetrators accountable for their crimes including, Germany,¹⁷ France,¹⁸ Spain,¹⁹ United Kingdom,²⁰ and Argentina.²¹

2. Violations committed inside IIOJK which are subject to Universal Jurisdiction

At the outset, it must be noted that existing literature already classifies the situation inside IIOJK as an 'occupation' and therefore subject to the Fourth Geneva Convention.²² Article 147 of GCIV establishes that 'grave breaches' of the Conventions encompass the following acts against protected persons or property:²³

- Willful killing,
- torture or inhuman treatment, including biological experiments,

- willfully causing great suffering or serious injury to body or health,
- unlawful deportation or transfer or unlawful confinement of a protected person,
- compelling a protected person to serve in the forces of a hostile Power, or
- willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention,
- taking of hostages and
- extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly.

It is now well established that the Indian Forces have routinely perpetrated such actions inside IIOJK as clearly documented by the aforementioned OHCHR Reports, the works of the Human Rights Watch²⁴ as well as the Jammu Kashmir Coalition of Civil Society.²⁵ Accordingly, this article will briefly touch upon the factual aspects of the aforementioned grave breaches and focus primarily on the legal implications.

2.1 Willful Killing

Willful killing implies that the alleged perpetrator killed or caused the death of a protected person. The notion of killing has been used interchangeably with causing death. Thus, this grave breach covers not only such acts as shooting a protected person to death, but also such conduct as reducing the food rations or water of protected persons resulting in their starvation and/or dehydration and ultimately their death.²⁶

Similarly, inside IIOJK, Indian Forces routinely engage in civilian killings and between 2008 to 2018, some 1,081 civilians have been killed extra judicially.²⁷ Lately at the onset of the spread of COVID- 19 inside IIOJK, India had invoked draconian measures such as lack of equipment and health care workers²⁸ which would ultimately lead to the death of

civilian population and amount to willful killing.

2.2 *Torture or Inhumane Treatment*

Torture means that the perpetrator inflicted severe pain or suffering, whether physical or mental, upon one or more protected persons. In determining the 'severity' of the conduct, the ICTY has considered a whole series of factors, both objective- relating to the severity of the conduct and subjective, relating to the particular situation of the victim.²⁹ The ICRC notes the objective factors, among others: the nature and context of the infliction of pain, the premeditation and institutionalization of the ill-treatment, whether the mistreatment occurred over a prolonged period, and the manner and method used. Whereas, the following subjective factors relating to the particular victim have been used by courts and tribunals when assessing the severity of the conduct: the physical condition of the victim, the physical or mental effect or the treatment on the victim, the victim's state of health, the position of inferiority of the victim, the victim's age, the victim's sex and the victim's social, cultural and religious background.³⁰

Similarly, the Indian Forces have also engaged in the torture of the civilian population inside IIOJK with the OHCHR noting that 'there have been persistent claims of torture by security forces in Indian-Administered Kashmir, especially during the 1990s and early 2000s.'³¹

2.3 *Willfully causing great suffering or serious injury*

The CTY has interpreted this to mean '(such harm must inflict) grave and long- term disadvantage to a person's ability to lead a normal and constructive life.'³²

The extensive use of 'pellet-guns' as a crowd control measure has also been well documented as 1,253 people have been blinded as a result which impairs them from leading a normal and constructive life.³³

2.4 *Unlawful deportation or transfer of civilian population*

On 6 August 2019, the President of India, through a presidential order rendered Miele 370 (which included article 35A) of the Indian Constitution inoperable. Resultantly, the 'special status' of Kashmir

within the Indian Constitutional framework was revoked and all laws applicable within India were now also applicable to Jammu & Kashmir. The Indian Parliament passed the Jammu & Kashmir Reorganization Act w.e.f from 31 October 20 19. The Act sought to absorb the State of Jammu & Kashmir into a Union Territory. Article 96 of the Act gave the Central Government unbridled powers to alter, amend and modify any legislation with respect to Jammu & Kashmir. Under this provision four orders were promulgated which sought to grant rights with respect to civil service, education and property inside Jammu & Kashmir to all citizens of India. People from the rest of India would have the right to acquire property in Jammu and Kashmir and settle there permanently.³⁴

These actions are in a clear violation of the prohibition contained in Article 49(6) of GCIV which states, 'the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.' The ICJ in the *Wall Advisory Opinion* stated that:

*"[Article 49(6)] prohibits not only deportations or forced transfers of population such as those carried out during the Second World War, but also any measures taken by an occupying Power in order to organize or encourage transfers of parts of its own population into the occupied territory."*³⁵

2.5 Unlawful confinement and deprivation of fair trial

Arbitrary detention sometimes without even a warrant³⁶ is routinely undertaken inside IIOJK using the 'Kashmir Public Safety Act (PSA), 1978' which authorizes administrative detention for a broad range of activities that are vaguely defined including "acting in any manner prejudicial to the security of the State" or for "acting in any manner prejudicial to the maintenance of public order". PSA allows for detention without charge or trial for up to two years in some cases.

The Human Rights Committee has also noted that the PSA contravenes the rights enshrined in the International Covenant on Civil and Political Rights, especially the rights to liberty and to a free and fair trial.³⁷

Therefore, there is considerable evidence that Indian conduct inside IIOJK amount to grave breaches of the GCIV as well as that of customary international law and is therefore, amenable to Universal Jurisdiction by

any state.

However, the exercise of Universal Jurisdiction is not without its challenges which are discussed in depth below.

2. **Challenges to the exercise of Universal Jurisdiction**

3.1 *Fact-finding and collection of evidence*

As explained above, the exercise of Universal Jurisdiction requires states to investigate and prosecute crimes that were perpetrated outside their territory. This comes with its own problems such as 'prosecuting authorities being unable to enter the states where atrocities were committed; witnesses being hard to find or may be too afraid to testify; geographical distance being a large financial burden on the investigations'³⁸, etc.

This challenge exists because trials under the exercise of universal jurisdiction must also meet the internationally recognized principles of fair trial and due process which requires proof of guilt to be established beyond reasonable doubt'. Accordingly, the collection of evidence and ascertainment of facts is a crucial exercise that needs to be undertaken before the trial can commence.

While the work of the OHCHR, HRW and other human rights organizations is indeed commendable, their fact finding is based on the "reasonable grounds"³⁹ standard of proof which is not sufficient to seek convictions. However, these reports can form the basis of seeking the establishment of an 'independent investigative mechanism' through the Human Rights Council which can further investigate and collect evidence of the aforementioned crimes.

The Human Rights Council recently established a similar mechanism on 27 September 2018 to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011.⁴⁰ The mandate of the 'Independent Investigative Mechanism for Myanmar' ("IIMM") was the preparation of case files to identify specific evidence that may be used by national, regional or international courts or tribunals in potential criminal proceedings against individuals who have allegedly

committed serious international crimes and violations of international law in **Myanmar**.⁴¹

The work of the IIMM is crucial as individual criminal responsibility can only be ascertained when a 'link is established between the crime and the perpetrator as well as the requisite *mens rea*. Accordingly, the IIMM seeks to 'focus on evidence pertaining to *mens rea* and to specific modes of criminal liability, including the principle of command or superior responsibility established under international **criminal law**'.⁴²

3.2. **Functional Immunity of Indian Officials (Immunity Ratione Materiae)**

The OHCHR reports note that:

"The Armed Forces (Jammu and Kashmir Special Powers Act 1990 (AFSPA) remains a key obstacle to accountability. Section 7 of the AFSPA prohibits the prosecution of security forces personnel unless the Government of India grants a prior permission or "sanction" to prosecute. In nearly three decades that the law has been in force in Jammu and Kashmir, there has not been a single prosecution of armed forces personnel granted by the central government."⁴³

This means that any future prosecution of Indian Officials by another state will be met with the defence of 'functional immunity.' The concept of 'functional immunity' implies that state officials are immune from the jurisdiction of other states in relation to acts performed in their official capacity. As this type of immunity attaches to the official act rather than the status of the official, it may be relied on by all who have acted on behalf of the state with respect to their official acts. Thus, this conduct-based immunity may be relied on by former officials in respect of official acts performed while in office as well as by serving state officials.⁴⁴

However, scholarly opinion and recent developments including state practice of the international law governing individual criminal responsibility have resulted in state officials losing their immunity *ratione materiae* as far as prosecutions for **international crimes are concerned**.

According to Akande and Shah, 'the very purpose of international criminal law is to attribute responsibility to individuals, including state officials, and to defeat the defence of official capacity or act of state. Since acts amounting to international law crimes are to be attributed to the individual, there is less need for a principle which shields those officials from responsibility for acts which are to be attributed solely to the state.'⁴⁵

Similarly, it may be the case that granting immunity *ratione materiae* may itself be incompatible with a state's obligations under certain international conventions⁴⁶ including the Fourth Geneva Convention.⁴⁷ This is also what the House of Lords held in the *Pinochet (No.3)* case stating that granting immunity *ratione materiae* to the former Chilean dictator 'would have been inconsistent with those provisions of the Torture Convention according to universal jurisdiction for torture'.⁴⁸

3.2. *Lack of presence of Accused (Universal Jurisdiction in absentia)*

It may very well be presumed that the Indian Officials will not be present in the state exercising universal jurisdiction over them for their role in the atrocities committed inside IIOJK. Admittedly, this is a challenge as lack of voluntary presence or the accused in a trial could, theoretically, be a violation of the principle of universal jurisdiction.

As Pieter notes, 'as soon as a Contracting Party realizes that there is on its territory a person who has committed such a breach, its duty is to ensure that the person concerned is arrested and prosecuted with all dispatch.'⁴⁹ However, subsequent practice has resulted in the 'watering down of this requirement and there is debate that 'universal jurisdiction *in absentia*' was even prohibited in the first place to begin with. Judge's Higgins, Kooijmaos & Buergenthal in their joint separate opinion of the *Arrest Warrant Case* best encapsulated this debate as follows:

"Is it a precondition of the assertion of universal jurisdiction that the accused be within the territory"?

Considerable confusion surrounds this topic, not helped by the fact that legislators, courts and writers alike frequently fail to specify the

precise temporal moment at which any such requirement is said to be in play. Is the presence of the accused within the jurisdiction said to be required at the time the offence was committed? At the time the arrest warrant is issued? Or at the time of the trial itself?"⁵⁰

The separate opinion notes that '[the] incoherent practice [surrounding the rule] cannot be said to evidence a precondition to any exercise of universal criminal jurisdiction' and accordingly, '[Belgian] arrest warrant envisage(ing) the arrest of Mr. Yerodia in Belgium, or the possibility of his arrest in third States at the discretion of the States concerned [...] would in principle seem to violate no existing prohibiting rule of international law.'⁵¹

Similarly, the ICRC in the updated commentary of 2020 to the Third Geneva Convention has also shown a shift in position from the Pictet commentary regarding 'universal jurisdiction *in absentia*':

"[...] the obligations contained in Article 129(2) also imply that a State Party should take action when it is in a position to investigate and collect evidence, anticipating that either it itself at a later time or a third State, through legal assistance, might benefit from this evidence, even if an alleged perpetrator is not present on its territory or under its jurisdiction. Lastly, the wording of Article 129(2) arguably allows for the issuance of an arrest warrant, even, if the alleged perpetrator is not present on the territory of the issuing State, and for trials in absentia, if permissible under domestic law. This led the ICRC to conclude that 'States may institute legal enquiries or proceedings even against persons outside their territory.'"⁵²

3.4 India's subsequent non-recognition of the principle (Persistent Objector)

It is likely that India will object to even the investigations of the aforementioned crimes, let alone allow any trials to begin. To that end, India may undermine the 'customary' status of Universal Jurisdiction especially where such universal jurisdiction is based in the 'domestic' laws of the states. This, nonetheless, does not prevent the exercise of Universal Jurisdiction based on the Fourth Geneva Convention i.e., treaty based universal jurisdiction. It may be recalled that India herself recognizes the existence of Universal Jurisdiction:

“The principle of universal jurisdiction is a legal principle allowing a state to bring penal proceedings in respect of certain crimes irrespective of the place of the commission of crime and the nationality of the perpetrator or the victim. This principle is an exception to the general criminal law principle of requiring territorial or nationality link with the crime, the perpetrator or the victim. This exception is justified due to the grave nature of the crime which affects the international community as a whole and thereby no safe havens are established for those who commit these grave crimes and escape the criminal proceedings using the loopholes in the general criminal law.”⁵³

While India agrees that 'Maritime Piracy' is a 'classic example of Universal Jurisdiction (sic)', it adds that 'careful analysis of state practice and opinion juris is needed in order to identify the existence of a customary rule of universal jurisdiction over a particular crime.'⁵⁴

In this case, the 'particular crime' being grave breaches of the Geneva Conventions, are indeed recognized as offences over which universal jurisdiction may be exercised as a principle of customary international law.⁵⁵ In fact, India's own domestic legislation regarding the Geneva Conventions i.e., the Geneva Conventions Act, 1960 gives effect to universal jurisdiction, stating:

‘When an offence under this chapter {i.e. a grave breach of the 1949 Geneva Conventions} is committed by any person outside India, he may be dealt within respect of such offence as if it had been committed at any place within India at which he may be found.’⁵⁶

4. **Pakistan's Role**

The aforementioned OHCHR and HRW reports have already set the stage for a case that additional inquiry is needed inside IIOJK. The OHCHR report has specifically recommended the HRC for the 'possible establishment of a commission of inquiry to conduct a comprehensive independent interactional investigation into allegations of human rights violations in Kashmir.' As described above, it is essential that such an investigation collect evidence and ascertain the facts including the maintenance of case files on the perpetrators. To this end, Pakistan

being a member of the Human Rights Council should table a resolution and seek support from its fellow members which includes its allies and/or members of the OIC.

The next immediate step should be identifying potential jurisdictions where the Indian Officials can be investigated. Focus must be given to jurisdictions which have ratified the core human rights treaties as well as adopted domestic laws granting them extraterritorial jurisdiction.

5. Conclusion

Keeping in view that the well-documented evidence of the atrocities inside IIOJK being done and the 'impunity gap' inside IIOJK increasing by the day, steps must be taken by Pakistan to ensure the accountability of the perpetrators. Indeed, pursuing the exercise of universal jurisdiction is the best available option that can achieve this objective. Admittedly, there will be procedural hindrances such as those highlighted above, but International Law has clearly evolved in the present day to ensure that such procedural hindrances do not come in the way of accountability and justice.

References

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- ¹ Al Jazeera, "Kashmir's struggle did not start in 1947 and will not end today", 15 August 2019 <<https://www.aljazeera.com/opinions/2019/8/15kashmirs-struggle-did-not-start-in-1947-and-will-not-end-today->> accessed 20 May 2021
 - ² OHCHR, "First-ever UN human rights report on Kashmir calls for international inquiry into multiple violations", 14 June 2018. <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23198%20>>
 - ³ Ibid, p. 4-5.
 - ⁴ OHCHR, "No steps taken by India or Pakistan to improve human rights situation in Kashmir – UN", 8 July 2019 <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24799&LangID=E>> accessed 20 May 2021
 - ⁵ Al Jazeera, "India revokes disputed Kashmir's special status with rush decree", 5 August 2019, available at: <https://www.aljazeera.com/news/2019/8/15india-revokes-disputed-kashmirs-special-status-with-rush-decree>
 - ⁶ Guardian, "India set to withdraw Kashmir's special status and split it in two", 5 August 2019 <<https://www.theguardian.com/world/2019/aug/05/india-revoke-disputed-kashmir-special-status>> accessed on 20 May 2021

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- ⁷ RSIL, “Kashmir Under Siege? An International Law Perspective”. 19 September 2019 <<https://rsilpak.org/2019/kashmir-under-siege-an-international-law-perspective>> accessed 20 May 2021
- ⁸ Ibid (n 2 and 4).
- ⁹ Arrest Warrant of 11 April 2000 (DR Congo v Belgium) [2002] ICJ Rep 3, 75 [42] (Joint Sep Op of Judges Higgins, Kooijmans, and Buergenthal); See also, Kriangsak Kittichaisaree, *The Obligation to Extradite or Prosecute* (Oxford University Press 2018), pages 204-207
- ¹⁰ Kriangsak (n 9) page 204.
- ¹¹ Paper on some policy issues before the Office of the Prosecutor, September 2003, page 7 <https://www.icc-cpi.int/nr/rdonlyres/lfa7c4c6-de5f-42b7-8b25-60aa962ed8b6/143594/030905_policy_paper.pdf> assessed on 20 May 2021.
- ¹² Ibid.
- ¹³ See Arts 49-51 Geneva Convention I, Arts 50-50 Geneva Convention II, Arts 129-31 Geneva Convention III, Arts 146-48 Geneva Convention IV.
- ¹⁴ See Art 105 UNCLOS.
- ¹⁵ Ilias Bantekas, “Criminal Jurisdiction of States under International Law”, March 2011, in Rudiger <<https://opil.ouplaw.com/view/10.1093/law/epil/9780199231690/law-9780199231690-e1021#law-9780199231690-e1021-div2-6>> accessed on 20 May 2021.
- ¹⁶ ICRC, Casebook *Universal Jurisdiction* <<https://casebook.icrc.org/glossary/universal-jurisdiction>> accessed 20 May 2021
- ¹⁷ Volkerstrafgesetzbuch (Code of Crimes against International Law, hereinafter VStGB) of 26 June 2002, Bundesgesetzblatt (Federal Law Gazette) 2002 I, p. 2254; ef. BTDrucksache 14/8524.
- ¹⁸ French Criminal Code of Prosecutor (CCP), Title IX.
- ¹⁹ Organic Law 6/1985, of 1 July, of the Judicial Power (Ley Organica 6/1985, de 1 de julio, del Poder Judicial), as amended by Organic Law 11/1999, art. 23.4 (a) and (g).
- ²⁰ Criminal Justice Act 1988, section 134; see also Geneva Conventions Act 1957, section I, IA; International Criminal Court Act 2001, section 50.
- ²¹ Constitution of Argentina, Article 118.
- ²² RSIL, Legal Memorandum – The Status of Jammu & Kashmir Under International Law <<https://rsilpak.org/wp-content/uploads/2019/08/Legal-Memo-Kashmir.pdf>>.
- ²³ GCIV Art, 147.
- ²⁴ Human Rights Watch, Kashmir <<https://www.hrw.org/tag/kashmir>> accessed on 20 May 2021.
- ²⁵ Jammu & Kashmir Coalition of Civil Society, Annual Reports. <<https://jkccs.net/annual-human-rights-review/>> accessed 20 May 2021.
- ²⁶ ICRC, Commentary of 2020, GCIII, para 5218 citing ICTY, Prosecutor v. Prlic et al, Trial Judgement, IT-04-74-T, 29 May 2013, Volume 3, paras 745-748
- ²⁷ OHCHR, supra note 4, para 61
- ²⁸ RSIL, The Coronavirus in India-Occupied Kashmir, 26 April 2020 <<https://rsilpak.org/2020/the-coronavirus-in-indian-occupied-kashmir/>> accessed 20 May 2021.
- ²⁹ ICTY, Prosecutor v. Kvočka et al., Trial Judgement, IT-98-30/1, 2 November 2001, para 143.
- ³⁰ ICRC, Commentary, supra note 26, paras 5229-5230.
- ³¹ Report, supra note 4, para 124.
- ³² ICTY, Prosecutor v. Tolimir, Appeal Judgement, IT-05-88/2-A, 8 April 2015, para 201.
- ³³ Report, supra note 4, para 78.
- ³⁴ Just Security, Kashmir: A Place Without Rights, 5 August 2020 <<https://www.justsecurity.org/71840/kashmir-a-place-without-rights/>> accessed 20 May 2021.

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- ³⁵ ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, p. 136, para 120.
- ³⁶ Report, supra note 4, para 91.
- ³⁷ CCPR/C/79/Add.81, para 18.
- ³⁸ TRIAL International, Universal Jurisdiction Annual Review, 2019, page 9 <https://trialinternational.org/wp-content/uploads/2019/03/Universal_Jurisdiction_Annual_Review2019.pdf> 20 May 2021.
- ³⁹ OHCHR Report, note 4, para 49.
- ⁴⁰ A/HRC/RES/39/2 <<https://undocs.org/en/A/HRC/RES/39/2>> accessed 20 May 2021.
- ⁴¹ A/73/716, Terms of Reference of the IIMM <<https://undocs.org/en/A/73/716>> accessed 20 May 2021.
- ⁴² Ibid.
- ⁴³ Report (n 4) para 13.
- ⁴⁴ Dapo Akande, Sangeeta Shah, Immunities of State Officials, International Crimes, and Foreign Domestic Courts, European Journal of International Law, Volume 21, Issue 4, November 2010, Pages 815-852.
- ⁴⁵ Ibid.
- ⁴⁶ Article I, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), 1465 UNTS 85; see also Articles 2, 4, 9 & 11 (I), International Convention for the Protection of All Persons from Enforced Disappearance (2006)
- ⁴⁷ ICRC, Commentary of 1958, Article 146, stating: “Full responsibility shall attach to the person giving the order, even if in giving it he was acting in his official capacity as a servant of the State”.
- ⁴⁸ *R. v. Bow Street Stipendiary Magistrate and others, Ex parte Pinochet (No. 3)* [1999] 2 All ER 97, at 114, 169-170, 178-179, 190 (per Lords Browne-Wilkinson, Saville, Millett, Philips).
- ⁴⁹ ICRC, Commentary of 1958, Article 146.
- ⁵⁰ ICJ, Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), Judgement, I.C.J. Reports 2002, p. 3. Joint separate opinion of Judges Higgins, Kooijmans and Buergenthal, paras 53-54.
- ⁵¹ Ibid.
- ⁵² ICRC Commentary (n 26) para 5137.
- ⁵³ Statement by First Secretary/Legal Adviser, Permanent Mission of India to the UN, 3 November 2020 <https://www.un.org/en/ga/sixth/75/pdfs/statements/universal_jurisdiction/I%20mtg_india.pdf> accessed on 20 May 2021.
- ⁵⁴ Ibid, para 5.
- ⁵⁵ ICRC, Customary IHL Database <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v%20I_rul_rule157> accessed 20 May 2021.
- ⁵⁶ The Geneva Conventions Act, 1960, Act No. 6 of 1960, Article 4 <<https://databases.icrc.org/applic/ihl/ihlnat.nsf/o/aeae4d0dc5332b64c12563aa004a6f27/SFILE/GENEVA%20CONVENTIONS%20ACT,%201960.pdf>> accessed 20 May 2021.

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The Balkanization of Jammu and Kashmir

Ms Ayesha Malik

Abstract

This INSIGHT discusses India's annexation of Jammu and Kashmir on August 5, 2019 and its repercussions for India, Pakistan and China. It highlights that many Indian constitutional lawyers defended the abrogation of Article 370, arguing it is in accordance with India's domestic law, however, the most agreed that the bifurcation of the territory into two, Jammu and Kashmir and Laddakh was legally void because the input of Jammu and Kashmir's legislature could not be given which was mandatory. The reluctance on the part of the Indian superior judiciary to censure the government for its unconstitutional moves and China's reservations are also indicative of its being in violation of international covenants and local laws.

Keywords: Regional Super Power, Balkanization, Disputed Territory, Annexation, Demography, Non Democratic, Abrogation.

In the mid-1990s, when he was Mayor of Istanbul, Recep Tayyip Erdogan famously quipped “democracy is like a tram. You ride it until you arrive at your destination, then you step off.” India, once called the world's largest democracy, seems to have adopted this approach when it comes to Jammu and Kashmir. After achieving regional superpower status and following the BJP's election into power, it has become decidedly and unapologetically non-democratic. On August 5, 2019, Jammu and Kashmir was annexed to India and bifurcated into two. These historic constitutional changes redefined the legal status of the disputed territory and fundamentally changed its relationship with India, Pakistan, and even China.

Many Indian constitutional lawyers defended the abrogation of Article 370, arguing it is in accordance with India's domestic law, however, the

most agreed that the bifurcation of the territory into two, Jammu and Kashmir and Laddakh, was legally void. This is a strange conclusion to reach at. From Pakistan's point of view, while both are bad, the annexation seems to be far worse.

However, the bifurcation of the state is a worrying development that should be followed very carefully by Pakistan and China because firstly, this seeks to dilute the demography of the state. Laddakh has a Buddhist majority with a sizable Shia Muslim population while Kashmir valley has a Muslim majority, and Jammu has a Hindu majority. Now that these have been balkanized by India into two territories and India's settler laws encourage non-local, mostly Hindu Indians to move to Jammu and Kashmir, it is likely that India wants the Muslim majority in the valley to be substantially diluted.

This would be a problem for Pakistan's long-standing legal position which is that a referendum should be held in the state, as the question now is when would this be held and also how many local Kashmiris would be left in the territory to vote? Secondly, significantly for India, it faces many critics at home regarding the bifurcation as it forms a worrying precedence for other states and undermines its own constitution. Thirdly, another country which has a bearing on this change is China which is unhappy with the unilateral nature of the step on territory which it considers disputed, and which abuts land upon which China and India have clashed very recently. We will turn to the second and third of these issues in turn as the first has been much discussed in Pakistan's opposition to this law.

The Jammu and Kashmir Reorganization Act (2019) was passed by India's Parliament with a two-thirds majority days after the abrogation of Article 370. The law is unprecedented as never before in India's history has a state been bifurcated into two union territories. Amit Shah, as Foreign Minister, explained that the state was bifurcated owing to the "long pending demand of people of Laddakh, to give it the status of a Union Territory to enable them to realize their aspirations", whilst for Jammu and Kashmir, the reason given is "the prevailing internal security situation, fuelled by cross border terrorism in the existing State of Jammu and Kashmir."

The law however is legally void as India's constitution, under Article 3, does not allow the Parliament to get rid of a state and create two union territories in its place. Also, even if it could be argued (as some Indian constitutional lawyers do) that the constitution does allow this, it could not be done while the state of Jammu and Kashmir was under the President's rule, as it requires the input of the state's legislature. As the input of Jammu and Kashmir's legislature could not be given, Parliament consented to its own proposed reorganization, which undermines the safeguards of a federalist structure and may create a dangerous precedent which takes away the prerogative of states to have a say in their reorganization. This erodes the democratic nature of the constitution under which a state may not be guaranteed its territorial integrity but they are guaranteed a say in the extent to which this is altered.

Petitions were filed before India's Supreme Court challenging the abrogation of Article 370 and the state's bifurcation soon after those laws were passed. Notices were issued by the court and stays were not granted. The matter was last heard in March 2020, when the Supreme Court ruled that it should not be referred to a larger bench. Since then nothing has happened in an incredibly important case of constitutional significance with the court showing no urgency despite virtually hearing other cases during the coronavirus pandemic. Over three years have passed since these petitions were filed before the Court and it seems unlikely that we will have a pronouncement on the matter any time soon. However, it does indicate a clear reluctance on the part of the superior judiciary to censure the government for its unconstitutional moves.

The other important element to this relates to China. The Chinese Foreign Ministry released a statement the day after India's announcement regarding the bifurcation which said that "India has continued to undermine China's territorial sovereignty by unilaterally changing its domestic law". Since then China has stated that it is following the situation closely and maintains that any unilateral change to the status quo is illegal and invalid. President Xi, in October 2019, during a visit to India was quoted as saying the "dragon and elephant dance is the only correct choice for China and India", which seems to

indicate that China wants India to act in tandem with it and not unilaterally in order to prevent issues. The reason for China's indignation is because Laddakh abuts China's Aksai Chin where the Line of Actual Control between India and China runs. This is not only the site of the 1962 Sino-Indian war but also where border clashes took place between Indian and Chinese forces in 2020 and more recently in 2022. However, China is taking ever increasingly aggressive postures in defence of its territorial claims, especially in the South China Sea. In April 2023, the Chinese government renamed 11 places in Arunachal Pradesh in Chinese and Tibetan characters, referring to the region as 'Zangnan, the southern part of Tibet' and part of Chinese territory. In this context, it seems apparent that India's unilateral actions of 5 August 2019 have opened a new front with China and its evolving state practice on exerting its territorial claims.

As both sides are now competing to build infrastructure along the disputed Line of Actual Control, there are likely to be more clashes along this area especially given India's aim is to enhance Laddakh's connectivity and construction of a new road to a high-altitude base has already started. India is investing heavily in defence infrastructure in Laddakh in a move which signals its desire to meet China toe to toe along the disputed border. The Defence Minister, Rajnath Singh, inaugurated 75 infrastructure projects in Laddakh in October 2022 - these include bridges, roads, helipads, landing ground for aircraft, and storage for up to 22,000 troops and 450 heavy vehicles and tanks. All of this signals why India chose to bifurcate the territory in the first place - at the heart of this decision is its desire to ensure defence preparedness at high altitudes while distancing the area from the Jammu and Kashmir 'dispute'.

The alibi of allowing the people of Laddakh 'to realize their aspirations' is a mere fig leaf, as is shown by the fact that the population, both Buddhist and Shia, began protests in February 2023 disillusioned with what was promised to them after the bifurcation and what was delivered. India's real reasons should be a cause for concern for both China and Pakistan but could also be an opportunity for Pakistan and China to align their state practice in a way which preserves their joint interests while preserving the disputed nature of the territory.

Not only is the division of the state of Jammu and Kashmir a violation of international law, it is also an erosion of India's democracy, and it affects two of the largest countries in the region. In violating their own constitution to further oppress and change the demographics of the valley, India can no longer claim to be the world's largest democracy. This ride ended in August 2019 and India has most definitely gotten off the tram.

About Insight and Author

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Simla Agreement: Is it Still Relevant?

Ms Ayesha Malik

Abstract

This INSIGHT discusses whether Simla Agreement is still relevant when India is acting unilaterally even on bilateral issues like Kashmir. It highlights that India is neither ready to engage with Pakistan bilaterally nor concedes to internationalize Kashmir Issue. In such a situation Pakistan has the right to withdraw from Simla Agreement on the context of India's disinterest in bilateralism on the one hand and renunciation of mediation on the pretext of Simla Agreement on the other.

Keywords: Simla Agreement, Bilateral Negotiations, Normalization of Relations, Plebiscite, Perpetual Stalemate.

In his farewell speech to the Pentagon in December 2006, Donald Rumsfeld warned that 'weakness is provocative'. This approach seems to be the beating heart of many powers' foreign policy and also serves to explain the Simla Agreement. Pakistan signed the pact just after losing a war in which it was dismembered, conceding ground which has only served to weaken its claims since. The agreement itself is a mere six clauses and yet the scholarly ink spilled in its support or critique runs many lengths. Following India's abrogation of Jammu and Kashmir's special status in August 2019, the question for Pakistan is whether the Simla Agreement should be given CPR and revived or it is worth withdrawing from entirely.

The Agreement requires India and Pakistan to settle their differences by peaceful means through bilateral negotiations and prohibits either country from unilaterally altering the situation.¹ In relation to Kashmir, it states that "the basic issues and causes of conflict which have bedeviled the relations between the two countries for the last 25 years shall be resolved by peaceful means"² and binds both parties to discuss the modalities and arrangements for durable peace and normalization of

relations, including a final settlement of Jammu and Kashmir.³ Pakistan maintains its desire to talk to India but also solicits international intervention to ensure the implementation of Security Council Resolutions. Its longstanding position has been that Jammu and Kashmir needs to be demilitarized and a supervised plebiscite held. India meanwhile states that the Simla Agreement precludes international involvement in the issue (despite India being the one to take the issue to the UN) and deprives Pakistan of locus standi from intervening in Kashmir. India also contends that local elections in Kashmir (held under the eyes of its huge army, which have been marred by violence, boycotts, and accusations of rigging) are the same as a plebiscite.

Pakistan's main grievance is that by abrogating Article 370 and balkanizing the territory into two separate states, India has unilaterally altered the situation in violation of the Simla Agreement. However, the international community has alarmingly seemed to side with India largely due to its desire to not rankle this regional power too much. When China convened a closed-door meeting of the Security Council to discuss the issue, Russia and France cited the Agreement when vetoing a resolution tabled during the meeting. The UN Secretary General also recalled the Simla Agreement when appealing for maximum restraint between the parties following the tensions that ensued in August 2019.

India's talk of bilateralism is confrontation masquerading as cooperation. It has merely served to exclude outside involvement in an issue India has no desire to solve. Relying on the Simla Agreement is a gross cop-out which ignores the fact that the pact refers to meetings between 'Heads' which would resolve disputes, these meetings have happened only a few times. Talks have then stopped or stalled and there were never any serious efforts to resolve the dispute. In fact, the Agreement has led to this issue being more deeply entrenched, creating a perpetual stalemate as one side cannot talk about Kashmir when the other refuses to engage and then annexes the territory to its own.

Pakistan has continued to court international intervention, drawing attention to the genocidal saffron policies of the BJP and its 'settler laws' in Jammu and Kashmir. These have not really worked and India is now an aspiring superpower longingly eyeing a permanent seat at the

Security Council. In abrogating Article 370, it is also acting to ensure that it will not be refused a seat due to its inability to resolve the Kashmir dispute. It also aims to preclude a mediator as given its powerful status; it is wary of the equal treatment which would be given to both sides in mediation. It has stopped engaging with even the UN's Military Observer Group to India and Pakistan (UNMOGIP) following the Simla Agreement, leaving only Pakistan reporting to the organization which is largely toothless due to India's refusal to participate.

So, what should Pakistan do? We are currently again in a weak position. First World money lenders are at our throats. Our economic situation will worsen and our defence budget will be cut (while India side-eyeing China has anxiously increased its own by 13 percent). However, Pakistan should look to thwart India's long term goals. It can seek China's support in countering India's bid for a permanent SC seat due to the Kashmir dispute. Moreover, it can also publicize its attempt to bring India to resolve the issue bilaterally through a mediator. While the US and Russia would not be acceptable to either state, the Gulf States may have an increasing role to play.

The ceasefire on the Line of Control agreed to in February 2021 was facilitated by the UAE, with the country's ambassador to the US claiming he had helped arrange meetings between Indian and Pakistani intelligence chiefs in finalizing the truce. The UAE may be an acceptable mediator to both Pakistan and India, though Pakistan should be wary of increasing economic cooperation between the two states. Moreover, a key issue with the Simla Agreement is its lack of specific mandated mechanisms. In a last ditch effort to save the agreement and abide by the need for bilateral cooperation inherent in it, Pakistan should look to draft an actionable sub-agreement under Simla Agreement similar to the Good Friday Agreement between Ireland and the UK regarding the status of Northern Ireland and distribute it in order to force India to the table. This sub-agreement should provide a framework which structures in detail how difficult issues will be addressed and discussed, including issues relevant to both sides, namely demilitarization, policing, and self-determination. The Simla Agreement's relevance seems to be predicated on the fact that it delineates the Line of Control between the two

countries; however, the text understands this to be a defacto border, not a de jure one. Pakistan should include in any new sub-agreements its intention to continue to respect the defacto border. If India does not agree to this framework agreement, which is likely, then Pakistan should withdraw from the Simla Agreement and seek to internationalize the dispute once again.

The focus of Pakistan's argument should be highlighting that legal title for Jammu & Kashmir has not passed to India. The Security Council Resolutions and India's own constitutional history clearly reflect this position. As such, Pakistan must make every effort to reverse India's 5 August 2019 game plan which is aimed at 'internalizing' the matter and changing the goalposts so that Kashmir issue no longer remains a 'dispute' under international law. While most of the international community no longer views the 1950's formula of UN-supervised plebiscite practical today, Pakistan must not forget the real value of the UNSC Resolutions in that they crystallize Kashmir as a disputed territory under international law where title has not passed to either India or Pakistan.

Pakistan's withdrawal from Simla would be valid under international law. This is because India, in annexing and bifurcating the disputed territory, has committed a material breach of the agreement. Article 60 of the Vienna Convention on the Law of Treaties defines a material breach of a treaty as the violation of a provision essential to the accomplishment of the object or purpose of the treaty, which in this instance would be a unilateral act which does not accord with bilateralism. Withdrawing after having attempted to create a sub-agreement and appointing a mediator would indicate that Pakistan has attempted to uphold the obligations under the treaty as much as it could, leaving withdrawal as the only remaining option.

In the early decades, following partition, the Kashmir issue was overwhelmingly viewed as an international dispute on the UN agenda. Simla provided India with the perfect excuse to 'bilateralise' the dispute. The treaty has, so far, only been an obstacle to Pakistan's attempts to 'internationalize' the Kashmir issue which India uses to roadblock the discussion of Kashmir as well as other issues such as Sir Creek. On 5 August 2019, India has once again moved to change the goalposts, and is

now trying to portray Kashmir as an ‘internal’ matter. Countering the Indian juggernaut will require Pakistan to develop a bold Kashmir policy based on sustained diplomatic, legal, and academic engagement with the international community and effective media and strategic communication strategy for mobilizing public support at home.

After all, while weakness is provocative, history proves that Goliaths can be beaten.

References

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- ¹ **Clause 1(ii), Simla Agreement 1972:** That the two countries are resolved to settle their differences by *peaceful means through bilateral negotiations or by any other peaceful means mutually agreed upon* between them. *Pending the final settlement of any of the problems between the two countries, neither side shall unilaterally alter the situation*, and both shall prevent the organisation, assistance or encouragement of any acts detrimental to the maintenance of peaceful and harmonious relations. (Emphasis Added)
 - ² **Clause 1(iv), Simla Agreement 1972:** That the basic issues and causes of conflict which have bedeviled the relations between the two countries for the last 25 years shall be resolved by peaceful means.
 - ³ **Clause 6, Simla Agreement 1972:** Both Governments agree that the respective Heads will meet again at a mutually convenient time in the future and that, in the meanwhile, the representatives of the two sides will meet to discuss further the modalities and arrangements for the establishment of durable peace and normalisation of relations, including the questions of repatriation of prisoners of war and civilians internees, *a final settlement of Jammu and Kashmir* and the resumption of diplomatic relations. (Emphasis Added)

About Insight and Author

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The Lessons from Pulwama – Balakot Incident (2019) for Pakistan

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Abstract

The 2019 Pulwama-Balakot incident demonstrated Pakistan's strong politico-military response, catching India off-guard. While Pakistan emerged victorious, the event raised concerns about South Asia's deterrence stability due to global indifference and India's ongoing aggression. Moving forward, Pakistan must bolster its diplomacy, highlight Kashmir's human rights violations, and strengthen strategic capabilities to prevent future conflicts.

Keywords: Pulwama, Balakot, Incident, Pakistan, Indo-Pak, Leadership, Jammu & Kashmir.

On the eve of 4th anniversary of infamous Pulwama-Balakot (Pul-Bal) incident,¹ it is important to carry out a postmortem of that particular event with relevance to present day regional and global environment. It is not a coincidence that next Indian elections are knocking on the door again as they were at the time of Pul-Bal.² Similarly, Indo-Pak tensions are still high due to Indian illegal action of 5 August 2019.³ Post Pul-Bal, India is in the process of acquiring and integrating French Rafale fighter jets into Indian Air Force,⁴ acquiring S-400 anti-ballistic missile defence system from Russia,⁵ and has also embarked upon an ambitious military hardware shopping spree from around the world.⁶ On the other hand, Pakistan is currently going through a phase of unprecedented politico-economic instability, etc.

At the world stage, Russia-Ukraine War is re-defining contours of emerging global order with major strategic re-alignments taking place.⁷ Taiwan and South China Sea⁸ is in limelight for all the wrong reasons as

global trouble spots.⁹ Sino-India border disputes continue to simmer,¹⁰ etc.



In post Pul-Bal analysis, there is no doubt that the Pakistani politico-military leadership came out as clear winners due to its robust, mature, timely and effective decision-making ability and information strategy based on relative truthfulness. It was possible due to integrated decision-making process, clarity of thought and decisiveness at politico-military level. There is a need for Pakistan to carry on with the same momentum and retain initiative in future as well, if and when the need arises.

However, given the current politico-economic instability in the country, such a cohesive politico-military decision-making mechanism may be hard to replicate in near future. Is it a coincidence that India ‘accidentally’ fired Brahmos into Pakistan on 9 April 2022, only a day after the launching of the no confidence motion against Prime Minister Imran Khan in the National Assembly of Pakistan? Interestingly, Pakistan’s response to India’s blatant action was not more than a muted protest at diplomatic and military level only.

In post Pul-Bal analysis, it is also clear that India got a bloody nose due to several reasons, e.g.,

- Weak politico-military preparation due to short notice.¹¹ The Indians finally decided to go ahead with the air strikes due to apparent green signal from the US.
- Narrow political objectives (electioneering) set for the air strikes under the assumption that there would be no or very limited response from Pakistani side.
- Disproportionate politico-military response of Pakistan which caught Indians and international community by surprise. Some aspects of this response were by default rather than by design.
- Indian inability to prolong the escalation due to domestic politico-military compulsions and international pressure to de-escalate.

Notwithstanding above, in post Pul-Bal analysis, the most important question was and still is: Did the politico-military tete-a-tete between Pakistan and India, diluted or reinforced the deterrence stability in South Asia? There are generally two opposing viewpoints on the subject.

Most popular and common viewpoint is that the deterrence stability in South Asia has been further reinforced after Pakistan's befitting politico¹²-military¹³ response against Indian aggression. The argument further states that the deterrence was re-established as Indians didn't escalate the situation further due to risk of imminent response from the Pakistani side.

On the other hand, the opposing school of thought states that the deterrence stability in South Asia has, in fact, diluted. Their argument is based on the fact that despite nuclear risks, the Indian leadership actually went ahead and conducted air strikes inside Pakistani territory on a flimsy pretext. Later, they also fired a Brahmos missile inside Pakistani territory, 'accidentally'.¹⁴

In own assessment, the truth lies somewhere between the two arguments. However, despite unprecedented politico-military victory of Pakistan during and post Pul-Bal; it appears after four years that there is some gradual deterioration in the overall deterrence stability of South Asia. Major reasons are: -

- There was no recognizable international condemnation of India for violation of territorial integrity of Pakistan. In fact, major powers of the world including the USA/ West supported the so-called India's right of self defence primarily due to geo-political compulsions i.e., India's designation as a net security provider against China in the region,¹⁵ etc.
- On 5 August 2019, India took an unprecedented step since 1947 and unilaterally and unlawfully tried to change the status of Jammu and Kashmir (J&K), in violation of Simla Agreement and the United Nations Security Council (UNSC) resolutions.¹⁶
- On 9 April 2022, India fired a Brahmos deep inside Pakistani territory. When Pakistan broke the news after 24 hours of incident, India termed it as an accident.¹⁷ Interestingly, the world community showed almost no reaction on this ludicrous Indian explanation for accidentally firing a nuclear capable state of the art supersonic cruise missile.
- There is continued international apathy towards the violation of right of self-determination' to Kashmiris in Indian illegally occupied Jammu and Kashmir (IIOJK).¹⁸ Moreover, India continues to suppress the people of IIOJK through extreme human rights violations without any reaction from the international community.
- India continues to challenge Pakistan's strategic restraint terming it as 'nuclear bluff' in speeches of its politico-military leadership which may lead to any miscalculation in future as well.¹⁹
- Pakistan is going through an extreme internal politicoeconomic destabilization phase.

There is enough evidence available that India continues to seek space for application of conventional military instrument for attainment of its strategic objectives against Pakistan. In future, India may also try some misadventure in naval domain, engage in drone or missile warfare, small team ground actions in disputed territories, for achieving its nefarious

designs. What should or can Pakistan do to deter or avoid ‘a next time’? Following are a few broad guidelines for strategic planners: -

- Pakistan should convert the challenge emanating from Pul-Bal into an opportunity. Pakistan’s strategic response involving all Elements of National Power (EoNP) should be based on the premise that “Military escalation between two nuclear rivals as initiated by India on a flimsy pretext of allegedly abetting terrorism is totally UNACCEPTABLE and international community should take notice of it. Pakistan reserves the right of self defence at all costs at the time, place and mode of own choosing.”
- Pakistan must launch immediate but sustained diplomatic efforts against India by raising issue of violation of territorial integrity and thus international law at all forums including UNSC with an aim to taking it to a logical conclusion.
- Similarly, Pakistan should highlight to the international audience, the fact that India has violated the Simla Agreement and UNSC Resolutions on J&K by unilaterally trying to change the legal status of the State.
- Moreover, Pakistan needs to bring into notice of international community especially EU, the Indian human rights abuses in IIOJK. This should be done with the objective of replacing Indian narrative of terrorism, as alleged root cause of Kashmir dispute, with the narrative of violation of basic human rights i.e., denial of right of self-determination by the Hindutva led Modi Government?
- Pakistan needs to develop robust domestic and international law-fare capability.
- Pakistan should develop a sustained and robust “Kashmir Strategy.”
- Pakistan should also study the possibility of leveraging China Pakistan Economic Corridor (CPEC) and security assistance

provided to the Americans for seeking their assurances in security domain.

- At grand strategy level, Pakistan needs to work on completeness of deterrence by focusing more on domains other than military i.e., diplomacy, economy, information, cyber, technology, law-fare, soft power, etc.

In case, Pakistan is unable to shape the strategic environment favorably in short term; it should be prepared to fight and win a non-contact war or a war starting but not limited to Kashmir under immense international pressure to resort to ‘no response’ or ‘graduated limited response’ rather than ‘non-linear/ asymmetric response’. In case of any Indian misadventure due to strategic miscalculation, Pakistan’s media strategy would have to operate in increasingly unfavorable media environment. One of the measures to offset Indian media advantage would be to let the Indians create media hype around their misadventure and thereafter Pakistan should strike militarily (while recording evidence) for enhanced credibility at the time, place and mode of own choice.

Post Pul-Bal, it has also been validated beyond doubt that Pakistan’s politico-military response must be “disproportionate or asymmetric”, as it actually transpired by default on 28 February 2019, rather than on Quid Pro Quo (QPQ) basis causing surprise and fear into the hearts of Indian politico-military leadership. This is the only way to deter Indians militarily until Pakistan achieves completeness of deterrence in times to come.

References

- ¹ “Botched Balakot Airstrike Still Haunting Indian Air Force,” accessed March 3, 2023, <https://tribune.com.pk/story/2403233/botched-balakot-airstrike-still-haunting-indian-air-force>.
- ² “How Modi Shammed World’s Largest Democracy in India, Fascism Is Reinventing Itself,” The Nation, February 27, 2023, <https://www.nation.com.pk/27-Feb-2023/how-modi-shammed-world-s-largest-democracy-in-india-fascism-is-reinventing-itself>.
- ³ “5 August – A Turning Point In IIOJK’s History | Stratejik Düşünce Enstitüsü,” accessed March 1, 2023, <https://www.sde.org.tr/5-august-a-turning-point-in-iiojks-history-bolgesel-analiz-186>.
- ⁴ Rajeswari Pillai Rajagopalan, “France-India-UAE Trilateral: India’s Minilateral Engagements Ticks Up,” ORF, accessed March 3, 2023, <https://www.orfonline.org/research/france-india-uae-trilateral/>.

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- ⁵ "Russia Says S-400 Deliveries to India Ongoing as per Agreed Terms," accessed March 3, 2023, <https://www.aa.com.tr/en/politics/russia-says-s-400-deliveries-to-india-ongoing-as-per-agreed-terms/2819566>.
 - ⁶ "India Spent \$24 Billion for Buying Foreign Defence Items in Last 5 Years," accessed March 3, 2023, <https://www.msn.com/en-in/news/trendingtopics/india-spent-dollar24-billion-for-buying-foreign-defence-items-in-last-5-years/ar-AA175NM1>.
 - ⁷ "How War in Ukraine Is Reshaping Global Order – Harvard Gazette," accessed March 3, 2023, <https://news.harvard.edu/gazette/story/2022/04/how-war-in-ukraine-is-reshaping-global-order/>.
 - ⁸ Ashish Dangwal, "US Navy, Air Force & Marines Get Into 'Action Mode' Against China As Spy Balloon, UFOs Hog Limelight," Latest Asian, Middle-East, EurAsian, Indian News, February 13, 2023, <https://eurasianimes.com/as-us-air-force-shoots-down-chinese-balloons-us-navy-marines/>.
 - ⁹ News desk, "Indo-Pacific under Limelight | By Muhammad Abubaker," Pakistan Observer (blog), August 6, 2022, <https://pakobserver.net/indo-pacific-under-limelight-by-muhammad-abubaker/>.
 - ¹⁰ "India-China Relations: A Decade of Escalating Border Dispute in the Himalayas, 2013-2023 – Modern Diplomacy," accessed March 3, 2023, <https://moderndiplomacy.eu/2023/02/25/india-china-relations-a-decade-of-escalating-border-dispute-in-the-himalayas-2013-2023/>.
 - ¹¹ "Four Reasons India Has Little Cause to Cheer the Balakot Airstrike and Its Aftermath," The Wire, accessed March 3, 2023, <https://thewire.in/security/four-reasons-india-has-little-reason-to-cheer-the-balakot-airstrike-and-its-aftermath>; News Desk, "Balakot Incident Revealed Indian Air Force Is Unprofessional & Untrained," Global Village Space, October 10, 2019, <https://www.globalvillagespace.com/balakot-incident-revealed-indian-air-force-is-unprofessional-untrained/>; "Botched Balakot Airstrike Still Haunting Indian Air Force."
 - ¹² "Rejection of Indian Prime Minister's Remarks Insinuating Pakistan's Involvement in Pulwama Attack – Ministry of Foreign Affairs," accessed March 3, 2023, <https://mofa.gov.pk/rejection-of-indian-prime-ministers-remarks-insinuating-pakistans-involvement-in-pulwama-attack/>.
 - ¹³ News Desk, "2019 Balakot Airstrike – a Reminder of Pak's Military Might," Global Village Space, February 27, 2023, <https://www.globalvillagespace.com/2019-balakot-airstrike-a-reminder-of-paks-military-might/>.
 - ¹⁴ "India 'Deeply Regrets Accidental' Firing of Missile inside Pakistan - World - DAWN.COM," accessed March 1, 2023, <https://www.dawn.com/news/1679443>.
 - ¹⁵ "India as a Net Security-Provider in the Indian Ocean and Beyond | Center for International Maritime Security," April 29, 2016, <https://cimsec.org/india-net-security-provider-indian-ocean-beyond/>.
 - ¹⁶ "Article 370: India Strips Disputed Kashmir of Special Status - BBC News," accessed March 1, 2023, <https://www.bbc.com/news/world-asia-india-49231619>.
 - ¹⁷ "Reports on BrahMos Missile Incident 'Disingenuous Attempt' to Absolve India of Its 'Irresponsible Nuclear Behaviour': FO - World - DAWN.COM," accessed March 1, 2023, <https://www.dawn.com/news/1721285>.
 - ¹⁸ "Kashmiris' Ordeal Persist amid Struggle for Right of Self-Determination," The Nation, February 3, 2023, <https://www.nation.com.pk/03-Feb-2023/kashmiris-ordeal-persist-amid-struggle-for-right-of-self-determination>.
 - ¹⁹ Elizabeth Roche, "With Balakot Air Strike, India Has Called Pakistan's Nuclear Bluff: Kanwal Sibal," mint, March 4, 2019, <https://www.livemint.com/news/india/with-balakot-strike-india-has-called-pakistan-s-nuclear-bluff-kanwal-sibal-1551632825174.html>.

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Pakistan's Kashmir Strategy – The Way Forward

Namra Naseer

Abstract

This INSIGHT discusses the Indian government's actions in the disputed territory of Jammu and Kashmir, which have disrupted the status quo and demonstrated India's disregard for international norms. The revocation of Articles 370 and 35(A) stripped the people of Jammu and Kashmir of their autonomy and divided the region into two Union Territories, Jammu and Kashmir and Ladakh. The introduction of a new domicile law, which allows non-Kashmiris to buy land and property in Jammu and Kashmir, has further undermined the indigenous freedom movement and the right of the people of Jammu and Kashmir to self-determination. The international community has largely ignored India's illegal actions, and Pakistan is now considering policy options for Gilgit-Baltistan and Azad Jammu and Kashmir, including merging Gilgit-Baltistan politically into Pakistan and holding a referendum in Azad Jammu and Kashmir.

Keywords: Indian Illegally Occupied Jammu and Kashmir, Gilgit-Baltistan, Articles 370 and 35(A), Right to Self-determination, UNSC Resolutions.

The Indian government's illegal actions in the disputed territory of Jammu and Kashmir and subsequent legislation have disrupted the status quo and demonstrated India's disregard and contempt for international norms. The revocation of Articles 370 and 35(A) stripped the people of Jammu and Kashmir of their autonomy and divided the region into two Union Territories, Jammu and Kashmir and Ladakh.¹

The introduction of a new domicile law on April 1, 2020,² was a part of India's plan to change the demographic character of the occupied territory by allowing non-Kashmiris to buy land and property in Jammu

and Kashmir, which was not allowed before. Under the new law, anyone who has resided in Jammu and Kashmir for 15 years or has studied there for a specific period can apply for residence in Kashmir and will be considered a Kashmiri. It is expected to result in a 30% increase in the number of voters in the region and is a blatant attempt to tilt the balance of political power in favour of the ruling BJP party.³ The law also allows for the possibility of further BJP-favored seats in the Jammu and Kashmir Legislative Assembly, which could ultimately lead to the permanent integration of the occupied territory into India, in disregard of the Indian constitution. This legislation undermines the indigenous freedom movement and the right of the people of Jammu and Kashmir to self-determination.

The Indian actions have practically set the stage for an altered demographic outlook of Indian Illegally Occupied Jammu and Kashmir (IIOJ&K), where Kashmiris are likely to be reduced to a minority in their homeland. The international community has, by and large, ignored India's illegal actions in occupied Kashmir for a long except for an occasional report by Amnesty International and Genocide Watch, and that too after Pakistan's consistent prodding to jolt their conscience. India has

The ongoing stalemate in resolving the Kashmir dispute as India continues to take unilateral actions in the disputed region calls for a review of available policy options for Pakistan in respect of the regions of Gilgit-Baltistan and Azad Jammu & Kashmir. As such, a careful evaluation of potential risks and challenges is crucial for Pakistan to make informed decisions.

brushed aside any demands by international organisations and even by the UN Commission for Human Rights and OIC to investigate human rights violations by its security forces.

It has gone for unconstitutional and undemocratic actions to change the demographic makeup of the occupied territory in flagrant violation of the UNSC resolutions, the Simla Agreement Clause 4(ii),⁴ and its international commitments. Article 1 of the UN Charter protects the right of self-determination as a fundamental principle of International Law.⁵ These actions represent a blatant violation of the principle of self-determination, as outlined in the UN Charter and the International

Covenant on Civil and Political Rights, to which India is a signatory.⁶ The UN Security Council has passed 18 resolutions regarding the Kashmir dispute, with resolutions 47⁷ and 51⁸ granting the people of Kashmir the right to decide their future. However, India continues to ignore these resolutions and take actions that threaten to lend more complexity to a highly charged dispute between Pakistan and India.

Pakistan has consistently maintained a principled stance on the Kashmir dispute based on the UNSC resolutions. However, the ongoing stalemate in resolving the conflict, as India continues to take unilateral actions in the disputed region, calls for a review of available policy options for Pakistan regarding Gilgit-Baltistan and Azad Jammu and Kashmir. As such, carefully evaluating potential risks and challenges is crucial for Pakistan to make informed decisions. Ambassador Ashraf Jehangir Qazi's statement, "There are no risk-free or cost-free policy options for Pakistan on Kashmir," highlights the importance of careful consideration in decision-making.⁹ Despite political sensitivity surrounding the Kashmir issue in Pakistan, concrete policy options have not been thoroughly thought through or disclosed.

Option 1: Merging Gilgit-Baltistan Politically into Pakistan

The majority of the people in Gilgit-Baltistan wish to be formally recognised as a province of Pakistan, as evidenced by resolutions passed in the Gilgit-Baltistan Assembly.¹⁰ This move towards formal integration is driven by a desire for economic and social benefits and the sentiment that Gilgit-Baltistan should not be considered a part of the disputed State of Jammu and Kashmir. However, this option comes with risks. India is likely to challenge the decision and mount an international campaign to denounce it. Additionally, there may be resistance from the Azad Jammu and Kashmir leadership, and Pakistan may face criticism at the international level. To minimise risks, it is vital for Pakistan to thoroughly assess potential legal issues and ensure consistency with its principled stance and the UNSC resolutions. It will help determine the most feasible and effective course of action for Pakistan to take. While criticism from India and the international community may arise, Pakistan needs to approach this as an internal political matter.

Option 2: Hold a Referendum in Azad Jammu and Kashmir

Holding a referendum in Azad Jammu and Kashmir could be a positive move for Pakistan by demonstrating a commitment to democratic processes and giving the people of the region a voice in determining their future. Pakistan could invite international and UN observers to lend legitimacy to the referendum's fairness. The success of such a move would depend on careful planning and management to ensure that the rights of all parties are respected and protected. It would help address any concerns or tensions related to the region's status and potentially lead to a peaceful conflict resolution. However, it risks eliciting strong reactions from the occupied and Azad Kashmir people, who may perceive it as a compromise of their right to self-determination. A careful plan to discuss the proposal will help to allay any unfounded apprehension.

Options 1 and 2 would be exercised on the explicit understanding that the new arrangement is without prejudice to the ultimate resolution of the Kashmir dispute in accordance with the UNSC resolutions and the wishes of the people of Kashmir.

Option 3: Keeping the Status Quo

Keeping the status quo in Jammu and Kashmir involves maintaining the current situation while drawing attention to India's human rights violations in IIOJ&K. The risks of this option include the possibility that the status quo may not result in a resolution to the Kashmir dispute, India may enervise efforts to not only "Indianise" Jammu and Kashmir but may indulge in a false flag operation as it has done before, to heighten tensions with Pakistan to claim ownership of Azad Kashmir. The security situation in South Asia will deteriorate, leaving Pakistan with limited options. Anticipating and preparing for India's and the international community's response is crucial, as although Pakistan may have the support of China and perhaps Russia, the international community will play a balancer's act that would suit India more than Pakistan. Waiting for a more favourable opportunity for Pakistan is by itself a risk as the situation may further deteriorate, leaving fewer options for Pakistan in the future.

Option 4: Military Action

Military action involves considering the use of limited military force to reclaim parts of the disputed territory in IIOJ&K. This option carries several risks, including the potential escalation of conflict with India, which could result in a full-scale war and a disproportionate response from India. Additionally, military action could result in significant loss of life and damage to infrastructure, as well as potentially damaging Pakistan's relationship with major world powers and its reputation. While the option of military action should not be discarded entirely, it should be approached cautiously. By declaring in 2019 that it will not be pursued, Pakistan may have portrayed a sense of helplessness. However, limited military action in a series of steps to reclaim smaller areas of the disputed region should remain a viable option to exercise at a time of Pakistan's choosing. The decision to use military force should only be made after considering all risks and potential consequences carefully.

In conclusion, to make an informed decision on Jammu and Kashmir, Pakistan needs to weigh its options carefully and consider the potential risks associated. These risks can be mitigated and contained by proactively assessing the sensitivities in the context of rising major power competition. The two views about merging Azad Jammu and Kashmir and Gilgit-Baltistan must be evaluated, one suggesting a simultaneous merger and the other proposing a step-by-step approach. The latter may be preferable as the merger of Gilgit-Baltistan would face less opposition, while Azad Jammu and Kashmir's leadership may be hostile to such an action. With regard to limited military action, India's potential response could harm Pakistan's image and, therefore, must be thoroughly considered. It is crucial that Pakistan analyses all available options and waits for the right domestic and international conditions before taking any steps to change the status quo in Gilgit-Baltistan and Azad Jammu and Kashmir.

References

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- ¹ "Kashmir Special Status Explained: What Are Articles 370 and 35A?" *Al Jazeera*. Accessed on October 13, 2022, at <https://www.aljazeera.com/news/2019/8/5/kashmir-special-status-explained-what-are-articles-370-and-35a>.

-
- ² “Demographic Flooding: India Introduces New Kashmir Domicile Law.” Accessed on November 17, 2022, at <https://www.aljazeera.com/news/2020/4/1/demographic-flooding-india-introduces-new-kashmir-domicile-law>.
- ³ Leoni Connah. “Kashmir: New Domicile Rules Spark Fresh Anger a Year after India Removed Region’s Special Status.” *The Conversation*. Accessed on November 17, 2022, at <http://theconversation.com/kashmir-new-domicile-rules-spark-fresh-anger-a-year-after-india-removed-regions-special-status-142696>.
- ⁴ “Simla Agreement. Pdf,” July 2, 1972. Accessed on November 17, 2022. at https://peacemaker.un.org/sites/peacemaker.un.org/files/IN%20PK_720702_Simla%20Agreement.pdf.
- ⁵ “Purposes and Principles of the UN (Chapter I of UN Charter) | United Nations Security Council.” Accessed on November 17, 2022, at <https://www.un.org/securitycouncil/content/purposes-and-principles-un-chapter-i-un-charter>.
- ⁶ “International Covenant on Civil and Political Rights.” Accessed on November 17, 2022, at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.
- ⁷ “Security Council Resolution 47 - UNSCR.” Accessed on November 23, 2022, at <http://unscr.com/en/resolutions/47>.
- ⁸ “Security Council Resolution 51 - UNSCR.” Accessed on November 23, 2022, at <http://unscr.com/en/resolutions/51>.
- ⁹ Ashraf Jehangir Qazi. “Six-Track Kashmir Settlement.” *DAWN*. September 26, 2020. Accessed at <https://www.dawn.com/news/1581701>.
- ¹⁰ “Joint Resolution No.3 Adopted by the Gilgit-Baltistan Assembly.” Accessed on November 17, 2022, at https://gba.gov.pk/gba/gba/tables/alldocuments/resolutiondocx/2022-08-11_07:58:53_53b7f.pdf.

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Is Another War in Kashmir Around the Corner?

Dr. M. A. Gul

Abstract

This insight examines the possibility of renewed conflict in Kashmir, driven by US-China rivalry and regional tensions. The US strategy to contain China may encourage instability, with Kashmir as a key flashpoint. India's reluctance to confront China directly could lead to a limited military engagement with Pakistan, especially after its 2019 revocation of Article 370. Pakistan's political instability may further embolden India, aligning US and Indian interests in the region. The paper also highlights Pakistan's strategic importance and suggests potential responses to counter India's moves.

Keywords: War, Kashmir, US, China, Policy, Financial, COVID, QUAD, AUKUS, ASEAN, Sea.

Under the overall ambit of 'Containment of China Policy', the "US' Strategy of Disruption" has finally started to show some positive signs for its policy makers¹. China's economic engine is showing visible signs of fatigue especially post COVID.² With Russia-Ukraine conflict in motion, international economic system is witnessing a meltdown. Leading International Financial Institutions (IFIs) are predicting global economic recession in 2023 resulting into possible slow growth rate of China.³ Under these conditions, US would find itself in an advantageous position to exploit Chinese internal fault lines including Hong Kong and Xinjiang,⁴ etc.

One of the strands of the "US' Strategy of Disruption" has also been to sow the seeds of potential military conflicts all around China. Some of the potential hotspots are: North-South Korea/ Japan, Taiwan, South China Sea, AUKUS, QUAD, ASEAN, Pacific Nations, Tajikistan-Kyrgyzstan, Afghanistan and India-Pakistan, etc.⁵ Some other strands of

this “Strategy of Disruption” in the realm of diplomacy, economy, human rights, climate change, etc. are not under discussion here but the only focus is the potential of military conflict in South Asia.



The dispute of Jammu & Kashmir (J&K) is a ready-made recipe for a potential military conflict in South Asia since 1947. The military situation along the Line of Control (LOC) and the Line of Actual Contact (LAC) has always been volatile though, presently there is a temporary calm in the situation. However, it does not take much for two neighbouring nuclear South Asian States to take off their gloves. It must be understood that all this discussion takes place under the considered assumption that ‘Instability in South Asia remains in larger US geo-strategic interests’ in the overall construct of US-China rivalry.

India is under increasing pressure to step up its support to US/ West vis-à-vis China and Russia.⁶ On the contrary, India is dragging its feet and trying desperately to bank upon its so called ‘strategic autonomy’ which is coming under tremendous stress especially during Russia-Ukraine conflict.⁷ With the recent Sino-Indian ceasefire understanding along with growing trade between two countries; it seems evident that India does not have an appetite for any military conflict with China in near future.⁸ Similarly, India does not seem willing to out rightly oppose Russia vis-à-vis Ukraine, much to the dismay of the US and EU. India’s

double game is visible through its recent voting patterns in United Nations Security Council (UNSC)⁹ and United Nations Human Rights Commission (UNHRC)¹⁰, where India did not vote against Russia and China, respectively as per the US' expectations or desires. It must be remembered that in February 2022, the Joint Summit Communique¹¹ between China and Russia has also indicated towards a futuristic Russia-China-India format at play.

Under these circumstances, Pakistan may once again become relevant as a 'catalyst' on behalf of the US to shake up things in South Asia and to rein in India. Some recent developments in the region indicate towards this possibility: Amnesty Report indicating Indian human rights violations in J&K¹², provision of US \$ 450 million for Pakistan's F-16 maintenance program, first ever visit by a US Ambassador to Muzaffarabad in Azad Jammu & Kashmir (AJ&K) followed by his 'interesting' remarks, favourable IMF response and other IFIs vis-à-vis Pakistan's economic condition,¹³ favourable FATF engagements,¹⁴ World Bank resuming Indus Basin Water Treaty cases after a lapse of five years,¹⁵ some very high profile visits of Pakistani delegations to the US in a short span of time,¹⁶ etc.

It should also be remembered that next Indian elections are scheduled in 2024¹⁷ whereas Pakistani elections are scheduled in 2023.¹⁸ Post abolishment of Articles 370 and 35(A) of the Indian Constitution, India has already embarked upon an ambitious political engineering program in Indian Illegally Occupied Jammu & Kashmir (IIOJK). It has disturbed the status quo of IIOJK which existed since many decades indicating towards the fact that India was uneasy with the status quo otherwise it could have continued with the erstwhile arrangements. Indian actions of 5 August 2019 sparked another wave of 'Instability' in the region vis-à-vis China and Pakistan. However, recent ceasefire arrangements have brought some 'stability' among these countries.

Such an arrangement does not sit well with the Americans who would like to see more military oriented 'instability' in the region as part of its larger "Strategy of Disruption" against China. As India does not seem willing to confront China in a military conflict any time soon,¹⁹ it may be 'persuaded or pushed' to take a calculated risk to engage Pakistan in a limited military operation (like Pulwama-Balakot) in Northern Kashmir

(Gilgit Baltistan) as part of an effort to bring some logical conclusion to its 5 August 2019 actions. However, it could only be possible once BJP government becomes hostage of its own rhetoric on Kashmir and is compelled to undertake this (mis)adventure. Current political instability in Pakistan would only encourage India to undertake such a risky operation.

Such a scenario, if materialized, would certainly bring another phase of 'instability' in the region as early as summer of 2023. This is where the US and India's interests would align. However, such a scenario may not be possible unless India takes China into confidence. Will China come on board? Apparently, China would not allow India such a misadventure unless India gives China a lucrative bait e.g. trade concessions, possibility of a Sino-India border agreement (Ladakh), etc. Formation of two Union Territories (Ladakh, J&K) by India may also be seen in the same context.

Under such circumstances, China and the US might be willing to allow a limited military operation in Kashmir for their separate yet temporarily aligned interests and put pressure on Pakistan together to refrain from enlarging the conflict. In another case, India may not even consult China on the matter. Nevertheless, it would put Pakistan's already fragile political situation under tremendous stress. It should also be noted that India has already amassed a large number of 'out of zone' military forces in J&K region, presumably against China, but it would not take much time for them to change direction from China to Pakistan when the need arose. It is interesting to note that India and the US conducted "Yudh Abhyas", a military exercise in the Himalayas in November 2022.²⁰

What should Pakistan do to avert this dangerous scenario? Following are some contours of suggested Pakistani politico-military response:

- Taking advantage of unilateral violation of the Simla Agreement²¹ by India; Pakistan must absorb GB and AJ&K as part of its larger federation (in the same order of priority) under the proviso that 'the final status of these areas would be decided as and when Plebiscite is held in IIOJ&K also'.

- However, instead of absorbing GB and AJ&K through (long pending) legislation, it would be much more prudent if Pakistan conducts a free and fair district wise plebiscite in these areas. For the sake of credibility, Pakistan must follow all international norms and rules e.g. invitation to foreign observers including Indians to monitor the transparency of this process, etc.
- Post Plebiscite, Pakistan should consider taking the J&K dispute to UNSC where it is likely that permanent members may not ‘veto’ it this time due to varying interests.
- Diplomatically, Pakistan should confront India for violation of Article 1(ii) of the Simla Agreement²² and bring it in the knowledge of the international community.
- Militarily, Pakistan must refresh its defensive as well as offensive plans to defend each and every inch of AJ&K at all costs.

With above strategy in place, Pakistan should be able to convert the Kashmir challenge into an opportunity. It will also reinvigorate the political struggle in IIOJ&K. There is no doubt that above strategy would destabilize the situation in South Asia temporarily, much to the dismay of China, but at the same time Pakistan would be able to safeguard its national interest with a timely political riposte against India for which there is a limited time window (until summer of 2023).

References

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- ¹ Victor Teixeira, “The United States’ China Containment Strategy and the South China Sea Dispute,” *Central European Journal of International and Security Studies* 13, no. 3 (September 25, 2019): 166–93, <https://doi.org/10.51870/CEJISS.A130305>.
 - ² Martin Farrer and Vincent Ni, “China’s Economic Growth Slumps Sharply after Covid Lockdowns,” *The Guardian*, July 15, 2022, sec. Business, <https://www.theguardian.com/business/2022/jul/15/chinas-quarterly-economic-growth-slumps-sharply-after-covid-lockdowns>.
 - ³ Hannah Ward-Glenton, “IMF Cuts Global Growth Forecast for next Year, Warns ‘the Worst Is yet to Come,’” *CNBC*, accessed November 21, 2022, <https://www.cnbc.com/2022/10/11/imf-cuts-global-growth-forecast-for-2023-warns-worst-is-yet-to-come.html>.

-
- ⁴ Sean Golden, "Hong Kong and Xinjiang, the Two Thorns in the Side of China," Reset DOC (blog), January 20, 2020, <https://www.resetdoc.org/story/hong-kong-and-xinjiang-thorns-side-china/>.
- ⁵ John Pilger, "John Pilger Q&A: 'US Missiles Are Pointed at China,'" December 6, 2017, <https://www.aljazeera.com/features/2017/12/6/john-pilger-qa-us-missiles-are-pointed-at-china>.
- ⁶ Alasdair Pal and Sanjeev Miglani, "Pressure Grows in India to Condemn Old Friend Russia's Invasion of Ukraine," Reuters, March 2, 2022, sec. India, <https://www.reuters.com/world/india/pressure-grows-india-condemn-old-friend-russias-invasion-ukraine-2022-03-02/>.
- ⁷ Alexey D. Muraviev, Dalbir Ahlawat, and Lindsay Hughes, "India's Security Dilemma: Engaging Big Powers While Retaining Strategic Autonomy," International Politics, September 4, 2021, <https://doi.org/10.1057/s41311-021-00350-z>.
- ⁸ "India, China to Withdraw from Disputed Border Area by Sept 12: Indian Foreign Ministry," DAWN.COM, September 9, 2022, <https://www.dawn.com/news/1709224>.
- ⁹ Anwar Iqbal, "India Turns down US Persuasion to Vote against Russia," DAWN.COM, February 27, 2022, <https://www.dawn.com/news/1677312>.
- ¹⁰ "India Abstains from Voting in UNHRC on Holding Debate on China's Treatment of Uyghur Muslims," The Indian Express (blog), October 6, 2022, <https://indianexpress.com/article/india/india-abstains-from-voting-on-draft-resolution-in-un-human-rights-council-on-holding-debate-on-human-rights-situation-in-chinas-xinjiang-region-8194088/>.
- ¹¹ "Joint Statement of the Russian Federation and the People's Republic of China on the International Relations Entering a New Era and the Global Sustainable Development," President of Russia, accessed November 21, 2022, <http://en.kremlin.ru/supplement/5770>.
- ¹² "India: The Government Must End the Repression of Rights in Jammu and Kashmir," Amnesty International, September 2, 2022, <https://www.amnesty.org/en/latest/news/2022/09/india-the-government-must-end-the-repression-of-rights-in-jammu-and-kashmir/>.
- ¹³ Zaheer Abbasi, "Targeted Assistance: IMF Appears Ready to Take the Long View," Recorder, November 18, 2022, <https://www.recorder.com/news/40209534>.
- ¹⁴ "Pakistan Exits FATF Grey List - Ministry of Foreign Affairs," accessed November 21, 2022, <https://mofa.gov.pk/pakistan-exits-fatfs-grey-list/>.
- ¹⁵ "World Bank Resumes Processes Under the Indus Waters Treaty," Text/HTML, World Bank, accessed November 21, 2022, <https://www.worldbank.org/en/news/press-release/2022/04/06/world-bank-resumes-processes-under-indus-waters-treaty>.
- ¹⁶ Muhammet Nazim Tasci, "US Relations with Pakistan Have Gained New Momentum: Expert," November 10, 2022, <https://www.aa.com.tr/en/americas/us-relations-with-pakistan-have-gained-new-momentum-expert/2707955>.
- ¹⁷ "2024 Lok Sabha Elections : BJP Puts Special Focus on 144 Seats, Plans Mega Rallies by PM Modi," The Times of India, October 8, 2022, <https://timesofindia.indiatimes.com/india/2024-lok-sabha-elections-bjp-puts-special-focus-on-144-seats-plans-mega-rallies-by-pm-modi/articleshow/94729262.cms>.
- ¹⁸ Web desk, "General Elections Will Be Held in 2023, Says Ahsan Iqbal," Samaa, October 19, 2022, <https://www.samaaenglish.tv/news/40019596>.
- ¹⁹ Maria Abi-Habib, "Will India Side With the West Against China? A Test Is at Hand," The New York Times, June 19, 2020, sec. World, <https://www.nytimes.com/2020/06/19/world/asia/india-china-border.html>.
- ²⁰ Christopher Woody, <https://www.yahoo.com/news/us-indian-troops-teaming-tough-155041776.html?guccounter=1>

-
- ²¹ “Simla Agreement. Pdf,” July 2, 1972,
https://peacemaker.un.org/sites/peacemaker.un.org/files/IN%20PK_720702_Simla%20Agreement.pdf.
- ²² “Simla Agreement. Pdf.” Map source: <https://thediplomat.com/2014/10/china-india-end-military-stand-off-along-disputed-border>.

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