



April / May 2020



C o n t e n t s

01 |



Legitimacy of Kashmir's Liberation Struggle: Right to Self-Determination Under International Law
M. Idrees Abbasi

17 |

PAKISTAN REJECTS INDIA'S NEW KASHMIR DOMICILE RULES
(Iftikhar A. Khan)

17 |



SOME EID IN KASHMIR
Abbas Nasir

19 |



Corona in Kashmir
Asad Rahim Khan

20 |

A peace policy to end the double lockdown in Kashmir
By M.M. Ansari

24 |

News Section

Patron
Mansoor Qadir Dar

Chief Editor
Raja Muhammad Sajjad Khan

Editor
Muhammad Sarfraz Khan

Assistant Editor
Matloob Hussain

Circulation
Naqeebullah Gardezi

DISCLAIMER

The articles and columns are published in this magazine in good faith. However the contents of these writings do not necessary reflect views of the magazine.

Published by:

Chief Editor Kashmir Today K-Block, New District Complex, Muzaffarabad.

Website: www.jklc.org

E-mail: kashmirtodaymzd@gmail.com

Ph: 05822-920072, 05822-920074

Month: April / May 2020

Volume: 09

Issue: 02

Quantity: 1000

Price Rs. 150/-

Yearly Subscription: Rs. 1000/-

Registration No.MZD-31

Printed by Dharti Art Press

Legitimacy of Kashmir's Liberation Struggle: Right to Self-Determination Under International Law

M. Idrees Abbasi*

Abstract

This article discusses Kashmiris' right to self-determination under International Human Rights Law. It highlights Kashmiris' entitlement to self-determination while they reside in the disputed Indian occupied State of Jammu and Kashmir (J&K). In addition, this article analyses the rule of National Liberation War under International Humanitarian Law and its distinction with frequently associated terms i.e., "aggression" and "terrorism." At the end, legitimacy of Kashmir's liberation struggle as a National Liberation War under International Humanitarian Law is explained followed by the conclusion of the article.

Keywords: Self-Determination (SD), Right to Self-Determination (RSD), International Humanitarian Law (IHL), National Liberation Movement (NLM), Kashmir Liberation Struggle (KLS).

Introduction

For six decades, the people of the disputed territory of Jammu and Kashmir (J&K) under Indian occupation have looked up to the international community for a peaceful resolution through their external Right to Self-Determination (RSD). They even participated in the electoral process conducted under the Indian Constitution, to exercise their democratic right of choosing their own government i.e., Internal RSD election but that too was denied.¹ However, the armed struggle of people of J&K is frequently dubbed by India as terrorism and Pakistan has continuously been accused of infiltrating the militants across ceasefire line.²

* The author is Secretary Presidential Affairs, Govt. of Azad Jammu and Kashmir.

¹ Tariq Nizami, *The Undying Spirit, Kashmir Amidst The Nuclear Blasts* (Kashmir Liberation Cell, 1998, Rawalpindi): 85-96.

² Renamed as Line of Control, vide Simla Agreement executed between Pakistan and India on July 2, 1972, in the aftermath of 1971 Indo-Pak War.

On the other hand, India gradually started integrating J&K into its mainland by changing its demography leading to shocking development of August 05, 2019 whereby New Delhi revoked the special status³ of J&K. Now J&K has been divided into two union territories with stronger control by the Central Government of India. With this act, India has become an occupying power and left no choice to the people of the state except to restart an armed struggle against India to finally exercise their RSD.⁴

India does not recognise Kashmir's Liberation Struggle (KLS) as legitimate under International Law (IL). The people of J&K through All Parties Hurriyat⁵ Alliance, claims it to be a legitimate National Liberation Movement (NLM) which is aimed at exercising their RSD. Now it is to be examined whether Kashmiris are entitled to RSD and to what extent KLS is legitimate under IL. This paper addresses these questions besides exploring the nature of the integration of J&K into Indian Union territories and the KLS under IL.

Right to Self-Determination: Concept and Origin

For a coherent group of people, having a certain level of national consciousness to create their own state and decide their own form of government is described as RSD.⁶ The origins of contemporary notions of RSD are found in the Declaration of Independence of United States of America⁷ which announced to derive the powers to govern from the people. The peoples right to retain, amend or substitute the form of their government was recognised under the Declaration. This principle was further advanced and elaborated by the leaders of French Revolution who

³ Before August 5, 2019, unlike other states of India, J&K was having special status under Indian Constitution and as such only those laws of Union Parliament were extendable to J&K which correspond to so-called Instrument of Accession or specifically agreed by the J&K Assembly and Government.

⁴ The Constitution (Application to Jammu and Kashmir) Order, 2019 and The Jammu and Kashmir Reorganization Act, 2019.

⁵ An Urdu language word that means "freedom."

⁶ Encyclopedia Britannica, <https://www.britannica.com/topic/self-determination>

⁷ Declaration of Independence, July 04, 1776, "National Archives and Records Administration," Government of United States of America, http://www.archives.gov/exhibits/charters/declaration_transcript.htm, Please also see Arnulf Becker Lorca, "A 'Pre-History' of Self-Determination," *European Journal of International Law*, vol. 25, issue no. 2 (May 2014): 497-523, <https://doi.org/10.1093/ejil/chu033>

demanded the annulment of all the previous rules of conquest and annexation of territories by force. The annexation of a territory was made conditional to consent of the people of the territory by holding a plebiscite.⁸

a) Development of RSD as a Norm of International Customary Law

Customary Law has been conclusively accepted as one of the basic sources of IL.⁹ Customary Law develops from practice of states vis-à-vis their inter-state relations. The practices which states impliedly consider as binding among themselves are termed as international customs. In the North Sea Continental Shelf Case,¹⁰ in relation to development of Customary Law, it has been held that an international custom assumes the status of International Customary Law when the act amounts to a settled practice and that practice is rendered obligatory by the existence of a rule of law requiring it. Moreover, in the Continental Shelf Case between Libyan Arab Jamahiriya and Malta,¹¹ it has been held as well that it is the actual practice which is required to be followed compulsorily and this expected behaviour is termed as *opinion juris*, *necessitates (opinion juris)*.

Originating as a principle of Customary Law, the concept of RSD developed over time and transformed into various phases. Ironically, this principle was adopted during the Bolshevik Revolution to serve the class conflict in the name of social justice.¹²

⁸ Edward James Kolla, "The French Revolution, the Union of Avignon, and the Challenges of National SD," *Law and History Review* 31(4) (2013): 727, <http://www18.georgetown.edu/data/people/ejk55/publication-73669.pdf>

⁹ Article 38, the Statute of International Court of Justice.

¹⁰ North Sea Continental Shelf case between Federal Republic of Germany and Denmark; Federal Republic of Germany and The Netherlands, "50 years (1946-1996): Book of the International Court of Justice," 4th ed., The Netherlands: 114.

¹¹ Ibid., 121-24, please also see "*Public IL: An Introduction to Public IL for Students*," <https://ruwanthikagunaratne.wordpress.com/>

¹² Yves Beigbeder, "*International Monitoring of Plebiscites, Referenda and National Elections: SD and Transition to Democracy*," *International Studies in Human Rights*, v.32. (MartinusNijhoff Publishers, 1994), 34.

b) Development of RSD as a Right under International Human Rights Law

Another development of SD was the adoption of the two notable Human Rights (HRs) Instruments i.e., ICCPR 1966 (International Covenant on Civil and Political Rights, 1966) and the ICESCR 1966 (International Covenant on Economic, Social and Cultural Rights, 1966). The common sub-Article (3) of Article 1 of both covenants restated RSD and required the States Parties to take measures for promotion and protection of this right for administration of the Non Self-Governing and Trust Territories. The same Article also provides that all the people may freely dispose of their natural wealth and resources without any prejudice to any obligations arising out of international economic cooperation, on the basis of principle of mutual benefit and IL, and that people shall, in no manner, be deprived and dispossessed of their means of sustenance.¹³

In 1989, the experts of United Nations Educational, Scientific and Cultural Organisation (UNESCO) first interpreted the 'people'¹⁴ entitled for RSD as under:

"A group of individual human beings who enjoy some or all of the following common features: (a) a common historical tradition; (b) a racial or ethnic identity; (c) cultural homogeneity; (d) linguistic unity; (e) religious or ideological affinity; (f) territorial connection; (g) common economic life."

The UNESCO's experts further supplemented that group F must have a certain number of people who may not be necessarily huge, however, it should not also be a mere individuals association within a state; it must have the resolve as whole to be recognised as a people or conviction of being people; and it should have means and institutions for expressing and voicing its shared characteristics and will for its distinct identity."¹⁵

¹³ Arts 1 (2) of both International Covenant on Civil and Political Rights, 1966 and International Covenant for Economic, Social and Cultural Rights, 1966, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/>

¹⁴ UNESCO, "International Meeting of Experts on Further Study of the Concept of the Rights of Peoples," November 27-30, 1989, Final Report and Recommendations, Paris.

¹⁵ Ibid.

c) *Internal and External Classification*

RSD is categorised into external and internal dimensions above. On the other hand, Internal RSD is the right to self-governance, i.e., right of the people to elect their political and economic regime.¹⁶ It is also said that the internal dimension of SD concerns with the people right within a state, to decide their own political status.¹⁷ In other words, the internal aspect of SD is democracy,¹⁸ i.e., right of the people to have a representative and democratic government. Moreover, internal SD is also alternatively termed as democratic SD¹⁹ and it is an ongoing right.²⁰

Kashmiris Entitlement to RSD

a) *Emergence of Conflict*

J&K was the largest state out of 560 states of the Subcontinent internally independent but under British paramountcy externally. It was one of 560 princely independent states of Subcontinent and, at the time of partition of India, the British Government terminated its suzerainty over the princely states, which were given an option either to join India or to join Pakistan. Hari Singh, the then Maharaja of J&K, intended to remain independent and signed a stand-still agreement with Pakistan.²¹ A similar offer was made to India, but it declined to do so. Meanwhile, an uprising against the Maharaja broke out in Poonch against heavy taxation. The area's population, full of retired soldiers of the World War II, started an armed struggle against the Maharaja's Army.²² On October 21, 1947, several thousand tribesmen from tribal areas adjoining Pak-Afghan border poured into J&K in order to

¹⁶ Antonio Cassese, *SD of peoples: a Legal Reappraisal*, No. 12 (Cambridge University Press, 1995), 111.

¹⁷ Robert McCorquodale, "SD: A Human Rights Approach," *International and Comparative Law*, 43, no. 4 (1994): 864.

¹⁸ Hurst Hannum, *Legal Aspect of Self Determination*, <http://pesd-princeton.edu/>, 30.

¹⁹ James Crawford, *The Creation of States in IL* (Oxford University Press, 2006), 114.

²⁰ Gerry J. Simpson, *The Diffusion of Sovereignty: Self-determination in the Post-colonial Age*, *Stan. J. Int'l L.* 32 (1996): 257. Please also see Solon Solomon, "The Quest for Self-Determination: Defining IL's Inherent Interstate Limits," *Santa Clara J. Int'l L.* 11 (2012): 397, <http://digitalcommons.law.scu.edu/seujil.vol11>, issue no. 2/4

²¹ Lamb, *Supra* N.6, 128.

²² Saraf, *Supra* N. 4, vol. II: 848-854.

liberate the state from Dogra rule. The tribesmen liberated Muzaffarabad and Baramulla and reached the capital, Srinagar. On the other hand, most of the Poonch and Mirpur were also liberated by the freedom fighters. On October 24, 1947, the Maharaja requested military help from India in order to stop the tribesmen from occupying the entire state, but India, in response, conditioned the help to signing of Instrument of Accession.²³ Accordingly, the Instrument of Accession was signed and the Indian troops were airlifted to Srinagar. The Indian troops, backed by the Indian Air Force, not only stopped the tribal advancement but also pushed them back to Chakothi.²⁴

On the other side, Pakistan also sent its troops to stop advancement of the Indian Army, resulting into a war between both countries. In Gilgit-Baltistan (GB), the northwestern side of the frontier province of the state, the people with help of Gilgit Scouts stood in revolt and freed a big part of Kashmir territory. Subsequently, India took the matter to the United Nations Security Council (UNSC), which passed a number of resolutions acknowledging the peoples' right to decide whether they wished to be a part of Pakistan or India by holding the plebiscite for this purpose. The UNSC established the UN Commission for India and Pakistan²⁵ for conflict resolution and the UN Military Observer Group was placed to oversee violations of ceasefire line demarcated to put an end to the war.

b) *J&K's Disputed Accession to India*

The execution of Instrument of Accession by India on October 26, 1947 is contested by independent researchers on chronological basis as the said date is appended to justify the landing of Indian troops on the very next day i.e., October 27, 1947.²⁶ It has been concluded by the

²³ "Instrument of Accession signed by Late Maharaja Hari Singh of the State in favour of India on October 26, 1947," <http://jklaw.nic.in/historical.htm>

²⁴ Saraf, Supra N. 4, vol: 889-891.

²⁵ UN Commission on India and Pakistan was established by UNSC Resolution, No. 39, dated January 20, 1948, comprising three member, one nominated by India, another by Pakistan and third was designated by both the nominated members. The commission was mandated to effectuate ceasefire and reduce the tension prevailing between both countries and to normalise the situation for holding of the plebiscite in the area. The commission was also tasked to proceed to the area and monitor activities along the ceasefire line under supervision of the UNSC.

²⁶ Lamb, Supra N.6: 136-141 and Victoria Schofield, *Kashmir in Conflict*, (IB Tauris Publishers, London-New York: 2000), 49-60,; and Joseph Korbel, *Danger in Kashmir*, (Oxford University Press Karachi Pakistan, 2003), 78-87.

researchers that Maharaja's signature was ante dated in order to justify the landing of the Indian troops on October 27, 1947.²⁷ The Government of Pakistan was neither consulted nor was any notice to this effect was given in spite of the fact that Maharaja was bound to do so under the Stand Still Agreement with Pakistan.²⁸ Muhammad Ali Jinnah, the first Governor General of Pakistan, termed the so-called Instrument of Accession as fraudulent and impossible to accept.²⁹

Even for the sake of argument if it is accepted that the Instrument of Accession is true and genuine, it was not absolute or unconditional, rather it was limited to the extent of few subjects' i.e., external affairs, defence and communications. Besides, it was provisional and subject to plebiscite to be held under the UN resolutions.³⁰ It is due to this reason that a unique temporary constitutional status to the State of J&K was given under the Article 370 of the Constitution of India, compared with other Indian states.³¹ It was followed by a so-called resolution of Constituent Assembly of Indian Held Kashmir ratifying the accession in sheer violations of different UN resolutions and RSD of the people of J&K. The Constituent Assembly's resolution, altering the political status of the State unilaterally was categorically denounced by the UNSC³² through its resolution passed in 1957, while reaffirming the disputed nature of the State and resolution of the dispute through holding of plebiscite under the UN auspices.

c) *Nature of Kashmir Conflict and RSD*

In order to resolve the conflict, it is necessary to explore the nature of the conflict. J&K holds great significance not just because it is a disputed territory between India and Pakistan, but it has a more meaningful and deeper dimension which is humanitarian. It is a land inhabited by 18 million

²⁷ Ibid.

²⁸ Cunningham Diary, 1947-48, MSS.Eur.D670, London, 1854, 19-20.

²⁹ *Pakistan Times*, October 31, 1947, 1.

³⁰ White Paper on J&K, Government of India, New Delhi, 1948, 17-19, and letter of Lord Mountbatten to Maharaja Hari Singh, dated October 27, while accepting the Instrument of Accession. Please see as well Anand A.S., *The Development of Constitution of J&K*, (1991, Verinag Publisher Mirpur Azad J&K), 93 and Ibid., 43-45.

³¹ Disputed Instrument of Accessions executed on October 26-27, 1947, between Hari Singh, Ruler of State and Indian Government.

³² UNSC Resolution No. 122 passed in its 765th meeting dated January 24, 1957, <http://www.un.org/en/sc/documents/resolutions/1957.shtml>, *Appendix XIII*.

people and the resolution of this dispute means the determination of political fate and destiny of these much population. Kashmir-specific resolutions of the UN acknowledge the disputed nature of the territory and right of people of this territory to SD. Besides, IL as well as extensive jurisprudence on exercising RSD by the people of disputed territories under alien occupation makes a strong case for the indigenous freedom movement.³³ Therefore, J&K conflict is a pending case of SD of the people under IL rather than just a territorial dispute between India and Pakistan to be resolved by them exclusively through bilateral negotiations.

For exercising the RSD, the people must qualify the basic requirements as such under IL. In 1989, experts of the United Nations Education Scientific and Cultural Organisation (UNESCO) took a lead and interpreted the term 'people.'³⁴ To be called as the 'people,' Kashmir fulfills three common features: historical tradition, territorial connection and economic life. Thus, they are not only entitled to this right, but they have unique privilege of having specific UN resolution acknowledging their RSD.

National Liberation War

National Liberation War or liberation struggle means an armed conflict in which the people fight against the colonial power, alien occupation and racist regimes to exercise their RSD. Several communities fought against the colonial oppression and their struggle even turned violent. The colonial and occupying power were and, still are, in most of the cases, unwilling to acknowledge RSD for the subjugated people. The Liberation War of people of United States against the imperialist British; East Timor against Indonesia; South Sudan against Sudan and Kosovo against Serbia are frequently quoted examples.

International community, being cognizant of the fact, passed number of resolutions through the UN General Assembly on this issue. These resolutions not only acknowledged the fundamental nature of RSD for all the people, particularly for those who were under colonial or any form of

³³ Section 4.2 and Infra 58 for elaboration of status of India viz a viz J&K after August 05, 2019.

³⁴ UNESCO, "International Meeting of Experts on Further Study of the Concept of the Rights of Peoples," Paris, November 27-30, 1989, Final Report and Recommendations, <http://unesdoc.unesco.org/images/0008/000851/085152Eo.pdf>

foreign domination, but also declared that the use of force against people striving for the SD is absolutely illegal. As such, people having the first ‘level’ of RSD³⁵ cannot be deprived forcefully at all. This has been laid down in several General Assembly resolutions unequivocally.³⁶

a) *Legitimacy of National Liberation War*

The term “war of national liberation” is used in conjunction with the wars against foreign occupying powers to establish separate sovereign states for the rebelling nationality. There is an emerging trend to formally accommodate the non-states actors under the IHL framework because it is meant to protect both combatants and civilians. However, NLMs have encountered difficulties while applying IHL to their conflicts in the past, due to the nature of the legal framework.³⁷

Though the UN Charter recognises RSD, it is indeterminate about the method nor does it mention any particular mode by which other states can help the people as how to protect this right. It does, however, mention the principle of non-interference in the internal affairs of other states. It means that, according to the UN Charter, support to liberation struggle will be legitimate if it does not amount to interference in the internal affairs of other states and it has been acknowledged by the Friendly Relations Declaration which is as under:

“In their action against, and resistance to, such forcible action in pursuit of the exercise of their Right to Self-Determination, such people are entitled to seek and to receive support in accordance with the purposes and principles of the Chapter.”³⁸

IHL is applicable whenever there is a situation of an armed conflict, which involves militant activities perpetuated by NLMs. The acts which

³⁵ Right to Self-determination at External Level.

³⁶ UN General Assembly Resolutions No. A/RES/44/29; No. A/RES/46/51; No. 1514[XV] dated December 14, 1960; No. 3314, December 14, 1974; No. 37/43, December 3, 1982; No. 3034 (xxvii), 1972; and No. A/RES/39/159 dated December 17, 1984.

³⁷ Noelle Higgins, “The Regulation of Armed Non-State Actors: Promoting the Application of the Laws of War to Conflicts Involving National Liberation Movements,” *HR Brief* 17, no. 1 (2009): 2.

³⁸ Article 1, Friendly Relations Declaration, *Supra* N34.

must be admitted as terrorism under anti-terrorism laws are only exempted to the extent of justification provided under IHL.³⁹ Similarly, the Declaration acknowledges the legitimacy of the liberation struggle and external support as well but, simultaneously, it mentions the principle of non-interference which clearly states that all the principles mentioned in the Declaration are correlative and should be construed jointly.⁴⁰ Hence, legitimacy of the liberation struggle and the external support need to be explained. In this context, it may be interpreted that Kashmiri's liberation struggle and their entitlement to external aspect of RSD⁴¹ cannot be treated as an internal affair of the Indian state. Hence, supporting these people would not amount to interference in the internal affairs and, as such, it would neither be violation of the Declaration and principles of IL nor the UN Charter.

The 1963 Tokyo Convention on Offences⁴² was a remarkable progress to address the problem of freedom fighters and state terrorism by using principles of IHL as tools of distinction. Different resolutions of the UNGA on terrorism explicitly affirmed the SD principle. In 1972, while addressing the terrorism and reaffirming the Right and NLMs, the UNGA⁴³ urged all the member states to address the underlying causes leading to the violence. In 1984, it followed by another UNGA resolution on inadmissibility of the policy of state terrorism and any actions by states aimed at undermining the socio-political system in other sovereign states.⁴⁴

b) *National Liberation War and Terrorism*

The UN Charter specifically contains some constraints about unilateral use of force i.e. embargo on the use of force; pacific settlement of differences; interference free internal affairs; and unilateral force to be used only in

³⁹ 28th International Conference of the Red Cross and Red Crescent December 2-6, 2003, International Humanitarian Law and the Challenges of Contemporary Armed Conflicts.

⁴⁰ Article 2 and 3 of the Friendly Relations Declaration, Supra N34.

⁴¹ Those who want and make liberation struggle and to secede from a political community or state.

⁴² UN Office on Drugs and Crime, Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963, *UN Treaty Series*, vol. 704, No. 10106

⁴³ UNGA Resolution No, 3034(xxvii), 1972.

⁴⁴ UNGA Resolution No, A/RES/39/159 dated December 17, 1984.

exceptional circumstances of self-defence and within the parameters of necessity and proportion. It means that the law of resort to war is not violated in such cases. The NLMs must, however, accept and comply with the law of conduct of war.⁴⁵ The most important constraints of IHL are: inviolability of civilian and non-combatant population and property; the principle of proportionate use of force; protection of the wounded, sick ameliorated and captured combatants; and restrictions on the means and methods of warfare. It is the violation of any of these norms that turns liberation struggle into terrorism.⁴⁶

UNGA has made clear that it does not legitimise the use of terrorism by those seeking SD as declared in the “Resolution against State Terrorism 1984”⁴⁷ and “Resolution to Prevent International Terrorism 1989.”⁴⁸ In 1991, the UNGA passed a resolution as “Measures to Eliminate International Terrorism”⁴⁹ wherein; the relationship between terrorism, colonialism and liberation movements was elaborated in its 14 preambular paragraph. The UNSC in 1999 and 2004 also expressed in its resolutions 1269⁵⁰ and 1566⁵¹ that all acts of terrorism, regardless of their motivation, are unjustifiable.

c) *National Liberation War and Aggression*

Under Article 39 of the Charter, it is the responsibility of the UNSC to see whether an act of aggression has been committed by a state or not, and then to take appropriate measures. In 1974, the General Assembly passed a landmark resolution defining “aggression”⁵² that necessitates the legality of such support that it should not violate the UN Charter and

⁴⁵ Additional Protocol I to Geneva Conventions of August 12, 1949 Relating to Protection of Victims of International Armed Conflicts of June 8, 1977.

⁴⁶ Ibid.

⁴⁷ UNGA Resolution No, A/RES/39/159, <https://www.un.org/documents/ga/res/39/a39r159.htm>

⁴⁸ UNGA Resolution No. A/RES/44/29

⁴⁹ UNGA Resolution No, A/RES/46/51, 67th plenary meeting 9 December 1991, <http://www.un.org/documents/ga/res/46/a46r051.htm>

⁵⁰ Council on Foreign Affairs Relations, “UNSC Resolution 1269, Combating Terrorism,” adopted on October 19, 1999

⁵¹ Council on Foreign Affairs Relations, “UNSC Resolution 1566, Terrorism,” adopted on October 8, 2004.

⁵² UN Resolution No. GA/Res/3314 (XXIX) (1974).

be harmonious to the Declaration of Principles of International Law 1970.

However, it is pertinent to mention here that one of the reasons for the eagerness of the General Assembly to adopt a consensus definition of aggression was to prohibit states from the threat or use of power against those striving for their RSD. That is why the General Assembly reaffirmed the responsibility of states as not to deprive the people from RSD, freedom and independence, or to disrupt territorial Integrity through use of force.⁵³

In short, IL, in this regard, can be summarised as use of power for the RSD will be legal if the following three conditions are fulfilled: that those who resort to the use of force in this behalf must be under colonial, racist, or any other form of alien domination; that resort to the use of force can only be made when they are being forcibly denied of their RSD; that the use of force must be within the constraints of IL, particularly the UN Charter and the Declaration on Principles of International Law.

Legitimacy of Kashmir's Liberation Struggle

a) Struggle for RSD

Kashmiris' struggle is based on RSD under UN Resolution on Kashmir and Universal Declaration of Human Rights. Despite moral crisis in integrity of global powers, the UN still considers Kashmir as 'disputed territory' and Kashmiris have not been provided with RSD which is their inalienable and absolute right.⁵⁴ Especially after August 5, 2019, the Indian occupation of disputed territory of J&K has altogether become illegal. Therefore, any struggle against the illegal occupation is lawful and legitimate. International community is bound to support them morally and legally. Moreover, despite India's futile attempts of portraying the issue as internal constitutional problem, unprecedented sacrifices and continuous struggle by Kashmiris compelled the media to bring the conflict to the attention of international community In the wake of recent developments, the UN, UK and European

⁵³ Ibid.

⁵⁴ Ibid.

Union (EU) have started discussion on human rights violation in IOK and Kashmir conflict.⁵⁵

Origin of the recent uprising can be traced back to 1987 when an alliance of different political/religious parties, the Muslim United Front, was formed in J&K, for participation in the assembly elections to challenge India. The elections were rigged by the state and Indian-supported National Congress candidates were declared winners, but during and after the election, the situation exposed India's disreputable plans in Kashmir. 1980s was an era of political disruptions, troubles and trials resulting in enhancement of Kashmiris self-confidence. While in 1990s, the movement attained the characteristic of all-pervading popular *Intifada*. Moreover, the Indian brutality and inflexibility brought and converted the struggle into an armed movement, having general support of Pakistan, and Organisation of Islamic Cooperation. Subsequently, the religious groups began to emerge and NLM was popularly named as a sacred war, *Jihad*.⁵⁶

b) Forceful Denial of Right to Self-Determination

It is well-established in IL that opposition to the government or state functionaries through political means or use of violence for acquiring full independence from the state or changing the governmental authorities or policies is not an "internal" issue. The argument for this is threefold: Firstly, there are several international resolutions of different bodies, particularly the UNGA, which make liberation struggle an international, rather than an internal, issue. Therefore, for instance, the 1960 Declaration on Granting of Independence to Colonial Territories categorically condemns all forms of alien domination⁵⁷ including colonisation and denial of RSD: "The subjection of people to alien subjugation, domination and exploitation constitutes a denial of fundamental Human Rights, and is contrary to the

⁵⁵ *Pakistan Today*, August 9, 2019, www.pakistantoday.com.pk/2019/08/09/ and *Pakistan Today*, July 4, 2018, <http://www.pakistantoday.com.pk/2018/07/04/>

⁵⁶ Arabic word means "Struggle" and used for Holy War under Islamic Law.

⁵⁷ Though strictly speaking India is not colonial power, but it is now altogether established that it is an alien power especially after abolition of special status under Article 370 of the Indian Constitution in pursuance of so-called Instrument of Accession. Therefore the accession of J&K into mainland India on August 05, 2019 has become illegal beyond any doubt and India is now an alien in J&K.

Charter of the UN and is an impediment to the promotion of world peace and co-operation.”⁵⁸

Secondly, there are some classes of people for whom this right is specifically recognised by the international community. These are the people either living under colonial or alien domination or for whom the UNSC has recognised this right of the people of Kashmir,⁵⁹ Palestine and East Timor. SD for this class of people cannot be called as an internal affair of a state. Thirdly, it is also an accepted norm that liberation struggle is a conflict of international nature and not an internal dispute.⁶⁰

Consistent and forceful denial of RSD of Kashmiris and silence of international community left no other option for them except to resort to an armed struggle. Since 1989, armed guerrilla activities were formally organised by different groups besides political struggle. The resistance was brutally countered by matchless military campaign by Indian forces up to the extent of permanent low-intensity war against civilian population.

c) Human Rights Violations and Crimes Against Humanity

Indian Occupied Kashmir is a highly militarised zone with around seven hundred thousand troops and ratio of military personal to civilian is 1:7 which is highest in the world.⁶¹ Thousands have lost their lives and number of others maimed forever, subjected to inhuman torture and gone missing. Different laws were passed by India giving complete impunity to its armed forces for their action against so-called terrorists which include The Jammu and Kashmir Public Safety Act 1978, The Terrorist and Disruptive Activities (Prevention) Act 1985, The Armed Forces (Jammu and Kashmir) Special Power Act 1990, and The Prevention of Terrorism Act 2002.⁶² A young popular guerrilla leader, Burhan Wani mobilised the Kashmiri youth through social media for raising arms against tyrant regime and for their

⁵⁸ Section 1, Declaration on Granting Independence to Colonial Peoples and Territories (GA/Res/1514 (XV) (1960).

⁵⁹ The Security Council Resolution No. 47 (1948) April 21, 1948, [S/726].

⁶⁰ Article 1(4), of the Additional Protocol I to the Geneva Conventions.

⁶¹ International Association of Peoples' Lawyers, <http://www.iapl.net>

⁶² Office of the UN High Commissioner for HR Report on the Situation of Human Rights (HR) in Kashmir: Developments in the Indian State of J&K from June 2016 to April 2018 and General HR Concerns in AJ&K and Gilgit-Baltistan, June 16, 2018, <https://www.ohchr.org/.../IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>

liberation. He was very successful in his pursuit and thousands joined him. He was chased and killed extra-judicially on July 8, 2016 in an encounter.⁶³

In J&K, the Indian forces enjoys complete impunity and have never been tried for HR violations in a civilian court except a few cases, in which military court marshals were held. The security forces have massively used pellet-firing shotguns during unarmed protests and demonstrations resulting in thousands blinded and injured. From January 1989 to September 2019, it has been estimated that 95,454 people died, 144 lost their sight completely, 209 lost one eye,⁶⁴ 109,442 structures destroyed, 22910 women widowed, 107,780 children orphaned and 11144 women were molested or gang raped.⁶⁵ Number of enforced disappearances is reported to be between 8000 and 10000.⁶⁶ From 2016 to 2018, total 125 persons have been killed, 654 injured, and 187 houses damaged due to indiscriminate firing of Indian Army along Line of Control (LoC).⁶⁷ Internet services are frequently blocked to stop transmission of communications with outside world.⁶⁸ The mass killing and symptoms of genocide have also been reported when 2080 unidentified and unmarked mass graves were discovered in different places in the Indian Occupied Kashmir.⁶⁹ The state government accepted the presence of these graves, but investigations were not carried out in spite of repeated demands from families of missing persons. This state of affairs is due to the fact that possible investigation report could bring public hue and cry as well as impunity enjoyed by Indian security forces may be

⁶³ “Violence in Kashmir over Death of Rebel Social Media Star Leaves Eight,” *Independent*, July 9, 2016, <https://www.independent.co.uk/news/world/asia/violence-in-kashmir-over-rebel-social-media-star-shot-by-soldiers-leaves-at-least-eight-dead-and-60-a7128756.html>; Please also see, Ishfaq Ahmad Shah, “Kashmir is on the Edge After the Death of 22-Year-Old Militant Who Used Facebook as a Weapon,” *Quartz India*, July 9, 2016, <https://qz.com/india/727911/kashmir-is-on-the-edge-after-the-death-of-22-year-old-militant-who-used-facebook-as-a-weapon/>; “Kashmir’s Disturbing New Reality | the Young Militants of Kashmir,” *Hindustan Times*, <https://www.hindustantimes.com/static/the-young-militants-of-kashmir/>

⁶⁴ Kashmir Media Service, <https://www.kmsnews.org>

⁶⁵ Ibid.

⁶⁶ Association of Parents of Disappeared Persons (APDP), <http://apdpkashmir.com>

⁶⁷ Detail of losses/damages 2016-18 due to Indian Firing along LoC issued by State Disaster Management Authority, Govt. of J&K.

⁶⁸ Office of the UN High Commissioner, Supra N. 55; Please also see Amnesty International India, Human Rights Organization, www.amnesty.org.in

⁶⁹ Ibid; Annual Report 2017, *A Review of HR in J&K*, Jammu Kashmir Coalition of Civil Society, The Bund, Amira Kadal, Srinagar-190001, J&K, www.jkccs.net

threatened.⁷⁰ The situation has worsened since August 5, 2019 when the J&K was formally integrated into mainland India and the state of J&K was divided into two union territories.

Conclusion

SD is an internationally recognised principle and a basic and foundational right under HRs regime. All people have RSD, both internal and external, but the latter is only used once whereas the former is a right which the people exercise throughout their life. It is recognised internationally that the state of J&K is a disputed area and its people are entitled to RSD. They can legitimately use force and wage their National Liberation War in case of any forceful denial of their RSD. However, they are always subject to adherence to rules of IHL. NLM is distinguishable from the acts of terrorism or aggression since they are treated as International Armed Conflicts and bound to follow all the rules of IHL. Kashmir's Liberation Struggle is legitimate under IL since RSD of Kashmiris is denied by India forcefully, especially in wake of August 5, 2019 action. Thus, the Indian occupation of J&K has become unlawful thereby giving legitimacy to the Kashmiri struggle beyond any doubt. The atrocities are being committed against Kashmiris and indiscriminate and disproportionate force is frequently used against peaceful demonstrations which amount to state terrorism. Moreover, targeted killing of non-combatant civilian population along LoC is a war crime. International community is obligated not only to support this cause, but also ensure that the Kashmiris achieve their RSD.

⁷⁰ Ibid.

PAKISTAN REJECTS INDIA'S NEW KASHMIR DOMICILE RULES

[\(Iftikhar A. Khan\)](#)

Islamabad: Pakistan on Tuesday rejected Indian government's recently announced domicile rules for occupied Kashmir which allows non-locals to seek permanent residence in the disputed region.

On Monday, India notified new rules that permit those who have lived in India-held Kashmir for 15 years, or studied there for seven years and appeared in class 10th or 12th examinations in a local school, to apply for Kashmir domicile, a mandatory condition for seeking jobs in the Himalayan region.

Before the abrogation of Article 370 and the new domicile rules, no outsider could apply for permanent residency or government jobs in the conflict-hit region.

The Foreign Office spokesperson said in a statement that the Jammu and Kashmir Grant of Domicile Certificate (Procedure) rules were in clear violation of the relevant United Nations Security Council resolutions, international laws, including the Fourth Geneva Convention, and bilateral agreements between Pakistan and India. "The domicile law is aimed at changing the demographic structure of IOJ&K and undermining the exercise by the Kashmiri people of their right to self-determination through free and impartial plebiscite as per the relevant UNSC resolutions. We reiterate that such steps can neither change the disputed nature of Jammu

and Kashmir recognised as such by the United Nations and the international community nor can they prejudice the inalienable right to self-determination of the Kashmiri people," the Foreign Office stated.

It observed that the timing of the illegal Indian action was particularly reprehensible as it used the world community's preoccupation with the coronavirus pandemic and reflected the opportunistic and morally bankrupt mindset of RSS-BJP.

The Kashmiri people would never accept the sinister "Hindutva" agenda of dispossessing them of their land, marginalising them politically and economically, and depriving them of their distinct identity, the FO stated.

It said Pakistan had been consistently sensitising the international community about the real Indian designs behind its illegal and unilateral actions of Aug 5, 2019.

Through these actions, along with continuing restrictions, excruciating military crackdown, extra-judicial killings, arbitrary detentions and incarcerations, and grave human rights violations, India seeks to perpetuate its illegal occupation of held Kashmir.

The UN and international community must take immediate action to stop India from changing the demography and distinct identity of held Kashmir and hold India accountable for the persistent violations of international law, urged the FO.

SOME EID IN KASHMIR

The few images, photos and videos, that trickle out of occupied Kashmir chronicling the travails of the Kashmiris are heart-rending and a couple of days ahead of Eid it was not difficult to imagine that the valley would be seeing next to nothing in terms of a celebration.

Since August last year, when New Delhi revoked Article 370, which gave occupied Kashmir special status, and annexed the disputed territory, a lockdown has been in place. That unilateral annexation was followed by unprecedented oppression even by the appalling

standards seen there over the years.

Many of these images, shot by *Associated Press* photographers Dar Yasin and Mukhtar Khan in Srinagar and Channi Anand in Jammu, enabled



Abbas Nasir

the world to see the Indian's state brutality and the defiant resistance being put up by the Kashmiris, and won the 2020 Pulitzer Prize in the process.

The Pulitzer Prize brought some cheer to the beleaguered Kashmiri journalists who have mostly worked without internet and mobile data services for

some eight and a half months in a hostile, oppressive environment. Prize-winning images tell the story of human tragedy unleashed by the Indian state.

These prize-winning images tell the story of human tragedy unleashed by the state which does not even spare little, unarmed children, injuring, blinding or even killing them with shotguns fired directly at them; they have captured the pain, the tears and the helpless loss on the faces of mothers of martyrs.

Read: 3 AP photographers win Pulitzer for coverage of occupied Kashmir after India's annexation

The cameras captured distraught, poor people standing on the rubble or the gutted remains of their homes destroyed by the security forces to teach them a lesson: that their defiance comes at a high price. But the Kashmiri spirit remains unbroken.

This unbroken spirit is manifested each time young men, who have taken up arms against the occupation forces, lay down their lives. Their funerals are marked by hundreds of people, defying the authorities, and congregating to pay their tributes.

Such funerals are marked by the grief of the affected families, whose wailing and lamentation rend the air. Equally poignant is how the fallen fighters are remembered by the rest. In contemptuous disregard of the heavy security presence around them, they raise vociferous "azadi" slogans.

Apart from 1948 when Pakistan was able to wrest a part of Kashmiri territory from India, history has showed that militarily operations whenever initiated have not yielded the desired results. This has happened more than once.

In 1965, when a proud son of Pakistan, Maj-Gen (later Lt-Gen) Akhtar Husain Malik, was removed midway through Operation Grand Slam as troops under his brilliant command were poised to take the valley, GHQ replaced him with Yahya Khan. The operation stalled and lost all momentum never to be regained. And to this day there is no explanation, let alone inquiry, for the decision.

The insurgency of the 1980s and the 1990s, when a large number of armed and trained militants entered the valley and started to bleed the Indian security forces, was never going to lead to the liberation of Kashmir, even if it did leave the Indian security forces traumatised.

Here too the price of that "success" was paid by the Kashmiris whose own Sufi-leaning Islam was supplanted by extremist denominations which were alien to the people and

culture of the valley. Also, these militants' conduct discredited the indigenous freedom movement and led to allegations of it being foreign-inspired.

Although the historical visit to Lahore in February 1999 by then prime minister Atal Behari Vajpayee fuelled optimism about a peace deal, it was followed by the Kargil (mis)adventure initiated by the army chief Gen Pervez Musharraf and some of his close confidantes.

The Kargil conflict, so soon after our nuclear tests, led to Pakistan being dubbed an "irresponsible state" by the international community, caused heavy loss of life of our brave Northern Light Infantry men, and a stalemate which was only resolved after we agreed to a climbdown.

Less than two years after staging a military coup in October 1999, the architect of the Kargil operation arrived in Agra sold on the idea of negotiating a peace deal with India. At one stage, all seemed to be in order for the deal to be inked.

Behind the scenes, hard-line elements in the governing BJP were unhappy with what they saw as Vajpayee's concessions to Pakistan. Gen Musharraf's bravado before the Indian media personnel gave the extremist elements an opportunity to play their hand. It is safe to assume they would have found another excuse even had Musharraf not spoken.

A few years later, Pakistan and India came close to agreement again when Musharraf and (Congress) prime minister Manmohan Singh reached a four-point formula and de-escalation followed. Then, Musharraf triggered a domestic crisis by sacking his chief justice in 2007. The rest is history.

One thing is clear. What Musharraf rather sensibly agreed with Singh reflected the ground reality in Kashmir and the region. Both sides offered concessions and moved away from their historical stance on the issue for peace. Frankly, no civilian leader here would have been able to offer as much.

Nawaz Sharif was castigated for merely trying to engage with Modi when the latter became prime minister. His patriotism was questioned and baseless allegations were made that Sharif's move was driven by business interests.

Eight and a half months after India's unilateral annexation of Kashmir, amid mounting agony for the Kashmiris, the Pakistani response seems hamstrung apart from a lot of talk. The Kashmiris' indomitable will and their burning desire for freedom appear to be the only obstacles in the extremist, authoritarian BJP's path.

The writer is a former editor of Dawn.

Corona in Kashmir

As a symbol of cruelty, the Nazis have it all: hate, fear and fanaticism. The genocide of the Jewish people was driven by all three, but also by epidemic typhus, a disease that often follows war. This was a boon for the Nazis, who used typhus prevention as a ploy to ramp up the death toll.

“Jews were labelled disease carriers and a public health risk to justify the creation of ghettos,” one scholar writes. Typhus also led to quarantine, disinfection and “delousing baths” code for gas chambers. In the end, the victims “were left in a diseased environment, and doomed to die”.

Today, the Hindutva project, long inspired by European fascism, borrows directly from the source. To be Muslim in India is a rolling horror show: the state is following up on New Delhi's pogroms with the cry of 'corona jihad'. Whereas Muslims were being set on fire earlier in the year, they are now being assaulted with cricket bats and run out of neighbourhoods as 'virus spreaders'. While Yogi Adityanath, the psychopathic monk that heads Uttar Pradesh, slaps Tableeghi Jamaat members with the National Security Act, fellow saffron dud Raj Thackeray goes one further. “They should be shot,” he says.

In occupied Kashmir in particular, the coronavirus has been a blessing for the Fourth Reich. It's been eight months since India went from occupying Kashmir to annexing it, and as many months since its people were put in cages. But after Covid-19, the Modi regime, per its fawning press, looks to be pushing its final solution.

The Modi regime looks to be pushing its final solution.

Lest it be thought that Delhi is motivated by the Kashmiris' safety, medical infrastructure is falling apart. The Kashmir Valley has 97 ventilators for three million people, a ratio rightly remarked to be “even lower than besieged Gaza”. Kashmiris on the way to hospital have been fired at. Videos and photographs of police brutality of citizens lined up in chowks and beaten with lathis in Jammu city are being circulated.

All this comes at a time when Kashmir needs access to health services more than ever. Already reeling from one

of the largest mass blindings in history, its people now face a pandemic.

Doctors also point to a full-blown psychological crisis, with spikes in depression, anxiety and psychotic events. Owing to the longest-running

cyber shutdown in the world, low-speed internet has also meant doctors can't download urgent medical guidance, videoconference with patients, or check scans.

When it comes to Indian oppression, however, it's business as usual: 'counterinsurgency operations' continue despite corona. Where once the bodies of Kashmir's murdered young men would be handed over to their families, they are now brought to Srinagar, sampled for DNA, and buried in secret. The occupation claims social distancing; that large funerals might spread the virus. Yet even those families that want to bury their boys quietly are told the same, because the real reason was never Covid-19. “When we are preventing funerals, we are preventing youth from joining militants,” one police officer told a Kashmir-based journalist. “Once he's a militant, he will be killed. Therefore, we are actually saving lives.”

Kashmiri bodies, oppressed in life, are now stolen in death. They are also being denied a fair trial: JKLF leader Yasin Malik has been implicated in a string of 30-year-old cases, pursued at blinding speed. A judicial murder is feared and must be prevented.

Even on the other end of the spectrum, India-held Kashmir's ex-chief ministers, detained for months, are just now being released. There can be little sympathy for the houses of Abdullah and Mufti: as career quislings that oversaw the mass rape and slaughter of their own people, their deal with the devil in Delhi was bound to come crashing down sooner than later. One can only hope the pain they inflicted on Kashmiris is never visited on them.

In the midst of such terror, there's little time to lose. India's response to corona in Kashmir violates international law, including the Fourth Geneva Convention. Modi's



Asad Rahim Khan

annexation has also unwittingly internationalised this crisis like never before, and grounded the solution ever further in UN resolutions advocated by world bodies, White House hopefuls in the US, and Labour leaders in Britain. Most unprecedented of all, the report of the Office of the UN High Commissioner for Human Rights has recommended the Human Rights Council establish a commission of inquiry into human rights violations. The

COI is one of the UN's highest-level probes, reserved for war zones and humanitarian crises like Syria and Libya. To call for its setup marks a decisive shift in international opinion, and transforms India's 'bilateral conflict' into a global crisis.

Pakistan must make sure that momentum carries over to the finish line: self-determination for the Kashmiri people, and an end to this long nightmare.

A peace policy to end the double lockdown in Kashmir

India lacks coherent policy in its handling of J&K and Pakistan

By M.M. Ansari



In this Friday, Sept. 27, 2019, file photo, an Indian paramilitary force soldier stands guard near a barbed wire barricade during restrictions in Srinagar, Kashmir |AP With the scrapping of Jammu and Kashmir's special status on August 5, 2019 came unprecedented security measures and limits on communication that continue to this day. The effect of the COVID-19 pandemic and measures taken to contain it have led to the people of J&K being placed under a double lockdown.

As India and Pakistan continue their proxy war, the people of J&K yearn for peace and the restoration of democratic rights enjoyed across the rest of the country. At the same time, their sense of alienation grows.

Today, Kashmiris are treated with suspicion, penalised under draconian laws like the Public Safety Act (PSA), Armed Forces Special Power Act (AFSPA) and Unlawful Activities Prevention Act (UAPA) the likes of which do not exist in major democracies. Journalists who report on inhuman conditions seen during lockdown are put behind

bars without justifiable reasons.

The degree of human suffering has increased so much that a significant proportion of Kashmir's people suffer from various mental illnesses including depression, constraining their ability to take sound decisions on matters both personal and electoral. The lack of gainful employment and business opportunities throughout the year only adds to their frustration.

The Supreme Court, too, has not acted fast enough to provide legal relief to the petitioners from Kashmir, as the Centre has pleaded that J&K be treated like a war zone.

Had there been an acceptable policy to treat all citizens equally in all matters including access to digital platforms as the Constitution of India mandates, the sense of alienation among the youth and the general feeling of victim hood could have been contained.

An assessment of political developments in J&K since independence indicates that there has not been a consistent and well-thought-out Kashmir policy to ensure sustainable peace and development and to promote the democratic participation of people in the decision-making process.

For instance, unlike any other federal state under the Indian Union, J&K has been under the direct control of the Centre. The three-tiered Panchayati Raj system, which guarantees good governance at the grass roots levels, has never been operationalist.

Likewise, even though several political leaders were placed under house arrest without assigning any reason for their confinement, the Supreme Court has yet to assign sufficient priority to the matter; a constitutional one

that adversely affects the democratic rights of people. The Central government has not pursued the policy pronouncements it makes made from time to time with any consistency. While the support of the people of Kashmir has been elicited for maintaining law and order, they have never been democratically engaged to resolve contentious issues such as, for example, the extent of political autonomy for the governance of J&K.

In a broadcast to the nation on November 3, 1947, Jawaharlal Nehru promised that the fate of Kashmir would be decided by the people. "That pledge we have given not only to the people of Kashmir and to the world. We will not and cannot back out of it," he said.

What his successors subsequently said and did, however, is discussed below.

"Na Goli Se, Na Gali Se, Kashmir ki Samasya Suljhayge, Gale Lagane Se"



File photo of Prime Minister Narendra Modi addressing the nation from Lal Qila

In Prime Minister Narendra Modi's Independence Day speech delivered at the ramparts of Lal Qila on August 15, 2015, he said that "Kashmir's problems can be solved only by embracing the people of Kashmir, not with bullets or abuses."

The government subsequently, after August 5, 2019, enacted unprecedented security measures in Jammu and Kashmir after its decision to abrogate Article 370 and reorganise the state of J&K into two Union Territories. Article 370 guaranteed nominal autonomy to J&K, which was rescinded to suppress and contain militancy through the Centre's direct control of the region.

PM Modi said that to strip the special status of the state, these steps were taken in a "completely democratic,

open, transparent and constitutional manner". Regarding its constitutionality, however, the government's decision was challenged in the Supreme Court of India which is yet to deliver its judgement.

Contrary to what PM Modi said on Independence Day in 2015, his government's action on August 5, 2019 was unexpected and unbelievable. All this does not constitute an acceptable policy on Kashmir.

Insaniyat, Jamhuriat and Kashmiriyat



During his Prime Ministership, Atal Bihari Vajpayee made sincere and concerted efforts to reach out to all the stakeholders in J&K as well as in Pakistan. Eventually, India and Pakistan came closer towards signing a peace accord at Agra. They did this by accommodating the wishes and aspirations of people through a doctrine outlined by Vajpayee: Insaniyat, Jamhuriat and Kashmiriyat (Humanity, Democracy and Secularism). The President of Pakistan, Pervez Musharraf was on board, but the proposed accord could not be signed for reasons known to both the parties.

Dr Manmohan Singh not only tried to pick up the thread that the Vajpayee government had left but also took additional steps to address the problems faced by the people of J&K. For instance, Dr Singh constituted various Experts Groups to perform objective studies of issues facing the state. These groups looked at improving centre-state relations to ensure maximum functional autonomy, facilitating trade across the Line of Control

(LoC) to promote business and employment across the region, improving the quality of governance over J&K as well as its economic development and building a grievance redressal mechanism to deal with human rights violations including resettling the displaced Kashmiri Pandits.

But, the confidence building measures (CBMs) that were then recommended could not be satisfactorily implemented.

Further, on the recommendation of an 'all-party delegation' that had visited J&K to find out the causes of turmoil in 2010, the Centre appointed a three-member Group of Interlocutors to suggest ways and measures to promote peace and development in J&K. The Interlocutors' report, submitted in 2011, was titled 'A New Compact with the People of J&K', and was based on consultations with a massive representation of stakeholders from across 22 districts.

Sadly, the Central government kept the report under the carpet and chose not to proceed with the interlocutors' recommendations. This shows the lackadaisical attitude of the Central government towards the problems and issues faced by the people of J&K.

The manner in which the Centre has dealt with J&K including the lack of an effective democratic process to form governments at different levels and the use of brutal force to suppress the voices of youth has widened the sense of alienation and disillusionment among the people of J&K as well as among the Kashmiri Pandits.

Successive governments have promised resettlement of the Pandits but it has remained a hollow promise. They must also be taken on board for resolution of all the



contentious issues, especially their rights to live with dignity in their home state.

The Shimla Agreement

Under the Indira Gandhi government, India and Pakistan agreed to the following points under the Shimla Agreement 1972:

1. That the principles and purposes of the Charter of the United Nations shall govern the relations between the two countries.
2. 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.

Further, under the Shimla Agreement, the two countries agreed, *inter alia*, that "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 organisations, assistance or encroachment of any acts detrimental to the maintenance of peaceful and harmonious relations."

Yet, ignoring all these commitments, the decision to abrogate Article 370 and reorganise the state was unilaterally taken by the Centre. Without assigning a clear reason, political leaders of all hues were put under house arrest.

Inconsistent policy



An Indian security force personnel keeps guard alongside a road during restrictions after the government scrapped the special constitutional status for Kashmir, in Srinagar | Reuters

It emerges from the foregoing that India has neither evolved a consistent Kashmir policy nor has it followed what was promised and agreed with the stakeholders, mainly Kashmiris. This also indicates that we do not have a well-thought-out strategic and diplomatic approach to deal with Pakistan's sponsoring of cross-border terror activities, nor a plan to promote economic trade and people-to-people contacts.

India cannot solve the Kashmir problem without a sound Pakistan policy.

Given the emotional attachment between the families divided by the border and the cultural affinity among people of both sides, there is a need to improve people-to-people contacts. Countries that support cultural exchange programs across their regions and that promote economic and business trade, do not engage themselves in war-like activities or maintain adversarial relations. The lack of cordial relations with Pakistan often seen in the war of words between leaders of both countries is perpetuating the security-related crisis and adding to the problems of insurgency and militancy in the J&K state. Scarce resources are drained that could otherwise be utilised for the welfare of the people.

India-Pakistan tensions not only affect the prospect of peace, they also harm the economic atmosphere required to make India an attractive destination for domestic as well as foreign investors.

When India has managed to finalise border issues with Bangladesh by exchanging enclaves as per the people's

wishes, the Kashmir imbroglio that haunts Indo-Pak relations must also be settled.

But, instead of diplomatic efforts, India is engaged in a prolonged proxy war with Pakistan and this fight is without the help and support of the people of Kashmir. A strong commitment to continuing dialogue between the two sides is necessary.

It does not help that Islamophobic comments and tweets by some members of the ruling party, made often for electoral gains, spoil the chances of winning the hearts of minorities who constitute a majority in J&K. For a few among the youth, angered by maltreatment mainly from officials and security forces, they move closer to the separatists ideology. The use of brutal force only alienates them further.

Therefore, without evolving an acceptable Kashmir policy in consultation with all the stakeholders, particularly the youth who dream of a shining India, the restoration of sustainable peace would be an elusive goal. The fallout of COVID-19 requires a renewed approach to promoting economic trade and business in the region.

M.M. Ansari is a former member of the UGC, CIC and interlocutor on Jammu and Kashmir

The opinions expressed in this article are those of the author's and do not purport to reflect the opinions or views of THE WEEK

News Section

India has lost its war in Occupied Kashmir, says AJK president

Muzaffarabad: Azad Jammu and Kashmir (AJK)



President Sardar Masood Khan has strongly condemned the brutal killing of Pir Merajuddin Shah at the hands of Indian forces in Occupied Kashmir, saying the aggravation of Indian army is a proof that New Delhi has lost its war in the disputed region. "I condemn the murder of Peer Mehrajudin in cold blood by occupation forces for crossing a checkpoint. I also condemn the use of brute force, including, pellet guns, against the demonstrators protesting the gruesome murder," the AJK president added. Reacting over the latest killing in IOJ&K on Thursday, he said: "India cannot keep Kashmiris enslaved at gunpoint for a long time because a majority of the people of the occupied region are now totally alienated from New Delhi."

8m people in IOK under harsher lockdown since August, says AJK president

President Masood also said that on one hand, the international community including Pakistan and Azad Kashmir are fighting coronavirus while on the other, the occupation forces are busy in massacring defenceless and innocent Kashmiri people, and Merajuddin's killing on Srinagar-Gulmarg Highway is its latest example.

Such happenings, he said, are proof that Occupied Kashmir has become a battlefield where the sanctity of precious human lives has ceased to exist. The people of

occupied valley are undergoing double lockdown the first which had started on August 5 last year and the other after the outbreak of coronavirus pandemic.

"The entire world is enforcing lockdown to protect human lives but Occupied Kashmir is the only region in the world where the people are being killed under the garb of lockdown."

The AJK president said that under the cover of Covid-19 pandemic, in the dead of night, stealthily, on April 2, while the whole world was preoccupied with coronavirus, the BJP-RSS regime unveiled an evil plan called the new domicile rules to usurp the livelihoods, land and businesses from the people of IOJ&K. "This all was done without the consent of the people. It was a decree that emanated from New Delhi."

Earlier, in an article written for *Halal* magazine of Pakistan Army, President Masood stated that the fascist regime rolled the dice last year when it abrogated Article 35A of its own constitution, which recognised the established rights of the people of the occupied valley to permanent residence, acquisition of property, jobs and seats and scholarships in educational institutions. "These rights predated the Indian occupation of the state in 1947."

He went on to say that new domicile rules will give domicile to anybody who has lived in the occupied territory for 15 years, has studied there for seven years or has appeared in the 10th or 12th class examinations.

UN chief urged to appoint envoy on Occupied Kashmir

Islamabad: Azad Jammu and Kashmir (AJK) President Sardar Masood Khan has called upon the United Nations to immediately intervene and convene a session of the Security Council in order to save the lives of 8 million Kashmiris living under India's inhuman lockdown, curfew and military oppression.

"The UN Secretary General Antonio Guterres should appoint a special envoy on Kashmir and the Security

Council should hold meetings on Kashmir to come up with a roadmap to implement its resolutions on Kashmir. There should be meetings, and there should be a product.” President Masood told an engaging video conference attended by key UK parliamentarian, Pakistani and Kashmiri leaders and representatives of the diaspora community.

Chaired by Raja Najabat Hussain, the conference was also addressed by Punjab Governor Chaudhary Mohammad Sarwar, Pakistan High Commissioner to UK Mohammad Nafees Zakariya, All Parties Parliamentary Group on Kashmir Chairperson Debbie Abrahams, MPs Angela Rayner, Jack Britton, MP Andrew Gwynne, James Daly, Sarah Owen, Yasmin Qureshi, Mohammad Yasin, former MEPs Shafq Mehmood, Julie Wards, Senator Faisal Javed, Member of National Assembly Naureen Farooq Ibrahim, Member of AJK Legislative Assembly Sehrish Qamar, Hurriyat Conference Azad Kashmir Convener Faiz Naqshbandi, Abdul Hameed Lone and others.

Majority of the British parliamentarians attending the Kashmir webinar said that Kashmir is an international, not a bilateral issue and demanded international intercession to end human rights violations in Indian Occupied Jammu and Kashmir (IOJ&K) and resolve the issue in accordance with Kashmiris' wishes.

Addressing the session as the chief guest, the AJK president thanked all parliamentary political parties of the UK for expressing concern over the situation of Occupied Kashmir and stressing the need for a peaceful political and diplomatic settlement of the Kashmir conflict.

India is preparing for 'buccaneering salvo' against Pakistan, says AJK president

He made it clear that Pakistan is ready for the solution of Kashmir issue through all means including third-party mediation, in which the Kashmiris are also involved as a party to the dispute.

Rejecting that Kashmir is a bilateral dispute between Pakistan and India, he said that Kashmir as an

unresolved issue is still on the UN agenda, and is thus it is an international issue.

Brushing aside India's baseless allegation that Pakistan was interfering on the other side of the Line of Control (LoC) or is harbouring terrorism, President Masood said that such allegations were an attempt on the part of Modi government to hide crimes against humanity in the disputed territory, and to divert the attention of the international community from the Indian sordid actions in IOJ&K and its own domestic unrest.

Pakistan, he also said, is not against more than 1 billion people of India but against the fascist and fanatic approach of the ruling BJP and the RSS which is designed to target minorities particularly the Muslims to materialise their heinous plan of Hindu hegemony. “Those talking about peace and development have no realisation that Kashmir with its 8 million people is on fire and there is a need to extinguish this fire before doing anything else.”

Under the garb of Covid-19, he said that India is poised to change the demographic profile of Kashmir by introducing the domicile law.

Moreover, the AJK president particularly thanked 600 European MPs who had demanded a peaceful solution to Kashmir issue through political and diplomatic means. He also expressed grief and sorrow over the loss of thousands of British lives in Covid-19.

India has lost its war in Occupied Kashmir, says AJK president

Addressing the Kashmir webinar, Julie Ward, the member European Parliament 2014-2020, said that human rights should be front and centre; commercial and economic interests should not be pursued at the expense of human rights, and BDS could be pursued in a legal way.

Angela Rayner, chair and deputy leader of the Labour Party, said that her party's position on Kashmir had not changed and that party leader Keir Starmer's position hadn't changed either.

Any misadventure will cost India dearly:

AJK PM

Muzaffarabad (*Tariq Naqash*) Azad Jammu and Kashmir



(AJK) Prime Minister Raja Farooq Haider on Thursday warned India that any “misadventure or false flag operation” would “cost it dearly” as people on this side of the Line of Control (LoC) were eager as well as prepared to settle many scores with it, together with the armed forces of Pakistan. “If India dared launch any false flag operation or committed any other misadventure along or within our side of the LoC following suffering utter humiliation at the hands of the Chinese army, it will suffer huge losses and indignity at the hands of Pakistan army as well,” he said. “The coward Indian Army which is helpless before the unarmed people of occupied Jammu and Kashmir lacks muscle as well as brain to combat Pakistani troops,” he added. The AJK premier was talking to a group of correspondents at his office here. While referring to the shooting of India’s aircraft by Pakistan fighters in AJK’s Bhimber district in February last year, he said the world had witnessed the “competence and professionalism” of Indian armed forces not too long ago. The AJK premier maintained that like that of their brethren in occupied Kashmir, people in AJK had also proved their great hardihood, time and again, in the face of indiscriminate and unrelenting ceasefire violations by the savage Indian army. “When this gallant population will fight shoulder to shoulder with their armed forces, it does not require extra wisdom to judge how Indian army will flee, leaving behind their dead and injured soldiers,” he said. The AJK premier pointed out that India was creating

a smokescreen by hurling false allegations against Pakistan without any pause. “Whether the terror unleashed in occupied Kashmir or failures of Modi government at domestic as well as foreign front, India has found the easiest way to point fingers at Pakistan to hoodwink its public,” he said. He said Indian machinations were also aimed at diverting world attention from the ever-worsening situation in occupied Kashmir. However, this will not work, he said, adding, people of occupied Kashmir were determined to overthrow illegal Indian occupation and would succeed soon. Warning the international community to comprehend India’s belligerence and expansionist designs in the region, Mr Haider said India was the biggest terrorist country where minorities were being persecuted under official patronage. “The Muslims and other minorities in India are also going through hell like that of the inhabitants of the disputed region of Kashmir and continuation of this situation would spell disaster for the whole world,” he said.

Mr Haider also expressed serious concern over the rapid spread of Covid-19 in occupied Kashmir due to the cruel negligence of the Indian government and called upon the United Nations and other international bodies to press India to provide better testing and treatment facilities to the oppressed Kashmiris.

AJK PM condemns Indian actions in Held Kashmir

MIRPUR: Azad Jammu and Kashmir (AJK) Prime Minister Raja Farooq Haider Khan has strongly condemned the India’s move to begin broadcasting the weather reports of AJK and Gilgit-Baltistan (GB), posing these two areas as their own territories in the bulletin of State-owned broadcasts. Talking to journalists after offering Fateha at the grave of Mirwaiz Muhammad Yusuf Shah in the State’s metropolis on Sunday, the Prime Minister termed Indian move as clear evidence of her frustration. “Indian nefarious motives would never yield desired results and the defeat has become her fate”, he

added. "We have nothing to do with the Indian cheap tactics such as broadcasting weather reports on AJK and GB. We want to remind the United Nations to fulfill its promises made with the people of Kashmir on their right to self determination", he said. He warned India to refrain from launching any aggression against Pakistan or AJK. AJK would be made the graveyard of Indian forces if tried to launch any aggression against Pakistan or AJK, he warned. Raja Farooq Haider asserted that India, after abrogating special status of the disputed territory on 5th August last year, was no more a party in Kashmir dispute. "India in-fact is an illegal occupant who violated the international laws and agreements and continuing its occupation through the use of state force", Haider added. On this occasion, the AJK prime minister recalled the services of Mirwaiz Maulvi Muhammad Yusuf Shah in creating religious political and social awareness among the Kashmiri masses. On his 53rd death anniversary of prominent leader of Kashmir freedom struggle and renowned Islamic scholar, Raja Farooq Haider paid glowing tribute to him and said that his role in freedom movement was unforgettable. Earlier, Prime Minister, Raja Farooq Haider and cabinet members offered Fateha at the mausoleum of veteran Kashmiri leader and the former President of the state Mirwaiz Muhammad Yusuf Shah.

Qureshi urges world to realise plight of Kashmiris

ISLAMABAD: Foreign Minister Shah Mehmood Qureshi on Thursday declared that the people of the Indian

Occupied Jammu and Kashmir (IOJ&K) had been forced to live under fear and observed the Covid-19 lockdowns were making the world realise what restrictions on Kashmiris' fundamental freedoms



would feel like. "Today the world is realising what a lockdown feels like. Now think about Kashmiris who have been under this lockdown and siege for nearly a year," he said in the Senate. "Kashmiris' fundamental freedoms such as right to life, right to food, right to assembly and right to expression are all unavailable since India revoked the region's semi-autonomous status last year," he added. "Our objective is to make India accountable over human rights violations, seek permission for international media and independent observers to visit occupied Kashmir, lifting of lockdown, ensuring food and medical supplies, release of political prisoners, abolishing draconian laws particularly reversal of all illegal steps taken by New Delhi since August 2019."

The minister said the whole nation was united on the Kashmir issue and Pakistan would continue to extend all possible support to the people of occupied valley and highlight Indian state terrorism on all forums. He observed that people of occupied Kashmir were facing siege for the last nine months and they were being denied of their basic rights, adding these steps of India had exposed its so-called claim of being a secular state.

HUMAN RIGHTS VIOLATIONS IN IOK

(From Jan 1989 till Apr 30, 2020)

Total Killings *	95,548
Custodial Killings	7,139
Civilian arrested	159,602
Structures Arsoned/Destroyed	109,506
Women Widowed	22,913
Children Orphaned	107,786
Women gang-raped / Molested	11,1

I am a MOTHER too



#WomenofKashmir