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REDEFINING PAK-US RELATIONS

With the last of the American soldiers packing to leave Afghanistan, post-9/11 US-Pakistan relations have come full circle. Originally touted as a strategic alliance, it morphed into a transactional one over the years. With American forces leaving Afghanistan, there is now a move to reset the alignment. There is, however, no indication yet of the relationship moving away from the Afghan pivot.

While the foreign policy priorities of the Biden administration are more or less defined, there is no likelihood of any major shift in its policy towards Pakistan. For the past several years, Washington has seen Pakistan purely from the Afghan prism and there is no indication that the Biden administration will be deviating from that policy approach.

Relations are likely to remain largely transactional with some convergence of interest between the two in the Afghan peace process. Pakistan's support remains critical for America's exit from Afghanistan and to bring to an end the two-decade-long war in the region. Fast-changing regional geopolitics including Pakistan's growing strategic nexus with China may also cast a shadow over the Biden administration's policy towards Islamabad. It has been six months since the Biden administration took over, but there has not been any contact between the two erstwhile allies at the highest level. Except for a few telephonic conversations between senior American officials and the Pakistani civil and military leadership that largely revolved around Afghan conflict, there have not been any serious negotiations that could define the framework of the future course of bilateral ties.

Lot of importance has been attached to the recent meeting between US National Security Adviser Jake Sullivan and his Pakistani counterpart Moeed Yusuf in Geneva. It was the first face-to-face high-level official contact between the two governments. The meeting was reportedly held at very short notice. Jack Sullivan was attending a conference in the Swiss city. A short joint statement issued after the talks said: "Both sides discussed a range of bilateral, regional, and global issues of mutual interest and discussed ways to advance practical



Zahid Hussain

cooperation." There is, however, no indication yet of the Biden administration willing to redefine its relationship with Pakistan beyond America's regional security prism.

Pakistan is not only still important for the US for a smooth exit from Afghanistan but also for its post-withdrawal security plans in the region. In a recent statement, a Pentagon spokesman said that the Biden administration is in negotiations with Pakistan and other regional countries on the option of having US bases there.

Apparently, the US wants a presence in the region as part of its efforts to counter the global terrorist groups making Afghanistan the centre of their activities after the withdrawal of foreign forces. Washington also wants Pakistan to continue providing the US overflight access to Afghanistan after the troops' withdrawal. Surely after entering into an alliance with the US after 9/11 Pakistan did allow the use of its airbases for US planes in the invasion of Afghanistan. But those were closed down several years ago.

Pakistan has also provided ground and air lines of communication for supplies to Nato forces operating in Afghanistan. But they were closed for the supply of weapons. Pakistani officials have denied that any negotiation on military bases is being held with Washington. But the controversy over the issue refuses to die.

It remains unclear whether or not US Secretary of Defence Lloyd Austin raised the issue of bases in his last telephonic conversation with army chief Gen Qamar Bajwa. The US officials would not comment on whether any serious negotiations on a 'possible basing agreement' is underway.

But it is very clear that the US wants to 'stay in the game' in Afghanistan and sees a role for Pakistan in this game. US Secretary of State Antony Blinken in a recent interview to BBC declared that it was in Pakistan's own interest to do so. He made it very clear that the US was only withdrawing its troops from the country and was not leaving Afghanistan.

This makes Pakistan's predicament more serious. The Afghan endgame remains tricky with the postponement of the peace

Conference in Istanbul after the Afghan Taliban's refusal to attend it. This has jeopardised the possibility of the Afghan government and the insurgent group reaching an agreement on the future political set-up in Afghanistan before the American withdrawal. The situation has become more complicated with the insurgents continuing their military offensive as the US is expected to complete the withdrawal of forces by July 4, weeks before the Sept 11 deadline.

Inevitably, the withdrawal of American forces from Afghanistan will have a huge impact on regional geopolitics. The country's strategic location has historically made it vulnerable to the involvement of outside powers and proxy battles. A major concern has been that the American military withdrawal could lead Afghanistan to further descend into chaos fuelling a full-scale civil war with India, Russia and Iran backing different factions and dragging Pakistan into a protracted conflict. The spillover effects of spiralling instability and conflict in Afghanistan could be disastrous.

Meanwhile, changing regional geopolitics have created a new alignment of forces. The growing strategic alliance between the US and India and the China-Pakistan axis reflect these emerging geopolitics. Pakistan needs to tread a cautious path as it seeks to reset its relations with the United States.

Surely we must cooperate with the US in achieving peace in Afghanistan but it's not in our interest to become part of any new US 'game' in the region. The use of Pakistani soil for America's post-withdrawal counter-insurgency strategy could suck the country into yet another conflict.

We certainly need to have a broad-based relationship with the US but should not get pulled into any new 'game' on America's behalf. The resetting of our relationship with America will certainly not be easy. We need to be extremely clear about our interests and priorities when negotiating the terms of the relationship.

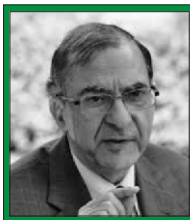
The writer is the author of No-Win War The Paradox of US-Pakistan Relations in Afghanistan's Shadow.

GLOBAL MEDIA AND THE KASHMIR DISPUTE

I am gratified by this opportunity to explore media influence in the United States on foreign and national security policy regarding Muslim nations and peoples in general and Kashmir in particular. Let me begin by summarizing the case of media detractors, which should tell us whether or not, it is too facile and indiscriminating.

Doubtless the media is instrumental in foreign policy because public opinion is ordinarily decisive on government decisions, whether in South Asia, Vietnam, the Middle East, Europe or elsewhere. It is charged by many thoughtful critics that the media is biased against Muslims, and that Bosnia was the rare exception that proves the rule. Samuel Huntingdon's thesis in his "Clash of Civilizations" which pits Islam against the West, is said to be revealed truth to the American media.

What I submit is that media portraits generally reflect a blending of the foreign policy and national security interests of the United States coupled with domestic voting constituencies, which are more Judaeo-Christian than Muslim. Let's examine South Asia in last three decades, with a focus on Kashmir,



Dr. Ghulam Nabi Fai

Pakistan, Afghanistan, and India. Pakistan and Afghanistan were treated kindly during the approximately 10 years needed to evict the Soviet Union after their December 1979 invasion of the latter.

The fragmented Mujahidin were celebrated as freedom fighters opposing Communist secularism and Soviet tyranny. They even received stinger weapons from the Central Intelligence Agency, and irregularities in the distribution of financial and military aid were overlooked. Pakistan was acclaimed for hosting millions of Afghan refugees despite the dislocations on the Pakistan economy and resentment by some indigenous Pakistanis around Khyber Pakhtunkhwa and beyond. Indeed, the media and the American government closed their eyes to Pakistan's nuclear capability in order to evade the strictures of the Pressler Amendment.

Now let's take the case of Kashmir, which is more complex. At the time that the resistance hardened and swelled in 1989, the media in the United States, including The New York Times, The Washington Post and others showed signs of sympathy, but India was never castigated except by human rights

Organizations in the context of assailing countless other countries.

The proposition that the United States tilted towards India because of its successful propaganda campaign maligning the Kashmiri resistance as largely so-called 'Afghan Arab terrorists' and 'fanatics' seems unconvincing. President George H. W. Bush, President Clinton, President George W. Bush, President Obama, President Trump and now President Biden administration always favored India over Pakistan or the people of Kashmir. They made no protests at the United Nations Security Council over India's violations of its plebiscite resolutions and recently over abrogation of the Article 370, 35A and enactment of Domicile Law that changes the demography of Kashmir. That is tantamount to acquiescence in India's illegal claim of sovereignty over Kashmir. They all gave India a veto over any third party intervention knowing it would be employed to the disadvantage of Pakistan and Kashmiris. They made no attempt at building moral suasion against India's human rights crimes and brutalities as was done against South Africa's apartheid, Yugoslavia's ethnic cleansing, and Indonesia's maltreatment of East Timorese.

A pro-India tilt is largely caused by India's multi million annual lobbying campaign with Congress and the Executive Branch coupled with a soaring number of politically organized Indian-Americans in the media, IT and other industries who command handsome salaries and make generous campaign contributions through political action committees. Election of Kamala Harris as Vice President of the United States, whose mother was from India, testifies to the growing influence of Indian American community. The Indian Caucus in Congress dwarfs a tiny Pakistan counterpart. And the domestic voting clout of Kashmiris and Pakistanis combined is no match to their Indian-American rivals.

It might be argued, however, that South Asian experts and national security wizards have identified Kashmir as the most dangerous place on the planet because it could trigger nuclear exchanges between India and Pakistan. The conspicuous fact is, nevertheless, that President Clinton was the one who was reciting the most dangerous place mantra for years, but did nothing as the President to demonstrate he seriously believed

what he was saying. No special envoy on Kashmir or push on Secretary-General of the United Nations to do the same. Not a syllable of criticism of India for its negotiating intransigence. In other words, the United States all along, including Biden Administration treats Kashmir with complacency, although its statements ring with urgency. Why the discrepancy?

The point of these observations is to demonstrate that the United States prevailing tilt toward India represents not a brake from the past but a continuity. The reasons for the pro-India sentiments are manifold. A hefty percentage of Americans equate India with Mahatma Gandhi, especially after watching movies that treat him as a virtual deity of peace and non-violence. The economic attractiveness of India as a trade and investment partner played a very important role in its image. Finally, India has maneuvered skillfully to keep its Kashmir atrocities off the likes of CNN and BBC and the front pages of newspapers by the exclusion of foreign journalists or permitting them only carefully scripted and chaperoned visits. No pictures means little international outrage and calls to action.

I have identified what seems to explain India's positive image in the United States. I will now turn to what I think explains a less positive or negative image of the Kashmir resistance and Pakistan, which is blurry in the eyes of most non-experts in the field. And they dominate image making.

After partition on August 15, 1947 when Kashmir became internationalized, the conflict was virtually uniformly treated as a dispute between India and Pakistan, not about Kashmiris and their right to self-determination.

When India raced to the United Nations Security Council in 1948 over Kashmir, Pakistan answered by itself. It did not insist that even a single Kashmiri be heard during endless argument and debate despite the fact that their political and human rights were at stake, not those of either Pakistan or India. Kashmiris later were not represented at Tashkent, Simla, or Lahore. Even today, no one persuades India and Pakistan to change track-two into multi-track diplomacy, with the inclusion of the Kashmiri representative..

Let me finally address Kashmir directly. Why has its self-determination claim been received with less media and foreign policy sympathy in the United States than Kosovo,

Montenegro, East Timor or Southern Sudan?

The answers do not lend themselves to Euclidean exactitudes, but seem reasonably clear. Most Americans know nothing of Kashmir or its history. They do not understand its international law right to self-determination. They do not know of the Hindu Maharaja's bogus and invalid instrument of accession to India. Kashmir does not feature internationally renowned political figures like the two Nobel Prize winners in East Timor, Carlos Belos and Jose Ramon-Horta or personality like Nelson Mandela.

In conclusion, I do believe that Kashmir cause is hurt by ignorance and misinformation. National security interests and domestic political influences are the overwhelming

determinants of how any nation or cause is perceived by the United States. Exemplary is Joseph Stalin, who was portrayed as a kind uncle during World War II when fighting with the United States, but then was rapidly transformed into a villain or demon with the onset of the Cold War.

Let us not gripe about the unfairness of the world, which is as otiose as shouting at the weather. Let us continue to improve our organizing and communications strengths so that our domestic influence in the United States and elsewhere will accordingly climb.

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PANDIT EXODUS 1990 RE-EXAMINED

Mudassir Ahmed

Pandits were never forced out of the valley, they just fell prey of a conspiracy played by Indian government: The Kashmiri pundit trump card” that India and Indians always use to justify the oppression of Kashmiri Muslims.....Here are the facts which no Indian or a pundit could ever logically reply to: Kashmiri Pandits left the valley out of fear as the armed revolt began against the Indian rule. But before blaming the Muslims, a majority in the valley, we need to take a holistic view of the circumstances at that time. There was no civil society, government machinery had collapsed and the state was under President's rule, represented by governor Jag Mohan. While most of these killings happened after January of 1990, there has been no plausible reason given to why most of the Pandits fled on the night of 19 January 1990. The only coincidences close to this date are joining of Jagmohan as governor of J&K one day prior and the repeated massacres by Indian forces right after 19 January. Sadly many facts in India have been twisted to create a demonic image of every Kashmir Muslim, blaming them for every crime of this conflict. “Sample this '(all pandits) will remember the night of January 19 the night when their Muslim neighbors, friends and colleagues turned against them. The night when they kept awake all night, as frenzied mobs on the streets and inside mosques called for their extermination.' (The Hindu 20th January 2014, There Are No Goodbyes). This claim

aims to make you believe that on the night of 19th January 1990 Pandits houses were surrounded by hostile and 'blood seeking' Muslims, resulting in their migration. How would it be possible, under unrelenting curfew from 17th January itself with shoot at sight orders, Muslims managed to assemble and surround Pandit habitations on the night of 19 January, and then within minutes of this Pandits managed to pack their belongings, seek friendly passage from 'this hostile crowd', call up state run SRTC and then drive away under armed escort'? Logic and reason surely fail here.

“As protests kept swelling, Muslims believed 'Azadi' was just round the corner while Pandits got scared by the sheer quantum of this rebellion. It was this fear in Pandits that many agencies (including some armed men) exploited for own interests. While most Pandits from Srinagar, already under a fear psychosis, were escorted in state buses on 19th January curfewed night, right after Jagmohan had taken over, Pandits from rural areas migrated in later months and years, trailing the exodus trend in fright and scare.“Most Pandit killings (219 killed in 20 years) happened after later part of 1990 while the repetitive massacres right after 19 January.

Gaw Kadal massacre happened one day after 19th January (on 21st Jan 1990, 100 killed and more than 250 critically injured)The Alamgari Bazar massacre on 22nd January 1990 (killing 10 civilians and fatally injuring scores)

The Zukoora And Tengpora Massacre: It was the killing of protesters calling for the implementation of a united nation resolution regarding a plebiscite in Kashmir at Zakoora Crossing and Tengpora Bypass Road in Srinagar on 1 March 1990 in which 33 people were killed and 47 injured

The Handwara massacre on 25th January 1990 (killing 25 civilians and critically injuring dozens others).

The Kunan Poshpora mass rape: Indian official records say at least 23 women were gang raped by soldiers that night. However, Human Rights organizations including Human Rights Watch have reported that the number of raped women could be as high as 100. The 1993 Lal Chowk fire : Over 125 civilians were killed in the conflagration and the ensuing firing by BSF troops. The Bijbehara Massacre: Border Security Force killed 51 civilians in Bijbehara after protests erupted over the siege of the mosque in Hazratbal. The list of such massacres by Indian forces seems unending while the reasons of 19th exodus strangely linking to their occurrence. "Credence to this also comes from other statements; Jagmohan in an interview to Current, May 1990, "Every Muslim in Kashmir is a militant today. All of them are for secession from India. I am scuttling Srinagar Doordarshan's programmes because everyone there is

a militant... The bullet is the only solution for Kashmir. Unless the militants are fully wiped out, normalcy can't return to the Valley." "Wajahat Habibullah recalling how Muslim groups appealed to the Governor (via Habibullah) to stop Pandits from leaving, his suggestion to Governor Jagmohan about a television (and radio) broadcast of requests from hundreds of Muslims to their Pandit neighbors not to leave Kashmir, being rejected by Jagmohan. "On the contrary Jagmohan announcing that 'the Government cannot guarantee any safety of Pandits....if Pandits decided to leave, refugee settlement camps had been set up for them and also that departing civil servants among the Pandits would continue to be paid their salaries'. The state was clearly pushing for an exodus.

"Had the people in Kashmir, both Muslims and non-Muslims, not lived in harmony, then the region wouldn't have been calm when whole of the India was burning in the run up to the partition of the sub-continent. Even when Hindus in Jammu just 300 km from Srinagar, massacred at least three lakh Muslims in 1947 during the past Partition inter-religious violence, not a single person from the minority Hindu community was harmed in the valley. Historians have called it an act of ethnic cleansing of Muslims in Jammu. Peace

PANGS OF PALESTINIANS AND CRIES OF KASHMIRIS

Nighat Leghari

Tragic enough that knowing all the facts behind the long lived confrontation between Israel and Palestine, all the superpowers including the UN did not play any role to resolve this burning issue. Consequently a gory incident occurred in Masjid-e-Aqsa on 07 May 2021. The maiden attack by Israelis on the praying infallible people in Masjid-e-Aqsa, reveals the facts that attack was based on religious rivalry and not to modify their map.

The praying Palestinians were not militants but the Israeli armed forces opened fire on them indiscriminately and within no time dozens of men, women and children were lying dead on the floor of the mosque.

Seemingly, the ceasefire has brought a stop to the clashes between Israel and Palestine but it can be merely a pause and may it take a return to status-quo. The support to Israel specifically from USA confirmed the fact that the war by Israel

was based on faith animosity, the large-scale supply of weaponry to Israel by the USA proved the facts.

The members of the International Declaration of UN that are supposed to be impartial went into dumb and deaf at this horrible incident. The International Declaration is clear in its Charter that it will be totally above all discrimination of colour caste and even the political thoughts and faith. The Declaration speaks abundantly on human rights only. Riding on the wave of superiority sense almost all the superpowers do not take the declaration to be committed with it.

A US-based newspaper "Washington Post" has published a story of the concepts about Muslims by an Israeli writer, he reads, we are of the belief that Muslims are like a rapid growing raw grass in your lawn, which needs to be trimmed very rapidly otherwise it will surround and hide your whole home.

When under the pretext of eradicating terrorism and protecting

the human rights in the Muslims countries (Afghanistan and Iraq). The US violated human rights by inflicting unbelievable atrocities on the captives of these countries.

The gruesome video footage of that time is saved in the history of human rights violations.

In “Cuba Centre” prisoners of these wars were behaved canibalically, they were beaten upon ruthlessly and their Holy Book Quran was torn up before their eyes. When USA was criticized for all this inhuman behaviour and for providing weaponry, the heads of the US gave an amazing response, they said, we provide weapons to weaker countries for their defense because defence is inevitable for all the countries, continuing with the statement. They said our wars in poor and under-developed countries are for keeping peace. Our civilizing mission is an act of peace on the globe. We have risked upon a long legacy of hatred across the human community but even then, we will carry on to our peace-making mission for larger betterment for human community.

A US General Richard Myer once said, our casualties (anywhere) remind us the heavy price we paid for the freedom of the oppressed people of any Muslim country. Our new “World Order” will introduce an “orderly living” to all human community. The gruesome videos footage of the helpless Palestinian is a pause of thought for all the Muslims community. We, the Muslims, have overlooked all the Divine Commands of unity, we have deviated the right path, we have been deviated to all these motivations of worldly temptations and forget the righteousness of head and heart which was bestowed upon us by Almighty God

If we determine and commit ourselves individually to abide by

the Divine Commands, we can regain our strength to encounter every evil of the Islamophobia elements. We keep a very high profile heritage of chivalry.

In the dawn of Islam all the examples of Divine support in the wars are before us, while only 313 Muslims could defeat a large number of infidels in the oddest of circumstances.

We have overthrown an act of self discovery and self actualization which is part of our Islam-based education and bringing up.

We have extended not any Islamic code of education to our new generation which could introduce them to the full-fledged code of perfect life.

The video footages of the current combat between Israel and Palestine have provided much material of pondering to all the Muslims community.

The wounded Palestinian children while standing on the debris of their demolished homes and parents lying dead before them is a times to get together against brutality against Muslim community, as a wounded ten years old girl said crying, we have to face all this because we are Muslims.

The massacres of Muslims and consecutive human rights violations in Kashmir are needed an SOS vigilance and alertness of whole of the Muslim community to protect the Kashmiris. India is indulged in genocide activities in Kashmir and many others brutalities.

To help the Kashmiris Pakistan is doing a lot but intermittent clashes with India on this burning issue are not enough now the time is ripe to wage a full-fledged war with India to protect the Kashmiris.

The writer is senior journalist, based in Germany.

TERMS OF ENGAGEMENT

Now that a backchannel between Pakistan and India has been confirmed by a senior official it would be appropriate to evaluate its nature and implications. Efforts to de-escalate tensions between the two nuclear neighbours are always welcome. But given the history of false starts and the one step forward, two steps backwards engagement in this long-troubled relationship it is important to take into account lessons of the past and on-ground realities, especially as the dire situation created by India



Malecha Lodhi

in occupied Kashmir remains unchanged.

There is nothing unusual about a backchannel. It is frequently used when formal dialogue between countries is suspended. This was often the case in the past when Pakistan and India demurred from engaging in open talks. Backchannels are useful to confidentially probe, explore and assess how much give there is in the other's position. This is harder in a formal forum where negotiating parties stick to maximalist positions at least at the start. During

the Musharraf period backchannel negotiations on the Kashmir dispute took place over three years to find an interim settlement. This marked the most serious effort in recent decades to find a political solution of Kashmir. The talks were conducted by civil servants who enjoyed the confidence of president Pervez Musharraf and prime minister Atal Bihari Vajpayee.

What has been disclosed about the current backchannel is that talks are being conducted by the chiefs of intelligence of the two countries. This isn't the only difference from past backroom efforts. The Musharraf era process began with a public acknowledgment by both sides of the resumption of formal talks. The joint statement of Jan 6, 2004 stated that "the resumption of the composite dialogue will lead to peaceful settlement of all bilateral issues, including Jammu and Kashmir, to the satisfaction of both sides". The backchannel subsequently set in train was an accompaniment to formal talks that covered all issues of priority for both sides. Negotiators on the backchannel were publicly named.

While information about the present backchannel has been revealed by Pakistani officials this has been met by silence on the Indian side. There have been no background briefings or leaks by Indian officials. This one-sided admission may have unwittingly created the impression of over-eagerness by the Pakistani side. Moreover, making public disclosures at a preliminary stage of sensitive talks raises the question of whether it is prudent before anything significant has been agreed.

Peace with honour should remain the immutable principle of Pakistan's engagement with India.

As the present engagement is being cast as 'talks about talks' it might be useful to keep the following factors and principles in view. One, Pakistani interlocutors should seek to test and verify assess if the Indian move is tactical or strategic and proceed cautiously. Our officials claim India is prepared to talk on all issues. What should be ascertained is what exactly is meant by that. Whether it means Indian willingness for substantive discussion on outstanding disputes including Kashmir or just a 'dialogue of the deaf' and re-statement of its familiar position that Kashmir is India's 'internal matter' and the 'new' status quo

created by its Aug 5, 2019, action is non-negotiable.

Two, Pakistan must maintain its red lines on its principled position on Kashmir especially as Indian media reports suggest that Delhi's expectation is for Pakistan to cease insisting on reversal of the illegal annexation of Kashmir. While pursuing the near-term aim, as identified by Pakistani officials, of providing 'relief to the Kashmiri people', presumably through CBMs, this should be done in tandem with and not as substitute for substantive talks on the issue. Again, past experience is instructive. Kashmir-specific CBMs agreed in the composite dialogue during 2004-08 were an accompaniment to and not replacement of negotiations on Kashmir.

Three, 'process' in the backchannel should not be mistaken for substance. It has long been India's aim to draw Pakistan into a process with no outcomes in settling disputes and thus to demonstrate to the world how reasonable it is without conceding anything. Delhi has sought to achieve normalisation on its terms without resolving disputes and instead prioritising the two T's, terrorism and trade. From this perspective, normalisation for the sake of normalisation should be avoided as this will be transient, lack substantive content and therefore durability. De-escalation of tensions is an aim worth pursuing but that is different from normalisation, which should be predicated on efforts and progress in resolving differences. Normalisation can only come about gradually and should be distinguished from managing tensions.

Four, the backchannel should not become the sole track of Pakistan-India engagement. It should lead to the resumption of formal and comprehensive dialogue. India's apparent suggestion in the backchannel that issues should not be 'bundled up' in a composite dialogue is fraught with risk. It seems a way for Delhi to focus mainly on its priority areas and avoid a broad-based, integrated dialogue that Islamabad has long wanted. Revival of track one peace talks is also necessary because engagement confined only to a backchannel will give the other side much wriggle room precisely because informal talks may not bind parties to any commitment. In any case agreements reached in track two have to be formalised in 'front channel' talks. Diplomatic negotiations should be conducted by experienced diplomats who are best equipped to deal with

them. The foreign ministry should also be consulted and kept fully on board on backchannel talks.

Five, announcements should only be made once there is progress in the backchannel and through mutual agreement by both sides. Significantly, conciliatory statements by Prime Minister Imran Khan and army chief Gen Qamar Bajwa have not been reciprocated by Indian leaders. This as well as Delhi's lack of comment on the backchannel may be designed to

convey that Pakistan is keener on normalising ties owing to its domestic vulnerabilities and compulsions. This plays off an unwitting impression created by some Pakistani officials who have said the country's weak economy is the principal motivation for its peace overture to India.

Last but not least, peace with honour should remain the immutable principle of Pakistan's engagement with India.

The writer is a former ambassador to the US, UK & UN.

INTERNATIONALIZE THE KASHMIR CONFLICT

When the foreign ministers of Pakistan, Turkey, Oman and Sudan landed in New York to demand a ceasefire in Gaza the Israeli guns were silenced. The United Nations General Assembly succeeded in enforcing a ceasefire. The Foreign Minister (FM) of the only Islamic nuclear power of the world returned to a hero's welcome arranged by his family at the Chaklala Air Base. Rose petals were showered over him. He spoke triumphantly and demanded a resolution of the Palestinian conflict. Peace in the ancient land can only be achieved with Arab unity, together with the support of the Ummah.

Shah Mahmood Qureshi (SMQ) has been at the helm of the foreign office twice. He was removed from this position by President Asif Ali Zardari over the Raymond David debacle in January 2011. After the mammoth PTI Jalsa at Lahore in October same year, he joined Kaptan's team.

'Rose petal political players' are a special breed who never lose an opportunity to project themselves. Jahangir Khan Tareen (JKT), Shehbaz Sharif (SS), Maryam Safdar all appear in the courts with their supporters who shower rose petals on them to establish their reverence. In the Sufi tradition showering flowers is looked down upon. When the great Mansoor Hallaj was being taken for his execution, one of his disciples threw flowers in praise of his cause and he got very upset. "When one is on the righteous path, the flowers hit like stones" that is the Sufi way.

I closely watched the trial of Zulfiqar Ali Bhutto (ZAB) at the Lahore High Court (LHC) in the seventies. He fought his legal battle with dignity and grace despite the extreme bias of the then Chief Justice Maulvi Mushtaq. To avoid personal



Dr Farid A Malik

humiliation, he should have boycotted the court but he decided to present his case hoping to get relief from the Supreme Court of Pakistan (SCP). A national leader of his standing fought his legal battles without cheap theatrics. His last address to the SCP is now a part of history which was later published under the title, 'Witness to Splendour'.

Kashmir is the unfinished agenda of the partition of the Indian Subcontinent. Quaid-e-Azam termed it as the 'Jugular Vein' of Pakistan as all our rivers flow from the valley. Since August 2019, Kashmir has been under the boots of the Indian Army. A curfew and human rights violations continue unabated. With so much tyranny in our own backyard, the issue has not been internationalised. I am sure the FM was pushed to go to Turkey to forge an alliance which then travelled to New York. While the Arab nations do not support us on Kashmir, we do have the support of other Muslim brethren like Turkey, Malaysia and Indonesia. It is time to pay back India in the same coins as they did to us in 1971 to dismember Pakistan. The Bangladesh model of internationalizing the uprising in former East Pakistan can be followed. In the eastern wing we had only about 50,000 troops while India has over 800,000 in Kashmir. Our embassies and delegations should be holding conferences and organising demonstrations to highlight the plight of the Kashmiris. Two United Nations resolutions remain unimplemented despite the passage of several decades. Ethnic cleansing similar to Palestine continues in the valley. What are we waiting for? Time is running out, it is now or never. Kashmir is crying for help. While we hear their screams, the world does not. It is our duty that their SOS (Save our Soul) message

reaches every corner of the world before it is totally silenced. here was a time when the Foreign Office was professionally led by heavyweights of their field. Sir Zafarullah Khan was the first to lead the department. Then ZAB and Sahibzada Yakub Ali Khan led from the front. It was ZAB who was the chief architect of the Pak-China friendship which then turned into 'Iron Brothers'. After over seven decades, the bond has resulted in the most important project of the country under the Belt and Road initiative (BRI) called CPEC under which a corridor is being built all the way from Kashgar to Gwadar. If Shaukat

Tarin can be inducted to lead the Ministry of Finance, the Ministry of Foreign Affairs should also be under professional foreign policy stalwarts like Senator Javed Jabbar or Ambassador Munir Akram who is currently our permanent representative to the United Nations. Nawaz Sharif operated without a FM, while Zardari first tried SMQ and then appointed a novice, Ms Hina Rabbani Khar to head this important department. Substance-less stewardship of such an important portfolio will get us nowhere.

INDIA'S SETTLER COLONIALISM

Let there be no mistake. Pakistan is now confronted with the clear and present danger of India's settler colonialism in the Kashmiri homeland. From Pakistan, a viable policy response is still... Let there be no mistake. Pakistan is now confronted with the clear and present danger of India's settler colonialism in the Kashmiri homeland. From Pakistan, a viable policy response is still awaited.

Pakistan needs to explore competently, consistently and boldly more imaginative ways on using international diplomacy and international law to address the Kashmir issue more effectively. After all, what did the visiting president of the United Nations General Assembly Volkan Bozkir mean when at the May 25 presser in Islamabad he told his host, the Pakistani foreign minister, that: "I think it is the duty, especially of Pakistan, to bring this [issue] to the United Nations platform more strongly". Although he, like the Pakistani FM, also declared that India's illegal moves on Jammu and Kashmir do not change its status, the fact is that India's settler colonization, if left almost unchallenged, may become irreversible. Significantly, in recent weeks, vacillation in Pakistan's India policy has surfaced. The statements regarding India by different stakeholders have varied. From talking about regional trade, the significance of geo-economics and the need to resolve problems with India to stating that Article 370 of the Indian constitution does not concern Pakistan since Pakistan does not acknowledge the special status of Occupied Jammu and Kashmir, to Prime Minister Imran Khan's latest statement



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categorically declaring that trade with India at this point will be like abandoning the Kashmiris, Pakistan's position seems fluid.

For example, on May 30, Prime Minister Imran Khan said in a nationally telecast telephone Q&A that only if

India goes back to Kashmir's August 5 state and gives back to the Kashmiris their rightful status would Pakistan speak to India. Pakistan cannot begin trade at the cost of Kashmiri blood since that will be a betrayal of the Kashmir cause. However, a few days later in a Reuters interview on June 4 the PM said if given a roadmap by India regarding reversal of the August 5 steps, talks with India could begin.

What is unclear is Pakistan's next step on the India policy. The February LOC ceasefire was followed by comments right from the top on the significance of engaging India, on the centrality of geo-economics and on not being impatient about resolving the Kashmir dispute. Following are the confirmed aspects of the current Pakistan-India backchannel process:

One, the peace talks between Pakistan India which began during former prime minister Nawaz Sharif in 2017 led by the Pakistani and Indian national security advisors continued between the intelligence chiefs of both, and subsequently with NSAAjit Doval.

Two, Pakistan-India talks first led to the February 25 ceasefire along the LOC and subsequently to the revelation in Pakistan of the December 2020 Indian offer of talks on all outstanding issues including Kashmir, initiating a multiple groups of dialogues on issues ranging from trade, water, Kashmir,

Terrorism, Sir Creek etc.

Three, Pakistan responded with its four conditions: stop demographic changes in Occupied Kashmir, release prisoners, return some form of statehood to Occupied Kashmir which was taken away under the August 5, 2019 act of the Indian parliament, and end human rights violations. Without these conditions, engaging with India was not possible. The cabinet's April 1 decision to veto the Economic Coordination Committee's (ECC) recommendation to import sugar and cotton from India. No trade was possible unless India reversed its Kashmir-related illegal actions of August 5.

Four, "as a gesture of solidarity with the people of India in the wake of the current wave of COVID-19", Pakistan offered Covid-related support to India. India neither accepted nor even acknowledged this offer. Earlier, Pakistan did not get a response from India to its four point conditions for talks. However, the February 4 ceasefire has held up.

However, in the post-ceasefire phase Pakistan's decision to roll back on its post August 5, 2019 proactive and effective public diplomacy exposing with specific proof India's terrorism in Pakistan and in Occupied Kashmir has been perplexing. Pakistan decided to roll back with no concrete quid pro quo from India. In fact, as is clear, when Pakistan raised concrete questions through its four conditions for talks India basically chose to not respond.

India is moving ahead relentlessly to fully implement its colonial-settler blueprint. Since August 5, 2019, Delhi is taking all constitutional, administrative and demographic steps to annihilate Kashmiri resistance. Delhi's architecture of permanent occupation of Kashmir rests primarily on reducing Kashmiris to a minority by bringing in non-Kashmiri settlers. India is refusing to revisit this policy. Hence, talks with India can only begin once it takes some practical steps to demonstrate a rethink to reverse and revisit its August 5 policy. And so moving into the future what could be a viable India policy, given Pakistan's experience with its own post-August 5, 2019 India policy and the current geopolitical situation in the region. Most importantly, Pakistan must reverse its decision of following a one-track policy: of expecting the backchannel to work. That is clearly not on the cards immediately. Instead,

Indians are pursuing their colonial-settler policy in Indian occupied Kashmir while Pakistan has put a stop to its very active and to some extent effective public policy exposing India internationally. This Pakistan must decide to reverse. Islamabad must return to its proactive public diplomacy revealing India's state terrorism that has targeted Pakistan and the Occupied Kashmiris. The policy helped tell the Kashmiri resistance story, no less inspiring and less heart-breaking than that of the Palestinians. The impact of the policy was such that the Indians reportedly sent a message through a third party that Prime Minister Imran Khan be asked to not refer to the Delhi government as a fascist government following Hitler's ways.

Meanwhile, even if international response and support to the Kashmiri struggle is disappointing, there is recognition of the legal validity of the struggle. As Bozgir advised Pakistan, it must be more active on Kashmir. The UNGA president called on all parties to refrain from changing the status of Jammu and Kashmir and said a solution was to be found through peaceful means in accordance with the UN charter and UN Security Council (UNSC) resolutions as agreed in the Simla Agreement between Pakistan and India.

Pursuing multiple tracks and remaining engaged in Pak-India backchannel diplomacy, Pakistan must use all possible avenues of international diplomacy to keep international pressure on India, as it was doing until six months ago. Statement diplomacy alone, as of the June 4 kind, when upon learning from sections of the Indian press that Delhi was planning more steps to further consolidate its colonial settler plans in Occupied Kashmir, is an ineffective response. India has clearly entered the space that an agitated Jawaharlal Nehru had promised in the 1950s to an American ambassador in India. In his book 'India's World', Rajiv Dogra writes that Nehru had warned the US ambassador that: "I will not back down even if Kashmir, India and the whole world went to pieces."

Pakistan needs a hard think on its India policy. Like it has managed wisely with its US policy, Pakistan must think of India via realism and the lessons learnt, not by a 'pie in the sky' starry-eyed approach.

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INDIAN BELLIGERENT OCCUPATION ON KASHMIR TO ANNEXATION: INTERNATIONAL LAW PERSPECTIVE

ABSTRACT

International law is the only tool that defines the legal status of states, as well as set principles for peace, stability, and humanity in the world. The centuries-old concept of might is right and the use of military power has been changed in new concepts of nation-states. The concept of absolute sovereignty is now replaced by sovereignty with responsibility. The disputed nature of Kashmir has been recognized by United Nations (UN) and international Law. India had forcefully occupied the areas of this state against scheme of partition and wishes of the people. Indian occupation and complete denial from the right to self-determination to the people of Kashmir is not only a violation of international law but it is also a threat to peace in the region.

KEYWORDS

Belligerent occupation, IOJK, International law, annexation, constitutional scrap, humanitarian law, resistance,

INTRODUCTION

In 1947 Jammu and Kashmir was a princely state having 78 percent Muslim population¹ and the ruler was Hindu Dogra. Like other princely states, this state was also under the suzerainty of British Govt. Although the history of Kashmir is centuries old, the modern state was established in through the 'Treaty of Amritsar of 1846'² between the British Govt. and Gulab Singh. The Maharaja was not the only ruler but also owns lands of Kashmir through this treaty. The taxes imposed on the people of Kashmir are three times that were in neighboring Punjab.³ Laws were different for Muslims and Non-Muslim, capital punishment was on the slaughter of the cow. Only Hindus can get arms licenses.⁴ The political movement for the rights of Kashmir Muslims was started in 1932.⁵ An organized anti-Maharaja civil disobedience movement was started from Poonch, in February 1947⁶, and later on, it was spread in the whole state. The partition plan of the subcontinent was announced on 3rd June 1947.⁷ The majority of the people of Kashmir were pro-Pakistan but the Maharaja was inclined towards India due to his religious affinity. This had sparked the movement which was already in Kashmir against the ruler and was converted into armed struggle. India had landed her forces in Kashmir on 26th October 1947 and on 1st January 1949 ceasefire was implemented on the intervention of the United Nations (UN).⁸ The people of Jammu and Kashmir succeeded to liberate Azad (Free) Jammu and Kashmir (AJK) and *Gilgit Baltistan* (GB). AJK Govt was established on October 24, 1947, and GB got liberation on November 01, 1947.⁹ That was the beginning of the belligerent occupation on Jammu and Kashmir by India. The people of Kashmir were against the Indian occupation and initially, India was giving assurance to people as well as the international community that as law and order will be maintained the future of the Kashmir will be decided by the people through a fair and free plebiscite. The people of Indian Occupied Jammu and Kashmir (IOJ&K) had started a resistance movement against India in 1989. On August 5, 2019, the Indian President through a presidential order revoked the article 370 and 35-A of the Indian constitution. Due to these unconstitutional actions of India besides many other implications, the status of Kashmir state was changed into a union territory, divided Kashmir into two union territories and the residence certificates law was abrogated. This illegal annexation is a violation of international law, UN resolutions, and bilateral agreements.

The primary aim of this paper is to analyze the status of Kashmir from an international law perspective especially the law of occupation and International Humanitarian Law (IHL). The paper also identifies the legal implications of this occupation in light of the jurisprudence of international courts. The paper is divided into four parts, 2nd part is

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¹ Census of India 1941.

² Josef Korbel, *Dangers in Kashmir* (Oxford: Oxford University Press, 2005), 13.

³ Lord Birdwood, *Two Nations and Kashmir* (London: Robert Hales Ltd. 1956), 31.

⁴ Richard Symonds, *In the Margin of Independence: A Relief Worker in India and Pakistan* (1941-1949) (Karachi: Oxford University Press, 2001), 78-9.

⁵ Prem Nath Bazaz, *Inside Kashmir* (Mirpur: Verinag Publishers, 1987), 183.

⁶ Christopher Sneed, *Understanding Kashmir and Kashmiris* (U.K: C. Hurst and Co., 2015) 115.

⁷ Alastair Lamb, *Incomplete Partition: The Genesis of the Kashmir Dispute 1947-48* (Oxford: Oxford University Press, 1997), 43.

⁸ Ibid, 207.

⁹ Ibid, 195.

about the concept of belligerent occupation and the occupation on Kashmir, 3rd part is about the illegal annexation of Indian Occupied Jammu and Kashmir (IOJK) and the violations of international law, UNSC resolutions, and bilateral agreement, 5th part is the conclusion.

BELLIGERENT OCCUPATION

International law provides comprehensive rules and regulations about occupation both in customary international law (CIL) and International Humanitarian Law (IHL). Initially, the Hague regulations had defined the belligerent occupation as “The territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.”¹⁰ Geneva Convention further elaborates on the concept of occupation and provides that if in an international armed conflict any territory completely or its any part comes under the control of the foreign power it is occupation¹¹, even if there is not any armed resistance against this. Under international law the acquisition of territory by annexation or invasion is illegal.¹² The analysis of international law with the legal status of the J&K shows that the part of the state under the control of India is under belligerent occupation. Before the partition of the subcontinent, the Kashmir was a princely state having a Muslim majority, the only road, economic, social, and cultural links with areas constituted Pakistan. According to the Indian Independence Act, 1947 Pakistan and India became new states based on religion, Muslim majority areas constituted Pakistan and non- Muslim areas had constituted India. Article 07 of the Act, provides that suzerainty of British Govt. on the princely states will lapse on 15th August 1947.¹³ The British had a clear policy about the states that their government will not recognize any state as an independent dominion, so the state has to accede with Pakistan or India. The Maharaja had requested for standstill agreement with Pakistan on August 12, which was accepted by Pakistan on August 15, 1947.¹⁴ Indian National Congress was trying to achieve Kashmir at every cost, the Boundary Commission, Mountbatten, and Maharaja had provided the support to congress. Before the creation of Pakistan and even the announcement of the partition plan, the people of Kashmir were struggling against the regressive, unpopular, and autocratic ruler Maharaja of Kashmir. From February 1947 onward Maharaja forces had started to disarm Muslims and distributing weapons to Non-Muslims. At that time the “All Jammu and Kashmir Muslim Conference”¹⁵ was the only political party representing the Muslims of the state and having majority seats in the state’s legislature had passed the accession to Pakistan Resolution in the meeting in Srinagar on July 19, 1947.¹⁶ Maharaja was inclined towards India and made many administrative changes and took strict measures against Muslims. On 14th August 1947 people of Kashmir had celebrated Pakistan Day, the Dogra forces used baton force on these public gatherings.¹⁷ The people had started an armed struggle against the Dogra ruler from August 1947. Only in two areas of state Mirpur and Poonch, there were at least 50,000 trained people who had fought World War II.¹⁸ The Maharaja had issued orders of the shoot on sight to his army on September 02, 1947.¹⁹ Maharaja had imposed restrictions and censorship on newspapers and journalists that were reporting in favor of Pakistan.²⁰ By 7 October 1947, all daily newspapers from west Punjab were banned to enter in Kashmir.²¹ The ruler of Patiala was Sikh and acceded with India, the Patiala forces were the part of the Indian army and stationed at Srinagar and other areas before October 17, 1947.²² India was supplying arms to Maharaja and it was a systematic ethnic cleansing plan

Maharaja had ordered the ethnic cleansing of Muslims from Kashmir. During September and October 1947, the Maharaja’s Dogra-led troops carried out a campaign of sustained harassment, arson, physical violence, and genocide against in at least

¹⁰ Hague Regulations, 32 Stat. 1803, II Malloy 2042, 1 Bevans 247 (1907) , article XLII.

¹¹ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907, Article 42.

¹² United Nations Security Council Resolution 242, 22 November 1967.

¹³ A.G. Noorani, ‘C.P. and Independent Travancore’, *Frontline*, Volume 20, Issue 13, 21 June-4 July 2003.

¹⁴ Alastair Lamb, *Incomplete Partition: The Genesis of Kashmir Dispute 1947-1948* (Oxford: Oxford University Press, 1997), 112.

¹⁵ The first political party of Kashmir established in 1932.

¹⁶ Saraf, *Kashmiris Fight for Freedom* , Vol. II, 712.

¹⁷ Christofer Snedden, *The Untold Story of the People of Azad Jammu and Kashmir* (Oxford: Oxford University Press, 2012), 42.

¹⁸ Christopher Snedden, *The Untold Story of the People of Azad Kashmir* (Oxford: Oxford University Press, 2012), 31.

¹⁹ Muhammad Yusuf Saraf, *Kashmir Fight For Freedom* Volum II (1947-1978) (Lahore: Ferozsons, 1979), 848.

²⁰ Civil and Military Gazette, October 08, 1947.

²¹ Ibid, October 18, 1947.

²² Alastair Lamb, *Kashmir a Disputed Legacy 1846-1990* (Oxford: Oxford University Press, 1991) , 131.

two areas Punch, right on the border with Pakistan and pockets of southern Jammu...the Maharaja meant to create a buffer zone of uninhabited land, approximately three miles wide, between Kashmir and Pakistan. Muslims were pushed into Pakistan or killed. Hindus were sent another way, deeper into Kashmir. India would deny that any Holocaust had taken place, perhaps because it had secretly provided arms to the Dogra side.²³

A Kashmiri Pundit and political leader in '40s narrated the situation of Kashmir as "people were shot in Poonch like dogs and whole villages burnt. This happened during August, September, and October. The Maharaja was repeatedly warned but to no purpose. If then the tribesmen came in Kashmir to help their Muslim brethren on October 23, 1947, in their sad plight, how can we call it aggression?." ²⁴ Most of the writers are convinced with Indian claim and complaint in the UN that due to the intervention of tribal people in Kashmir on October 22, 1947, India entered her forces and Maharaja had signed an instrument of accession, which is baseless and neutral researched did not authenticate this.

It is evident from the reliable historical account that India is the aggressor in Kashmir. Indian claim on Kashmir is based on an instrument of accession, whose authenticity was questioned by many researchers like Alastair Lamb.²⁵ Stanley Wolpert's research revealed that instrument of accession was signed on 27th October at that time Indian forces were landing in Srinagar airport.²⁶ If we accept the authenticity of the Instrument of Accession, it was provisional and conditional. Lord Mountbatten accepted that, "it is my Government's wish that as soon as law and order have been restored in Jammu and Kashmir and her soil cleared of the invader the question of the State's accession should be settled by a reference to the people."²⁷ The people of Kashmir were fighting against Dogra forces and their allies and liberated a considerable part up to October 24, 1947, and established a revolutionary Govt. After entering Indian forces in Kashmir the war was continued. India herself knocked the doors of the UN and a ceasefire agreement was signed between Pakistan and India and the ceasefire line was demarcated. UN had rejected the Indian claim that Kashmir is her part under the instrument of accession. UNSC had passed 17 resolutions about this conflict and it was admitted that Kashmir is a disputed territory whose future has yet to be determined. The resolution of 21st April 1948 states,

Both India and Pakistan desire that the question of the accession of Jammu and Kashmir to India and Pakistan should be decided through the democratic method of free and impartial plebiscite. Considering that the continuation of this dispute is likely to endanger international peace and security.²⁸

The two resolutions of 13th August 1948²⁹ and 5th January 1949 passed by the United Nations Commission for India and Pakistan (UNCIP) were agreed by both Pakistan and India. The resolution of 5th January 1949 provides, "The question of the accession of the state of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of free and impartial plebiscite."³⁰

The historical and legal facts prove that India had occupied the Jammu and Kashmir and India has no legal right to claim sovereignty on Kashmir. Except for India, all international community and the UN consider Kashmir as a disputed area.

ILLEGAL ANNEXATION

Indian leadership had made promises publicly and officially that the accession of Kashmir with India is temporary and to protect the Kashmir from invaders. There are many commitments by India in the UN and also with their nation and people of Kashmir. The Indian Prime Minister Jawaharlal Nehru in an address to All India Congress Committee said, "people seem to forget that Kashmir is not a commodity for sale or to be bartered, it has an individual existence and its people must be the final arbiters of their future."³¹ The time had proved that all the promises of India were just a time gaining tactics to change the Muslim majority into minority in the state. In the

²³ Alex Von Tunzeleemann, *Indian Summer: The Secret History of the End of an Empire* (UK: Simon & Schuster Ltd, 2008), 286-287.

²⁴ Prem Nath Bazaz, *Azad Kashmir* (Mirpur: Verinag Publishers, 1992), 33.

²⁵ Alastair Lamb, *Incomplete Partition*, (Oxford: Oxford University Press 1997), 139-178.

²⁶ Stenely Wolpert, *Nehru: a Tryst with Destiny* (Oxford: Oxford University Press, 1996), 416-417.

²⁷ K. Sarwar Hassan (ed.), *Documents on the Foreign Relations of Pakistan: The Kashmir Question* (Karachi: Institute of International Affairs, 1966), 57.

²⁸ UNSC Res. 47(1948), document No. 5/726 dated April 21, 1948.

²⁹ UNCIP Res of 13th August 1948, document No 1100.

³⁰ UNCIP Res of 5th January 1949, document no 5/1196.

³¹ Daily Statesman, New Delhi July 09, 1951.

Indian Constitution of 1950 Article 370 was added a temporary provision about the Kashmir. Article 35-A was inserted in the constitution to provide the special permanent residence law for Kashmir.

During the drafting of the Indian Constitution in 1949, the constituent assembly has representation from IOJK and the instrument of accession was included as Article 306 A of the Indian Constitution. This article became operative from November 17, 1952, as Article 370³² in the Indian Constitution and it was ‘Temporary, Transitional and Special Provision.’³³ Article 370 (3) empowers the President to abrogate this article on the recommendations of the Constituent Assembly of IOJK. Article 35-A was added in the constitution through ‘The Constitution (Application to Jammu and Kashmir) Order, 1954’, which allows the Govt. of IOJK to define the ‘Permanent residents’ with their privileges and rights. The constituent assembly of IOJK defined the ‘ permanent residents’ in 1957.³⁴ The state subject law was initially introduced by the Maharaja Hari Singh vide Notification No. 1-L/84 dated April 20, 1927, read with State Notification No. 13/L dated June 27, 1932.³⁵

On August 5, 2019, the president of India issued an order ‘The Constitution (Application to Jammu and Kashmir) Order, 2019’³⁶ and amended the constitution without fulfilling the constitutional procedure. on next day August 6, 2019, the president issued another order and revoked Jammu and Kashmir’s special status, which states that, “all clauses of the said article 370 shall cease to be operative, and that all provisions of this Constitution, as amended from time to time, without any modifications or exceptions, shall apply to the State of Jammu and Kashmir.”³⁷

On August 06, 2019, the Indian Parliament passed the ‘Jammu and Kashmir Reorganization Bill, 2019’ besides many other amendments article 370 was also amended as,

All provisions of this Constitution, as amended from time to time, without any modifications or exceptions, shall apply to the State of Jammu and Kashmir notwithstanding anything contrary contained in article 152 or article 308 or any other article of this Constitution or any other provision of the Constitution of Jammu and Kashmir or any law, document, judgments, ordinance, order, by-law, rule, regulation, notification, custom or usage having the force of law in the territory of India, or any other instrument, treaty or agreement as envisaged under article 363 or otherwise.³⁸

On August 05, 2019, IOJK was under the presidential rule since December 2019, the constituent assembly was dissolved in 1957, and legislative assembly was dissolved in June 2018. Article 370 also provides the procedure for amendment in this article which shows that the prior approval from the Govt. of IOJK is required before the amendment but on 5th August the Kashmir was under the presidential rule. The Governor was the nominee of the president and does not represent the people of Kashmir. Constitutional expert AG Noorani’s opinion is very much clear about the intention of the Indian Govt. and unconstitutionality, according to him,

The Hindu nationalist government was not aiming at unifying Kashmir with India, but removing the identity of Kashmiri people. The Indian parliament was not empowered to either amend or delete the provision. For this, the approval of the [J&K] State’s Constituent Assembly was necessary. Any concurrence of the state government is always subject to the elected assembly’s final approval. When the state is under the governor’s rule or president’s rule, neither can accord that concurrence, the central government cannot acquire concurrence from its handpicked appointee. Currently, Jammu and Kashmir is under central rule. There is no elected government now, the Indian constitution has itself defined that the state government means a council of ministers in the state, There was no such council of ministers headed by a chief minister right now.³⁹

This constitutional scrap of August 05, is also contradictory to the various decisions of the Supreme Court of India (SCI). In the case titled ‘*Prem Nath Kaul Vs. The state of Jammu and Kashmir*’ the SCI held, “the Constitution-makers attached great importance to the final decision of the Constituent Assembly, President’s powers under

³² Constitution of India, art 370.

³³ Ibid. Part XXI of the Indian Constitution.

³⁴ The Constitution of Jammu and Kashmir, 1957, art.06.

³⁵ A.S.Anand, *The Development of the Constitution of Jammu and Kashmir* (Mirpur: Verinag Publishers,1991),30-34.

³⁶ The Constitution (Application to Jammu and Kashmir) Order, 2019, C.O. 272.

³⁷ Presidential Order C.O. 273.

³⁸ The Jammu and Kashmir Reorganization Act, 2019.

³⁹ Iftikhar Gilani, “India’s Move Sans Kashmir Assembly’s say Illegal: Experts,” *AA, Ankara*, August 09 2019, accessed August 25, 2020, <https://www.aa.com.tr/en/asia-pacific/india-s-move-sans-kashmir-assembly-s-say-illegal-expert/1553228>.

Article 370 could only be continued if the Constituent Assembly of J&K gave its final approval for him to do so.”⁴⁰ In another case *‘State Bank of India Vs. Santosh Gupta’* in 2016 the SCI ruled, that “revocation of Article 370 is possible only with the recommendation of the constituent assembly of the state. Given its absence, the provision seems to have assumed permanence.”⁴¹ Article 3 of the Indian Constitution provides a legal mechanism to change the name or state boundaries as,

Parliament may by law: (a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State; (b) increase the area of any State; (c) diminish the area of any State; (d) alter the boundaries of any State; (e) alter the name of any State. Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.⁴²

The Jammu and Kashmir Reorganization Act, 2019, and presidential orders had changed the status of IOJK from state to union territory. The state has been divided into two union territories Jammu and Kashmir and Ladakh without consulting the legislative assembly of the state. Moreover, article 370(1)(d) empowers the Govt. of IOJK with constituent powers, not the governor.⁴³ The Indian parliament or the president has no powers to amend or abrogate the article without the consent of legislature/ Govt. of IOJK. The IOJK had its separate constitution ‘the constitution of Jammu and Kashmir, 1957’⁴⁴ which was approved by the constituent assembly of IOJK. The constituent assembly was elected by the people and had a mandate to draft a constitution. This separate constitution could not be repealed or abrogated by the amendments in the Indian constitution. The relationship of India with the state of J&K was established through the instrument of accession and this instrument was incorporated in article 370 of the Indian constitution and the abrogation of this article is also the withdrawal of India from the instrument of accession, Article 08 of Instrument of Accession Provides,

Nothing in this Instrument affects the continuance of my sovereignty in and over this state, or save as provided by or under the instrument, the exercise of any power, authority and right now enjoyed by me as a ruler of this state or the validity of any law at present in force in this state.⁴⁵

This instrument was accepted by India and article 8 provides the sovereignty to Maharaja on Kashmir. In the case *Gurdwara Shaib Vs. Piyara Singh*⁴⁶ his lordship held, “that simply by executing the Instrument of Accession and by ceding certain powers with regard to external affairs a state does not lose its sovereignty.”⁴⁷ The SCI in another case held,

We must therefore reject the argument that the execution of the instrument of accession, affected in any manner the legislative, executive and judicial power in regard to the Government of State, which then vested in the ruler of the state.⁴⁸

Another important provision of this instrument is article 07 which provides,

Nothing in this Instrument should be deemed to be a commitment in any way as to acceptance of any future Constitution of India or to fetter my discretion to enter into arrangements with the government of India under any such future constitution.⁴⁹

The analysis of these two provisions of IoA shows that Maharaja had not surrendered his sovereignty to India. ‘The Constitution of India of 1950’ and ‘The Constitution of Jammu and Kashmir of 1957’ are clear violations of this

⁴⁰ AIR 1959 SC 749.

⁴¹ *State Bank of India v. Santosh Gupta*, judis.nic.in/supremecourt/imgs1.aspx?filename=44411.

⁴² Constitution of India, art.3.

⁴³ Ibid, art.370(3).

⁴⁴ Constitution of Jammu and Kashmir, 1957.

⁴⁵ Instrument of Accession, art. 8.

⁴⁶ A.I.R.(1913) pepsu,1.

⁴⁷ A.S.Anand, *The Development of the Constitution of Jammu and Kashmir*, 116.

⁴⁸ Prem Nath Kaul Vs. The State of Jammu and Kashmir, AIR(1959)S.C. 749.

⁴⁹ A.S.Anand, *The Development of the Constitution of Jammu and Kashmir*, 121.

IOA. The 5th August 2019 constitutional scrap is the annexation of the state which is also a violation of international law. The ruling party Bahrtia Janta Party(BJP) is an orthodox Hindu party promoting the Hindutva ideology. The nexus between BJP and Rashtriya Swayam Sevak Sangh (RSS) was very rightly exposed by Keith Jones as,

In reality, the BJP is, even from the standpoint of current-day capitalist politics, a party of the extreme right. It espouses Hindu chauvinism, militarism and anticommunism while exalting entrepreneurial initiative. At its core stands a mass, fascistic organization associated over many decades with communal violence--the Rashtriya Swayamsevak Sangh (RSS).⁵⁰

The website of RSS shows their evil designs about Muslims and Kashmir, “Jammu and Kashmir, with its oppressive Muslim-majority character as a headache for our country and a thorn in the flesh of India.”⁵¹

The abrogation of Article 370 was always in the election manifesto of BJP from 1996 to 2019.⁵² The basic objective of the constitutional amendment is to change the demography of IOJK, which has an overwhelming Muslim majority. After August 5, 2019, the steps were taken by Indian Govt. prove these evil designs of India. Article 35-A of the Indian constitution was empowering the Govt. of IOJK to define the permanent residents of the state, and in 1957 it was defined by the legislature that only those persons who are state subjects could purchase the property or get Govt. jobs and scholarships in Kashmir.⁵³ This article did not allow non-Kashmiris to get a permanent residence certificate in Kashmir. After the abrogation of this article, the Govt. of India had redefined the domicile law through ‘Jammu and Kashmir Reorganization (Adaption of state laws) order, 2020’⁵⁴ on April 1, 2020, and subsequently rules were issued through ‘The Jammu and Kashmir Grant of Domicile Certificate (Procedure) Rules 2020’⁵⁵ in May 2020. According to these rules following classes of persons are eligible for domicile:

Applicants should have resided in J&K for 15 years, or studied in the state for seven years and appeared in either the Class 10 or the Class 12 examination there. Children of central government officers, and employees of public sector undertakings and banks, central universities etc who have served in Jammu & Kashmir for 10 years will also be eligible to apply for a domicile certificate. Migrants registered by the Relief and Rehabilitation Commissioner need not fulfil the aforementioned requirements and will automatically be eligible for a domicile certificate. The domicile status also applies to children of such residents of J&K who reside outside J&K in connection with their employment or business or other professional or vocational reasons but their parents should fulfill any of the conditions provided.⁵⁶

As per the census in IOJK 1.7 million migrants are living for more than five years which are not Kashmiri.⁵⁷ The process of getting domiciles for Indian is a very easy and online facility is also available. Indian Govt. had issued 400,000 domiciles just in three months, up to the last week of July 2020.⁵⁸ The permanent residents of IOJK who are living there from generations have to apply for new domicile otherwise they will not be eligible for Govt. Jobs.⁵⁹ This is another oppressive act to discourage Kashmiris for a job in Kashmir. People from India are getting domicile of states one such case of Naveen Chaudry an officer of Indian administrative service born and grown up in Bihar

⁵⁰ Keith Jones, “India: the BJP-RSS nexus Fascistic movement plays critical role in India's ruling coalition”, *World Socialist Website*, June 20, 1998, accessed August 25, 2020,, https://www.wsws.org/en/articles/1998/06/bj_pz-j20.html.

⁵¹ Rashtriya Swayamsevak Sangh, Vision and Mission, accessed on August 26, 2020, www.rss.org.

⁵² Karan Thapar, “How the BJP wavers on Articles 370 and 35A: The commitment to abrogate them has provoked anger in the Valley. That, perhaps, is what the BJP wanted”, *Hindustan Times*, May 04, 2019, accessed August 25, 2020, <https://www.hindustantimes.com/columns/how-the-bjp-wavers-on-articles-370-and-35a/story-NXIXhqe8m06m46AhnPwacL.html>.

⁵³ The Jammu and Kashmir Constitution, 1957, art.6.

⁵⁴ Jammu and Kashmir Reorganization (Adaption of state laws) order, 2020, <https://www.thehinducentre.com/resources/article31224756.ece/binary/PIB1609804.pdf>.

⁵⁵ The Jammu and Kashmir Grant of Domicile Certificate (Procedure) Rules 2020, Law Department J&K SO 175, <http://www.jklaw.nic.in/pdf/S.O%20175%20OF%202020.pdf>.

⁵⁶ Ibid.

⁵⁷ Ajaz Ashraf and Vignesh Karthik K.R., “Why J&K’s demography will change beyond belief”, *NewsClick*, May 31, 2020, accessed on August 26, 2020, <https://www.newsclick.in/articles/J&K%20Delimitation>.

⁵⁸ Ateev Sharma, “Officers asked to grant J-K domicile certificates within two days: revenue secy”, *The Tribune*, July 31, 2020, accessed on August 26, 2020, <https://www.tribuneindia.com/news/j-k/officers-asked-to-grant-j-k-domicile-certificates-within-two-days-revenue-secy-120349>.

⁵⁹ “PRC holders too need domicile certificate for J&K jobs”, *The Times of India*, August 24, 2020, accessed on August 28, 2020, http://timesofindia.indiatimes.com/articleshow/77710573.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

had got the domicile was gone viral.⁶⁰ The Govt. of IOJK on July 17, 2020, had amended the ‘Control of Building Operations Act, 1988’, and the ‘J&K Development Act, 1970’ to allow notifying any areas in the territory as “strategic areas” to allow the Indian army for construction of infrastructure.⁶¹ On July 24, 2020 the Govt. issued an order by which the Indian army and paramilitary forces could acquire any property without any permission/approval.⁶²

The Indian occupation, illegal annexation, and actions are blatant violations of IHRL and IHL. The disputed nature of the erstwhile state of Jammu and Kashmir has been recognized in international law as well as UNSC resolutions. India could not change the status of J&K as it is mentioned in two UNSC resolutions, resolution No 91 states,

....that the final disposition of the State of Jammu and Kashmir will be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations.

Affirming that the convening of a Constituent Assembly as recommended by the General Council of the "All Jammu and Kashmir National Conference" and any action that Assembly might attempt to take to determine the future shape and affiliation of the entire State or any part thereof would not constitute a disposition of the State in accordance with the above principle.....⁶³

Resolution No 122 of 1957 states,

.....any action that Assembly may have taken or might attempt to take to determine the future shape and affiliation of the entire State or any part thereof, or action by the parties concerned in support of any such action by the Assembly, would not constitute a disposition of the State in accordance with the above principle; Decides to continue its consideration of the dispute.⁶⁴

India had annexed IOJK and divided it into two union territories which is the violation of both the resolutions. Kashmir is an international armed conflict and humanitarian law is applicable in the situation of Kashmir. The issuing of domicile to non-Kashmiris is the shifting of the Indian population in Kashmir which is the violation of the fourth Geneva Convention and besides the ICL, India is also a state party in this convention. Article 49 of GC-IV provides, “The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.”⁶⁵ It is also a violation of AP-I of GC,

In addition to the grave breaches defined in the preceding paragraphs and in the Conventions, the following shall be regarded as grave breaches of this Protocol, when committed wilfully and in violation of the conventions or the Protocol:

a) the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Convention.⁶⁶

According to the Statute of the International Criminal Court India is committing war crimes by transferring its population in IOJK, “the transfer, directly or indirectly, by the occupying Power of parts of its own civilian population into the territory it occupies constitutes a war crime in international armed conflicts.”⁶⁷

The International Court of Justice in an advisory opinion in The Wall Case opined, that “Article 49(6) prohibits not only forced transfers 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.”⁶⁸

⁶⁰ Khalid Shah, “Decoding the new domicile law of Jammu and Kashmir” , *Observer Research Foundation*, June 30, 2020, accessed on August 28, 2020, <https://www.orfonline.org/expert-speak/decoding-new-domicile-law-jammu-kashmir-68777/>

⁶¹ Ekip, “Timeline – Kashmir: A Year after Annexation” , *Andolu Agency*, August04, 2020, accessed on August 28, 2020, <https://www.aa.com.tr/en/asia-pacific/timeline-kashmir-a-year-after-annexation/1931170>.

⁶² Ibid.

⁶³ UN Security Council, Security Council resolution 91(1951) of 30 March 1951, S/RES/91 (1951).

⁶⁴ UN Security Council Resolution 122 (1957) of 24 January 1957, S/RES/122(1957).

⁶⁵ GC IV, Art. 49(6); CIHL, Rule 130.

⁶⁶ Protocol Additional to The Geneva Conventions of 12 August 1949, and Relating to The Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977, art. 85(4)(a).

⁶⁷ Statute of International Criminal Court, art. 8(2)(b)(viii) <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>

The unilateral change of the status of IOJK and its annexation is also a violation of the Simla agreement, which provides

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 organization, assistance or encouragement of any acts detrimental to the maintenance of peaceful and harmonious relations.”⁶⁹

According to constitutional expert A.G. Noorani, “After Art 370 scrapping, the Simla pact is virtually dead.”⁷⁰ The breach of the Simla agreement by India also provides the legal right to Pakistan to terminate this treaty. ‘Vienna Convention on the Law of Treaties’ provides, “material breach of a bilateral treaty by either party entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part”.⁷¹ The annexation and occupation is also the violation of common article 1 of two international covenants, which provides, “All peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.”⁷²

CONCLUSION

The erstwhile State of Jammu and Kashmir is a disputed area according to international law and UNSC resolutions. India had occupied this area since 1947 against the will and wishes of the people. The disputed IoA was provisional and India had also violated the terms of this instrument. Moreover, UNSC had not accepted the Indian claim of accession, hence this IoA has no *locus standi*. The belligerent occupation by India on Kashmir is a clear violation of international law. The constitutional amendment by India on 5th August 2019 is the violation of international law, UNSC resolutions especially resolution No.91(1951) and resolution No. 122 (1957), Simla agreement, and also the procedure of constitutional amendment in the Indian constitution. The prime objective of this constitutional scrap is to change the demography of IOJK and since August 5, 2019, many actions have been taken in this regard. The struggle of the people of IOJK is not for the restoration of special status but it is the struggle of right to self-determination and against the Indian occupation. India’s unilateral actions are also a threat to peace and stability in the world and war crimes.

⁶⁸ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, I.C.J. Advisory Opinion, 2004 I.C.J. 136, para 120.

⁶⁹ Simla Agreement of 1972, Para 1(ii).

⁷⁰ A.G. Noorani, “After Art 370 scrapping, the Shimla pact is virtually ‘dead’”, *Deccan Chronicle*, August 26, 2019, accessed on August 28, 2020, <https://www.deccanchronicle.com/opinion/columnists/260819/after-art-370-scrapping-the-shimla-pact-is-virtually-dead.html>.

⁷¹ Vienna Convention on the Law of Treaties Done at Vienna on 23 May 1969, art.60.

⁷² International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, art. 1, International Covenant on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976.

Genuine Encounter or Custodial Killing: What Really Happened to Md Amin Malik at Tral SOG Camp?



Umar Mukhtar

A Central Reserve Police Force (CRPF) officer patrols an empty street in Srinagar August 5, 2020. Photo: Reuters/Danish Ismail

According to J&K police, Malik was an active militant who snatched a police rifle while being questioned and had to be shot. According to his family, he was a labourer who voluntarily presented himself to the police for questioning.

Srinagar: On the night of June 2, Zahoor Ahmad, a 30-year-old resident of Machama hamlet in south Kashmir's Tral in Pulwama district, received a phone call from the village watchman who asked him to take his mother to Tral police station immediately.

The police station was where Ahmad's brother, 38-year-old Mohammad Amin Malik, had been in custody for questioning since May 29.

When they arrived at the police station, Ahmad's mother was escorted to a police vehicle and driven to a Special Operations Group (SOG) camp some meters away. There she was told that Malik had snatched a rifle out of the hands of a policeman and that she must ask her son to surrender.

Ahmad's mother told him later that she had called to Malik while still seated in the police vehicle which was at a distance from the building where, according to the police, Malik had run and taken shelter. But she received no response.

She apparently told Ahmad: "I told them to let me get out [of the vehicle] and I would ask my son to surrender. But they did not

let me. I did not know whether there was anyone on the other side of the building or not."

Confused, Ahmad's mother repeatedly called to Malik to surrender, but continued to receive no response. Eventually, she was sent home.

The next morning, June 3, Ahmad went to the police station to ask what had happened with his brother. The policemen on duty told him to go home because the search operation for Malik was still going on. "Your family will be informed when something develops," the policemen told Ahmad.

As Ahmad spoke with the policemen, he received a phone call from a relative who informed him that Malik had been killed while in police custody and that his body had already been taken to the police control room in Srinagar.

Malik's story: Police version

According to the Jammu and Kashmir police, Malik was an active militant and had been killed in an overnight encounter on the night of June 2/3 after he snatched a service rifle (AK-47) from a policeman and fired indiscriminately around the room.

"Mohammad Amin Malik, son of Abdul Ahad Malik of Nagbal Machhma, Tral, an active (militant) operative was neutralised in an overnight operation on 2/3 June, jointly conducted by Awantipora Police, 180 battalion CRPF and 42 RR of army at Police Component Complex, Tral," a police spokesperson told

the media soon after the alleged encounter had ended.

The police spokesperson added that Malik had been arrested on May 30 and had possessed “incriminating materials viz. arms, ammunition and explosives including unlicensed 12 bore gun, live rounds, explosives, iron/steel balls, 9 feature phones and other warlike stores used in fabrication of IEDs”. He had been taken to the Tral police station where “a case FIR No. 48/2021 under relevant sections of law was registered”.

The police spokesperson said: “The operative (militant) was on police remand and on June 2, 2021, he was brought from the Police Station, Tral, to the Police Component, Tral, for further interrogation. During the interrogation (he) got hold of the service rifle (AK-47) of CT (constable) Amjad Khan and fired indiscriminately with the intention to kill the police personnel.” Malik wounded Amjad Khan “critically”, the police statement said

The police spokesperson added: “He (Malik) then took total control of the interrogation room and engaged the police personnel by firing intermittently from the snatched weapon. Sensing grave danger to the lives of police personnel and that of the (militant) operative, his mother and the executive magistrate were brought on the site and sincere and repeated efforts were made to persuade him to throw down the weapon and surrender.”

Malik apparently not only refused to surrender, but continued to fire upon the police party. “One of the police personnel was hit with a bullet on the chest and survived because of the bulletproof jacket he was wearing,” the spokesperson said.

Eventually, said the spokesperson, after all efforts to persuade Malik to surrender had failed, he was engaged in a gunfight “following the rules and SoP of such engagement and was neutralised.”

Malik's story: Family version

Malik's family has an entirely different story about Malik's arrival in police custody. On May 23, they told *The Wire*, their house had been cordoned off by a contingent of forces from the army, police and paramilitary. According to Ahmad, when the security forces personnel entered the house, they were “furious and started ransacking everything”. Malik meanwhile slipped away quietly and returned only when the forces had left the house.

“They turned everything upside down and asked for Malik,” said Ahmad. When they left, they told the family to bring Malik to the police station. Later, the police claimed they had recovered an unlicensed gun and some incriminating material including bleaching powder from Malik's home.

“They recovered a decades-old, rusted hunting rifle (*toppe bundook*) from our house,” said Ahmad. “My father was a hunter. He used to hunt animals in the nearby forests. After his death, we preserved the rifle in his memory. It had broken clips and dismembered barrels.”

The bleaching powder the police had taken with them after the raid at Malik's home had been used for fishing and weeding, Ahmad added.

On the night of May 23, after the police and army had left the house, Malik returned. “He saw everything turned upside-down and the sight sent chills down his spine,” said Ahmad. “They (the forces) had let their sniffer dogs into our stored rations including rice, tea and other eatables, so we had to throw away our rations. A tin shed erected in the courtyard had also been demolished.”

The family told Malik that the police had ordered him to report to the police station. Malik was reluctant to do so. He knew that getting involved in police matters would never be easy. But his family, including his mother and wife, persuaded him to go since he had done nothing illegal.

“In fact he had doubts about how the police would react to the recovery of the old hunting gun,” said Ahmad. “But we told him that police would understand our emotions behind keeping this old rifle.”

The family also approached an intermediary to talk to the police. According to Ahmad, the deputy superintendent of police who had spoken with the intermediary had sworn upon his own two children that the police would keep Malik in custody for two or three days for questioning and then release him safe and sound.

On May 29, Ahmad and another person accompanied Malik to the Tral police station. The deputy superintendent of police apparently questioned Malik in isolation for some time and then handed him to the SOG.

On May 31, Ahmad went to the police station to meet his brother. Malik was fine. But the deputy superintendent of

police asked Ahmad to tell his brother to hand over the arms he possessed or else he would be jailed.

When Ahmad told his brother what the deputy superintendent of police had said, Malik told him: “Am I a fool? If I had something like this do you think I would have come to the police station? I have nothing like this.”

On June 1, Malik's wife and 70-year-old mother went to meet him at the police station. They later told Ahmad that when two policemen brought Malik to the visitors' room, Malik had been limping. There was very little conversation between Malik, his mother and his wife.

“They told me when they returned home that Malik had been in pain. He told them his whole body was aching,” Ahmad said.

Worried, Ahmad went to the police station on June 2 to see Malik for himself. Although he was turned away at first, he was somehow allowed to meet his brother. The person Malik had become by June 2 was the opposite of what he had been on May 31, the day Ahmad had met him last. Malik now looked exhausted, lost and wrecked. As Ahmad approached him, Malik broke down and said that he had been tortured.

“He could not fold his hands; his wrists were swollen,” Ahmad told *The Wire*.

Malik apparently told Ahmad that a police officer had twisted his legs while he was seated in a chair and broken his knee. All Ahmad could do was try and console Malik by telling him he would soon be free.

After the encounter

According to Ahmad, the police had told an untruth in the story they had shared with the media about Malik's arrest.

“It is a lie that Malik was arrested,” said Ahmad. “The fact is that we, his family, had taken him to the police station because they had told us he needed to be questioned. If Malik had plans to join the militancy, then he would not have handed himself over to the police.”

Malik's family had also presented him to the police on May 29, whereas the police said Malik had been in their custody since May 30.

In 2002, Malik had joined the Hizb-ul- Mujahideen as a militant. But in 2003, he had formally surrendered and since then had been working as a labourer. Another brother, Shabir Ahmad Malik, had also been a militant, serving with the Al

Qaida-affiliated Ansar Ghazwatul Hind (AGuH) militant outfit until he was killed in June 2019.

Malik is survived by his wife and two sons, one 14 years old, the other seven.

“We do not know what happened inside the police camp but we are sure that our brother was a labourer and not a militant,” Ahmad said. He claims that Malik's body was taken by the police and buried at an undisclosed location.

“We were not even taken for my brother's last rites and we do not know where they have buried my brother,” he said.

The Wire adds from New Delhi:

Encounter raises unanswered questions

Based on what the police and family had said about the death of Mohammad Amin Malik, *The Wire's* Delhi bureau asked a former central paramilitary force officer to offer his assessment of the official account. “The story is unbelievable,” he said, requesting anonymity because of the government's recent gag order on retired security and intelligence officials.

According to the officer, there are several holes in the claims made by the police.

“In the first place, if you had reasons to believe that the man is dangerous and given to violence (what else could you determine from the alleged seizure/recovery?), the law permits you to handcuff him or even put him under irons or fetters after obtaining due permission from the magistrate who granted the police remand,” the officer told *The Wire*.

He continued: “What was the necessity of someone standing so close to him that the accused could snatch his rifle? Why was Amjad Khan so careless with his rifle? We are made to believe that a dangerous terrorist took control of the interrogation room. How? This needs investigation.”

According to the officer, it would have been difficult for a lone man to take control of the interrogation room. “What happened to the interrogator?” the officer asked. “Usually more than one person is involved in an interrogation. And because they claim it (the arrest of Malik) was a joint operation of the SOG, CRPF and the RR, it follows that their officers must also have been present. If they were not present, why not? Usually, Intelligence Bureau officers are also present... Joint interrogation has been the standard practice since the last 33 years.”

The officer also suggested that the scene be recreated so that the sequence of events could be confirmed.

“From which place was he (Malik) firing? Obviously, he could not have closed the door. Had he closed [the door], how would he fire? This means the door was open. This also means that he would have to, at times, lean out of the door to fire, unless he was firing in one direction only,” said the officer.

He added: “Even if we accept that this so happened, the forces have got both hand grenades and under barrel grenade launcher rifle grenades. The simplest thing would have been to lob a grenade inside. In fact, in a room, even tear gas grenades or stun (flash and bang) grenades would have been very effective. Tral has been a hotbed [of militancy] and all such things have been routinely available there with all the forces.”

The officer also questioned the logic of the police claims.

“They would like the nation to believe that even as a terrorist had launched a murderous assault on a constable, they were still thinking in terms of getting him to surrender on the appeal of his mother? This shows that the operation, if at all conducted, was a most unprofessional one,” he said.

The Wire also asked a former Intelligence Bureau official with extensive field experience in the Valley if it is standard operating procedure for police constables to carry their weapon into interrogation when a suspect is not physically restrained with handcuffs. “It is true that many police personnel carrying AKs keep moving around while the suspect is being interrogated,” he said. “The problem is lack of gun discipline and over confidence. I have seen many times an AK hanging loosely from the shoulders of police personnel.”

But he added, “If [the sequence of events as narrated by the family] is correct, which seems so, it is a fake encounter. Perhaps, the poor fellow died during interrogation and the whole story is being made up.”

The Wire has asked the police to provide more details about the “critical” injuries sustained by constable Amjad, whose AK-47 was allegedly snatched, and the treatment he is undergoing, and will update this story when it receives a response.

Umar Mukhtar is a Srinagar-based journalist working with Kashmir Life. He tweets at @umarmukhtaar.



Departmental Briefing to President AJ&K Sardar Masood Kahn by Secretary Jammu & Kashmir Liberation Cell Raja Tariq Mehmood



Prime Minister GoAJ&K Raja Muhammad Farooq Haider Khan and other speakers addressing on the occasion of Death Anniversary of Mirwaiz Molvi Muhammad Farooq and Khawaja Abdul Ghani Lone

Ready for India talks if given roadmap to restoration of Kashmir's status, Imran Khan

Islamabad: Pakistan is ready to restart talks with India if New



Delhi provides a roadmap towards restoring the previous status of Indian Occupied Jammu and Kashmir, Prime Minister Imran Khan said Friday.

In 2019, India withdrew IOJK's autonomy in order to tighten its grip over the territory, sparking outrage in Pakistan, the downgrading of diplomatic ties and suspension of bilateral trade. "If there is a roadmap, then, yes, we will talk," PM Imran Khan told *Reuters* at his official residence in Islamabad. Previously, PM Imran Khan and his government had held that India would have to first reverse its 2019 steps for any normalization process to begin. "Even if they give us a roadmap, that these are the steps that we will take to basically undo what they did, which is illegal, against international law and United Nations resolutions... then that is acceptable," Khan said. India's external affairs ministry did not immediately respond to *Reuters'* request for comment.

Kashmir has been a flashpoint since India and Pakistan gained independence from British rule in 1947, and they have fought two wars over the region. India has repeatedly committed rights violations in Kashmir. In 2019, a suicide bombing of an Indian military convoy in Kashmir led to India sending warplanes to Pakistan.

PM Imran Khan said he has always wanted a "civilised" and "open" relationship with India. "It is common sense that if you want to reduce poverty in the subcontinent, the best way is to trade with each other," he said, referring to the example of the European Union. Pakistan in March deferred a decision by its top economic decision-making body to restart trade with India

until Delhi reviewed its moves in Kashmir. He said India had crossed a "red line" by revoking the autonomy of occupied Kashmir. "They have to come back for us to resume dialogue," Khan said, adding, "at the moment there is no response from India". Earlier this year, Indian officials said the two governments had opened a back channel of diplomacy aimed at a modest roadmap to normalising ties over the next several months.

AJK President pays homage to Mirwaiz Farooq, Ghani Lone and other martyrs

Muzaffarabad: Azad Jammu and Kashmir (AJK) President, Sardar Masood Khan on Friday paid tributes to Mirwaiz Molvi Muhammad Farooq, Abdul Ghani Lone, and other Kashmiri



freedom fighters on their martyrdom anniversary.

In a special message, the AJK President reiterated his unflinching resolve that the struggle to get freedom from the oppressive Indian occupation and the realization of the right to self-determination would continue relentlessly and the mission left incomplete by Kashmiri martyrs would be accomplished. "We vow to carry forward the mission of Kashmiri martyrs who offered supreme sacrifice of their lives to get rid of the oppressive foreign rule," he asserted.

Describing Mirwaiz Moulvi Mohammad Farooq and Abdul Ghani Lone as robust voices of the Kashmir freedom struggle that were targeted by the oppressor to weaken the liberation struggle, AJK President said that their supreme sacrifices instead gave a new lease of life to the struggle for the right to self-determination. Khan also paid homage to the martyrs of Hawal on the day of their martyrdom and said that the sacrifices offered by these martyrs will never be forgotten by the people of IOJK, AJK, and Pakistan. The intensity of the long struggle of the Kashmiris for freedom that has withstood decades of

suppression and has grown stronger neither will reduce nor killings, arbitrary detentions, torture, and other brute tactics can dampen the spirit of freedom, he said. The AJK President assured that the people of Azad Jammu and Kashmir and Pakistan will continue to extend political and diplomatic support to the struggling people of Jammu and Kashmir and they will not be left alone in their fight for freedom and liberty. "We salute our brothers and sisters living on the other side of LoC with firm assurance that the people of AJK and Pakistan are fully behind them and they will never leave them alone," he assured. He went on to say that the people of Jammu and Kashmir have been fighting for their freedom and right to self-determination for more than seven decades and they are determined to continue it till they are given a right to decide their political future through an UN-supervised referendum. About the international support to the Kashmir peoples' struggle for their right to self-determination, President Khan said since 2016, after the martyrdom of Burhan Wani and August 2019, when Indian troops invaded and besieged IOJK, Kashmir has been significantly internationalized. The Kashmir dispute, he said, discussed in the UN Security Council, the European Parliament, the US Congress, the British Parliament, and the ASEAN parliaments, among others. It (Kashmir issue) has been covered extensively by the international media and taken up by leading international think tanks and human rights organisations. This has hurt India because it has been called out, and India now wants to seek indemnity and immunity for its crimes against humanity in IOJK, he concluded.

Environment, Biodiversity, Livelihood of People in IOJK Under Attack: Sardar Masood

Azad Jammu and Kashmir (AJK) President, Sardar Masood Khan on Saturday said that at a time when the world was celebrating World Environment Day, India is intentionally destroying the fragile ecosystem in Indian Illegally Indian Occupied Jammu and Kashmir (IIOJK) MIRPUR (APP - UrduPoint / Pakistan Point News - 5th Jun, 2021) : Azad Jammu and Kashmir (AJK) President, Sardar Masood Khan on Saturday said that at a time when the world was celebrating World Environment Day, India is intentionally destroying the fragile ecosystem in Indian Illegally Indian Occupied Jammu

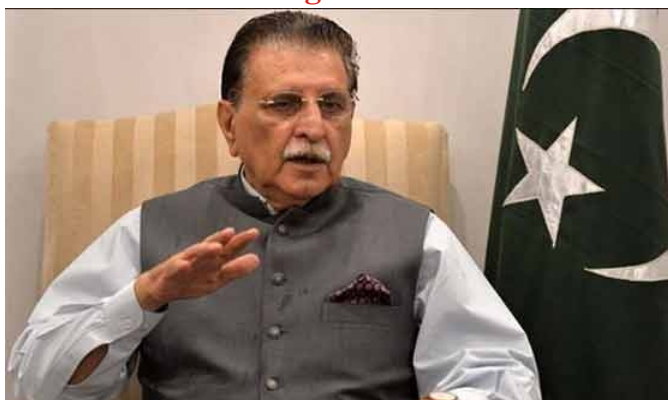
and Kashmir (IIOJK). In a message on the occasion of World Environment Day observed across the globe including Azad Jammu Kashmir on Saturday, he said that Kashmir is distinctive in the world due to its beautiful forests, lush green valleys, rivers, waterfalls, and biodiversity of flora and fauna. But unfortunately, the one million occupation army of India is busy building cantonments and military garrisons by relentlessly destroying the forests, polluting the rivers, lakes, and wetlands.

"IIOJK's coniferous forests, wetlands, rivers, glaciers, lakes are all under threat due to the rapacious exploitation of the fragile ecosystems and massive land grab by the Indian occupation authorities. UNEP should declare it as an environmental disaster zone," the President demanded. He pointed out that currently most of the forests and mountains of Occupied territory are under the control of the Indian Army where the occupying forces are not only clearing the forests to build military camps but also using forest timber for cooking and heating purpose massively, leading to a serious environmental crisis in the region. The anti-environment policies of the Indian authorities can be gauged from the fact that the military not only burnt the entire hamlets and settlements to ashes but also destroy fruit orchards in the areas where the military operation is conducted, he maintained. The BJP-RSS government's plan to bring 3.2 million Indian nationals from India to settle them on the forest land in IIOJK will not only change the demography but will also have a very serious negative impact on the natural environment of the region, Khan warned.

"The new Environment Policy in IIOJK was designed to and is being used to delegitimize indigenous Kashmiri businesses and enterprises and to subcontract them to outsiders. The construction industry was the first to be hit," he added. Commenting on Pakistan's initiative to host World Environment Day 2021 in collaboration with the United Nations Environment Program (UNEP), President Masood termed it a right step in the right direction. "Pakistan is hosting World Environment Day 2021 today in collaboration with the UN Environment Programme (UNEP). A right step towards making amends for the omission that was made by not inviting Pakistan to the Climate Summit earlier this year," he

maintained. Highlighting the steps being taken by the government in the liberated part of Kashmir, President Masood said that state government was addressing issues and challenges of climate change and promoting sustainable development. "A policy is being pursued in AJK to harmonize economic growth with the environment. It is possible only through a multi-departmental strategy," he concluded.

Farooq Haider condemns Israeli, Indian atrocities against civilians



Muzaffarabad: Azad Jammu Kashmir (AJK) Prime Minister Raja Farooq Haider Khan on Friday led a public rally here at the Lal Chowk to express solidarity with the Palestine and Kashmir to condemn Israeli and Indian atrocities. The rally was attended by a large number of people Minister Education Barrister Iftikhar Gilani, Sahibzada Saleem Chishti and Mufti Kafait Hussain Naqvi chanting anti Israel slogans holding placards and banners inscribed with demands to United Nations to take

cognizance of atrocities and play its role for resolving the Palestine issue. Raja Farooq Haider while addressing the rally said that the Palestine day was being observed throughout the country to condemn Israeli atrocities against Palestinians and express solidarity with them. He said the Muslim world must unite against Israeli atrocities against Palestine people and should take serious steps for the resolution of Palestine issue in accordance with United Nations, resolutions and also to take unanimous stance at international forums. While praising the strongest stance taken by the governments of Turkey and Iran on the issue, the prime minister demanded the other governments of the Muslim countries to follow the both governments in order to exert pressure on Israel. He expressed gratitude of other civilized countries for condemning Israeli atrocities on Palestinians and strongly condemned those countries that supported Israeli atrocities and demanded the United Nations to resolve the Palestine and Kashmir issue for a peaceful world. Farooq Haider also demanded the organization of Islamic countries (OIC) to play an effective role the resolution of Palestine issue to achieve the objectives of its constitution as its basic objective was to safeguard the holy place of the Muslims and that couldn't be achieved yet. He said India was also following footsteps of Israel in occupied Kashmir and was engaged to the demography of the state and termed the Israeli and Indian prime ministers as two sides of a single coin.

HUMAN RIGHTS VIOLATIONS IN IOK

(From Jan 1989 till May 31, 2021)

Total Killings *	95,790
Custodial Killings	7,172
Arrested	161,797
Arson (Houses, Shops, etc.)	110,411
Women widowed	22,926
Children orphaned	107,819
Women gang-raped / Molested	11,244

Social Distance in Kashmir

