

Indian Assault on Kashmiri Identity and its Likely Implications

Seminar Report

The Institute of Policy Studies, Islamabad held a meeting titled, ‘Indian Assault on Kashmiri Identity and its Likely Implications’, under its Working Group on Kashmir, a body of experts and opinion leaders on Kashmir affairs that meets regularly after the illegal revocation of the special constitutional status of J&K by the BJP-led Delhi regime on August 5, 2019. The participants of the meeting, held on September 29, 2022, included Dr. Idrees Abbasi, former secretary law AJ&K, Iftikhar Gilani, a journalist based in Turkey, and Nasir Qadri, director of Legal Forum for Kashmir.



Nasir Qadri, Khalid Rahman, Syed Abrar Hussain, and Dr Idrees Abbasi

Executive Summary

Kashmir has been suffering an inhumane occupation under India for 75 years. Despite the United Nations resolutions that call for a plebiscite in Kashmir to decide its future, judging in light of the actions by Indian authorities the hopes for a fair referendum are bleak. In this regard, this session attempts to enlighten the audience on various aspects of India's settler colonial project in occupied Kashmir and also suggests the way forward for Pakistan.

On August 5, 2019, the Indian government unilaterally and unconstitutionally repealed the special status of Kashmir through a presidential order without concurrence of the Government of Jammu and Kashmir. As a consequence, the special status of Kashmir ceased to exist and it was made a part of India. This resulted in the cessation of the special privilege and autonomy that Kashmir enjoyed under Articles 370 and 35-A.

For centuries, Kashmiris were being systematically disempowered in social, political, cultural and economic realms but this process has accentuated after August 2019. Today, the Bharatiya Janata Party (BJP) continues the assault on Kashmiri culture and identity and imposes its Hindutva ideology on occupied Jammu and Kashmir. This onslaught on the Kashmiri people, and Muslims overall, can be witnessed in the Hindutva policies. The number of Muslims in bureaucracy has sharply declined. Culturally, Urdu is no more the sole official language of J&K. Moreover, the script of the Kashmiri language has been changed from Persian to Devanagari. Politically, the Kashmiri population is being marginalized and this is evident from the proposal of the Delimitation Commission to redistribute assembly and parliamentary seats. This proposal is clearly aimed at increasing seats of Hindu majority Jammu region to further disempower and marginalize the Muslim population.

Likewise, all kinds of efforts to change the demography of Kashmir are underway. These covert actions are in the guise of initiatives like Pundit colonies, shelter homes, sanik colonies, settlement of West Pakistan refugees, who are predominantly Hindu, in Samba and Kathua districts of Jammu and allotment of land to industrialists. Keeping in view India's policy on Kashmir it can be said that the phenomenon of settler colonialism is unmistakably visible. The indigenous population is being displaced and non-Kashmiris are being settled. Prior to August 5, 2019, Kashmir was a case of colonialism, but post-August 2019 Kashmir is a case of settler colonialism.

The situation in Indian occupied Kashmir is dire and effective measures are needed to ease the misery of the Kashmiri brethren. First and foremost, it is essential to project the significance of special status for a disputed territory and importance of keeping demography intact in J&K. Secondly, it must be acknowledged that the Kashmiris are fighting a war of liberation according to the UN guaranteed right to self-determination and vocally support their struggle as it is legitimate under international law. Additionally, enhanced role of the Kashmiris to project their cause is crucial. Besides, the human rights violations should be actively highlighted in order to bring the plight of Kashmiris in global limelight. Lastly, Pakistan should upgrade its diplomacy by backing it with necessary force.



Proceedings of the Meeting

Opening remarks by Ambassador Syed Abrar Hussain (retd), Vice Chairman IPS

I welcome you all to this gathering. This is the 20th meeting of the IPS' Working Group on Kashmir and we have discussed different aspects of the Kashmir issue in the previous 19 meetings. Through these discussions we try to add to our knowledge and come up with some recommendations. Then, these recommendations are shared among the relevant policy circles. Being a think tank, it is our duty to forward the right recommendations to the authorities concerned. It is an honor to have Iftikhar Gilani, Idrees Abbasi and Nasir Qadri as our speakers who will discuss specific topics that are on the agenda. I welcome them and all those who have joined us online. I would like to especially welcome Ghulam Muhammad Safi sahib on behalf of IPS as he ensured his presence despite ailing health. Thank you so much for joining today's session.

The proceedings of the meeting have been compiled in the form of questions and answers.

Q. What are the demographic patterns in Kashmir?

The population of Kashmir is not homogenous and is divided in a wide spectrum and in different geographical zones. The table below shows the region's population based on religion according to the J&K census data of 2011.

Jammu and Kashmir Religion Data (2011 Census)

Total Population	12,541,302
Muslims	8,567,485 (68.31%)
Sikhs	3,566,674 (28.43%)
Hindus	234,848 (1.87%)
Buddhists	112,584 (0.89%)

Geographic Division of J&K

J&K comprises Kashmir Valley, Jammu and Ladakh divisions. Since August 5, 2019, Ladakh is a separate centrally administered territory.

Kashmir Valley (Population)

<i>District</i>	<i>Total population</i>	<i>Hindus</i>	<i>%age</i>	<i>Muslims</i>	<i>%age</i>
Kupwara	870354	37128	4.26	823286	94.59%
Budgam	753745	10110	1.34%	736054	97.65%
Baramulla	1008039	30621	3.03%	959185	95.15%
Bandipora	392232	8439	2.15%	382006	97.39%
Srinagar	1236829	42540	3.43%	1177342	95.19%
Ganderbal	297446	5592	1.88%	290581	97.69%
Pulwama	560440	13840	2.46%	535159	95.48%
Shopian	266215	3116	1.17%	262263	98.51%
Anantnag	1078692	13180	1.22%	1057005	97.98%
Kulgam	424483	4247	1.05%	418076	98.49%
Total	6888475	168813	2.45%	6640957	96.4%

Division of Kashmir Valley

1. Maraz – South Kashmir
2. Yamraz – Central Kashmir
3. Kamraz – North Kashmir

Out of these, Maraz or South Kashmir is 100% ethnic Kashmiri-speaking region. That is why it often behaves in a distinct manner compared to the other two regions. In older times, these used to be three provinces of Kashmir Valley which had separate governors.

Jammu Division (Population)

Total Population	5,378,539
Hindus	3,364,616 (62.55%)
Muslims	1,799,232 (33.45%)

Jammu Division has three regions

1. Tawi
2. Pir Panchal
3. Chenab Valley

In 1941, Jammu had 69% Muslim population, which has now reduced to 33.45%. *The Times* of London, on August 10, 1948, reported that 237,000 Muslims were systematically exterminated by the forces of the Dogra state headed by the maharaja in person and aided by Hindus and Sikhs. Reportedly, as a result of the massacre, Muslims who were a majority (69%) in the Jammu region became a minority. Horace Alexander's article of January 16, 1948, in *The Spectator* puts the number of killed at 200,000. This genocide in Pakistan's backyard has remained out of sight.

Tawi Region

<i>District</i>	<i>Total Population</i>	<i>Hindus</i>	<i>%age</i>	<i>Muslims</i>	<i>%age</i>
Kathua	616435	540063	87.61%	64234	10.42%
Udhampur	554985	489044	88.11%	59771	10.76%
Reasi	314667	153896	48.90%	156275	49.66%
Jammu	1529958	1289240	84.26%	107489	7.02%
Samba	318898	275311	86.33%	22950	7.19%
Total	3334943	2747554	82.38%	410719	12.31%

Pir Panchal

<i>District</i>	<i>Total Population</i>	<i>Hindus</i>	<i>%age</i>	<i>Muslims</i>	<i>%age</i>
Poonch	476836	32604	6.83%	431279	90.44%
Rajouri	642415	221880	34.53%	402879	62.71%
<u>Total</u>	1119251	254484	22.73%	834158	74.52%

Chenab Valley

<i>District</i>	<i>Total Population</i>	<i>Hindus</i>	<i>%age</i>	<i>Muslims</i>	<i>%age</i>
Doda	409936	187621	45.76%	220614	53.81%
Ramban	283713	81026	28.55%	200516	70.67%
Kishtwar	230696	93931	40.71%	133225	57.74%
<u>Total</u>	924345	362578	39.22%	554355	59.97%

From the aforementioned data, one can deduce that Jammu Division is not homogenous. It comprises the following religious groups:

- Muslims – 33.45%
- SC/Dalits – 20%
- Brahmins – 23%
- Rajput/Dogras – 12%
- Vaish – 5.5%
- Sikhs – 6%

Ladakh Division (Population)

Total Population	274,289
Hindus	33,223 (12.11%)
Muslims	127,296 (46.40%)
Buddhists	108,761 (39.65%)

Ladakh (Leh and Kargil)

District/ Hill Council	Total Population	Hindus	%age	Muslims	%age	Buddhists	%age
Leh	133487	22882	17.14%	19057	14.27%	88635	66.39%
Kargil	140802	10341	7.34%	108239	76.87%	20126	14.29%
<u>Total</u>	274289	33223	12.11%	127296	46.40%	108761	39.65%

Q. What were the constitutional arrangements that limited the scope of the instrument of accession?

The people of J&K launched the war of liberation in 1947 against the despotic rule of the maharaja. The ruler then sought military help from India against the freedom fighters. The Indian government agreed to help, subject to signing of the instrument of accession by the maharaja. As claimed by India, the maharaja signed accession of the state on October 26, 1947, and troops landed in Srinagar on October 27. Scholars Josef Korbel, Alastair Lamb and Victoria Schofield have asserted the accession to be anti-dated. The accession was limited to the extent of three subjects that included defense, external affairs and communication.

Addition of Article 370

Article 370 was added to the Indian Constitution to give effect to the limited scope of the instrument of accession. Only two articles of the Indian Constitution (Article 1 and Article 370) were primarily made applicable to J&K. Other than these, Kashmir had its own flag, national anthem and constitution before 2019. This article was temporary and the president was competent to repeal it after concurrence of J&K constituent assembly. Even as per the Indian Constitution, the act of repealing this article unilaterally by the president is unconstitutional as the J&K Assembly did not concur with it. But due to political reasons, the Indian Supreme Court is hesitant in taking any firm decision in this regard.

Laws made by the Indian Parliament were not *ipso facto* applicable to J&K unless:

- Declared by president to correspond to matters specified in instrument of accession after consultation with state government
- President may, on the recommendation of state constituent assembly, declare that this article (370) ceased to be operative

The special status of this nature was not available to any other state because no other state has limited accession to India.

Protection of Demography Under Article 35-A

The Constitution Order 1954 (Application to Jammu and Kashmir only) was issued under Article 370. The order added Article 35-A to the Indian Constitution for keeping demography intact. Four benefits were granted to the Kashmiris that no Indian citizens in other states were given. Permanent resident term was used for state subjects. It protected state subject laws enacted since 1927. This concept came up in 1927 during the time of Dogra Raj. In that a classification was done and it defined what is meant by state subjects. These developments took place in the aftermath of a political movement that called for the protection of the rights of the people of Kashmir. They had grievances that jobs and other benefits were dominated by non-Kashmiris which resultantly jeopardized the economic rights of the people living in Kashmir. This movement culminated in Order 1-L/84 passed in 1927 and under this employment, public service and land rights were forbidden to non-Kashmiris. This law is also protected by the AJ&K interim constitution 1974, but in Gilgit-Baltistan it was not applied after 1974.

Special protection was given to residents of J&K about their rights and privileges for employment in state, acquisition of immovable property, settlement, scholarship, etc.

Importance of Special Status

- Autonomous status of J&K was compatible to the disputed nature and identity.
- J&K had its own constitution, flag, and national anthem with limited scope for India to interfere.
- Dual citizenship for Kashmiris was protected, i.e. nationality of J&K and India.
- Constitutional guarantee was available against change of demography, i.e. Muslim majority position of J&K.

Q. The Indian government has been attempting to change the demography of Kashmir. Explore the covert and overt efforts aimed at altering Kashmir's demography?

The following segment explores the Indian government's covert and overt efforts to change the demography of Kashmir in detail.

Covert Attempts for Demographic Change

- Pundit colonies

The BJP election manifesto was return of Kashmiri Pundits and their settlement in separate colonies. Kashmiris have no issue with the return of Pundits but they should return to homes where they belong rather than settling elsewhere.

- West Pakistan refugees

At the time of partition, 6,000 Hindu families (approximately 3 million people) from West Pakistan took refuge in Jammu. These refugees were settled in Samba and Kathua districts of Jammu. A number of attempts were made to give them state subject or permanent resident status. These refugees were given Indian nationality but not J&K nationality. However, after 2019 they are entitled to vote, etc.

- Sanik colonies

In April 2016, process for identification of land for the purpose of establishing cantonment for Indian soldiers was started by the governor through letters to DC Srinagar and DC Jammu. These former soldiers will be provided weapons. There is a plan to establish 10 colonies for former Indian soldiers.

- Shelters for homeless non-state subjects

The Indian government is planning to build shelters for homeless Indians under National Urban Livelihoods Mission. In Jammu and Kashmir, the state subjects own a certain stretch of land under the land reforms of 1976. So, there are no homeless state subjects in J&K. On the contrary, thousands of non-state subjects are living in J&K without any record. Thus, these non-state subjects will be settled in the valley under National Urban Livelihoods Mission.

- Allotment of land to Indian industrialists

The Indian government's new industrial policy aims to settle non-state subjects in the garb of investment. Under this policy, land is to be allotted for 90 years on lease. These attempts had not been successful due to Article 35-A of the Constitution that has been revoked by the Indian government.

Overt Attempts for Demographic Change

- Abrogation of special status of Kashmir

On August 5, 2019, the order of 1954 was replaced by the Constitution (Application to Jammu and Kashmir) Order, 2019. The special status under Article 370 including Article 35-A was taken from Kashmir. Henceforth, all provisions of the Indian Constitution will be applicable to J&K. All the special provisions like Kashmir's anthem, flag, etc. were abolished by this order. The governor is said to represent the government of J&K.

The J&K Reorganization Act, 2019 was issued and J&K state was divided into two union territories. Each union territory will be represented by a lieutenant governor instead of governor. Ladakh was made a union territory without legislature whereas J&K was made a union territory with legislature with two women members nominated by the lieutenant governor.

The legislative assembly was declared competent to legislate on state list except public order, police and subjects enumerated in the concurrent list. This was the first example of reducing the status of state into a union territory. The justification given for this is the demand of people of Ladakh and law and order/terrorism situation in J&K.

Q. Kashmiris are being systematically disempowered and this process has heightened after August 2019. What are the various ways in which this disempowerment is being proliferated?

This disempowerment, in fact, had begun with the annexation of Kashmir by the Mughal rulers in 1586. Since then, barring a few occasions, Kashmir has been ruled by governors and agents. Therefore, the region has suffered political, social, cultural, psychological and economic disempowerment for more than four centuries.

Systematic Marginalization of Kashmiris

Administrative marginalization

Decades of exogenous influence, active assimilation and reorientation of Kashmiris became faster after Kashmir was stripped of its the special status. Muslims were the constant victims of this marginalization. They are marginalized in every sphere of life including the administrative process. The number of Muslims in bureaucracy has decreased gradually. According to J&K government figures, out of 24 secretaries in the region, just five are Muslims, with only 12 Muslims out of 58 top-serving officials. In the second tier of bureaucracy, Muslims make up just 42%, 220 out of 523. Among police, only seven of the 66 top officers are local Muslims, despite making up 68.5% of the region's total population.

The Modi government plans to limit Muslim representation in the new assembly below 50%. This will forever end political domination of the Kashmir Valley and Muslims in the regional assembly. The BJP government is

Year	%Muslim
1946	80.00
1951	70.35
1961	68.30
1971	65.85
1981	64.19
1991	65.58*
2001	66.97*
2011	68.31*

*The figures are disputed by Hurriyat leaders

Official census reports show a drastic reduction in Muslim population in J&K



using the formula to reserve Muslim-dominated seats for Dalits and to lock out Muslims from the entire decision-making process.

Cultural marginalization

The Kashmiri culture is also under assault as India imposes its Hindutva ideology. Urdu is no more the sole official language of J&K. Moreover, the script of Kashmiri language has been changed from Persian to Devanagari. This step means that past 800 years of literature written in Kashmiri language will become redundant. The works of Shaikh Noor-Ud-Din Wali, Lal Ded, Habba Khatoon, Mahmood Gami, Moti Lal Saqi, Ragunath Kastoor will become incomprehensible.

There is even an attempt to change the Kashmiri cuisine. For example, Bollywood filmmaker Vivek Agnihotri has proposed a vegetarian Kashmiri wazwan.¹ It could be an innocuous statement but taking into account the food habits being imposed on people in India these days, it seems certain that the Kashmiris' multi-cuisine famed dishes are under the scanner.

Furthermore, a video has circulated on social media in which Muslims were forced to sing a bhajan (Hindu hymn) at a school in Kulgam and elsewhere. The so-called integration of the younger generation with the Hindutva vision of India is part of efforts to erode the region's Muslim identity.

Political marginalization

The proposal of the Delimitation Commission to redistribute assembly and parliamentary seats notified in the gazette on May 5, 2022, aims at increasing seats of Hindu majority Jammu region to further disempower and marginalize the Muslim population.

The Muslims have already been edged out of the bureaucracy. The only advantage they had was in the assembly or through politics and this is an attempt to disempower Muslims politically. Based on population distribution, Kashmir Division had 46 seats and Jammu Division 37 seats in the J&K Assembly.

Ironically, the Delimitation Commission has neither considered geography nor population as the criteria to demarcate electoral constituencies. The BJP members earlier demanded geography as criteria, but soon realized that Muslim majority regions of Jammu Division have more geography.

- **Recommendations of Delimitation Commission**

The commission has proposed increasing six seats for Jammu region and one seat for Kashmir Valley. As per the new arrangement, Kashmir Valley will have 47 seats and Jammu 43 seats; 16 seats are reserved, seven are for Dalits or Scheduled Castes, and nine for Gujjar-Bakarwal or Scheduled Tribes. Now the Kashmir Valley will have 146,000 voters per MLA and Jammu will have 125,000 voters per MLA. Discrimination is to such an extent that Pir Panchal, a Muslim majority region, will have 140,000 voters per MLA, and the Hindu belt will have 125,000 voters per MLA.

- **Defying principles of democracy**

The commission, in its communal award, has considered the weight of religion rather than numbers, thus defying the principles of democracy. One vote of Kashmir Valley, or Muslims, will be equal to 0.8 votes of Jammu (Hindus). In Pir Panchal, out of eight assembly seats, five have been reserved for Scheduled Tribes, or Gujjar/Bakarwals. The area has a considerable majority of Pahari-speaking population, who live in identical conditions with almost the same economic conditions. This is a clear attempt to create a permanent tension between these two communities.

¹ Mufti Islah, "Vivek Agnihotri Suggested A 'Vegetarian' Wazwan and Kashmiris Were Quick to React," *News 18*, January 14, 2021.



Other recommendations and their repercussions

The commission has also recommended to reserve two seats for Kashmiri Pundit migrants, who are living in J&K and elsewhere in India. One of those seats will be reserved for a Kashmiri Pundit woman. Seats will also be allocated for refugees who migrated in 1947 from areas now administered by Pakistan and are living in Haryana, Punjab, Delhi, and Jammu. The commission has not specified the number of seats reserved for this group.

There are 24 seats reserved for Pakistan-administered areas in the J&K Assembly which remain vacant. The BJP aims to fill those seats with refugees. So far, there are indications that four to five seats will be reserved for the refugees of 1947. That means in an assembly of 96 or 97, Jammu region will have 49 or 51 seats against 47 for Kashmir Valley, thus completing a circle of disempowerment. The commission has also changed the names of 13 seats (constituencies) and redrawn boundaries of 21 others that include Sopore. Zainagir, the birthplace of Kashmiri leader Syed Ali Shah Geelani, will no more be a part of Sopore as it has been merged with Rafiabad.

Parliamentary seats

For assembly seats, the commission has made a clear distinction between Jammu and the Kashmir Valley. But for parliamentary seats, the commission states that it will treat J&K as one unit. The number of Lok Sabha seats will continue to be five. The commission has merged South Kashmir or Maraz or Anantnag seat with Pir Panchal, i.e. Punch and Rajouri districts of Jammu region. This has clearly been done to dilute Kashmiri character of South Kashmir. Both regions are linked via Mughal Road which remains closed for six months. In case there are elections between October and May, the candidate will have to travel 600 km of hilly road via Ramban, Doda, Udhampur, and Jammu districts to reach other parts of the constituency.

Furthermore, there are instances elsewhere in India where Dalit and Scheduled Caste seats have been reserved in general category and Muslim majority seats in reserved category so that no Muslim is able to contest and win elections. It seems that the same formula is being applied to J&K for complete political disempowerment of local Muslims. This practice is being applied in other parts of India for years. In view of the already lower number of Muslims in state bureaucracy, the new scheme of demarking assembly constituencies will further decrease the representation of Muslims in political institutions, particularly from Kashmir.

Q. What are the main aspects of India's Kashmir policy?

Following are the main features of India's policy on Kashmir:

1. Reduce influence of Kashmir Valley and overall Muslim majority in the affairs of J&K. It has been felt that Muslim majority character and political power of valley-centric political parties was coming in the way of total integration of the region with India.
2. India wants to make it clear to Kashmiris that their voices are unheard at the international level.
3. For Pakistan, India wants to express that its plan for Kashmir has become more quixotic than ever. The blindfold optimism will lead to nothing.
4. All these aspects must be reported clearly and reiterated to Pakistan through media repeatedly.
5. Furthermore, India should test the raw nerve in Balochistan, Gilgit-Baltistan and Pakistan-administered Kashmir.
6. To achieve territorial dominance in Kashmir and to change the mindset of Pakistan and the Kashmiris.
7. To make the Kashmiris realize that their future is only with India.
8. To convey to pro-India or mainstream political parties like National Conference and People's Democratic Party to stop blackmailing India and desist from contesting elections on autonomy and self-rule agenda or giving any formula on Kashmir.
9. To isolate Pakistan and those supporting Pakistan internationally.

10. To offer China settlement of border dispute using the Dai Bingguo formula of “adhere to the path of peaceful development”.

Q. What is settler colonialism and how does it differ from colonialism?

Settler colonialism is defined as a system of oppression based on genocide and colonialism that aims to displace a population of a nation, often times indigenous people, and replace it with a new settler population. The same phenomenon can be seen in occupied Kashmir. The indigenous population is being displaced and non-Kashmiris are being settled.

There are various types of settler colonialism, including as apartheid, assimilation policies, biological warfare, and military occupation. The situation of Kashmir is viewed exclusively through the perspective of human rights. However, Indian expectations on the ground are considerably greater. Abrogation of Articles 370 and 35-A will hasten India’s “settler colonial ambition” in Kashmir, since India will be able to recruit non-Kashmiris to dilute the region’s largely Muslim population. The decades of military occupation in Kashmir will also be ignored.

The region was both culturally and topographically diverse, and it uniquely bordered both India and Pakistan. However, the BJP government has abolished the region's unique status. In addition, India developed the narrative in a way that attracts Hindus who are not from Kashmir. Through increased institutional support, the promotion of the Amarnath Yatra, a Hindu pilgrimage to an ice formation believed to symbolize Lord Shiva, has risen substantially over the years. This has been especially effective if the pilgrimage has been associated with national pride. In addition, by introducing Hindu temples, the Indian government has bolstered the notion that Kashmiri Muslims are outsiders. Kashmir's militarization is intended to make non-Kashmiri Hindus feel entitled to claim the territory as their own and to reimagine and recreate a Kashmiri identity that excludes the Muslim majority. In addition, the government is developing plans for the return of the Kashmiri Hindu diaspora to the region, proposing enclosed, strongly guarded colonies with their own amenities. This ahistorical image of a Kashmiri society devoid of Kashmiri Muslims highlights the state's commitment to eradicating Kashmiri characteristics that undermine its settler colonial narrative.

Settler colonialism and colonialism are distinct, yet intertwined, modes of oppression. Colonialism is the act of power and domination of one nation by acquiring or maintaining full or partial political control over another sovereign state. While colonizers say, “you, work for me”, settler colonizers say, “you, go away”. Still, at the core of both projects are migration and a relationship of ascendancy. It can be said that prior to August 5, 2019, Kashmir was a case of colonialism, now post August 5 Kashmir is a case of settler colonialism. Patrick Wolfe, who is recognized as an authority on this subject, defines settler colonialism as a system rather than historical event that perpetuates the erasure and destruction of native people as a precondition for settler colonialism and expropriation of lands and resources. This definition is fit for Palestine and Kashmir.

Q. Respond to India’s settler colonialism in Kashmir through the lens of international law.

There is no single law that specifically prohibits settler colonialism. The international community has failed to accept Kashmir as under occupation and thus refused to extend protection under *jus in bello*. Because where there is occupation, law of war (*jus in bello*) is applicable.

Kashmir is fighting a war of liberation for the UN guaranteed right to self-determination. The right to self-determination, which is people’s right to their own sovereignty, is arguably the most crucial element for release from settler colonial project. This is the starting point. As Kashmir is under settler colonialism, Pakistan has a strong argument that the UN has guaranteed right to self-determination for disputed territories. Accordingly, Kashmiris have a just right to fight for their self-determination.

Article 1 and Article 51 of the UN Charter refers to right to self-determination as a principle which has often been a source of controversy between the organization and some member states regarding self-determination as a mere standard of achievement toward member states. Over the years, however, the principle of self-determination has been the source of many UN General Assembly resolutions and gradually taken on the mantle of the second option, i.e. it is a legal right.



The main provisions of this charter are discussed in the following section. First, the subjugation of people to an alien force, dominion, and exploitation connotes the denial of fundamental rights which is contrary to the UN Charter and is an impediment to the promotion of world peace and cooperation. Second, armed actions or repressive measures of all kinds directed against dependent people ceases their right to independence, peacefully and freely. Furthermore, integrity of their national territory is also violated.

The **1964 Cairo Conference** says that the process of liberation is irresistible and irreversible. Colonized people may legitimately resort to arms to secure the full exercise to their right to self-determination and independence, if the colonial power persists in opposing their natural rights and aspirations.

The UNGA Resolutions of 1965 Onward

In **Resolution 21 of 1965**, self-determination was also classified as fundamental rights of all people in Article 1 of International Covenant on Civil and Political Rights (ICCPR). **Cultural and Economic Rights 1966** also enumerates that it is now a fundamental right. Following this, in **1970 a declaration of principle of international law concerning friendly relations and cooperation among states** was issued in accordance with the United Nations Charter. Another debate also took place on this regarding war of liberation and self-determination. This declaration is important with regard to the world community view on self-determination and war of liberation because the drafting committee worked on the basis of consensus and it was also adopted by the General Assembly with consensus. Thus, for the first time the western powers as a whole recognized self-determination as a legal right and its denial as violation of the UN Charter.

Article 3 Governing War of Liberation: The 1970 declaration states that the territory of a colony or other non-self-governing territory has, under the Charter, a status separate and distinct from the territory of state administration. As such, separate and distinct status under the Charter shall exist until the people of the colony or non-self-governing territory have exercised the right of self-determination.

The use of force was rendered legitimate in the same declaration. It clearly states that forcible action or force, which is prohibited by Article 2, paragraph 4 of the Charter, is not that used by people struggling for self-determination but that which is resorted to by colonial or alien government to deny them freedom. In the case of Kashmir, there is both foreign invasion and alien government. Scholars and historians like Alastair Lamb, Josef Korbel, and Victoria Schofield, all dispute the so-called document of accession. There was a foreign invasion and alien occupation. The same thing is being discussed in the 1970 declaration.

UNGA Resolution 3103, 1973: Basic Principles of the Legal Status of the Combatants Struggling Against Colonial and Alien Domination and Racist Regimes.

Point 3 of this resolution states that the struggles of the people against the colonial and alien domination and racist regimes are to be regarded as international armed conflicts. This has already been exhaustively communicated to the policy circles, government, all stakeholders, and national security advisor that rather than pursuing an apologetic stance, let the Kashmiris speak for themselves as they are in a state of war. Only then some positive outcome could be expected.

There are laws of peace and laws of war and **Geneva Conventions** are applicable in the state of war. When Pakistan does not accept that Kashmir is in a state of war, how will Geneva Conventions be applicable? So there are major flaws in the light of international law paradigm. Many other resolutions, for instance resolutions 27 and 87, and the diplomatic conferences for the reaffirmation of development of humanitarian law, are also applicable to armed conflicts.

In a nutshell, the solution to alien occupation and colonial domination is that you break the back of the colonizer. According to historians who have written extensively on this topic, “one settler is equal to one soldier”.

Q. Given the colonial origins of international laws, can we expect the principles laid out by International Law to protect against the settler colonial project?

International law has been attacked by Third World Approaches to International Law (TWAIL) and critical theorists for its dubious origins: colonialism. They are of the view that colonial roots of law cannot safeguard them from any settler colonial project. They serve their purposes in the name of law and civilizing mission. Consequently, there is no simple solution to this conundrum. Kashmiris, like many citizens of settler colonial states, live under a repressive home government. By using domestic narratives to skirt the protections and limitations of the law of occupation and jus in bello (the law of war), oppressor regimes can justify their actions by spinning narratives. The term “settler colonial states” was first coined by Professor Dunkin Kennedy, and was later used by Professor Nora Irkhat in reference to Palestine.²

As per these theorists engaging in legal work is the best action that Kashmiris can opt. Legal work entails an effort on the part of workers to mold a legal regime to their benefit at this stage the existing international principle described above. We are embedded in a weak enforcement regime with little binding power but with the legal work as Kennedy explains the worker can transform an initial apprehension of what the system of norms requires so that an apprehension of system correspond to extra juristic preferences of the interpretive work while there is no blue print for the decolonization of settler regime it must be crafted from the hands of oppressed Kashmiris by engaging in legal work. With the principle laid out above we can reinvigorate the struggle at the international stage organizing around these rights of indigeneity and more generally peoplehood. Advocates can better illuminate the parallels between Kashmir freedom movement and that of Palestinian.

There is no “blueprint” for the decolonization of a colonial rule. But one thing is certain: it must be produced by the oppressed. By engaging in “legal work”, Kashmiris might revitalize their struggle on the international stage. For instance, by organizing around these rights – of indigeneity and, more generally, peoplehood – advocates can shed greater light on the similarities between the Kashmiri pro-freedom movement and that of the Palestinians. As an added component, writing about the war criminals and bringing them to the attention of the world is also a part of this.

Q. For the Kashmiris, slavery to India is the greatest curse and they would do anything to get free from it. What is missing in Pakistan’s diplomatic efforts that has led to failure to ease the suffering of the Kashmiris?

Despite decades of Indian occupation, the international community and the parties concerned have failed to devise any peaceful strategy on Kashmir. The physical and mental oppression, assault on their identity and systematic expulsion of Kashmiris coupled with the international community’s negligence has put the region, and more specifically the people, under grave threat. Therefore, in order to assuage their suffering, every stakeholder has to act responsibly and play their due part.

It needs a multi-faceted approach. Foremost, the Kashmiris have to take their case forward. They are the true faces, the actual victims. Furthermore, Pakistan has to keep the issue alive. Over a period of time Pakistan has been emphasizing for third-party mediation by arguing that bilateral negotiation has failed to resolve the issue. Its articulation on Kashmir issue in various international forums also suggests lack of commitment on its part to resolve the issue bilaterally. The policy posture, which mostly aims at maligning India, does not talk of concrete solution other than reiterating its traditional position. Thus, Pakistan needs to revisit its Kashmir policy. Azad Kashmir is also another important entity, often sidelined. It has to be active and along with Pakistan, it has to take the Kashmir cause forward.

² Shaiba Rather, “Falling Through the Cracks: Kashmir’s Resistance Against Settler Colonialism and the Limits of International Law,” *Harvard International Law Journal*, Vol. 63 (2022), https://harvardilj.org/2022/02/falling-through-the-cracks-kashmirs-resistance-against-settler-colonialism-and-the-limits-of-international-law/#_ftn96



Moreover, the participation of the diaspora is crucial, and in the case of Kashmir, it is a staunch support. They encourage the movements by extending their political advocacy, fund-raising, international remittances, and aid to locals escaping from the parent state to foreign countries.

The ardent support of the Croatian diaspora for self-determination against the Serbs in the mid-1990s is an example of diasporic support for a freedom struggle. Currently, a significant portion of Kashmir's population resides in England, Germany, Canada, the United States, and Australia. It is estimated that 700,000 Kashmiris reside solely in England.

Ironically, Pakistan's loose directions and relenting efforts on Kashmir led to deviation and descent into various complexities. Neither the government's efforts complement each other nor is their direction in the same line. So, some solid steps are required to achieve the goal.

During the Iraq war when a no-fly zone was created and search was going on for WMDs, a journalist asked the then UN secretary-general Kofi Annan, "Why don't you give Iraq or diplomacy a chance? Why are you creating a no-fly zone? You always talk about giving diplomacy a chance." He replied: "You can do a lot with diplomacy, but you can do a lot more with diplomacy backed up with force." Likewise, Pakistan's diplomacy will only be effective if it is backed by a necessary force.

Thus, a well-coordinated effort with all stakeholders on board will surely create a greater impact at the international level.

Q. India is playing on multiple fronts and the most important thing is that it has been successful in managing the perception of its population as well as the international community. Why has Pakistan not been successful in managing the perception of local and global actors in its favor?

Perception management is an important concept through which a country protects and promotes its reputation, and there are more ways to do it nowadays than ever before. In the current age of data war and behavioral control through media, the greatest battle lies within the minds of people. The Pakistani state is not well equipped with the proper modes and methods of data warfare. And, therefore, it has failed to convince the regional and global actors. So, for Pakistan perception management is the need of the hour.

For Pakistan, there are many domestic and international challenges that have led to the failure of perception management. One of the factors is that the environment is not favorable for the country; it is favorable for the enemies. Pakistan has to mold its strategy as per the environment in which it has to operate. It is the government's responsibility to change the environment, especially when talking about Kashmir. Today, India has become more relevant to the world and there are reasons for that. It is the largest consumer market, with a fast growing middle class. Furthermore, it is an important partner to counter-balance China. Under such circumstances, navigating the international structure and then to take logical action has become crucial for Pakistan. Pakistan was a strategic partner previously and its geography has not changed. It is merely because of flawed policies that the enemy has become more relevant.

In the case of Kashmir, the first thing regarding perception management that needs to be corrected domestically is that Pakistan has to prepare a strong case. Pakistan has not been fully successful in convincing the world owing to its own weaknesses as well as political reasons and global dynamics. Therefore, narrative building is required. IPS, Kashmir Legal Forum and some other organizations are working on narrative building. A lot of work has been done after August 5, 2019, but all the organizations and think tanks should push a single narrative as it will strengthen the voice. So, by looking inward and managing the perception of the domestic actors will strengthen Pakistan's case at the international level and will have a positive impact.

A statement of US President Harry S. Truman highlights the importance of narrative and perception management; he said, "If you can't convince them, confuse them". There is so much confusion in Pakistani society and the leadership is playing a huge role in confusing the nation. The nation needs to come out of this confusion. In this regard, the role of an intellectual institution is very important; it should analyze the narrative and present it anew.

Q. Is Kashmir merely a human rights issue?

Pakistan has been rigorously promoting the narrative that Kashmir is a human rights issue without understanding the fact that it is merely one aspect of the greater Kashmir cause. Should the human rights situation improve in Kashmir someday, it does not imply that the freedom movement will end because the issue is about the right to self-determination of the people of Kashmir. It is a war of liberation according to international law. If the human rights narrative is not changed, Pakistanis would not be able to understand what is the actual issue.

As this is a liberation war, it means that the use of force is legitimate. This should be registered in people's minds. The government should use the human rights paradigm at times, but it should move beyond this paradigm. And if Pakistan is in a state of war there should be a proper strategy as per the circumstances. But saying that Pakistan does not believe in war and that this issue should be resolved peacefully is equivalent to killing its own narrative.

Q. What is the relevance of International Humanitarian Law for the Kashmir issue? Also suggest the way forward.

Article 49 of Fourth Geneva Convention states:

“The occupying power shall not deport or transfer parts of its own civilian population into the territory it occupies.”

Grant of nationality and domicile rights to Indians is explicit violation of this article of IHL. In case of violation of IHL, states can prosecute alleged offenders through domestic courts otherwise they can be prosecuted by international criminal tribunals.



The Way Forward

The following points can be considered for the way forward:

- Projecting the significance of special status for a disputed territory and importance of keeping demography intact in J&K
- Prosecution of Indian leadership under IHL
- Enhanced role of Kashmiris to project their cause because the voice of victim is more powerful than its advocates and supporters
- Project human rights violations in J&K
- Support Kashmir liberation movement as a just and legitimate struggle under international law



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