

JKCHR — Jammu and Kashmir Council for Human Rights

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
Established in 1984



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Item 5: The right of peoples to self-determination and its application to peoples under colonial or alien domination or foreign occupation

Statement made by Dr. Syed Nazir Gilani on behalf of Jammu and Kashmir Council for Human Rights (JKCHR) – a non governmental organization in special consultative status.

Mr. Chairman JKCHR congratulates you on your assumption of office as Chairperson of the 61st Session and we sincerely hope that your leadership would add to the institutional wisdom of the Commission.

UN Commission On Human Rights has continued to hear India and Pakistan directly or the people of Kashmir living under their respective controls and Kashmiris living outside the scope and influence of India and Pakistan on the question of self-determination. It is not surprising that some of the Kashmiri opinions and a few NGOs for the lack of an understanding of the jurisprudence of the Rights Movement of the Kashmiri people advance the sovereign interests of India and Pakistan. The genuine voice in the plural interests of the people of Kashmir has not been articulated in accordance with the history and jurisprudence of the Rights Movement.

It is a pity that when India and Pakistan emerged as two sovereign states in exercise of a Right to Self Determination in August 1947, the People of Jammu and Kashmir who were one people up until 27 October 1947, as a result of a Tribal invasion became a people divided under three administrations.

Government of India under the Instrument of Accession (disputed by the people) has taken upon a responsibility to protect the 'life', 'property' and 'honour' of the people of Jammu and Kashmir. This obligation extends to all the people living under the three administrations on either side of the Line Of Control.

Pakistan on its part keeps the semblance of supporting the Kashmiri Peoples right to self-determination and in this regard has continued to control and influence the people living under two administrations in Azad Kashmir and Gilgit and Baltistan (called Northern Areas).

A case for self determination needs a habitat which is free from (a) violence and (b) supplanted, private, commercialised, undemocratic, non-transparent and unaccountable political culture. The people as an immediate beginning need to have Popular Legislatures and Popular Governments based on a free transfer of will in an election in all the three administrations of Jammu and Kashmir.

JKCHR calls upon India and Pakistan to ensure that the people living in the three administrations under their respective controls are in no manner or shade treated less favourably than their own people.

It is important that UN Commission On Human Rights takes a full cognizance of the following facts:

1. History of 128 years old Rights Movement and the jurisprudence of UN resolutions on the question of the self determination of the people of Jammu and Kashmir
2. the jurisprudence of the distribution of the people under three administrations under the respective controls of India and Pakistan for the last 58 years.
3. obligations of India and Pakistan under their intra state agreements on Kashmir
4. bilateral agreements of India and Pakistan with the people of Kashmir

If we continue to allow the various variables operating under the respective influences of India and Pakistan it would be detrimental to the people's interests in Jammu and Kashmir.

Mr. Chairman there is an urgent need to differentiate between the three important variables embedded in the self-determination of the people of Jammu and Kashmir:

- (a) a title of the people to self-determination
- (b) and the two respective claims of India and Pakistan

It would be an error of judgement if we hold Peace and Security hostage to the question of Self-Determination or vice versa. As member nations of UN, Peace and Security remain a commanding obligation on India and Pakistan. While as, a Right of Self Determination of the people of Jammu and Kashmir remains an associate principle of UN Charter. It is high time that we revisit the full circle of wisdom and understand the jurisprudence of these two separate commanding obligations on India and Pakistan and the international community. Thank you Mr. Chairman.