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Universal Declaration of Human Rights

Indian action of 05 August 2019 Engagement between India-Pakistan and Kashmir

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Engagement is the instrument that civilised communities have used to secure peace and settle disputes. India and Pakistan are no exception to this rule. However, in this or any other engagement the dividends should be shared in equity and no party should be dispossessed or traded into a quid pro quo.

People of Jammu and Kashmir do not have a dispute with India and Pakistan. Unfortunately, their right to self-determination, which involves the question of accession as well, has resulted into the fracture of the State, division of the people and a life under five Governments and five constitutions. For some time we see that life in the Indian administered part of Jammu and Kashmir has degenerated into an occupation. Life is lived as a process and not as a quality.

People are waiting for a UN supervised vote to determine their future. India and Pakistan are committed to a UN template for the last 73 years. In the meanwhile, Government of India used around 900000 military personnel and committed an aggression against these people on 5 August 2019. Indian action has savaged all hopes and efforts to see through a Plebiscite in Kashmir.

Under these circumstances when India has wronged the people and the habitat of Jammu and Kashmir, there is a question as to how would India and Pakistan adjust their efforts for peace, without being iniquitous to the rights movement of the people of Kashmir. This report examines the merits of the 5 August 2019 Indian action and the efforts afoot to engage each other. Any effort that remains unfair and injurious to the interests of the people of Jammu and Kashmir, has no future. Let us examine the situation from the point of view of a Kashmiri and make an outside input for the two countries to consider.

On 5 August 2019 Government of India has conferred upon itself power and rights in regards to the part of the State of Jammu and Kashmir mandated to its ‘sacred trust’, to which it is not entitled and at the same time has deprived people of the territory of rights which they have been guaranteed. The provisional instrument of accession of 26 October 1947 and the UN template on Kashmir first created on 6 January 1948 (S/636) do not entitle India to decide the destiny of the people of Jammu and Kashmir at its discretion.

Indian action is a breach of the terms of the Instrument of Accession and under the UN template on Kashmir India has “loaded upon itself a very grave offence against the other party (in this case Pakistan), against the United Nations and against the right of the people of Jammu and Kashmir to self-determination”. The character of Instrument of Accession changed when India

surrendered the provisional accession at the UN Security Council on 15 January 1948, for a UN supervised Plebiscite. Indian action of 5 August 2019 in Kashmir has consequences at home, in the neighbourhood and at the international level.

Let us first examine how the terms of Accession ring fence India and the extent to which Government of India has attempted a lunge. The basis for Accession and Indian military admission into Kashmir is recorded as the Maharaja's plea to Governor General of India that "A grave emergency has arisen in my State and request immediate assistance of your Government". The admission of Indian army into Kashmir on 27.10.1947 was ring-fenced by clear terms of reference and a discipline as follows:

- 1.** Governor General of India Lord Mountbatten rendered it into writing that, "In consistence with their Policy that in the case of any State where the issue of accession has been the subject of dispute, the question of accession should be decided in accordance with the wishes of the people of the State, it is my Government's wish that as soon as law and order have been restored in Kashmir and her soil cleared of the invader the question of the State's accession should be settled by a reference to the people".
- 2.** Governor General of India Lord Mountbatten added that, "Meanwhile in response to your Highness's appeal for military aid action has been taken today to send troops of the Indian Army to Kashmir to help your own forces to defend your territory and to protect the lives, property and honour of your people".

It is clear that the Indian army has entered into Kashmir as a supplement and as a subordinate force to perform four duties. Five months and three weeks later Indian army became a subject of three restraints placed on it under UN Security Council Resolution of 21 April 1948 as follows:

- 1.** Para 2 (c) of UN Security Council Resolution 47 charges India with a duty that, "When the Indian forces have been reduced to the minimum strength...arrange in consultation with the Commission for the stationing of the remaining forces to be carried out in accordance with the following principles:
 - (i)** That the presence of troops should not afford any intimidation or appearance of intimidation to the inhabitants of the State;
 - (ii)** That as small a number as possible should be retained in forward areas;

- (iii) That any reserve of troops which may be included in the total strength should be located within their present base area.

We see that there is a restraint on the behaviour, number and stationing of Indian troops admitted into Kashmir. They have been identified only “for the support of the civil power in the maintenance of law and order.”

However, Netherlands has later challenged this exclusivity claimed by India. It made it clear at the 611th meeting of the Security Council held on 23 December 1952 that, “...there shall be, on the Pakistan side, the minimum number of forces required for the maintenance of law and order and of the cease-fire agreement, with due regard to the freedom of the plebiscite; on the Indian side, in addition to these two criteria, the stipulation “with due regard to the security of the State” must be taken into account – although that does not mean that India has the exclusive responsibility in this respect.”

Sheikh Abdullah mislead the UN Security Council by his speech on 5 February 1948, assuring the world community that “the Indian forces were there on a provisional basis and need not be feared because they would be supervised by the Commission of the UN Security Council. The condition of the attendant supervision of the Commission argued by Sheikh Abdullah is missing and has left the Indian army with no holds barred.

We have not only overlooked the matter but have very rarely discussed that India has committed itself to a final figure of its army in Kashmir and more importantly that “this force will have no supporting arms such as armour or artillery”. At the 608 meeting of the UN Security Council on 8 December 1952 Indian representative Mrs. Pandit conceded that, “...after careful examination and assessment by its experts, the Government of India had come to the conclusion that a minimum force of 28,000 was required to carry out its responsibilities.” Indian representative added, “However, on complete disbandment and disarmament of the Azad Kashmir forces, and as a further contribution towards a settlement, the Government of India is prepared to effect a further reduction of 7,000 to a figure of 21,000 which is absolute and irreducible minimum.... It should further be emphasised that this force will have no supporting arms such as armour or artillery.”

We have to admit that our non-interest or an ad hoc interest and an unreliable understanding of the UN template on Kashmir over the years encouraged India to step out of this fencing and heavily populate Kashmir with its army and security forces. According to OHCHR Reports of June 2018 and July 2019, Kashmir is the world’s most militarised human habitat. As far as my memory helps me, I have never ever heard any Kashmiri leader on either side of cease fire line, any one in Government of Azad Kashmir or GB, anyone in Government of Pakistan or anyone else highlighting the fact that Government of India has violated the ‘Good Behaviour’

certificate and ‘Surety’ given by Sheikh Abdullah in favour of the need to keep the Indian Army in Kashmir – pending a UN supervised vote.

Sheikh Abdullah made two important submissions at the 241st meeting of the UN Security Council on 5 February 1948. He said:

- (1)** “The all-important matter for us was our own liberation from the autocratic rule of the Prince, for which we were fighting and had been fighting for the past seventeen years. We had not achieved that goal, and therefore, I told my people that we must do so first. Then, as free men, we should have to decide where our interests lay. Being a frontier State, Kashmir has borders with both Pakistan and India, and there are advantages and disadvantages for the people of Kashmir attached to each of the three alternatives to which I have referred”.
- (2)** In regard to the question about keeping and trusting the Indian army in Kashmir he held out a character certificate in favour of Indian Army. He gave his reasons and said, ““However, what is the present situation? If I ask the Indian Army to clear out, how am I going to protect the people from the looting, arson, murder, and abduction with which they have been faced all these long months? What is the alternative? The Prime Minister of India long ago declared that the Government of India has no intention of keeping its army permanently stationed in Kashmir. He stated: "We are there only as long as the country is in turmoil. Once law and order are established, once the marauders and the tribesmen leave the country, we will withdraw our army. That pledge is already there.”
- (3)** “There need be no fear, since the Indian Army is there, that this army will interfere in the exercise of a free vote. After all, a commission of the Security Council will be there in order to watch. The Indian Army does not have to go into every village. It will be stationed at certain strategic points, so that in the event of danger from any border, the army will be there to protect that border. The army is there to curb disorders anywhere in the State; that is all. The army will not be in each and every village in order to watch each and every vote.” (Sheikh Abdullah at 241st meeting of the UN Security Council held on 5 February 1948).

Sheikh Abdullah’s character certificate in favour of Indian Army was attended upon by an important caveat of – “After all, a commission of the Security Council will be there in order to watch.” On 5 February 1948 it was a prevailing and convincing assurance. We find that Government of Pakistan for no good reasons except for the preparation to defend the Indian complaint and further to defend her counter claim against India failed to argue and contest the presence of Indian army. It failed to take a cue from the Canadian proposal made that in the

interim the Security Council should consider to provide a credible security to the People of Jammu and Kashmir. At the 235th Meeting of the Security Council held on 24 January 1948 there was an advice that we should afford security to the people of Jammu and Kashmir.

Canada (General McNaughton) at the 235th Meeting of the Security Council held on 24 January 1948 stated, “I speak at this time only to associate myself with the expressions of hope voiced by the representatives of the United Kingdom and United States that the discussions between the representative of India and Pakistan, under the auspices of the President of the Security Council, will continue so that a basis of agreement may be reached:

- (a)** to terminate the fighting;
- (b)** to afford security to the peoples of Jammu and Kashmir under some authority which will be recognised by everyone concerned as strictly impartial;
- (c)** and, most important, to provide for a Plebiscite of the people in which all of them will be permitted to express without fear or favour their wishes as to the future government of the State.” The option to afford security to the peoples of Jammu and Kashmir under some impartial authority was there.

There were opportunities to seek to disengage Indian army in Kashmir. Netherlands and United Kingdom came out forcefully against Indian claim that she had the exclusive responsibility of law and order in Kashmir. United Kingdom came out a stronger defence of equitable demilitarization. UK representative at the 606 meeting of the UN Security Council on 6 November 1952 in para 27 has found the Indian argument, as a condition not compatible with the idea of a ‘free plebiscite’. Sir Gladwyn Jebb said, “I have mentioned earlier that at no stage should demilitarization involve a threat to the cease-fire agreement. This would mean that the forces of each side of the cease-fire line should be, broadly speaking of the same kind. I should make it dear that the United Kingdom Government has never thought that the proposal to limit the forces on the Pakistan side of the cease-fire line to an armed civil force while leaving a military force on the other side of the cease-fire line was consistent with a really free plebiscite. I hope that representatives will join me in urging that the parties should resolve any differences they may still have on this point in the way which I have suggested.”

Sheikh Abdullah assurance to the UN Security Council in his speech on 5 February 1948, that “the Indian forces were there on a provisional basis and need not be feared because they would be supervised by the Commission of the UN Security Council was ill considered. It would have held ground if the Commission had assumed itself and the supervision of the Commission were not missing.

Pakistan updated itself in regard to UN template on Kashmir in January 1957. It proposed to send a UN Force into Kashmir. At the 761 meeting of UN SC held on 16 January 1957 Pakistan has proposed that “the Security Council should call upon the parties to withdraw all their troops from the State and should also ensure that the local forces which should be placed under the representative of the Security Council and left behind, are suitably reduced, if not disbanded altogether. The functions of protecting the State and ensuring internal security should be entrusted by the Council to a United Nations Force which should be introduced into the area at once. Let all other forces-Indian, Pakistani and local, be disbanded and non-Kashmiri nationals even in the police forces be removed from the State of Kashmir. It is further requested that an early and firm date be fixed for the induction into office of the Plebiscite Administrator. The situation may be saved even at this late stage-but only by these means. The most important of all is to take immediate steps to prevent India from taking the bit into its mouth and defying this august body.”

Pakistani proposal of sending a UN Force into Kashmir was endorsed by Australia, Cuba, United Kingdom and Northern Ireland and United States of America in Resolution S/3787 dated 14 February 1957. It said, “resolution, therefore, in taking note of the proposal of Pakistan, makes it quite clear that the use of the temporary force could only be considered within the framework of the resolutions in so far as it might contribute towards the achievement of demilitarization as envisaged in the resolutions of the United Nations Commission and towards the pacific settlement of the dispute, the use of such a force would deserve consideration.”

Government of India’s argument that sending a UN Force into Kashmir would be a violation of State sovereignty. The argument was vehemently dismissed by Philippines. At the 773 Meeting of Security Council held on 20 February 1957, Philippines (Mr. ROMULO) supported the Pakistan’s proposal and the Resolution brought by Australia, Cuba, United Kingdom and Northern Ireland and United States of America.

Philippines representative said, “I must emphasize that the sovereignty of India or of Pakistan is not involved in the proposal to send a United Nations force into the state of Jammu and Kashmir for a temporary and limited purpose. In the view of both the Council and the Commission, neither India nor Pakistan can bring into question the sovereignty of the State of Jammu and Kashmir. This, position is crystal clear in the assurances given by the Commission to the Governments of India and Pakistan and which forms the basis of their acceptance of the resolutions of 13 August 1948 and 5 January 1949 (see documents S/1100, annex 12, p.105, and S/1430/ Add.1, see also annex V, section A, of the documents submitted as annexes to the statement made by Mr. Krishna Menon [S/PV.762/Add.1].) Under the circumstances and

pending the holding of a plebiscite, neither India nor Pakistan can claim sovereignty over the State of Jammu and Kashmir.

There is a need to examine the merits of Indian action of 5 August 2019 in relation to Instrument of Accession and UN template on Kashmir. Instrument of Accession has been examined by the Division Bench of Jammu and Kashmir High Court comprising of Janki Nath Wazir CJ and Shahmiri J in the case Magher Singh v Principal Secretary J & K Government (May 1953).

Examining the impact of the Instrument of Accession the court has said that, “While the Maharaja was under the Paramountcy of the British Crown before the partition of India from 15.8.1947 under section 7, Indian Independence Act (10 & 11 Geo VI Ch. 30) passed by the British Parliament suzerainty of His Majesty over the Indian States lapsed and all functions exercisable by His Majesty towards the Jammu and Kashmir State or the ruler thereof and all powers, rights, authority or jurisdiction exercisable by His Majesty at that date in relation to the State of Jammu and Kashmir by treaty or otherwise lapsed and the State became an independent and sovereign State in the full sense of the International Law. Thus whatever limits to the sovereignty of His Highness in relation to matters coming within the sphere of paramountcy existed before 15.8.1947, these ceased to exist and His Highness became an uncontrolled and absolute sovereign even in relation to such spheres from that.”

The Division Bench continues to state “Now let us examine what was the effect of the execution of the Instrument of Accession by His Highness on 26.10.1947. This Instrument of Accession which was executed by the Ruler of the independent and sovereign State of Jammu and Kashmir was executed by him under Section 6, Government of India Act 1935, as adopted by the Indian (Provisional Constitution) Order, 1947. By executing this Instrument of Accession the Ruler on behalf of the State acceded to the Dominion of India with the object that certain authorities specified in Section 6 (1) (a) shall by virtue of the Instrument of Accession, but subject always to the terms thereof and for the purposes only of the Dominion, exercise in relation to the State such functions as would be vested in them by or under the Act. It is clear that, even if the Instrument of Accession had not made any specific reservations therein, the instrument read with Section 6, Government of India Act would leave the residuary sovereignty of the State entirely unaffected. But the Instrument of Accession does not leave this important matter to be determined by implication alone. Clause 8 of the Instrument of Accession runs as follows:

“8.Nothing in this Instrument affects the continuance of my sovereignty in and over the State, or, save as provided by or under this instrument, the exercise of any powers, authority & rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State”.

"In view of this clear and express reservation we see that no change whatsoever was affected in the residuary sovereignty of the State or the power of its Ruler so far as the succession of the State to the Dominion of India was concerned. It may not be out of place to mention here that on 5.3.1948 His Highness issued a proclamation by which he appointed a Cabinet to carry on the administration of the State. Sheikh Mohd Abdullah was appointed the Prime Minister and all other Ministers were appointed on his advice. The proclamation laid down that the Cabinet would act on the principle of joint responsibility."

The judgement has examined article 370 and held "A careful examination of this article would show that it in no way altered the basis of relationship between the State and the Union of India. The residuary sovereignty of the State and the powers of its Ruler in matters other than those specified in the Instrument of Accession remained unaffected.

The purpose for which Article 370 was incorporated in the Indian Constitution is clear from the language of the article itself. This is also apparent from the speech made by the prominent members of the Government of India who were responsible for drafting this article and piloting it through the Constituent Assembly. On 12.10.1949 this is what the late Sardar Patel, Deputy Leader of the Congress Party, Deputy Prime Minister and the Minister for States said in the Constituent Assembly on this subject: - "In view of the special problem with which the Jammu and Kashmir Government is faced, we have made special provision for the continuance of the relationship of the State with the Union on the existing basis".

The judgement has made it clear that the legislative power of the Union of India is "confined to the three subjects of defence, foreign affairs and communications but as a matter of fact these broad categories include a number of items which are listed in the Instrument of Accession".

Government of India has admitted this infirmity in its relationship with the State at the UN Security Council. It has stated at the 533rd meeting of the UN Security Council held on 1 March 1951 that, "There is a tendency in certain quarters to assume that this is just a dispute between India and Pakistan, and that the views of the lawful government of Kashmir need not be considered. This is a mistaken assumption. As I have already said, the authority of the Government of India over the Government of Kashmir is limited to certain subjects; outside that sphere, it can only advise and cannot impose any decision".

Jammu and Kashmir Government constituted a State Autonomy Committee comprising of nine members in 1996 (Order No. 1164-GAD dated 29.11.1996). It had to look into the question of residual sovereignty of the State and relationship with India. The report was published in July 2000.

It pointed out that, "...whereas the other Princely States signed the Instrument of Accession to India and subsequently the instrument of merger, the accession of J & K was limited only to

the areas of Defence, External Affairs and Communication. Uniquely, Jammu and Kashmir State is the only one to have negotiated the terms of its membership of the Union. Right till the Delhi Agreement of 1952, it did not accept any provisions of the Constitution of India other than those agreed in the Instrument of Accession and retained its autonomy”.

The findings in the Report of The State Autonomy Committee were a new and an additional challenge to the already existing challenges posed by the political alliance assembled under All Parties Hurriyat Conference, a militant resistance, agreements with the Government of Pakistan and the UN template.

Although India and Pakistan in their communications of 1 January 1948 and 15 January 1948 made under article 35 of UN Charter to the UN Security Council have admitted that they had failed to resolve the Jammu and Kashmir dispute through a bilateral engagement under article 33 of the UN Charter, yet at a later date started to turn away from UN SC and settled for a silent regime of quid pro quo.

It was difficult for the two countries to turn turtle on the agreements made with the people of the State and obligations accepted at the UN Security Council. No Government in Pakistan could afford to be seen dithering on the Kashmiris Right to self-determination or step back from her claim made in Document II submitted at the UN Security Council on 15 January 1948 that “the accession of the State to the Indian Dominion would be tantamount to signing of their death warrant.”

Pakistan has added “that India obtained the accession of the State of Jammu and Kashmir by fraud and violence and that large scale massacre and looting and atrocities on the Muslims of Jammu and Kashmir State have been perpetrated by the armed forces of the Maharajah of Jammu and Kashmir and the Indian Union and by the non-Muslim subjects of the Maharajah and of the Indian Union.”

India had ring fenced itself in her First Bilateral Pledge made on 27 October 1947 of making a reference to the People, in her written assurances given to Prime Minister of Britain Clement Attlee on 26 October 1947 and to Pakistan on 31 October 1947 and to UN on 15 January 1948, on making a reference to the people of Kashmir and on withdrawal of Indian forces. In addition to the terms of Accession and UN template on Kashmir, India faced a well organised political and militant resistance since the beginning of 1990. The strong Kashmiri diaspora became a reliable conduit of popular sentiment.

If the Government of Azad Kashmir had genuinely aligned itself with the political resistance started under APHC umbrella in the Indian occupied Kashmir in accordance with her duties under UNCIP Resolutions, under duties flowing from AJK Act 1970 and AJK Constitutional Act 1974 and if the Government of Pakistan had assumed fully in accordance with the Karachi

Agreement of 1949 and its assumed duties in Azad Kashmir under UNCIP Resolutions and obligations under UN template, India would have been out from the State by now.

Pakistan's interest under article 257 of the Constitution of Pakistan takes effect only after the liberation of the State. The pro accession school of politics has to address the question of relationship with Pakistan, that is, whether it would be like any other province of Pakistan or in the manner of a relationship that the State had confirmed with Pakistan under the Stand Still Agreement in August 1947 or attach itself as an autonomous federating unit.

Even before the Indian unlawful action of 5 August 2019, we have been misinterpreting the UN template on Kashmir and a confusion around 'fettered' and 'unfettered' right of selfdetermination has occupied our best minds. It was unnecessary and gave birth to an avoidable fracture in our ranks. This dissension and misunderstanding has helped neither Kashmir nor Pakistan. On the contrary it has gone into Indian interests and favour. Governments in Pakistan paid more attention to sentiment and little or no attention to the jurisprudence of the case.

We failed to build on the help rendered by China and other countries in this regard. China has highlighted the peculiar feature of Kashmir dispute at the 765th meeting of the UN Security Council held on 24 January 1957. China has pointed out that, "This dispute has another peculiar feature. From the very beginning, the Council began with an agreement between two parties. In fact, before the two parties directly concerned ever appeared before the Council, the two parties agreed that the plebiscite should be the answer. What did the Council do? The Council tried to build a solution on this prior agreement that the two parties had before they came to this Council. So the idea of a plebiscite was not imposed by the Council on the two parties."

China added that "In their public statements the statesmen of both countries, India and Pakistan, have stated that they would be willing to let the wishes of the people of Kashmir decide the future of that State. In this Council, in his very first statement in January 1948, the representative of India, Mr. Gopalaswami Ayyangar, had this to say: "The question of the future status of Kashmir vis-a-vis her neighbours and the world at large, and a further question, namely, whether she should withdraw from her accession to India, and either accede to Pakistan or remain independent, with a right to claim admission as a Member of the United Nations- all this we have recognized to be a matter for unfettered decision by the people of Kashmir, after normal life is restored to them." [227th meeting, p.29.]

We have erred to entertain a we false belief that Kashmir case has been discussed under Chapter VI and therefore the Resolutions were only recommendations and unenforceable. ICJ has addressed this issue in its Advisory Opinion on the International Status of South- West Africa

(NAMIBIA), in 1950. The Court gave its opinion in the "setting-up of the mandates system "two principles were considered to be of paramount importance: the principle of nonannexation and the principle that the well-being and development of such peoples form 'a sacred trust of civilization'" (I.C.J. Reports 1950, p. 131).

The Advisory Opinion rendered by ICJ in regard to Chapter VI1 of the Charter sates, "It has been contended that Article 25 of the Charter applies only to enforcement measures adopted under Chapter VI1 of the Charter. It is not possible to find in the Charter any support for this view. Article 25 is not confined to decisions in regard to enforcement action but applies to "the decisions of the Security Council" adopted in accordance with the Charter. Moreover, that Article is placed, not in Chapter VII, but immediately after Article 24 in that part of the Charter which deals with the functions and powers of the Security Council. If Article 25 had reference solely to decisions of the Security Council concerning enforcement action under Articles 41 and 42 of the Charter, that is to say, if it were only such decisions which had binding effect, then Article 25 would be superfluous, since this effect is secured by Articles 48 and 49 of the Charter."

The opinion adds that the "Resolution were adopted in conformity with the purposes and principles of the Charter and in accordance with its Articles 24 and 25. The decisions are consequently binding on all States Members of the United Nations, which are thus under obligation to accept and carry them out....Thus when the Security Council adopts a decision under Article 25 in accordance with the Charter, it is for member States to comply with that decision, including those members of the Security Council which voted against it and those Members of the United Nations who are not members of the Council. To hold otherwise would be to deprive this principal organ of its essential functions and powers under the Charter. The decisions are consequently binding on all States Members of the United Nations, which are thus under obligation to accept and carry them out."

We have failed to assert for various reliefs guaranteed in the UNCIP Resolutions and UN Security Council Resolutions and did not work under the available jurisprudence to keep on strengthening the internal self-determination and keep on working for external selfdetermination. The internal self-determination was flagged as 'sky is the limit' by India in February 1994.

We have not agitated the various variables and various elements of Kashmir case. There has been no research on the jurisprudence of Kashmir case and the Azad Kashmir Government

established on 4th October 1947 and re-constituted on 24 October 1947, disengaged itself from its constitutional duty to work around Plebiscite as provided since the introduction of Act 1970. Although it is a shared duty between the Government of Azad Kashmir and the Government of Pakistan, the Act 1974 empowers the Azad Kashmir Government with an exclusive responsibility towards work on “Plebiscite”.

The main strength of Kashmir case has been highlighted by China. United Kingdom has introduced Kashmir at the 284th meeting of UN Security Council held on 17 April 1948 as “the greatest and gravest single issue in international affairs”. China has submitted the Articles of Settlement at the UN Security Council for the resolution of Kashmir Dispute and has highlighted a ‘peculiar feature’ of Kashmir Dispute. The other strengths of the Kashmir case introduced by various countries are:

1. United Kingdom

“The ultimate objective of a fair and impartial plebiscite under the auspices of the United Nationshas been written into solemn agreements by the two Governments and endorsed by this Security Council. These agreements have been affirmed and reaffirmed by the two governments many times.” (UK representative Sir Gladwyn Jebb at the 606 meeting of the UN Security Council on 6 November 1952).

2. United States of America

“The Security Council will, ‘always welcome any agreement which the parties themselves can reach on any basis which will settle the dispute, provided of course that, that basis is consistent with the principles of the Charter of the United Nations. Security Council had a ‘positive duty’ and ‘unless the parties are able to agree upon some other solution, the solution which was recommended by the Security Council should prevail.’” (United States of America at the 768th meeting of the UN Security Council held on 15 February 1957).

3. France

“Resolutions of 13 August 1948 and 5 January, to which we must always return because they won the express agreement of both India and Pakistan. If the parties are unable to reach agreement on the plan submitted to them, provision is made for arbitration, and, to make assurance doubly sure, arbitration is to be carried out by an arbitrator or panel of arbitrators appointed not by a political body but by the President of International Court of Justice.” (France at the 539th meeting of the UN Security Council).

4. Netherlands

“The lack of agreement therefore, does not concern this right of self-determination. It concerns the ways and means and procedures to establish the conditions for a fair expression of the will of the people of the State of Jammu and Kashmir who want to make their choice free from any kind of fear or intimidation.” (Netherlands 566th Meeting of UN Security Council held on 10 November 1951)

5. Netherlands

“The issue should, in the last analysis, be decided by the people of the State of Jammu and Kashmir themselves, and not the rulers heretofore placed over them, and that no prearranged political organization in any part of the State concerned, and set up under the auspices of authorities which had already made their, choice should interfere with their complete freedom of choice.” (Netherlands 566th meeting of UN Security Council held on 10 November 1951)

6. Netherlands

“Convening of a Constituent Assembly for the purpose of determining “the future shape and affiliation of the State of Jammu and Kashmir” could not constitute a disposition of the State in accordance with principle of self-determination through the democratic methods of a free and impartial plebiscite set up under the auspices of the United Nations.” (Netherland 566th meeting of UN Security Council held on 10 November 1951)

7. United States of America

“Mr. Graham’s report is outstanding for one thing alone: it carefully states the issue. The issue is to find an agreed – and I emphasise the word “agreed” – and not an imposed solution for three questions: “first a definite period for demilitarization; secondly the scope of demilitarization and quantum of forces that will remain at the end of the period of demilitarization; thirdly, the day for the formal induction into office of the Plebiscite Administrator”. (USA 571 Meeting of Security Council held on 30 January 1952).

8. Argentina

“This matter having been referred to the Security Council, the Council is perfectly free to decide as it thinks fit, on the sole condition that it acts within the framework of the Charter. This is the legal point of view. But even from the factual point of view, there can be no other solution. Both the Maharaja, as absolute monarch of Kashmir and the government or governments established by him have already shown themselves biased

in favour of one of the parties and cannot therefore preside over a free plebiscite. Even if they could, they should not do so, because the opposing party would not recognize the fairness of this plebiscite, even if it had been fairly conducted. It is worth while noting that, at this stage of the evolution of humanity, it is not possible, at least as far as the United Nations are concerned, to accept a regime of absolute monarchy. Non-Self-Governing Territories report to the Trusteeship Council through the agency of the Administering Authorities upon a certain number of their activities. (Argentina 240 Meeting of Security Council held on 4 February 1948).

9. Argentina

“The Governments of India and Pakistan should hasten to obtain from the Indian princes, whom they have joined to themselves, an assurance that they will grant representation rights to the peoples over whom they rule. There are, if I remember rightly, 562 such princes and they rule over some 75 million human beings, whose living and working conditions and cultural and economic advancement cannot be a matter of indifference to us. (Argentina 240 Meeting of Security Council held on 4 February 1948).

10. Argentina

Now that the disputes between India and Pakistan have been submitted to the jurisdiction of the Security Council, the delegation of Argentina will not be able to vote in favour of any draft resolution which does not leave the solution of the problem to be decided by a plebiscite, freely prepared, freely conducted and freely scrutinized under the authority of the Security Council. (Argentina 240 Meeting of Security Council held on 4 February 1948).

11. United States of America

United States of America at the 607 meeting of the UN Security Council, held on 5 December 1952, introduced five principles for a settlement. US representative submitted that “the principles on which we are trying to proceed to assist the parties to carry out their Charter obligations are:

- (i)** In the first place, a lasting political settlement must be an agreed settlement.
- (ii)** Secondly, the Security Council will, we feel, always welcome any agreement which the parties themselves can reach on any basis which will settle the dispute, provided

of course that, that basis is consistent with the principles of the Charter of the United Nations.

- (iii) Thirdly, we feel that it is the role of the Security Council to assist the parties in seeking to reach agreement. In this case the Security Council has made available the services of Mr. Frank Graham as the United Nations Representative.
- (iv) Fourthly, we believe that agreement most frequently is reached step by step through negotiation and that negotiation involves an element of compromise.
- (v) Finally, we believe that the Security Council should consider with care the views and the recommendations of its representative and indicate to him and to the parties its views on the position he has taken.

Whatever Indian Government did, on 5 August 2019, is unlawful and has no merit. It has wronged the people and the integrity of the Status of the State. We have remained amoebic in finding a proportionate and pointed response, in seeking to challenge and vacate the Indian action. It required an effective response at various levels and we are running late. The principal and reliable option is to make a well prepared and uninterrupted reference to UN template.

On 6 January 1948 President of the UN Security Council has served a notice to both India and Pakistan “to refrain from any step incompatible with the Charter and liable to result in an aggravation of the situation, thereby rendering more difficult any action by the Security Council.” India and Pakistan have submitted themselves to the jurisdiction of UN Charter in their written confirmation of 9 January and 8 January 1948 respectively.

UN Security Council Resolution 47 of 21 April 1948, charges Government of India to perform 13 duties. Most important of these duties are in Para 2 imposing a discipline on the behaviour, number and location of Indian forces in Kashmir. Paras 12, 13 and 14 deal with rights, in particular, freedom of press, speech, and assembly and freedom of travel in the State, including freedom of lawful entry and exit; withdrawal of Indian nationals, release of political prisoners, right to return, guarantee against victimization and protection of minorities.

UN Security Council Resolution 91 of 30 March 1951 has cautioned the J & K Government and Government of India 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.” The

Resolutions also warns the Jammu and Kashmir National Conference that convening of “a constituent assembly for the purpose of determining 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.” The Resolution identifies the non-representative character of this assembly.

Under Article 24 (1) of the Charter “In order to pursue prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility of the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf. Under Article 24 (2) of the Charter “In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII and XII.

India and Pakistan both have admitted their failure to engage each other under Article 33 of UN Charter and have invoked Article 35 of UN Charter in their complaints of 01 January and 15 January 1948 respectively, bringing to the attention of UN Security Council a situation – “likely to endanger the maintenance of international peace and security.”

Core issue

Indian has admitted that Kashmir was the core issue between the two countries. Indian representative Gopalaswami Ayyangar made a statement at the 230th Meeting of UN Security Council on 20 January and said, ““We hope to be able to convince the Security Council that once we have dealt with the Kashmir question, there will probably not be anything of substance which will divide India and Pakistan to the extent of endangering international peace and security”.

Indian has made a truckload of admissions at the UN Security Council. The most important of these admissions are:

1. Indian representative highlighted the human aspect of the problem and said, “My intention also is to emphasize the human aspect of the problem. The people of Kashmir are not mere chattels to be disposed of according to a rigid formula; their future must be decided in their own interests and in accordance with their own desires. The population of the State is gradually settling down to some measure of peace and order. Any neutral visitor to Kashmir - and there are many such during the tourist season - can

satisfy himself as to the facts of the situation. (India 533rd Meeting of Security Council held on 01 March 1951)

2. At the 533rd Meeting of Security Council held on 01 March 1951 India has admitted in para 43 that “There is a tendency in certain quarters to assume that this is just a dispute between India and Pakistan, and that the views of the lawful government of Kashmir need not be considered. This is a mistaken assumption. As I have already said, the authority of the Government of India over the Government of Kashmir is limited to certain subjects; outside that sphere, it can only advise and cannot impose any decision.”
3. Indian representative at the 533rd Meeting of the Security Council held on 01 March 1951 reiterated that “On 27 October 1947, Lord Mountbatten, then Governor-General of India, accepted the instrument. The execution of the instrument by the Ruler, coupled with its acceptance by the Governor-General, completed the legal requirements of accession. Lord Mountbatten, however, wrote to the Ruler expressing the Government of India’s wish that when law and order had been restored and the soil of the State cleared of the invader, the question of accession should be settled by a reference to the people. Thus India voluntarily imposed upon itself the obligation, when normal conditions were restored, to give the people the right to decide whether they would remain in India or not.”
4. Sheikh Abdullah also made important submissions at the UN Security Council. Although he appeared as a member of Indian delegation yet he maintained his identity as the citizen of Jammu and Kashmir. In his address made to the 241st meeting of the UN Security Council held on 5 February 1948 he said “After all, we are not logs of wood, we are not dolls. We must have an opinion one way or the other. The people of Kashmir are either in favour of Pakistan or in favour of India”.
5. Sheikh Abdullah accorded a priority to liberation from autocratic rule and then decide as free people. He said, “The all-important matter for us was our own liberation from the autocratic rule of the Prince, for which we were fighting and had been fighting for the past seventeen years. We had not achieved that goal, and therefore, I told my people that we must do so first. Then, as free men, we should have to decide where our interests lay. Being a frontier State, Kashmir has borders with both Pakistan and India, and there are advantages and disadvantages for the people of Kashmir attached to each of the three alternatives to which I have referred”. (Sheikh Abdullah at 241st meeting of the UN Security Council held on 5 February 1948).

6. Sheikh Abdullah considered that freedom preceded any accession. He said, "Naturally, as I have indicated, we could not decide this all important issue before achieving our liberation, and our slogan became "Freedom before accession". (Sheikh Abdullah at 241st meeting of the UN Security Council held on 5 February 1948).
7. It is important to point out that Sheikh Abdullah did not regard accession with India final. He said, "It is not at all disputed that we must have a plebiscite and that the accession must be ratified by the people of Kashmir, freely and without any pressure on this or that side. That much is conceded; there is no dispute about it. The dispute arises when it is suggested that, in order to have the free vote, the administration must be changed. To that suggestion we say, "No". (Sheikh Abdullah at 241st meeting of the UN Security Council held on 5 February 1948).
8. As a leader Sheikh Abdullah invited all camps to join. It may not have been a relishing choice of Indian camp but Sheikh Abdullah said, "It will be my duty to request my brothers, who are in a different camp at this time, to come lend me support. After all, they are my own kith and kin. We have suffered together; we have no quarrel with them. I shall tell them: "Come on; it is my country; it is your country. I have been asked to administer the State. Are you prepared to lend me support? It is for me to make the administration successful; it is for me to make the administration look impartial". (Sheikh Abdullah at 241st meeting of the UN Security Council held on 5 February 1948).
9. "However, what is the present situation? If I ask the Indian Army to clear out, how am I going to protect the people from the looting, arson, murder, and abduction with which they have been faced all these long months? What is the alternative? The Prime Minister of India long ago declared that the Government of India has no intention of keeping its army permanently stationed in Kashmir. He stated: "We are there only as long as the country is in turmoil. Once law and order are established, once the marauders and the tribesmen leave the country, we will withdraw our army," That pledge is already there. (Sheikh Abdullah at 241st meeting of the UN Security Council held on 5 February 1948).

The Jurisprudence of Kashmir Case embeds the "The recognition of the rights and dignity, the security and the self-determination of these historic people of Jammu and Kashmir, under the auspices of the United Nations." It has been enriched and perfected by the contributions made by Argentina, Australia, Belgium, Canada, China, Columbia, Cuba, France, Netherlands, Norway, Philippines, Syria, UK and USA, during the debates on "the Jammu and Kashmir

Situation” and later “the India-Pakistan Question” at the UN Security Council. United Kingdom and United States of America have even considered taking the matter to International Court of Justice in November 1947 and in August 1951.

The Office of South Asian Affairs and Office of United Nations Political and Security Affairs of the United States prepared a document on 27 August 1951, titled, “Kashmir Dispute: Future Action” intended to challenge the merits of Indian claim of accession, in the International Court of Justice. United States put the process on hold, fearing that it might take longer and relied on a quicker result from the Security Council. Prime Minister Clement Attlee had also proposed a reference to ICJ in his telegram of 22 November 1947, addressed to Prime Minister of Pakistan.

The people of Jammu and Kashmir are known to the United Nations for the last 72 years, as ‘historic’ people and people of ‘legend’. (Para 60, 570th Meeting of UN Security Council held on 17 January 1952). UN Secretary General visited Srinagar for two days in March 1959 to assess the political and economic situation of the people. UNCIP delegation met the leadership in Azad Kashmir in September 1948.

A telegram sent by the Indian Mission in Washington to Ministry of External affairs in Delhi in March 1950 reveals that Admiral Chester Nimitz, UN Plebiscite Administrator for Kashmir, was working on electoral rolls and intended to complete Plebiscite by 1st November 1950. United Kingdom had earlier proposed that the Plebiscite should be held by October 1948. It never happened and People of Kashmir are still waiting for a UN supervised Plebiscite.

United States of America has argued that the Security Council will, “always welcome any agreement which the parties themselves can reach on any basis which will settle the dispute, provided of course that, that basis is consistent with the principles of the Charter of the United Nations.” US has pointed out that Security Council had a ‘positive duty’ and “unless the parties are able to agree upon some other solution, the solution which was recommended by the Security Council should prevail.”

There is an urgent need that the stake holders sit to reappraise the current situation. We need to examine the manner in which New Delhi manipulated the fall of PDP-BJP government and unlawfully dissolved the J & K assembly. There is a need to examine and highlight the mala fides of causing a fault in the Governors’ fax machine and not entertaining the claims made by PDP and JKPC that each one was able to show a majority for the formation of the Government. The imposition of the Governor’s Rule and later the President’s Rule was done to push through laws of Indian interest and choice in the absence of an elected Kashmir Government.

A line of communication needs to be established at some level and seek details, on the failure of PDP and JKPC in taking a legal course against the mala fides of the Governor's office to cause fault in the fax machine. It would also be helpful to establish a contact with all the parties who have signed the Gupkar Declaration on 4 August 2019 and in particular have agreed to:

- 1.** That all the parties would be united in their resolve to protect and defend identity, autonomy and special status of the JK State against all attacks and onslaughts whatsoever
- 2.** The modification, abrogation of articles 35A, 370, trifurcation of the State or unconstitutional delimitation would be an aggression against the people of Jammu, Kashmir and Ladakh.

It is for the first time in the history of Kashmir that all main pro-India political parties had a premonition that India might commit aggression against the people of Jammu, Kashmir and Ladakh. Indian Government as anticipated in item 2 of the Gupkar Declaration, committed an "aggression against the people of Jammu, Kashmir and Ladakh" and placed leaders under detention and the State under curfew – longest ever witnessed in the history of Kashmir.

Gupkar Declaration is a new political dissent against Indian rule in Kashmir. It is for the first time that pro-India leadership, which has served Indian interest and co-operated with New Delhi, to control the popular dissent through punishment, has tasted punishment and loss of liberty. These political parties need to be called out on the merits and claims of Gupkar Declaration. The representatives of the political parties have resolved "to remain together and stand united in their struggle for safeguarding the identity, autonomy and special status of the State." Every challenge to Indian re-occupation of the part of the State needs to be examined, monitored and supported.

The 14 countries named above in particular for their interest and contribution to Kashmir case and other member nations of UN in general need to be reminded of their historic involvement and briefed on the situation in Indian occupied part of Jammu and Kashmir. Indian "grave offence" against the three parties, namely Pakistan, United Nations and against the right of the people of Jammu and Kashmir to self-determination, needs to be formally raised with these 14 countries and with other member States of UN. There is a UN template on Kashmir.

There is nothing impossible, if one gives it a go. We have no choice but to ring fence India by using the UN Charter and her obligations as a "responsible democracy". India has continued with its non-compliance in Kashmir and on 5 August 2019 it has aggressed against a people given into its 'sacred charge' by the UN. The bona fides of India as a member state of UN need to be examined. There is a genuine cause to seek the reprimand of India.

Articles 3, 4, 5 and 6 of UN Charter describe the manner in which a country could seek membership of the United Nations and the organization could suspend a country from the exercise of the rights and privileges of membership or for a persistent violation of the Principles contained in the Charter, could be expelled from the UN by the General Assembly upon the recommendation of the Security Council. The interpretation of membership and expulsion is explicit and simple.

India may have been a legitimate candidate for the non-permanent seat of UN SC under rule 142 of Rules of Procedure of the General Assembly, but it did not qualify as a candidate under Rule 143, which reads “In the election of non-permanent members of the Security Council, due regard shall, in accordance with Article 23, paragraph 1, of the Charter, be specially paid, in the first instance, to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.”

India attracted a disqualification and deserved a challenge under rule 143 of rules of procedure. Pakistan had three UN reports against Indian Human Rights Record in its administered (now re-occupied) part. Pakistan should have engaged with 55-member Asia-Pacific Group and China in particular well ahead of election date and explained to them, the Indian military action in its administered part of Kashmir. It was and remains a clear violation of UN Security Council Resolution of 30 March 1951 and UN SC caution of 6 January 1948. Pakistan has missed on a full swing people’s diplomacy against India since 6 August 2019.

It has been a mistake:

1. First mistake to accept to suspend all discussions on Kashmir at the UN Security Council for 32 years from 5 November 1965 to 15 September 1996.
2. Second grave mistake was not to raise Kashmir at the UN Security Council during the Pakistan’s Presidency of Security Council in January 2013. Each one of us today and our future generations would be baffled to note that Pakistan during its Presidency of UN Security Council in January 2013 (Document S/2013/248 dated 26 April 2013) held 16 meetings and 18 consultations and discussed a long list of issues except Jammu and Kashmir. Pakistan skipped to discharge its duties towards the right of selfdetermination of the people of Jammu and Kashmir and do justice to the duties assumed in Azad Kashmir under UNCIP Resolutions. Kashmir situation was not included in the long list of other issues discussed during the month.
3. Third mistake was to allow India a berth at the UN Security Council for 2 years, where India would do all possible to wrong the Kashmir case. The concession does not

reconcile with a genuine Kashmir policy or with any heartfelt anguish on Indian action of 5 August 2019. People of Kashmir are aggrieved that a country which has aggressed against them, has reoccupied their habitat and is holding them at a gun point from 5 August 2019, should have been allowed an uncontested election, to a body, where she would hurt the cause of Kashmir.

It is high time to critically appreciate that Pakistan:

1. As a member nation of UN
2. Elected as non-permanent member of UN SC many times
3. Has held presidency of UN Security Council
4. Is a party to Kashmir dispute....., takes stock of the fact whether it has been successfully matching its political, moral and diplomatic support with the political, militant and rights struggle of the people of Indian occupied Kashmir. The closure of Kashmir Awareness Bureau in Delhi, collapse of the three Kashmir Centres, failure of Hurriyat to prosecute its constitutional discipline and its failure to prevail during dialogue with India, and failure of militancy (lack of military science) are serious issues. These discipline have accrued a liability and remain accountable to the people of Kashmir.

It is an irony that Politicians and Militants have changed their horse's mid-stream. They have been driven into associations, NGOs, businesses establishments and many have been sucked into power politics on both sides of the cease fire line.

We also find that Government of Azad Kashmir has not done justice to the two principal aims of its formation envisaged in the constitution. It has continued to skip on its constitutional duty towards Plebiscite, as required under Azad Jammu and Kashmir Government Act 1970 and Azad Jammu and Kashmir Interim Constitution Act 1974.

The Government of Azad Jammu and Kashmir is not late by a day, a week, a month, or one year but a continued avoidance of its duties for the last 51 years ring harsh bells. Azad Kashmir Government should not have failed in taking well measured steps and making regular inputs and giving expert advice to the Government of Pakistan in the context of Karachi agreement, Act 1974 and towards other duties assumed under UNCIP Resolutions and under UN template on Kashmir.

It has lost its conscience and the constitutional brief. Government of Pakistan has to share the failure and part of the blame. Azad Kashmir Government has its own considerations, which force it to keep the officers loaned from Pakistan in good humour by volunteering to pay them,

over and above salaries and huge perks – a new kind of perks called “Executive Allowances”. It makes these lent officers as Gulliver’s in the Lilliput.

5. That 59 years after the second UN Secretary General Dag Hammarskjöld’s visit to Srinagar in March 1959, UN High Commissioner for Human Rights produced a comprehensive report on the “Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018 and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan” in June 2018.

The draft report was sent to Government of India and Government of Pakistan on 12 June 2019 to “provide any factual comments by 17 June”. The Foreign Office of the Government of Pakistan failed to spot that the report was titled as “Indian State of Jammu and Kashmir” and the phrase was repeated in paragraphs 4, 6, 9, 18, 46, 52, 70 and 132. Such an aggravated oversight is unhelpful. Foreign Office alone could not be blamed or held to account. There are many others who have failed in their duty to care in this regard. We have tried to scapegoat people in August 1996, when Kashmir lost its 48 year old regularity on the UN Security Council agenda.

We have to use the recommendations made to India and Pakistan and work for the establishment of a commission of inquiry to conduct a comprehensive independent international investigation into allegations of human rights violations in Kashmir. Although all the 17 recommendations made to India are important to rehabilitate the human rights regime, yet the recommendation (6) to provide reparations and rehabilitation to all individuals injured and the family of those killed in the context of security operations and recommendation (17) to fully respect the right of self-determination of the people of Kashmir as protected under international law needed an uninterrupted follow up. UN reports have apportioned serious liabilities to India. These reports are FIR’s against India.

Under the UN template there is an urgent need to work on the 13 duties that Indian Government is required to carry out under UN Resolution of 21 April 1948. Bringing Indian army within the discipline set out in para 2 (c) (i) (ii) and (iii) is one of these duties. Other important duties are:

1. Para 6

The Government of India should undertake to ensure that the Government of the State invite the major political groups to designate responsible representatives to share equitably and fully in the conduct of the administration at ministerial level while the plebiscite is being prepared and carried out.

2. Para 12

The Government of India should themselves and through the Government of the State declare and make known that all subjects of the State of Jammu and Kashmir, regardless of creed, caste or party, will be safe and free in expressing their views and in voting on the question of the accession of the State and that there will be freedom of the press, speech and assembly and freedom of travel in the State, including freedom of lawful entry and exit.

3. Para 13

The Government of India should use and should ensure that the Government of the State also use their best endeavours to effect the withdrawal from the State of all Indian nationals other than those who are normally resident therein or who on or since 15 August 1947 have entered it for a lawful purpose. (It is important to point out that an Indian citizen required an entry permit (visa) to enter the State until 31 March 1959)

4. Para 14

The Government of India should ensure that the Government of the State releases all political prisoners and take all possible steps so that:

- (a)** All citizens of the State who have left it on account of disturbances are invited, and are free, to return to their homes and to exercise their rights as such citizens. [There are 2.5 million Kashmiri refugees (five generations) living in the four provinces of Pakistan and around the same number as Kashmiri Diaspora.
- (b)** There is no victimization;
- (c)** Minorities in all parts of the State are accorded adequate protection.

Under this resolution Government of India is not supposed to take any Kashmiri as a prisoner or remove a prisoner from Kashmir to any part of India.

Government of India is:

1. On the wrong side of UN Security Council
2. On the wrong side of OHCHR
3. On the wrong side of UN Special rapporteurs
4. On the wrong side of the people of Kashmir and
5. On the wrong side of its neighbour Pakistan. It is time that People of India check upon “if their government has done what they agreed on at the United Nations.”

In regard to Indian administered Jammu and Kashmir (now re-occupied), para 12 of UN Security Council Resolution of 21 April 1948 has charged the Government of India and Government of the State with a duty,

- a.** “The Government of India should themselves and through the Government of the State declare and make known that all subjects of the State of Jammu and Kashmir, regardless of creed, caste or party, will be safe and free in expressing their views and in voting on the question of accession of the State and that there will be freedom of press, speech and assembly and freedom of travel in the State, including freedom of lawful entry and exit.”
- b.** The Government of India has been charged with a duty to “use their best endeavours to effect the withdrawal from the State of all Indian nationals other than those who are normally resident therein or who on or since 15 August 1947 have entered it for a lawful purpose.”

Therefore, any attempt to change RESIDENCY laws in Kashmir and try to settle nonKashmiris, would not work. It would be an unlawful colonizing a part of Kashmir State by India.

An all-out and full scale effort is required to seek the vacation of Indian action of 5 August 2019. France has to be approached for advice, how to force India to return to “Resolutions of 13 August 1948 and 5 January” and United States of America has to be reminded of the “positive duty” of the Security Council that it has argued and to pursue that “unless the parties are able to agree upon some other solution, the solution which was recommended by the Security Council should prevail.”

We cannot afford any more apologies of the manner of 4 September 1960 when President Ayub Khan said in the radio broadcast to the nation that

- 1.** “The terms of the Water Treaty were the best we could get under the circumstances, many of which, irrespective of merits and legality of the case, are against us”.

Ayub Khan looked at Kashmir from a security and economic point of view and not as a peoples titles to right of self-determination.

- 2.** An apology for shelving Kashmir for 32 years from November 1965 to September 1996 and not letting it on the UN Security Council agenda for a debate, does not have a merit any more. The damage is done.
- 3.** An apology for not addressing Kashmir, when Pakistan had the Presidency of Security Council in January 2013, is as useless as, two birds in a bush and none in the hand. We have gone into an apology mode for our non-interest and non-follow up of the OHCHR Reports of June 2018and July 2019 and the May 2018 Report of the UN Secretary General.

We are running 635 days late (5 August 2019 - 01 May 2021) in putting ourselves and our tools together to offer a proportionate and pointed response to Indian action of 5 August 2019. We were warned by Yashwant Sinha a senior Indian politician and head of a civil society organization – Concerned Citizen’s Group, in his TV interview which he gave on 26 December 2018 after his visit to Indian Occupied Kashmir.

He warned us that, “Modi Government had abandoned the Vajpayee policy of ‘Consensus, Democracy and Insaniyat’, in favour of a “Strong State Policy” in Kashmir, “which meant the use of brutal force to kill as many as they could.” In his TV interview he admitted that, “We have lost Kashmir, there is no question of losing. We hold on to Jammu and Kashmir only by dint of the fact that we have our armed forces there. We have lost the people.”

Yashwant Sinha’s testimony came true, when on 5 August 2019, Indian Government raised the number of its soldiers from 700,000 to 900,000 and placed the State under curfew. India has taken many other steps to hurt the Muslim majority, dismember and annex its part of Occupied Kashmir. All this is unlawful and an aggression. Indian action has no future. Tomorrow belongs to the people of Kashmir and there are many tomorrows.

We have a case to argue with the United States of America. If Dr. P. Graham the UN Representative for India and Pakistan assigned to seek demilitarization for safe and secure Plebiscite and Admiral Nimitz the UN Plebiscite Administrator assigned to carry out a UN supervised vote, had not been US nationals, we may have been through a successful Plebiscite by 01 November 1950. Earlier the United Kingdom had proposed a UN supervised vote by

October 1948. Britain wanted the Plebiscite by October 1948, because people would have been restricted and hindered by the snow fall in and after November. (Colombia 768 Meeting of UN Security Council held on 15 February 1957).

India has been working non-stop from 5 August 2019 and has taken a series of other unlawful actions to consolidate its position in Kashmir. It has continued to spread out its influence and there are signs of unwillingness to stall the Indian march. India succeeded to anaesthetise OIC and has paralysed it on its response on Kashmir.

There is no doubt that Pakistan has put up strenuous efforts to expose Indian actions in Kashmir. India has been further exposed, after the present Hindutva Government, took a calculated risk to go after the Muslims of India and other minorities. The scenes of atrocities committed against Muslim men, women and children in Delhi and in other parts of India, are a replay of atrocities, committed against Muslims in the Valley of Kashmir.

It appears that Government and Opposition in Pakistan and the Government of Azad Kashmir, in aggregate, are lost in the wilderness of a confusion and the euphoria on Kashmir situation has sagged. We do not seem to have perfected a template to take our concerns and help for the Kashmiris to another secure and satisfactory level. Even the various Kashmiri representations working in Islamabad seem to have gone for a quiet. People are running mad for indoor seminars on Kashmir, which on their own do not sell a dime, in the international market. It is a waste of money and resurrection of a new culture, which has no immediate relevance to the gravity of aggression committed by India.

Government of India seems to have other ideas. WION (World Is One News) an International news channel owned by Zee Media, hosted the 3rd WION Global Summit in Dubai on 5 March 2020 on, "India and the Emerging World: Nationalism, Multilateralism and Creative Diplomacy." It is interesting that the first agenda item in the first session was "India's geographically significant move - Kashmir an Internal Matter."

The panellists in the session that were to consider Kashmir, included Ram Madhav, National General Secretary, Bharatiya Janata Party & Member, Board of Governors, India Foundation, General Joginder Jaswant Singh, former Chief of the Army Staff, India, Air Chief Marshal Pradeep Vasant Naik, former Chief of the Air Staff of the Indian Air Force and Manoj Ladwa, Founder & CEO @India Inc.

The three Pakistanis who were invited to the summit, Khurshid Mahmud Kasuri, Former Foreign Minister, Pakistan, Salman Bashir, Former Foreign Secretary of Pakistan and Reham Khan, Journalist, Commentator and Broadcaster were not part of this very important panel. In

other words they were very cleverly inducted in the summit, as panellists in the 3rd session on “Balancing and Recalibrating Pakistan’s Diplomatic Strategy: Economy, Security and Internal Political Stability”.

The 3rd session was further sub divided into seven sections. It appeared as if the first session was designed to legitimise Indian action in Kashmir and load Pakistan in the 3rd session to explain its position on seven issues. The organisers succeeded to revive a reference to terrorism by introducing a sub section titled “Pakistan’s Fight against Terror Funding - Creating an Overarching Strategic Stability Regime”. India has continued to weaken the Kashmir case by engaging retired and other people (Pakistanis and Kashmiris alike) from Pakistan, in track II diplomacy and by facilitating them at various such summits.

The cease fire agreed between the military leaderships of India and Pakistan on 25 February 2021 is a welcome development. It has brought calm and security to the people living on both sides of the cease fire line and has temporarily put an end to the loss of life in both military disciplines.

There is no harm if military leaderships in particular – the military leadership in Pakistan author the preface of a return to peace and a move on the question of Kashmir. However, Pakistan military leadership has to understand that there is a UN template on Kashmir and we are safe as long as we remain loyal to it. The other way forward, that is, an out of box formula, was introduced by President Pervaiz Musharraf. Government of Pakistan, opposition in Pakistan and many circles in Kashmir have been for and against Musharraf formula.

There has been very little and no effective progress after the oral presentation of the Prime Minister of Pakistan at the UN GA in 2019. On the other hand India has not given up on punishing the Kashmiri Muslims and on its plans to change the demography. This go slow policy at all levels in Pakistan, inability of AJK Government to assume itself as required in UNCIP Resolutions, failure of Pakistan to discharge its exclusive responsibilities and other responsibilities shared with AJK Government assumed under UNCIP Resolutions and now the revelations that military leadership has a plan to push India on Kashmir, have raised hopes and ruffled the concerns.

There is no denying the fact that the military leadership in Pakistan has retained a continued and exclusive interest in the resolution of Kashmir dispute. There may have been disagreements on the character and manner of this exclusivity but there has never been an element of mistrust attached to military’s interest. This time, the response and feelings in Pakistani and in the Kashmiri circles are not the same. There is a unanimity in the common concern that annual speeches at the UN General Assembly, letters of Foreign Minister to UN Secretary General

and to the President of the Security Council, Press Conferences, FO statements, Kashmir Committee Meetings and the promotion of a new culture of Webinars, are neither enough nor a proportionate and pointed response to Indian action of 5 August 2019 and other actions.

The information released in small bits seems to be that army leaders are seeking a solution in accordance with UN template on Kashmir. This is a very crucial consideration. Neither India nor Pakistan have a right to re-set the UN compass on Kashmir. It has taken us to the point of holding a Plebiscite by 01 November 1950. UN Representative on India and Pakistan required to secure a demilitarization and the other UN Plebiscite Administrator appointed to conduct a secure, free and fair Plebiscite have remained in office for a long time. Colombia has even accused the Plebiscite Administrator for inaction and failing the people of Kashmir

It is difficult to know about the raison d'etre of the latest actions by the military leadership to seek an engagement with India. A trained soldier lives up to the last bullet and fights until the last holdings of combat ration remain in his carry pouch. So nothing wrong if the armies move forward to build a bridge that would allow the People of Jammu and Kashmir to return to “Rights and Dignity” and “Security and Self-Determination.”

Everyone who subscribes to peace and co-existence would like to wish good luck to the military leaderships for their sense of duty to the dividends of peace and to the engagement as an instrument used by civilisations to settle disputes. Jammu and Kashmir may be a dispute but in reality it is the right of the people of Kashmir to self-determination.

We find that Pervez Musharraf failed as a military leader, just for stepping out of UN template, ignoring consultations and making a mistake of falling to the flattery of his courtiers. Pakistan army has retained the exclusivity of interest and control on Kashmir. It is an insurance against the dangers that are embedded in the un-reliability and unpreparedness of our politicians in dealing with India on Kashmir.

It needs to be pointed out that articles 243, 244, 245 and 257 of the constitution of Pakistan do not recognise the army for any such role on Kashmir. There is an undisputed and undeclared practice that army has a lead role on Kashmir. The practice has continued. The people of Jammu and Kashmir should not have an issue with the role of army. As long as the military leadership keeps to the UN template on Kashmir and does not wrong the merits of the case and merits of article 257 of the constitution of Pakistan, we have very little to bother.

Pakistan army as an institution has a credibility and finds love in the hearts of the people of Kashmir. It cannot enter into a quid pro quo with India on Kashmir. In any such attempt it shall have to forsake the proverbial trust and love in the hearts of the people of Kashmir and stain

itself. There is no legal basis for any quid pro quo because Pakistan's interests are a consequence of right of self-determination.

In view of the Pakistan's case at the UN, its agreements with the Government of Azad Kashmir and agreements with the Government of India, its political, moral and diplomatic support to the struggle of Kashmir, Pakistan should regard Indian action of 5 August 2019 as no different to Indian military intervention in East Pakistan in 1971. People of Kashmir have endured suffering and ignominy for the last 175 years. There is no reason that they should end their struggle as Pakistan army ended with a signature on 16 December 1971. Pakistan army in 2021 cannot disappoint NOOR JEHAN and the nation that has been singing in eulogy of it - "Eh Puttar Hattan Te Nahin Vikde".

India may have rushed for a quick bite on Kashmir on 5 August 2019. It has thrown itself in a deep dark ravine and there is no exit. UN template on Kashmir has forewarned in December 1952 that a party which violates the agreements on Kashmir would be "loading upon itself a very grave offence".

India can't carry on the heavy load of its 'very grave offence'. India may have gone nervous after the three UN reports – two by the OHCHR in June 2018 and July 2019 and third of May 2018 by the UN Secretary General became public. In all the three reports there are references that India might have committed war crimes in its administered part of Kashmir and her effort to aggress, re-occupy and annex a part is against the UNSC caution of 6 January 1948 and against the UN SC Resolution of 30 March 1951.

India has been accused of aggression and colonization by its own constituency. It has been challenged in the Autonomy Report and now in the Gupkar Declaration. In fact India has surrendered her Kashmir accession of 26 October 1947 at the UN Security Council for a UN supervised vote. The character of the India-Kashmir relationship created on 26 October 1947 changed on 15 January 1948 and the Indian action of 5 August 2019 has released Kashmir free of all agreements with India.

India cannot wrong the people, the habitat, the constitution, the flag and the UN template on Kashmir. It has to reconcile various provisions in particular Article 48 of J & K Constitution and the future of 2.5 million Kashmiri refugees living in the various provinces of Pakistan. UN Security Council Resolution of 21 April 1948 guarantees them a right to return in safety and dignity to their home and take part as citizens.

Indian action of 5 August 2019 has unfrozen the six interest groups referred to by the United Kingdom at the 241st meeting of UN Security council held on 5 February 1948. It has also created a raison d'être for Government of Azad Kashmir to reclaim and revive its army, that is

currently absorbed into Pakistan army. India has lost the consent of the Kashmiri people to rule. The people of Jammu and Kashmir shall have to demand the reinstatement of visa requirement for Indians to visit Kashmir – which was unlawfully rescinded by the Prime Minister of Kashmir on 31 March 1959.

Bilateral engagement between India and Pakistan under article 33 of UN Charter from October 1947 to January 1948 failed and both countries made their respective representations to the UN Security Council under article 35 of UN Charter. India and Pakistan have been told that “unless the parties are able to agree upon some other solution, the solution which was recommended by the Security Council should prevail.” It needs to be noted that any agreement that India and Pakistan might reach, has to be consistent with the principles of UN Charter.

We cannot allow India to run away with the Kashmiris right to self-determination and without facing accountability for its wrongs done to the people and habitat of Kashmir. India has to pay a reparation, compensation and damages to the people who have suffered under the military repression. Pakistan should stand with the people of Jammu and Kashmir and continue with its political, moral and diplomatic support. All the disciplines in Pakistan, military and political and intra-agency disciplines that look after Kashmir should not stand on the wrong side of the people and history. Robert Bruce has set an example to follow for generations to come. Failure begins only when we give up and stop trying. India and Indian actions in Kashmir have no future. The people of Jammu and Kashmir have a future.

Government of Pakistan and people of Pakistan should keep true to their advocacy of Kashmir case and reinforce their political, moral and diplomatic support to the people of Jammu and Kashmir. It should start reconnecting with the countries and help the Kashmiri advocates of all manner to reconnect with all those countries, who have remained fully involved in developing a UN template on the resolution of the right of self-determination of the people of Kashmir.

United Nations has defined the people of Kashmir as “A people of legend, song and story, associated with snow-capped mountains, beautiful valleys and life-giving waters. These people, Moslems, Hindus, Sikhs and Christians, as farmers, craftsmen and artists, small shopkeepers, boatmen, bearers and other workers in areas now on both sides of the cease- fire line, have been, through the centuries, the victims of exploitation and conflict. The recognition of the rights and dignity, the security and the self-determination of these historic people, under the auspices of the United Nations, might well become a challenging example of the progressive values of self-determination to the dependent peoples of the earth.”

The definition does not leave any room for India to play people against people in Kashmir. Pakistan is a custodian of their trust and should ensure that after recognising the “rights and dignity, the security and the self-determination” of these historic people, they are able to negotiate and not be negotiated behind their backs. It will be a tragedy and beginning of a new struggle if any unfortunate effort is made to render these people to a 16 December 1971 like instrument.

Time and tides have moved on. We do not live in 1846 or in 1931 or in 1947, or in 1971 or in 1990. People of Jammu and Kashmir live as seven people inside and outside the borders of the State. A just and an equitous dialogue across the table and in accordance with the UN template on Kashmir should be part of any terms of negotiations.

Pakistan has a prevailing constituency in all the seven habitats of Kashmiris. India has lost its constituency and the latter (Indian constituency) has called Indian action of 5 August 2019 as an “attack, onslaught and aggression against the people of Jammu, Kashmir and Ladakh”. India would be eagerly waiting that Pakistan wrong foots itself and sins against itself and the people of Kashmir. The make believe constituency of auxiliaries has passed its sell by date and the arrangement would not work. There has to be a rethink involving the Government of Azad Kashmir, GB, 2.5 million refugees living in the four provinces of Pakistan, Diaspora, and all the seven habitats.

We are prepared to engage and negotiate with those Pakistanis and ‘Kashmiris’ who flip flop and proclaim:

1. That UN Resolutions are a history
2. That Kashmir was discussed under Chapter VI
3. That India is a bigger market and 4 out of 5 permanent members of UN Security Council trade with India etc etc.

It is important to point out that once we accept that UN Resolutions are a history, Pakistan’s presence in Azad Kashmir and Gilgit-Baltistan becomes an occupation and the people of Jammu and Kashmir have no case. This view endorses the Resolution of Indian Parliament of 22 February 1994 about Azad Kashmir and the discussions held at the 3rd WION Global Summit in Dubai on 5 March 2020 about “India's geographically significant move - Kashmir an Internal Matter”, are also endorsed. There is no dearth of such enthusiasts in Azad Kashmir and in Pakistan. It is no surprise because for them Kashmir continues to remain a part-time – Saturday or Sunday interest.

When a Kashmiri and a Pakistani representative at the UN Security Council arranges 16 meetings and 18 consultations and discusses a long list of issues during the Pakistan's Presidency of UN Security Council in January 2013 and decides to drop Jammu and Kashmir, what more harm one could expect from this school of opinion. This schools exists on both sides of cease fire line and has always worked for the time and tide and not for the people of Kashmir. It does not mean that they shall have the last and end word on Kashmir. They are not the victims of the conflict but they are beneficiaries. UN has recognised the victims and we need to re-group on all fronts and tell the world that India has committed a 'grave offence' on 5 August 2019 and we want an end to this India aggression.

Until UN revives work on its template on Kashmir, people of Kashmir need a credible protection as proposed by Pakistan at the 761st meeting of UN Security Council held on 16 January 1957 and supported by Australia, Cuba, United Kingdom and Northern Ireland and United States of America (S/3787) on 14 February 1957. It is high time that we have a UN Force in Kashmir. It could be easily done by adding more strength and by re-organising the role of UNMOGIP. It could be achieved without disturbing the mandate of the UNMOGIP.

Canada could be approached in reference to her contribution made at the 235th meeting of the UN Security Council held on 24 January 1948, calling for "affording security to the people of Jammu and Kashmir under some authority which will be recognised by everyone concerned as strictly impartial; and, most important, to provide for a Plebiscite of the people in which all of them will be permitted to express without fear or favour their wishes as to the future government of the State."

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