



JKCHR – Jammu and Kashmir Council for Human Rights
NGO in Special Consultative Status with the ECOSOC of the United Nations
Established in 1984

Indian Action of 5 August 2019
Jurisprudence of Kashmir Case

December 2022 Report

INTRODUCTION

December 2022 Report primarily takes into account, the merits of Indian Action of 5 August 2019 and the Jurisprudence of Kashmir Case. UN Security Council has stated that “The party that would dare to violate an agreement thus reached would load upon itself a very grave offence against the other party, against the United Nations, and against the right of the people of Jammu and Kashmir to self-determination, a right which, in other contexts, both parties have so often and so eloquently defended.”

India without doubt has “loaded upon itself a very grave offence.” This offence has been committed against three parties namely, “the other party (Pakistan), United Nations, and against the right of the people of Jammu and Kashmir to self-determination.”

India did not need to take the action of 5 August 2019. It has no merit. Philippines has argued at the 773rd meeting of UN Security Council held on 20 February 1957, that, “Under the circumstances and pending the holding of a plebiscite, neither India nor Pakistan can claim sovereignty over the State of Jammu and Kashmir.” The respective interests and claims of India and Pakistan are duly embedded in the UN template on Kashmir.

Both countries have their respective constituencies as well. India has asked for a UN supervised vote and the relationship with Pakistan shall have to be negotiated in accordance with article 257 of the Constitution of Pakistan. The respective interests of India and Pakistan are a consequence of the right of self-determination of the people of Kashmir.

JKCHR has continued to work on the defence of the Human Rights of “All People” and on the jurisprudence UN Template on Kashmir. The NGO has interpreted the UN Template, on Rights, Dignity, Security and Self Determination. We invited a 4-member delegation of international NGO FIDH to visit Azad Kashmir in April 1993.

JKCHR was elected at the UN World Conference on Human Rights in Vienna in June 1993 to represent the Unrepresented Peoples and Nations and addressed the Plenary and the Main Committee of the Conference. The NGO sponsored a 6-member delegation at the World Conference.

The NGO has represented Kashmir at the UN Annual Conference on “Regional Conflicts: Threats to World Peace and Progress” in December 1992, at 49th session of UN General Assembly in September 1995, at UN ECOSOC Inter-Sessional Meeting in November 1994, at UN Human Rights Commission, Sub Commission and Human Rights Council sessions in Geneva, at Third Global Convocation on Human Rights in Washington in February 1992, at CHOGM-93 in Limassol in October 1993, at Islamic Summit in Casablanca in December 1994, at international Symposium on “Next Step in Jammu and Kashmir: Give Peace A Chance” jointly organised by a Pakistani think tank (Institute of Regional Studies – Pakistan)

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and an Indian think tank (International Centre for Peace Initiatives – India) in Delhi in November 2000 and at other international forums.

UN Secretary General receives our Written Statements on the situation in Jammu and Kashmir and these are released as UN GA Documents at Human Rights Council sessions in Geneva.

The broad spread of our work is known to the UN for the last 32 years and to India and Pakistan for the last 35 years. JKCHR defends the human rights of all people living in the 3-administrations and others stranded in various countries around the world. JKCHR commits this report to people who respect the principle of “equality of people” and the “Right of self-determination”. Any comments and enquiries arising out of this REPORT are welcome.

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Indian Action of 5 August 2019 Jurisprudence of Kashmir Case

Plebiscite in Jammu and Kashmir, should have been completed the latest by 01 November 1950 as planned by the UN Plebiscite Administrator Chester William Nimitz. He was a fleet admiral in the United States Navy and had played a major role in the naval history of World War II as Commander in Chief, US Pacific Fleet, and Commander in Chief, Pacific Ocean Areas, commanding Allied air, land, and sea forces during World War II.

Pakistan had proposed that Plebiscite should be held as early as in summer 1948, Britain had proposed that it should be held by October 1948 before the snow fall began in Kashmir. Noel Baker the representative of the Great Britain has stated at the 284th Meeting of UN Security Council held on 17 April 1948, “May I now say why I hope its measures may find favour with both parties to the dispute, and may find it without prolonged delay. To begin with, the sands of time, in literal truth, are running out. Kashmir is a land of mountains. In October the snow begins to fall. If the plebiscite which both sides desire is to be held this year, the Commission and the administrator must be at work within a month. The alternative is a summer, perhaps another winter, of uncertainty, maybe of fighting, with all that that would mean.”

Great Britain stated at the 284th meeting that “Kashmir was the greatest and gravest single issue in international affairs.” India herself has admitted at the 230th meeting of UN Security Council held on 20 March 1948 that “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 divided India and Pakistan to the extent of endangering international peace and security.”

The process of Plebiscite is a matter for the UN, Commission and the Government of Jammu and Kashmir. Government of India has no hand in the process, except, for providing law and order necessary for a secure, free and fair vote. “At the conclusion of the plebiscite, the Plebiscite Administrator shall report the result thereof to the Commission and to the Government of Jammu and Kashmir. The Commission shall then certify to the Security Council whether the Plebiscite has or has not been free and impartial.”

Ultimate Objective & Positive Duty

Argentina has stated at the 240th meeting of the Security Council held on 4 February 1948 that, “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.” It has been argued by Great Britain at the 606th meeting of the UN Security Council on 6 November 1952 that “The ultimate objective of a fair and impartial plebiscite under the

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auspices of the United Nations ... has 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.”

United States of America building on the role of Security Council has said at the 768th meeting of UN SC held on 15 February 1957 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. 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.” Article 103 of UN Charter, which reads as, “In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail” endorses the view expounded by United States of America.

Definition of People and Components of Rights Movement

United Nations has taken due note of the multi-religious fabric of the State. UN template has defined these people as, “a people of legend, song and story, associated with snow-capped mountains, beautiful valleys and life-giving waters”. In relations to the rights movement, UN has called them “historic people” and the Great Britain has pointed to a challenge and stated on 17 January 1952 that, “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.”

Peculiar Feature Chinese Endorsement - plebiscite should be the answer

It was at the 765th meeting of the UN Security Council held on 24 January 1957 that China highlighted the peculiar feature of Kashmir dispute. It is the agreement between India and Pakistan, on the Kashmir Dispute before coming to UN Security Council. The peculiar feature has remained undisputed. China has said:

“Para 68. 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.”

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“Para 69. In their public statements 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.]

Agreement between India and Pakistan

THE UNITED NATIONS COMMISSION FOR INDIA AND PAKISTAN received from the Governments of India and Pakistan in Communications, dated December 23 and December 25, 1948, respectively their acceptance of the following principles which are supplementary to the Commission's Resolution of August 13, 1948:

- 1.** The question of the accession of the State of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of a free and impartial plebiscite;
- 2.** A plebiscite will be held when it shall be found by the Commission that the cease-fire and truce arrangements set forth in Parts I and II of the Commission's resolution of 13 August 1948, have been carried out and arrangements for the plebiscite have been completed;
- 3. (a)** The Secretary-General of the United Nations will, in agreement with the Commission, nominate a Plebiscite Administrator who shall be a personality of high international standing and commanding general confidence. He will be formally appointed to office by the Government of Jammu and Kashmir.
 - (b)** The Plebiscite Administrator shall derive from the State of Jammu and Kashmir the powers he considers necessary for organising and conducting the plebiscite and for ensuring the freedom and impartiality of the plebiscite.
 - (c)** The Plebiscite Administrator shall have authority to appoint such staff or assistants and observers as he may require.
- 4. (a)** After implementation of Parts I and II of the Commission's resolution of 13 August 1948, and when the Commission is satisfied that peaceful conditions have been restored in the State, the Commission and the Plebiscite Administrator will determine, in consultation with the Government of India, the final disposal of Indian and State armed forces, such disposal to be with due regard to the security of the State and the freedom of the plebiscite.

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(b) As regards the territory referred to in A 2 of Part II of the resolution of 13 August, final disposal of the armed forces in that territory will be determined by the Commission and the Plebiscite Administrator in consultation with the local authorities.

5. All civil and military authorities within the State and the principal political elements of the State will be required to co-operate with the Plebiscite Administrator in the preparation for and the holding of the plebiscite.

6. (a) All citizens of the State who have left it on account of the disturbances will be invited and be free to return and to exercise all their rights as such citizens. For the purpose of facilitating repatriation there shall be appointed two Commissions, one composed of nominees of India and the other of nominees of Pakistan. The Commissions shall operate under the direction of the Plebiscite Administrator. The Governments of India and Pakistan and all authorities within the State of Jammu and Kashmir will collaborate with the Plebiscite Administrator in putting this provision to effect.

(b) All persons (other than citizens of the State) who on or since 15 August 1947, have entered it for other than lawful purpose, shall be required to leave the State.

7. All authorities within the State of Jammu and Kashmir will undertake to ensure in collaboration with the Plebiscite Administrator that:

(a) There is no threat, coercion or intimidation, bribery or other undue influence on the voters in plebiscite;

(b) No restrictions are placed on legitimate political activity throughout the State. All subjects of the State, regardless of creed, caste or party, shall be safe and free in expressing their views and in voting on the question of the accession of the State to India or Pakistan. There shall be freedom of the Press, speech and assembly and freedom of travel in the State, including freedom of lawful entry and exit;

(c) All political prisoners are released;

(d) Minorities in all parts of the State are accorded adequate protection; and

(e) There is no victimization.

The Pakistani and Indian officials who paid a courtesy visit to UN appointed Plebiscite Administrator Admiral Nimitz in March 1950 in his office in Washington had found that he was working on the electoral register and was considering the precedent of NWFP referendum of 1947.

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Chester William Nimitz and President of the International Red Cross

Imagine if Kashmiri leadership had been vigilant, had shown a reliable understanding of the Kashmir case, carried an influence, and had it prevailed upon Government of Pakistan and its leadership on the choice of appointing a Plebiscite Administrator, Kashmir would have been through the process of a Plebiscite in 1949. We note that it took India over six months that it accepted the UNCIP resolution of August 1948 in December 1948. The Commission had succeeded in obtaining agreement that once the truce agreement had been signed, and during that truce, a new agreement should be reached in order to synchronise, the withdrawal of forces and enable the plebiscite to be held

An examination of the record of the UN debates reveals that it was the misfortune of the people of Jammu and Kashmir and added with the poor diplomatic skills in Islamabad, which account for the failure in the realisation of the right of self-determination. The two errors have been pointed out in paras 72 and 73 of the statement made by the Colombian representative at the 768th meeting of UN Security Council held on 15 February 1957.

Neutral Plebiscite Administrator

In para 72 Colombian representative states, “Unfortunately, the atmosphere of confidence that had been achieved was lost owing to a series of errors and incidents which it is advisable to recall so that they will not recur.” He goes on to add in para 73, “The first was the appointment of the Plebiscite Administrator. As it is now nine years ago, I think it is worthwhile to explain what happened. In the Commission the Colombian delegation urged that the Plebiscite Administrator should be a neutral, that being the only way to induce India to abide by the offer which had been obtained with such difficulty. Unfortunately, other delegations had explicit instructions to urge that the Plebiscite Administrator should be a United States citizen. My delegation suggested, in private conversations also, that we should accept the Indian Government’s suggestion that the President of the International Red Cross should be appointed Plebiscite Administrator. If, at that time, we had accepted the Plebiscite Administrator proposed by India, the President of the International Red Cross, the plebiscite would already have been held. Instead of that, Admiral Nimitz waited for nine years in New York for an opportunity to organize the plebiscite. But these errors are delicate matters, because an apparent diplomatic victory, obtained at a certain time, served propaganda purposes, but in reality undid all the work the Commission had accomplished.”

There is no other alternative to this approach. Unless the people and the leadership of Kashmir have a reliable understanding of their case history, they will continue to be of no use or of little use in assisting Pakistan or India, to further their case.

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It is important to highlight the Colombian concern expressed at the UN Security Council. In para 74 of the statement made at the 768th meeting of UN Security Council held on 15 February 1957, Colombia has said, “The Commission had provided for an arrangement, system or procedure that was to be carried out in six weeks or three months at the most. Advantage should have been taken of the favourable atmosphere of the climate that had been brought about in India: Mr. Nehru’s acceptance, and the confidence with which the Commission had inspired him to accomplish all this in three months. But instead, we began to be asked for clarifications, which bogged us down for a year and a half. Then, of course, the Commission had nothing further to do.”

Reference to UN Security Council

Kashmir case has been referred to UN Security Council under Article 35 of UN Charter. It is based on Indian complaint of 01 January 1948 (document S/628), informing the UN SC of a situation “whose continuance is likely to endanger the maintenance of international peace and security” and a letter of 15 January 1948 from Pakistan (document 646).

The three documents submitted by Pakistan are, (I) “Pakistan’s reply to the complaint preferred by India against Pakistan under Article 35 of the Charter of the United Nations”, (II) “a statement of disputes which have arisen between India and Pakistan and which are likely to endanger the maintenance of international peace and order”, and (III) “contains a statement of the particulars of Pakistan’s case with reference to both the matters dealt with in Document I and II.”

On 6 January 1948 President of the UN Security Council advised India and Pakistan that the Security Council would be taking up the question of Jammu and Kashmir for discussion. The two countries should therefore, “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.” On 8 and 9 January 1948, Pakistan and India respectively submitted in writing their assurance of compliance with the UN Charter and UN Security Council jurisdiction.

UN Security Council met on 20 January 1948 at the 230th meeting to discuss “Jammu and Kashmir question” and President of the SC stated, “I have a brief report to make to the Council. As suggested during our last meeting, and as agreed by both parties, I consulted with the representatives of India and Pakistan. Both sides showed a keen desire to arrive at a satisfactory understanding as quickly as possible; and their efforts have achieved a preliminary result in the form of a draft resolution [document S/654]. I have the honour to submit this resolution to the Council, not only in my capacity as representative of Belgium but also on behalf of both the parties, 'who have signified their approval.”

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India and Pakistan agreed on the contents of the Resolution S/654 and it was the first agreement between the two countries. Security Council established a Commission to investigate the dispute (situation) under Article 34 of the UN Charter and report to UN Security Council. The Commission acted under the “authority of the Security Council and in accordance with the directions it may receive from it. It had to keep the Security Council informed of its activities and of the development of the situation. It had to report to the Security Council regularly, submitting its conclusions and proposals.”

The UN Commission was “invested with a dual function – (i) to investigate the facts pursuant to Article 34 of the Charter; (ii) to exercise, without interrupting the work of the Security Council, any mediatory influence likely to smooth away difficulties, to carry out the directions given to it by the Security Council, and to report how far the advice and directions, if any, of the Security Council, have been carried out.”

Indian Case – 3 elements

India has laid down her case at the 227th meeting of UN Security Council held on 15 January 1948 as follows:

*We desire only to see peace restored in Kashmir and to ensure that the people of Kashmir are left free to decide in an orderly and peaceful manner the future of their State. We have no further interest, and we have agreed that a plebiscite in Kashmir might take place under international auspices after peace and order have been established. Everything that we have done has been in discharge of our legal, constitutional, and moral responsibilities and obligations.

*The question of the future status of Kashmir vis-à-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.

***Accession was surrendered** at the United Nations. There is no Accession of the kind of 27 October 1947. Grave Emergency has been reversed.

Indian Army Role and seven restraints

Indian army has been granted a temporary admission by the Government of Jammu and Kashmir to perform 4 duties in 1947 as provided in the acceptance letter as:

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“Meanwhile in response to your Highness’ 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 as a supplement and a subordinate force to do four jobs in Kashmir. This army has been given a ‘good behaviour certificate’ by Sheikh Abdullah at the UN Security Council and Resolution 47 of UN Security Council of 21 April 1948 has placed 3 restraints on its number, behaviour and location. Government of India is required as follows:

The Government of India should:

- (a) When it is established to the satisfaction of the Commission set up in accordance with the Council's resolution 39 (1948) that the tribesmen are withdrawing and that arrangements for the cessation of the fighting have become effective, put into operation in consultation with the Commission a plan for withdrawing their own forces from Jammu and Kashmir and reducing them progressively to the minimum strength required for the support of the civil power in the maintenance of law and order;
- (b) Make known that the withdrawal is taking place in stages and announce the completion of each stage;
- (c) When the Indian forces have been reduced to the minimum strength mentioned in (a) above, 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.

Government of India finally offered to reduce its forces to an irreducible number of 21,000 soldiers. On 8 December 1952 at the 608th meeting of the UN Security Council Indian representative stated 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. 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

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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.”

In principle India had agreed to keep 21,000 non-arms bearing soldiers in Kashmir. The two OHCHR Reports of June 2018 and July 2019 on the Human Rights Situation in Jammu and Kashmir have quoted the strength of Indian soldiers between 500,000 to 700,000. This number has been further increased to around 900,000 troops, to put down peoples resistance to Indian action of 05 August 2019. Jammu and Kashmir is one of the most militarised zone in the world.

J&K Government Could terminate its agreement

Technically Government of Jammu and Kashmir could terminate its agreement with Government India on the presence of Security Forces in Kashmir and invoke its Stand Still Agreement with the Government of Pakistan. It could make a reference to the six elements recognised in the UN debates on Kashmir for self-defence. Self - Defence of the people at present has been frozen by the UN mechanism on Kashmir. Hizb-ul-Mujahideen and other militant groups would qualify as one of the six elements discussed at the 241st meeting of the UN Security Council. It was the lack of a reliable understanding of the case and military science that Hizb-ul-Mujahideen and other factions of militancy failed to seek a recognition during the cease fire of July 2000. The withdrawal of the cease-fire on 8 August, 2000, should have been thoroughly thought out.

Pakistan and the insurgents in Kashmir

United Kingdom representative Noel Baker has flagged six interest groups which have been frozen into a non-action in Kashmir. At the 241st Meeting of the UN Security Council held on 05 February 1948 Britain has accepted 6 interest groups, namely, Pakistan, insurgents, tribesmen, Government of India, other inhabitants of Jammu and Kashmir and the outside world. There is a distinction made between insurgents and tribesmen. Insurgent are indigenous and are duly recognised as an interest group.

Noel Baker stated, “This plebiscite must inspire confidence in everybody, including those who are now fighting. We have all stated it before. The representative of India said at our 239th meeting the day before yesterday that the two parties interested in the Kashmir question are Pakistan and the insurgents in Kashmir. Therefore, we have to satisfy these two parties. What the Security Council does must seem fair to these two parties. It must also seem fair to The Government of Pakistan, to the insurgents, to the tribesmen, to the Government of India, to the other inhabitants of Jammu and Kashmir, and to the outside world. That is why I arrived at the same conclusion as the other members of the Security Council who stated that

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impartial, interim administrative arrangements must be made. If we are looking into the past for precedents, I may say that I lived through two international crises; one over Upper Silesia and one over the Saar. I think that the arrangements made for those crises between the two wars will certainly be in agreement with proposals which have been made here.”

Noel Baker said that, “It is my conviction that raids and incidents will continue to occur until the question of Kashmir has been disposed of by the Security Council...And, so long as fear dominates the minds of the peoples in that area of the Punjab and of Kashmir, incidents will continue and the situation will remain extremely grave.” These are of concern have remained unnoticed in our debates.

‘Grave situation’ – was reversed after cease fire

Indian army was required in relation to a ‘grave situation’ pointed out by Pandit Nehru in his telegram to Prime Minister of Pakistan or later in the complaint made to the United Nations. A cease-fire was brokered by UN between various elements, including India and Pakistan on 01 January 1949 and the ‘grave situation’ was reversed. In addition The State of Jammu and Kashmir is divided into three administrations. People are forced to live as divided and distributed people in these three administrations. A UN brokered cease fire line temporarily divides the land and separates the families.

Life, property and honour was more secure on 26 October 1947, than it has been over some period in the recent past.

***Indian Government has justified** the landing of its troops in Srinagar, on the basis that there “exists a grave emergency” in Jammu and Kashmir. Today we do not have the Jammu and Kashmir that India wanted to defend on 27 October 1947. Jammu and Kashmir was recognised a sovereign State only for the purposes of arranging a plebiscite in collaboration and under the supervision of UN. Jammu and Kashmir was required to set up a provisional government under the supervision of United Nations and it had to be fully representative, including a representation from Azad Kashmir and Gilgit and Baltistan. A UN envisaged Government at Srinagar, had to reflect the presence of Muzaffarabad, Gilgit and the trust of Government of Pakistan as a party to the dispute.

Pakistan did not withdraw - unfettered decision by the people of Kashmir

India has entered into a written agreement with the Government of Jammu and Kashmir 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”.

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If Government of India and opinion makers appreciate the merits of Accession, there is no accession at this point. It has been surrendered at the UN Security Council, and India has asked the UN SC to find “whether she (J&K) 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 the unfettered decision by the people of Kashmir, after normal life is restored to them”.

*India has continued to drag its feet and rely on the excuse that Pakistan had to withdraw its armies first. This argument has no merit for the people of Kashmir. Firstly a vote on the conditional accession is an agreement between the Government of Jammu and Kashmir and the Government of India. Pakistan has been entertained as a party to the dispute at a later stage in January 1948.

Pakistan’s case

1. “The tragic events and the happenings in East Punjab and the Sikh and Hindu States in and around that Province had convinced the Muslim population of Kashmir and Jammu State that the accession of the State to the Indian Union would be tantamount to the signing of their death warrant.”
2. “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.”

Pakistan at the UN

Pakistan became a member of the United Nations on 30 September 1947. Pakistan has been elected seven times (tied with Colombia) into the UN Security Council and the most recent term as a non-permanent member was in 2013. Pakistan has also served a term as the President of the United Nations General Assembly and had the Presidency of the International Court of Justice.

Pakistan gave up on “Hyderabad Question” from 426th meeting of UN Security Council held on 24 May 1949 and on “The India-Pakistan question” from 1251st meeting of UN Security Council held on 5 November 1965. In August 1996, UN Security Council decided to simplify

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“the list of matters of which the Security Council is seized (rule 11 of the provisional rules of procedure of the Security Council).”

The Security Council decided that, “as of 15 September 1996, matters which have not been considered by the Council in the preceding five years will be automatically deleted from the list of matters of which the Council is seized.” Security Council Document S/1996/603 dated 22 August 1996.

30 years, 10 months, 10 days

It was found that Kashmir (India-Pakistan question) had not been discussed for 30 years, 10 months, 10 days. The regularity of this agenda item from January 1948 to 15 September was hit and the agenda item was deleted. It was a shock. It was the price of a serious dereliction of duty. A hectic diplomatic activity started to save Kashmir from deletion as a consequence of simplification.

JKCHR joined the fray and on 27 August 1996 made a written representation to the President of the UN Security Council, pointing out that the simplification process had caused a serious prejudice to one of the basic principles – Article 1 (2) of UN Charter.

Pakistan also contested the decision. It was agreed that, “A matter will, however, be provisionally retained in the list of matters of which the Security Council is seized for a period of one year if a member of the United Nations notifies its objection to its deletion before 15 September 1996. If at the end of one year the matter has still not been considered by the Council, it will be automatically deleted.” (Para 3 Security Council Document S/1996/603 dated 22 August 1996.”

Kashmir has lost its regularity on the agenda of SC that it enjoyed from January 1948 to September 1996. An application is made each year by Pakistan or a member State to keep Kashmir on the agenda. An annual reminder has its own implications.

The most recent seat of Pakistan at the UN Security Council and its Presidency was in January 2013. The report submitted on the work of the Security Council during the presidency of Pakistan (January 2013) on 26 April 2013 from the Permanent Representative of Pakistan to the United Nations addressed to the President of the Security Council reads as:

Assessment of the work of the Security Council during the presidency of Pakistan (January 2013)

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“Under the presidency of Pakistan in January 2013, the Security Council had an intensive programme of work, covering a wide range of agenda items. The Council considered a number of issues including the Central African Republic, the Democratic Republic of the Congo, the Sudan/South Sudan, the African Union-United Nations Hybrid Operation in Darfur, Côte d’Ivoire, Burundi, West Africa, Libya, Cyprus, the Middle East including the Palestinian question, non-proliferation/Democratic People’s Republic of Korea, Haiti, and the United Nations Regional Centre for Preventive Diplomacy for Central Asia. The situations in the Syrian Arab Republic and Mali also remained under the Council’s attention in view of the unfolding developments there. The Council held thematic open debates on counter-terrorism (15 January) and United Nations peacekeeping operations (21 January), both significant areas of the Council’s work. The debates led to the adoption of important outcomes. The Council responded to the terrorist attack in Algeria. The Council also discussed the rule of law. Also in January, the Council undertook a mission to Yemen to demonstrate its support for the transition under way in that country. The Council concluded its work for the month with a wrap-up session held on 31 January.

During the month of January, the Security Council held 16 meetings and 18 consultations of the whole. The Council adopted four resolutions, one presidential statement and six statements to the press.”

The year 2013 was very difficult for the people in Jammu and Kashmir. Every effort was made to tell the story of the people and the habitat. It is surprising that Pakistan’s representative skipped Kashmir situation during Pakistan’s Presidency of the Security Council in January 2013.

India attracted a disqualification

People of Kashmir are aggrieved that a country that has aggressed against them, has reoccupied their habitat and is holding them without their consent from 5 August 2019, should have been allowed an uncontested election on 17 June 2020, to a body, where she would hurt the cause of Kashmir.

The question remains what are the merits of Indian election to UN Security Council as a non-permanent member for two years and what have been the merits and demerits of Pakistan vote. Pakistan reiterates at all levels of civil and military leadership that it would continue to offer political, diplomatic and moral support to the people of Kashmir. Therefore, while voting, Pakistan failed to explain its vote and remain on the side of the Kashmiri grievance.

Ten non-permanent members are elected by the General Assembly for a term of two years from four regional distributions. India was elected on Wednesday 17 June 2020 as non-permanent member of the UN Security Council for a two-year term after winning 184 votes

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in the 193-member General Assembly. India was a candidate from the Asia-Pacific category for the 2021-22 term. India was a sole candidate for the lone seat from the Group.

India was endorsed unanimously by the 55-member Asia-Pacific Group, including China and Pakistan, in June last year. Pakistan in principle has stayed with the Asia-Pacific Group's candidate and necessarily not with India. The anger is based on a misunderstanding or non-knowledge of UN General Assembly Procedure used in the election of non-permanent members of UN SC.

Pakistan may have remained with the Asia Pacific Group and voted accordingly, but Kashmiris feel angry and let down. Pakistan has an overriding duty to weigh its diplomacy, against its commitments to the people of Kashmir. Pakistan has misdirected itself in the process on two counts since June 2019. Pakistan reiterates at all levels of civil and military leadership that it would continue to offer political, diplomatic and moral support to the people of Kashmir. Therefore, while voting, Pakistan failed to explain its vote and remain on the side of the Kashmiri grievance.

India may have been a legitimate candidate under rule 142 of Rules of Procedure of the General Assembly, 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. One fails to understand, what is Pakistan's Kashmir policy and who are the people involved in it. Government of Azad Kashmir remains at bay and there is no institutional development, as required.

A genuine question arises, why did not Pakistan engage with 55-member Asia-Pacific Group and China in particular well ahead of election date and explain to them, the Indian military action in its administered part of Kashmir, which was a clear violation of UN Security Council Resolution of 30 March 1951. The rights movement, could not be run, like any other department of the Government. It has its own jurisprudence.

Fraud and violence – move to ICJ

In August 1951 United States of America had also expressed her doubts about the Indian claim of accession. On 27 August 1951 Office of South Asian Affairs and Office of United

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Nations Political and Security Affairs of United States prepared a document on Kashmir titled, “Kashmir Dispute: Future Action” .

The document stated, “At some time in the course of our efforts, we might consider asking the Security Council to request the International Court of Justice to render an advisory opinion regarding the legality of the act of the Maharaja of Kashmir in signing an instrument of accession to India. If the ICJ finds the accession was invalid, this would knock out one of the principal Indian arguments supporting their occupation of Kashmir.”

US had taken United Kingdom Foreign Office on board but put the desire of going to ICJ on hold, fearing it might take considerable time. The law in regard to a reference to ICJ in 1951 was just developing and its tools of interpretation were no-where near to what we find them today.

Articles of Settlement

The accession has been surrendered before the UN Security Council for a UN supervised vote. Belgium, China, United Kingdom and Northern Ireland, Syria and USA have played a fundamental part in finalising a mechanism for the UN supervised referendum in Kashmir. China has presented Articles of Settlement at the UN Security Council to achieve maximum agreement and keep the minimum disagreement. It would also be argued at the ICJ that 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 supervision of the Commission is missing.

ICJ - International Court of Justice

Making a reference to ICJ on Kashmir was first proposed by British Prime Minister to Prime Minister of Pakistan on 22 November 1947. In para 4 of the telegram Prime Minister of United Kingdom proposed, “Would you like me to take private soundings from the President of the International Court of Justice to find out whether he is of the opinion that it would be practicable and he would be willing to try to get together a small team of international experts, not connected with India, Pakistan or the United Kingdom, in the event of a joint request being preferred by the Governments of India and Pakistan for this to be done”.

Pakistan was only 3 months old and did not have the reliable generation or a team of experts as it has today, to take up the offer. The reply from Prime Minister of Pakistan to Prime Minister of United Kingdom, when seen in the climate of today, seems very unconvincing

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and unimpressive. There is no evidence that the voice or input from Kashmiris was either sought by Pakistan or they made any effort to render it on their own.

Poor Diplomacy

Imagine for a while if Pakistan had a better quality of diplomacy and improved understanding of state craft in 1948 and it would not have put its finger on the final figure of 18,000 but agreed to Indian demand to have 21,000 soldiers on her side of cease fire line and settled with having 6,000 on its side of cease fire line?

Lack of Agreement & Demilitarization - prearranged political organization

The jurisprudence of UN template developed during the debates at the UN Security Council is very clear. Netherlands has argued at the 566th meeting of Security Council held on 10 November 1951 that, “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. ... 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.”

Force will have no supporting arms

Kashmir case came to a halt on the question of demilitarization, in particular, on the character and number of armed forces to be kept on either side of cease fire line. Hurriyat had 26 years from 31 July 1993 to 5 August 2019 to study the merits of India and Pakistan positions on demilitarization and the position advocated by the United Nations. India and Pakistan have agreed to a demilitarization. At the 608 meeting of the UN Security Council on 8 December 1952 Indian representative Mrs. Pandit had conceded to a final number of 21,000 soldiers. She said, “It should further be emphasised that this force will have no supporting arms such as armour or artillery.”

UN Representative for India and Pakistan charged with a duty to seek demilitarization for Plebiscite, proposed between 3,000 and 6,000 armed forces to remain on the Pakistani side of cease fire line and between 12,000 and 18,000 armed forces to remain on the Indian side of cease fire line. The justification given by India for an increased number of armed forces was to “safe-guard law and order, the integrity of the cease-fire-line and security of the territory on each side of that line.”

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The argument on the character and number of armed forces advanced in 1952, has lost its appreciation and needs to be re-appreciated differently in 2022. However, the Indian argument of keeping an increased number of armed forces on its side of the cease fire line has not been fully entertained by the United Nations.

Equitable Demilitarization

United Kingdom came out with a strong 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 misled 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 supervision of the Commission is missing today.

Security of People & Pakistan's Proposal - Question of Sovereignty

It was at the 235th meeting of the UN Security Council held on 24 January 1948 that Canada proposed to afford security to the people of Jammu and Kashmir. General McNaughton said, "...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 to terminate the fighting; to afford security to the peoples 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."

UN Force

Pakistan has made a valuable contribution by proposing to send a UN Force into Kashmir. At the 761 meeting of UN SC Meeting held on 16 January 1957 Pakistan has proposed:

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112. “In view of this, 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.”

Pakistan’s concern of providing security to the people of Kashmir assumed urgency. On 14 February 1957 it was further endorsed by Australia, Cuba, United Kingdom and Northern Ireland and United States of America in Resolution S/3787. 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.”

The proposal of Pakistan and the of the Resolution brought by Australia, Cuba, United Kingdom and Northern Ireland and United States of America for sending a UN Force into Kashmir was vehemently supported by Philippines. At the 773rd meeting of UN Security Council held on 20 February 1957, the representative of Philippines said, “**46.** 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.I, see also annex V, section A, of the documents submitted as annexes to the statement made by Mr. Krishna Menon [S/PV.762/Add.I].) Under the circumstances and pending the holding of a plebiscite, neither India nor Pakistan can claim sovereignty over the State of Jammu and Kashmir.”

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Failure under article 33

Pakistan and India have admitted in their allegations and counter allegations made at the UN SC that all engagements under article 33 of UN Charter had failed. It may be right time for article 103 of the Charter to prevail. India and Pakistan have admitted that they had failed in engaging each other under article 33 of UN Charter. Paragraph 1 of Article 33 of the Charter states the methods for the pacific settlement of disputes as: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, and resort to regional agencies or arrangements. India and Pakistan have not tried arbitration, judicial settlement, and a resort to regional agencies or arrangements.

India is faced with the following impediments and the consequent jurisprudence:

- (i) UN Resolutions on Kashmir
- (ii) Political resistance embedded in Hurriyat Constitution of July 1993
- (iii) State Autonomy Committee Report of July 2000
- (iv) 3 UN Reports of June 2018, July 2019, May 2018
- (v) Duties of AJK Government under UNCIP Resolutions
- (vi) Gupkar Declaration of 4 August 2019
- (vii) Terms of temporary admission of forces into Kashmir
- (viii) Unlawful rescinding of Visa requirement for entry into Kashmir of Indian citizens
- (ix) Regrouping of five out of six interests group to undo the occupation
- (x) Diaspora,
- (xi) 2.5m million Kashmiri Muslim refugees living in the four provinces of Pakistan and
- (xii) Pakistan as a party to the dispute and as a member Nation of UN.

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- (xiii) State Autonomy Committee Report of July 2000 has challenged the veracity of Indian claim of accession and

Identity & Autonomy

It is for the first time in the history of Kashmir that all the main pro-India political parties had a premonition that India might commit aggression against the people of Jammu, Kashmir and Ladakh. They decided to meet at the Gupkar Residence of Dr. farooq Abdullah, President Jammu Kashmir National Conference (JKNC) on 4 August 2019 to “deliberate upon the prevailing political situation, triggered by massive deployment of security forces, advisories issued, abandonment of Amarnath Yatra midway and forced removal of tourists from the Valley.”

The meeting was attended by 18 leaders from 7 political parties, namely NC, PDP, JKPC, Congress, CPIM, PUF and ANC. The two members of Parliament elected from NC also attended the meeting. The following demands in the “Gupkar Declaration”, add to the jurisprudence of the Kashmir Case:

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
3. That the parties participating in the meeting resolved to seek audience with the President and Prime Minister of India and the leaders of other political parties to apprise them of the current situation and make an appeal to them to safeguard the legitimate interests of the people of State with regard to constitutional guarantees given to the State under the constitution of our country

They will also apprise them of the unwholesome consequences bound to follow the unconstitutional violation, if any, of these guarantees

The representatives of the political parties resolved to remain together and stand united in their struggle for safeguarding the identity, autonomy and special status of the State.”

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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 control. 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.

Internal Self-Determination

The new alliance created under Gupkar Declaration, has resolved “to remain together and stand united in their struggle for safeguarding the identity, autonomy and special status of the State.” Hurriyat and the militant leadership are fighting for an enlarged cause, broader than “identity, autonomy and special status of the State”, that is, for a UN supervised Plebiscite, to determine the right of self-determination of all people of the State.

Gupkar Declaration is a resolve to seek the ‘internal self-determination’, while as Hurriyat Constitution and the armed struggle, add to internal self-determination, the second component of external self-determination as well. It would be helpful if Hurriyat and other non-Hurriyat leadership backs up the Gupkar Declaration, or remains decently favourable to the understanding scripted in item 2, which explains and warns India against committing an ‘aggression’.

Government of India has committed an aggression as envisaged in item 2 of Gupkar Declaration. Let us encourage and assist the seven political parties in their resolve made in the Declaration. The internal self-determination could easily be roller skated into achieving the external self-determination, by ensuring that India and Pakistan return to UN template to conduct a free, fair, impartial and a secure Plebiscite.

Residuary Sovereignty of the State

Locally the leadership of Indian Administered (now occupied) Jammu and Kashmir (and even the leadership of Azad Kashmir and GB) could challenge the Indian action as a breach of the terms of ‘provisional accession’. These terms of accession have been fully examined in the Maghar Singh case by Janki Nath Wazir CJ and Shahmiri J of the J & K High Court in May 1953. Commenting on the status of the Accession the judgement reads:

[(c) While the Maharajah of Kashmir 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 at that date with respect to the State of

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Jammu and Kashmir, all obligations of 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. 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 adapted 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:

“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 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 the Ruler so far as the succession of the State to the Dominion of India was concerned.”

The division bench in Magher Singh v Principal Secretary J&K Government case has examined the status of Article 370 and said “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 speeches made by the prominent members of the Government of India who were responsible for drafting this article and piloting it through the Constituent

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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 most recent examination of the terms of a relationship with India has been carried out in The State Autonomy Committee report published in July 2000. On 29 November 1996, the State Government had set up a Committee to examine the question of restoration of autonomy to the State of Jammu and Kashmir. The 9-member Committee was chaired by Dr. Karan Singh. It has made clear that Jammu and Kashmir had agreed to a limited relationship on three subjects and the State has never merged with the union of India. This report was adopted by both houses of the J&K Assembly.

India Attracts a Reprimand

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 moved to the United Nations Security Council in 1948 against Pakistan in reference to Jammu and Kashmir. India again moved to UN Judicial Body International Court of Justice (ICJ) in May 2017 and challenged Pakistan, on a military court decision against Kulbhushan Jadhav, convicted for espionage and terrorism in Pakistan. Can Pakistan or any other member of the United Nations seek Security Council or ICJ reference against India? The answer is a positive yes.

We have not been serious in seeking a formal reprimand of India. The main reason has been that we have not been able to understand the jurisprudence that would attract a reprimand. Pakistan except one and the only letter of 8 July 1948 written by the President of Azad Jammu and Kashmir Government addressed to Chairman UNCIP, has retained the full responsibility and control of representing Kashmir case at the UN Security Council and at other international forums. There has been and continues to be a Kashmiri representation. But

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it is peripheral and unimpressive. Kashmiris have failed to remain vigilant and make regular efforts to share their formal and substantive inputs with the Government of Pakistan.

For example if the Kashmiri leadership had a reliable understanding of the jurisprudence of UN Resolutions on Kashmir, Farooq Abdullah, Omar Abdullah and Mehbooba Mufti would not have chaired the 'Theatre *command*' or *joint military command* in Indian administered Kashmir (now re-occupied) and allowed the army a no holds barred and police a free hand in turning Kashmir into a prison. Similarly the Government in Azad Kashmir, would have rigorously performed in regards to its share of duties under UNCIP Resolutions. Government of Pakistan and the Government of Azad Kashmir have entered into a constitutional partnership in Azad Kashmir.

India could have been easily reprimanded at the UN General Assembly, UN Security Council and ICJ if we had not misdirected ourselves on the jurisprudence of Kashmir Case. In reference to Kashmir UN Security Council has argued that “The ultimate objective of a fair and impartial plebiscite under the auspices of the United Nations has, after all, 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 during the last three and a half years.” It has been further argued that, “The party that would dare to violate an agreement thus reached would load upon itself a very grave offence against the other party, against the United Nations, and against the right of the people of Jammu and Kashmir to self-determination, a right which, in other contexts, both parties have so often and so eloquently defended.” India without doubt has “load upon itself a very grave offence.”

Indian Government has been charged with 13 duties in Security Council Resolution 47 of 21 April 1948. Para 2 sets out the discipline for the behaviour, number and location of Indian forces. These forces have attracted the notice of the UN High Commissioner for Human Rights in June 2018 and July 2019 reports and in the May 2019 report of the UN Secretary General. The June 2018 report on the “Situation of Human Rights in Kashmir” has made 17 recommendations to the Indian authorities, in regard to the situation in its controlled part of Jammu and Kashmir.

Government of India has continued with its noncompliance of duties set out in UN Resolutions. In the past three years has pooh poohed the recommendation made in UN Reports. Ignoring the reports of the UN High Commissioner for Human Rights means an act of defiance towards the Human Rights Council and the General Assembly, which elects the members of Human Rights Council.

Actions taken on 5 August and 31 October by Indian Government in Kashmir are a violation of the UN Resolution of 30 March 1951. It has continued to violate paras 12, 13 and 14 of UN Resolution of 21 April 1948, denying the rights to 2.5 million Muslim refugees living in various provinces of Pakistan to return in safety and dignity to their homes in Kashmir. On

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the contrary it is seen bringing new laws to change the 92 year old State Subject Law and allow non-Kashmiri Indians to settle down and change the Muslim majority.

Kashmir remained under a long duration of curfew from 5 August 2019. People were locked in herds in their homes during Corona Virus. They were denied the social distancing and medical intervention. The ‘gross and systematic violation of human rights’, continued noncompliance of UN Charter obligations and occupation of a people waiting for a UN supervised Plebiscite, makes a strong case of intervention.

United Kingdom had proposed in November 1947 almost 1 month and 9 days prior to India made her petition to UN Security Council on 31 December 1947 that a reference could be made to the International Court of Justice. On 27 August 1951 Office of South Asian Affairs and Office of United Nations Political and Security Affairs of United States prepared a document on Kashmir titled, “Kashmir Dispute: Future Action” . USA was to ask the Security Council to request the International Court of Justice to render an advisory opinion regarding the legality of the act of the Maharaja of Kashmir in signing an instrument of accession to India. India is a fit case for a UN reprimand and expulsion from the UN.

Pakistan or a friendly country should be encouraged to consider the Indian noncompliance of duties under Security Council resolutions, defiance of UN recommendations on her human rights record and the manner of subjecting the people of Kashmir to torture and imminent health disaster, needs an action by the UN.

Indian Action of 5 August 2019

Government of India conferred upon itself powers to take actions in the part of Kashmir on its side of cease fire line. India cannot do so and the action of 05 August 2019 is unlawful. India remains under a UN Security Council caution from 6 January 1948 in respect of taking any action in Kashmir. The UN template on Kashmir has insulated Kashmir for a UN supervised Plebiscite. UN had appointed a Representative (US national) to arrange a demilitarization and an Administrator (US national) to conduct a free and secure Plebiscite. The Plebiscite should have taken place before 01 November 1950. But it did not.

Indian has made four written pledges on the withdrawal of its forces from Jammu and Kashmir. On 27 October 1947, it has made a formal bilateral pledge to the people of Kashmir that there would be a reference to the People. A day before, that is, on 26 October 1947 India has made a pledge to the Prime Minister of Britain Clement Attlee and a day after, that is on 28 October 1947 she made the third pledge to Pakistan and on 15 January 1948 India made the fourth pledge to UN, that there would be a reference to people on the future status of the State and that there would be a withdrawal of its forces. On 15 January 1948 India has

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surrendered the conditional Agreement of 26 October 1947 for a UN supervised vote. Therefore the character of accession of 27 October 1947 has changed on 15 January 1948. India has made three prayers at the UN Security Council.

1. The Agreement of 27 October clarifies the following:
 - (a) When law and order is restored the question of State's accession should be settled by a reference to the people.
 - (b) Indian army shall help Kashmir forces to defend the territory and to protect the lives, property and honour of people.

It is clear that the Indian army has to remain as a support and as a sub-ordinate force to perform four duties for a certain period. A voluntary withdrawal of these forces is also envisaged in the agreement and in the assurance given to British Prime Minister on 26 October 1947 and to PM of Pakistan on 28 October 1947.

Engagement and Dialogue

On 4 November 1995 Prime Minister Rao at Burkina Faso set "Sky as the Limit" for a dialogue with the people of Kashmir. In January 2004 Government of India carried forward the dialogue initiated by Prime Minister Vajpayee in April 2003 on the Vajpayee doctrine of 'Insaniyat, Jamhuriyat, Kashmiriyat'. Prime Minister of India held two meetings in January and March 2004 with Hurriyat leadership. At the conclusion of the second round-table conference on May 24, 2006 held in Srinagar Prime Minister Manmohan Singh announced five working groups to look into broad issues and problems vis-a-vis Kashmir.

The important Working Groups were:

- (1) That National Commission for Minorities (NCM) Chairman Mohammad Hamid Ansari will head a working group to deliberate on measures to improve conditions of the people of Jammu and Kashmir affected by militancy and schemes to rehabilitate all orphans and widows affected by insurgency.
- (2) That M K Rasgotra, a former diplomat, was to head a committee to recommend measures to simplify procedures to facilitate travel across the Line of Control, increase goods traffic and expand people-to-people contact, including promotion of pilgrimage and group tourism, the spokesman added.
- (3) That the former Chief Justice of India Justice A M Ahmadi as the chairman of a working group would deliberate on matters relating to the special status of Jammu

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and Kashmir within the Indian Union and methods of strengthening democracy, secularism and the rule of law in the state.

BJP Foothold in Kashmir and Betrayal

RSS interest in Jammu and Kashmir dates back to 21 December 1931, when its volunteers paraded on the streets of Lahore and avowed a full political and militant support to Ruler of Kashmir. It was to counter the support and sympathy that was gathering in British India for the plight of Kashmiri Muslims. There was anger and uproar on the killing of 22 innocent Muslims in the courtyard of Srinagar jail. RSS sent its armed volunteers into Kashmir to assist Maharaja's forces against the Muslim uprising.

It was 84 years later that in March 2015 BJP (Bharatiya Janata Party) succeeded to find an entry into the power politics of Kashmir. It entered into an alliance with PDP (J&K People's Democratic Party) and the two parties negotiated a 38 item common minimum programme. It seemed a comprehensive programme and addressed the following areas in relation to the people of the State and India-Pakistan relations:

5. The purpose of this alliance is to form a coalition Government that will be empowered to catalyse reconciliation and confidence building within and across the Line of Control (LoC) in J&K thereby ensuring peace in the state. This will, in turn, create an enabling environment for all round economic development of the state and prosperity of the people.
10. While recognising the different positions and appreciating the perceptions BJP and PDP have on the constitutional status of J&K, considering the political and legislative realities, the present position will be maintained on all the constitutional provisions pertaining to J&K, including the special status in the Constitution of India.
19. The Union Government has recently initiated several steps to normalise the relationship with Pakistan. The coalition government will seek to support and strengthen the approach and initiatives taken by the government to create a reconciliatory environment and build stakes for all in the peace and development within the sub-continent.
20. The same will be pursued by taking confidence building measures, such as, enhancing people to people contact on both sides of the LoC; encouraging civil society exchanges, taking travel, commerce, trade and business across the LoC to the next level and opening new routes across all three regions to enhancing connectivity.
21. The earlier NDA government led by Shri Atal Bihari Vajpayee had initiated a dialogue process with all political groups, including the Hurriyat Conference, in the spirit of "Insaaniyat, Kashmiriyat aur Jamhooriyat".

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22. Following the same principles, the coalition government will facilitate and help initiate a sustained and meaningful dialogue with all internal stakeholders, which will include all political groups irrespective of their ideological views and predilections. This dialogue will seek to build a broad based consensus on resolution of all outstanding issues of J&K.

24. While both parties have historically held a different view on the Armed Forces Special Powers Act (AFSPA) and the need for it in the State at present, as part of the agenda for governance of this alliance, the coalition government will examine the need for de-notifying 'disturbed areas'. This, as a consequence, would enable the Union Government to take a final view on the continuation of AFSPA in these areas.

25. All lands other than those given to the security forces on the basis of lease, licenses and acquisition under the provision of the Land Acquisition Act shall be returned to the rightful legal owners, except in a situation where retaining the lands is absolutely imperative in view of a specific security requirement. In any case, monetary remuneration, be it in the form of rents or compensation should be made fairly at market rates.

26. Protecting and fostering ethnic and religious diversity by ensuring the return of Kashmiri Pandits with dignity based on their rights as state subjects and reintegrating as well as absorbing them in the Kashmiri milieu. Reintegration will be a process that will start within the state as well as the civil society, by taking the community into confidence.

27. For the deprived groups, the coalition government will:

a. Work out a one-time settlement for refugees from Pakistan Occupied Kashmir of 1947, 1965 & 1971

b. Take measures for sustenance and livelihood of the West Pakistan refugees

c. Extend all benefits accruing to the people living on the LoC to the people living on the International Border

d. Make the families of the victims in cross border firing qualify for benefits given under SRO 43

e. Construct shelters in vulnerable areas on the LoC and the International Border to prevent loss of life

f. Give ST status to Kollis, Chopans and Paharis

g. Create a Scheduled Tribe Ministry for the welfare of the STs

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h. Constitute a delimitation Commission for the delimiting of Legislative Assembly Constituencies as required by law

V. Developmental Agenda:

38. There shall be a steering committee comprising of the President of PDP and BJP, and four members each from the parties for overseeing the implementation of the Common Minimum Program.

PDP leadership failed to assess the situation and made a serious error in refusing to go into an alliance with other local parties. BJP used its presence in the administration to plan a betrayal. It pulled out from PDP alliance in June 2018.

Delhi used its representative in Kashmir to advance her agenda and the first step was to disenfranchise the people of the State. Governor Satya Pal Malik blocked all efforts made by PDP and PC to prove their respective claims of having numbers to form the new Government. The communication was frustrated by claiming that the fax machine in the Governor's office was not working and the Governor did not receive the two claims. Mehbooba Mufti and Sajjad Lone tweeted their claims. Even then the claims were not acknowledged and the Governor dissolved the Assembly on 21 November 2018. PDP leader Mehbooba Mufti could have formed an alliance with the National Conference and Congress.

Two Historic Errors of Judgement

(1) Indian army has been given a good behaviour certificate by Sheikh Muhammad Abdullah at the 241st meeting of UN SC held on 5 February 1948 as follows:

“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.” We have issues with the number, behaviour and location of Indian army today. It has been referenced in the two OHCHR Reports of June 2018 and July 2019. The attendant caveat of the watch of the Commission is missing today.

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- (2) PDP did not have a sense of history and made a serious error of judgement in entering into an alliance with BJP. The power sharing history of PDP with BJP has had its own issues. Chief Minister failed to deliver on the Common Minimum Programme.

ONINION' like diplomacy – As Free Men

Government of India seems to have followed an 'ONINION' kind diplomacy on "Jammu and Kashmir Question" and it has a layer after layer. What it has said on 26th October 1947 to the Prime Minister of Great Britain, on 27th October 1947 to the people of Jammu and Kashmir, to the Prime Minister of Pakistan on 28th October 1947 and to the UN Security Council on 15 January 1948 and what it did on 5 August 2019 explains it all.

Most important of all is the Indian statement made at the 533rd meeting of the UN Security Council held on 1 March 1951. India has stated that, "Para 43. 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."

A onetime Kashmiri point of view presented by Sheikh Abdullah at the 241st meeting of the UN Security Council held on 5 February 1948 is equally an important part of the jurisprudence of the UN template on Kashmir.

We are not logs of wood, we are not dolls

Sheikh Abdullah has 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... 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...* Naturally, as I have indicated, we could not decide this all important issue before achieving our liberation, and our slogan became "Freedom before accession."

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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... 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”.

India is not Great Britain - BJP is not the East India Company

India is not Great Britain and BJP is not the East India Company. It is important to be reminded of the fact that RSS has taken out an anti-Muslim procession on 21 December 1931 on the streets of Lahore against the Muslims of Kashmir and in the support of the Maharaja and his forces in Kashmir. RSS backed action of 5 August 2019 has no merit and no force in Law. It is a colonial occupation.

History would not support Indian forced occupation and she cannot co-exist with our future generations, unless she vacates her action of 5 August 2019. The State Autonomy Committee commissioned in 1996, has brought out a report in July 2000. We see that it has missed a very vital point, which is, that even after signing a ‘contested’ instrument of accession on 26 October 1947, the Indian citizens required an entry permit to visit Kashmir until 31 March 1959. The requirement was rescinded by PM of Kashmir on 31 March 1959.

India does not have in any manner more an influence which United States of America and Israel have at the UN. A draft resolution moved by Egypt on the Right of Self Determination of the Palestinian people at the Third Committee of UN General assembly on 17 November 2022 was carried by a record vote of 167 in favour to 5 against (Nauru, Marshall Islands, United States, Israel, Micronesia), with 7 abstentions (Cameroon, Kiribati, Guatemala, Palau, Rwanda, Solomon Islands, Togo). United States of America and Israel failed to stop the resolution. The resolution stressed the urgency of ending the Israeli occupation and a lasting peace settlement between the two sides. It underscored the need to respect the territorial integrity of the Occupied Palestinian Territory, including East Jerusalem, and urge States to assist the Palestinian people in the realization of their right to self-determination.

India is faced with UN Resolutions on Kashmir, political resistance embedded in Hurriyat Constitution of July 1993, June 1997 India- Pakistan joint statement, State Autonomy Committee Report of June 2000, 3 UN Reports of June 2018, July 2019 and May 2018, duties of AJK Government under UNCIP Resolutions, Gupkar Declaration of 4 August 2019,

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terms of temporary admission of forces into Kashmir, unlawful rescinding of Visa requirement for entry into Kashmir of Indian citizens, regrouping of five out of six interests group to undo the occupation, Kashmiri Diaspora, 2.5 million Kashmiri Muslim refugees living in the four provinces of Pakistan and Pakistan as a party to the dispute and as a member Nation of UN.

State Autonomy Committee Report of July 2000 has challenged the veracity of Indian claim of accession and the Gupkar Declaration of 4 August 2019 has warned India as follows:

“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.”

The Jurisprudence of Kashmir Case in 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” has been enriched and perfected by the contributions made by Argentina, USA, UK, France, Norway, Netherlands, Columbia, Australia, Syria, Norway, Canada, Cuba and China during the debates on “the Jammu and Kashmir Situation” and later “the India-Pakistan Question” at the UN Security Council.

UN Secretary General

UN Secretary General Dag Hammarskjöld visited Srinagar Kashmir in March 1959, to assess the political and economic situation of the people. If he had not died in a plane crash in September 1961, things would have moved on the Jammu and Kashmir Question. The OHCHR Reports of June 2018 and July 2019 have made 17 and 19 recommendations respectively to the Government of India. The recommendations 17 and 19 have asked Government of India to “Fully respect the right of self-determination of the people of Kashmir as protected under international law.”

Recommendations

1. That Government of India vacates her action of 5 August 2019
2. Keeps the number and status (non-arms bearing) of the forces as proposed by India at the 608th meeting of UN SC held on 8 December 1952.
3. Government of India to return to its status in Kashmir as explained at the 533rd meeting of UN SC held on 01 March 1951 and as explained by the Court in Maghar Singh case of May 1953.

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4. It should revive a political process as envisaged in the five working groups set up on Kashmir.
5. Indian army to perform the four duties agreed in the agreement of 27 October 1947. The stationing of the forces to be carried out in accordance with Para 2 (c) (i) (ii) and (iii) of UN SC Resolution of 21 April 1948
6. Allow the political activities of Hurriyat under its constitutional discipline adopted on 31 July 1993 and allow the political activities of PAGD.
7. Release all political prisoners.
8. Consider the Human Rights situation described in the two reports of UN High Commissioner for Human rights of June 2018 and July 2019 and in the Report of UN Secretary General of May 2018 and act on the recommendations made in the interests of the welfare of the people and peaceful quality of life in the habitat.
9. Until the implementation of UN template Government of India accepts the Canadian proposal “to afford security to the peoples 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.”

Netherlands has 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.” Therefore, India could not claim an exclusive responsibility for law and order in Jammu and Kashmir. The character of Indian relationship with the Government of Jammu and Kashmir has changed on 15 January 1948 and the action of 5 August 2019 has reverted the State to the Stand Still Agreement of August 1947.

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