

## **Kashmir: Nature and Dimensions of the Conflict**

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### **Abstract**

After sixty nine years of the Partition of British India, Kashmir still remains an unresolved issue. It has not only been a cause of wars and crises in India-Pakistan bilateral relations, but regional peace and stability also hinges upon its resolution. Kashmiri people have been struggling for their right of self-determination and in pursuance of this goal, they have been facing grave human rights violations (HRVs). These violations in Indian Held Kashmir (IHK) show the indifference of the international community to this issue. The paper gives a brief historical overview of Kashmir; and the political and legal aspects of the concept of self-determination and its application on Kashmir in the contemporary global environment. It analyses how Indian domestic politics have a strong bearing on the changing dynamics of and in IHK, especially with regard to HRVs; and various options for peace put forward by Pakistan.

**Key words:** Kashmir, India, Pakistan, Self-determination, Human Rights, Peace, Stability.

### **Introduction**

**K**ashmir is the defining factor in India-Pakistan bilateral relations and has been the direct or indirect cause of crises and wars between the two states. Since the Partition of British India in 1947, the people of Kashmir have been struggling for their right of self-determination, a right that has been denied for about seven decades. Locked in conflict, India-Pakistan relations have not moved forward and have remained hostage to the resolution of Kashmir.

In fact, Kashmir has become part of the unfinished agenda of Partition. Apart from military means, diplomatic means have also been used in the form of multilateral and bilateral dialogues. A multilateral approach to address the Kashmir issue has been employed in the form of United Nations Security Council (UNSC) resolutions. Unlike its role in Kashmir, the UN effectively managed to hold referendum in East Timor in 1999 that

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ultimately led its independence from Indonesia in 2002. Similarly, action was taken in the case of South Sudan where threat of UN sanctions made parties to the conflict agree on its independence in 2011. A multilinguistic, multireligious and ethnically heterogeneous society like South Sudan had become independent due to UN intervention, but the Muslim homogeneous Kashmiri population with a well-defined territory has not been able to trigger any decisive action to compel the parties to comply with the UN resolutions.

At its very core, the conflict is primarily about the right of self-determination of the people of Kashmir. But with the passage of time and India's denial to accept the wishes of the Kashmiri people to decide their future; its non-compliance with UNSC resolutions with regard to holding fair and free plebiscite in Jammu and Kashmir; the rise of freedom struggle in 1990s by Kashmiri youth and the subsequent human rights violations by Indian security forces; nuclearisation of South Asia; inconclusive bilateral dialogue process and rise of the Bharatiya Janata Party (BJP) have further complicated and transformed this conflict from uni-dimensional (right to self-determination) to multidimensional.

This paper intends to highlight the political as well as legal aspects of the concept of self-determination and its application on Kashmir in the wake of the contemporary global environment. It analyses various dimensions of the conflict such as human rights violations (HRVs), centrality of Kashmir in preserving regional peace and stability and new political dynamics in Indian domestic politics and its impact.

### **The Kashmir Conundrum: Where Did it Begin?**

The source of the Kashmir conflict can be traced back to the partition of British India in 1947. Prior to the Partition, the princely states of the Indian subcontinent were given the option to accede to either India or Pakistan based on demographic or geographic considerations.<sup>1</sup> The state of Jammu and Kashmir while having Muslim majority population, also had historical, cultural and economic relations as well as geographical proximity with the areas that became part of Pakistan. Due to this, the people of Kashmir had a strong desire to accede to Pakistan, but the then ruler of Kashmir, Maharajah Hari Singh was reluctant to accede to a Muslim majority country. The indecisiveness on the part of Maharaja Hari Singh regarding Kashmir's future led to the rise of an indigenous uprising in Poonch, a district in South West Kashmir. Subsequently, Indian military involvement

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<sup>1</sup> Kunal Mukherjee, "The Kashmir Conflict in South Asia: Voices from Srinagar," *Defense and Security Analysis* 30, no.1 (2014): 48.

and the first Indo-Pak war of 1948 further intensified the conflict. The war ended with a ceasefire agreement on both sides with territory liberated from Indian occupation which is now known as Azad Jammu and Kashmir (AJK), while the territory including Kashmir Valley, Jammu and Ladakh remain occupied by India.

The most important hindrance in the resolution of Kashmir has been India and Pakistan's different interpretations regarding nature of the Kashmir conflict. India claims Kashmir as its integral part, but fails to prove the validity of its claim. Article 370 of the Indian Constitution grants Kashmir special status in the Indian Union, while limiting the Parliament's law-making powers regarding the region. According to this Article, the Indian Government can have rights over Kashmir in only three areas: defence, foreign affairs and communications.<sup>2</sup> With the passage of time, the symbol of its special status was abolished as the post of Kashmiri Prime Minister was replaced with Chief Minister, while the post of President was replaced by Governorship like other states in the Indian Union.<sup>3</sup> Moreover, Article 35 (A) was added to the Constitution of India by a Presidential Order in 1954 which protects the rights of permanent residents of state of Jammu and Kashmir regarding acquisition of immovable property.<sup>4</sup> Successive governments in India have also been using different tactics to delay the dialogue process.<sup>5</sup> While for Pakistan, Kashmir issue is part of the unfinished agenda of Partition of British India. Pakistan desires that the Kashmiri people be allowed to exercise their right to self-determination in accordance with their wishes and aspirations.

### **What is the Right of Self-determination?**

Self-determination has been defined as 'a collective right of a defined ethnic, linguistic, cultural or religious community to create and administer their own state' or it can be defined as the 'right of a population to decide about their political destiny as well as economic and social institutions.'<sup>6</sup> In reality, self-determination has been applied in more specific terms to cases

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<sup>2</sup> Mukherjee, "The Kashmir Conflict in South Asia," 50.

<sup>3</sup> Ibid.

<sup>4</sup> Muzamil Jaleel, "Challenge to Jammu and Kashmir's Law on 'Permanent Residents': Meaning and Implications," *Indian Express*, July 16, 2015, <http://indianexpress.com/article/explained/challenge-to-jks-law-on-permanent-residents-meaning-and-implications/>.

<sup>5</sup> Pervaiz Iqbal Cheema, "The Kashmir Dispute: Key to South Asian Peace," *IPRI Journal* XIV, no. 1 (2014): 2, <http://www.ipripak.org/wp-content/uploads/2014/04/Article-no.-1-dr.-Cheema.pdf>.

<sup>6</sup> Montserrat Guibernau, "Self-Determination in the Twenty-First Century," *Ethnopolitics* 14, no.5 (2015): 540.

of colonialism and also in some instances to illegal and forceful occupation.<sup>7</sup>

Before highlighting the political and legal status of this right, it is important to briefly review the historical context of the concept. Its modern origin can be traced back to the Eighteenth Century Western political thought. Enlightenment philosophers such as Rousseau, Mill and Locke stressed the need to recognise the capacity of people to determine their own future.<sup>8</sup> Locke pronounced it as the right to resist despotism and withdraw support from any political arrangement; the idea was enthusiastically accepted by American revolutionaries and later on extended to their War of Independence.<sup>9</sup> Similarly, Rousseau's idea of popular sovereignty became a hallmark for the French Revolution and contributed to the evolution of the modern concept of self-determination.

During World War I, the concept of self-determination was employed as 'the right of people to decide their own destiny' with regard to minorities of opposing camps; but after the war, this principle received international acceptance with U.S. President Woodrow Wilson's support. He advocated that national identities should be respected and people should be free from external domination.<sup>10</sup> Unfortunately, President Wilson could not succeed in incorporating the provisions regarding self-determination in the Covenant of the League of Nations due to opposition from European allies who had large colonial empires; and also because of domestic opposition from within the U.S.

It was not until the creation of the United Nations (UN) that the concept was further developed. It has been recognised in the UN Charter, and has been defined in Article 1(2). While enunciating the purpose and objectives of the UN, Article 1(2) states:

It is one of the purposes of UN to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of people; and to take other appropriate measures to strengthen universal peace.<sup>11</sup>

In 1960, the UN General Assembly passed the declaration on 'Granting of Independence to Colonial Countries and Peoples.' The declaration states that the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental rights that

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<sup>7</sup> Ingrid Barnsley and Roland Bleiker, "Rethinking Self-Determination: From Decolonization to Deterritorialization," *Global Change, Peace and Security* 20, no.2 (2008): 121.

<sup>8</sup> *Ibid.*, 123.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*, 124.

<sup>11</sup> United Nations, "UN Charter," accessed May 16, 2016, <http://www.un.org/en/sections/un-charter/un-charter-full-text/index.html>.

is contrary to the Charter of the UN.<sup>12</sup> In 1966, self-determination was included as a right in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights that have described it as an individual and collective right of the people 'to freely determine their political status and freely pursue their economic, social and cultural development.'<sup>13</sup> These further emphasise that states should promote the realisation of the right of self-determination and respect that right in conformity with the provisions of the Charter of the UN.<sup>14</sup>

Furthermore, the right of self-determination has been identified by the International Court of Justice as one of the essential principles of Contemporary International Law. It refers to self-determination as a right held by people rather than a right held by governments alone. It is a norm of *jus cogens*. *Jus cogens* norms are the highest rules of international law and must be strictly followed at all times.<sup>15</sup> Moreover, it also has the legal status of *Erga omnes* that means flowing to all. *Erga omnes* obligations of a state are owed to the international community as a whole and it is a mandatory duty to respect it under all circumstances.<sup>16</sup>

An overview of the historical, political and legal status of self-determination shows that the concept has kept evolving throughout the course of modern history, but the predominant interpretation emerged in the post-World War II era with the acceptance of the right of colonial people to be free from colonial rule; and of people to be free from illegal occupation or annexation.<sup>17</sup>

Though this right has been established in international law and political practice in the colonial context, it has been applied beyond the colonial context as well. Examples include the creation of 15 states with the disintegration of the former Soviet Union; the creation of Czech and Slovak republics; the secession of Eritrea from Ethiopia; and the creation of new states with the break-up of Yugoslavia.<sup>18</sup> The formation of these states was either the result of state collapse or of civil wars, but political recognition of

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<sup>12</sup> Matthew Saul, "The Normative Status of Self -Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?" *Human Rights Law Review* 11, no. 4 (2011): 609-644, [www.corteidh.or.cr/tablas/r27634.pdf](http://www.corteidh.or.cr/tablas/r27634.pdf).

<sup>13</sup> Office of High Commissioner for Human Rights (OHCHR), International Covenant on Civil and Political Rights of 1976, Adopted by General Assembly Resolution, 2200A (XXI), 16 December 1966, [www.ohchr.org/en/professionalinterest/pages/ccpr.aspx](http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx).

<sup>14</sup> Ibid.

<sup>15</sup> Karen Parker, "The Right to Self-Determination of the Kashmiri People," *Association of Humanitarian Laws*, (paper prepared for international conference, United States House of Representatives, Washington, D.C., July 24, 2003), [www.humanlaw.org/kashmirself.html](http://www.humanlaw.org/kashmirself.html).

<sup>16</sup> Ibid.

<sup>17</sup> Barnsley and Bleiker, "Rethinking Self-Determination," 125.

<sup>18</sup> Ibid.

self-determination did exist. Some other examples include East Timor and South Sudan which presented circumstances similar to Kashmir.

### **Self-determination and Kashmir: An Unanswered Question**

The strongest argument for Kashmir as a case of self-determination can be made by referring to the United Nations Security Council resolutions which recognise Kashmiris right to self-determination. Kashmir has been the oldest issue on the agenda of United Nations Security Council (UNSC) that has passed a number of resolutions regarding holding plebiscite in Kashmir. An overview of the Security Council resolutions passed on August 13, 1948 and January 5, 1949 shows that withdrawal of troops and holding fair and impartial plebiscite in Jammu and Kashmir has been acknowledged as the prerequisite for the resolution of Kashmir issue.<sup>19</sup>

In this context, in January 1948, Security Council adopted Resolution 39 to establish a commission known as the United Nations Commission for India and Pakistan (UNCIP) to investigate and mediate the Kashmir conflict.<sup>20</sup> In July 1949, India and Pakistan by signing Karachi Agreement established a ceasefire line to be supervised by the military observers who formed the core of the United Nations Military Observer Group in India and Pakistan (UNMOGIP).<sup>21</sup> In March 1951, following the termination of UNCIP, the Security Council by its resolution 91(1951), decided that UNMOGIP should continue to supervise the ceasefire in Kashmir.

India's non-compliance with the UN Resolutions regarding plebiscite has not triggered any forceful action from the UNSC. One of the reasons for this inaction may be that resolutions on Kashmir were passed under chapter six of the UN Charter that does not have any mandatory enforceability as opposed to the resolutions passed under chapter seven of the Charter. Karen Parker highlights that apart from UN Resolutions, Kashmir also has other attributes that make it a suitable case for demanding right of self-determination. She lists these attributes as (1) a definable territory with a history of self-governance; (2) a distinct culture; and (3) the will and capability of the people to restore self-governance.<sup>22</sup>

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<sup>19</sup> United Nations Commission for India and Pakistan, MoFA, "Document no. 5/1196," 10th January, 1949, (Government of Pakistan, 1949)  
<http://www.mofa.gov.pk/documents/unsc/Resolution%20adopted%20at%20the%20meeting%20of%20the%20United%20Nations%20Commission%20for%20India%20and%20Pakistan%20on%205%20January%201949.pdf>.

<sup>20</sup> UN, "India-Pakistan: Background," United Nations, accessed August 11, 2016,  
<http://www.un.org/en/peacekeeping/missions/past/unipombackgr.html>.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

It is pertinent to note that Kashmir's territory was well-defined throughout the British colonial rule, and Kashmiris resisted British control by maintaining internal autonomy during this period. In this regard, the most notable resistance movement 'Quit Kashmir' was launched in 1931 against the British and British supported *Maharajah*<sup>23</sup>, but it could not succeed and was brutally put down. Later, another resistance movement against the *Maharajah* was launched in 1946 that was named as 'Azad Kashmir' movement.<sup>24</sup> After the partition of British India, resistance against Indian occupation continued with major uprisings in 1953, 1964, 1988-2000, 2010 and the most recently in 2016.

Given the new developments in the post-Cold War era, various scholars have stressed the need to link self-determination with questions of human rights. Robert McCorquodale emphasised that human rights were central to the application of the right to self-determination, while Jack Donnelly stressed that this right remains unaccomplished if other human rights are not exercised.<sup>25</sup> It is a foundational principle, the recognition of which provides people with the freedom to determine their cultural, social, economic and political life.<sup>26</sup> Keeping in view the co-relation between right of self-determination and human rights, it is pertinent to highlight human rights situation in Indian Held Kashmir (IHK).

### **Human Rights Situation in IHK**

In pursuance of their right to self-determination, people of Kashmir have been facing grave human rights violations. It is reported that since the rise of freedom struggle in Kashmir in 1989, around 100,000 people have been killed (mostly young people), and around 1,000 have disappeared.<sup>27</sup> To date, 135,657 civilians have been arrested; 22,819 women widowed; 10,283 women gang raped; and 107,577 children orphaned.<sup>28</sup>

Moreover, the Indian government has been enforcing many brutal laws in Kashmir from time to time. These include the Jammu and Kashmir Public Safety Act (1978); Armed Forces Special Powers Act (1990); Terrorist and Disruptive Activities Act (1990); National Security Act; and Prevention of Terrorism Act (POTA) (2002). The Jammu and Kashmir Public Safety Act of 1978 allows the detention of any suspect and for him

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<sup>23</sup> Sanskrit title for a 'great ruler', 'great king' or 'high king'.

<sup>24</sup> UN, "India-Pakistan: Background."

<sup>25</sup> Barnsley and Bleiker, "Rethinking Self-Determination," 131.

<sup>26</sup> Ibid, 132.

<sup>27</sup> Victoria Schofield, "Why Kashmir is Still Important," *Asian Affairs* 46, no. 1 (2015): 24, <http://www.tandfonline.com/doi/full/10.1080/03068374.2014.994961?src=recsys>.

<sup>28</sup> "Human Rights Violations – Jan 1989 to July 31, 2016," *Kashmir Media Service*, accessed August 15, 2016, [www.kmsnews.org/news/](http://www.kmsnews.org/news/).

or her to be kept in jail for two years without any trial for a broad range of activities, including such nebulous charges as promoting or propagating to create feelings of enmity and hatred on grounds of religion, race and community.<sup>29</sup> This act has been widely abused in Kashmir and is being used against 12-16 year old boys for merely pelting stones. The Armed Forces Special Powers Act (AFSPA) of 1990 empowers the Indian Security Forces (ISF) to search homes and make arrests without warrants, and to destroy suspected hideouts of potential terrorists. The law gives ISF power to shoot or kill anyone with total immunity from prosecution.<sup>30</sup> Under the Terrorist and Disruptive Activities Act of 1990, a person can be detained without any formal charge or trial for up to one year for being involved in terrorist or disruptive activities. Court hearings must be conducted in secret.<sup>31</sup> The National Security Act allows detention without charge or trial for up to one year to prevent individuals from acting in a manner prejudicial to state security, the maintenance of public order or having relations with a foreign power.<sup>32</sup> POTA (2002) sees any act committed with a lethal weapon as a terrorist act. It also considers inviting support for an alleged terrorist organization; addressing a gathering of sympathisers (of terrorists); and arranging, helping and assisting to arrange a meeting in which support for/to any terrorist organisation is expressed, as subversive acts of terror.<sup>33</sup>

Another attempt to institutionalise and formalise the HRVs carried out by the police as a general practice has been made by introducing the arbitrary Jammu and Kashmir Police Bill 2013 introduced after the hanging of Afzal Guru (a suspect of the terrorist attack on the Indian Parliament in 2001) when curfew was imposed in the Kashmir Valley. One of the provisions of the Bill has been to set up 'Special Security Zones' where administrative and magisterial powers are retained by the police. It has also proposed to set up militia of civilians as 'village defence committees' and to recruit special police officers outside the existing police structure.<sup>34</sup> The Bill, when enacted and enforced, gives the state police powers quite similar to the controversial AFSPA.

In the post-Cold War era, the humanitarian crisis in former Yugoslavia and Africa received worldwide attention during the early 1990s

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<sup>29</sup> "Kashmir," *Kashmir Issue*, August 15, 2016, <http://kashmir-issue.com/humanrights.html>.

<sup>30</sup> Ibid.

<sup>31</sup> Special committee of Parliament on Kashmir, "Draconian Laws in Indian Occupied Kashmir," *National Assembly of Pakistan*, accessed March 2, 2016, <http://www.na.gov.pk/en/content.php?id=90>.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Abdul Majid Zargar, "Civil Society Objections Jammu and Kashmir Police Bill, 2013," *Kashmir Watch*, February 25, 2013, <http://kashmirwatch.com/civil-society-objections-jammu-and-kashmir-police-bill-2013/>.

on the pretext that human rights abuses and violations in a particular state affect the peace and stability of the whole region. Since then, the principle of humanitarian intervention that was later on redefined as ‘Responsibility to Protect-R2P’ has been used selectively in various states. An analysis of the situations where humanitarian interventions were made shows that the principle was applied to those states that had geo-strategic importance for the big powers, while human rights violations in many other states go unnoticed. Kashmir is the best example of indifference of world powers towards human rights violations despite the fact that it threatens South Asian peace and stability.

### **New Dynamics of Conflict in Kashmir: Rise of the BJP**

Though Article 370 of the Constitution gives Kashmir special status within the Indian Union, domestic politics have a bearing on how Kashmir and Kashmiris are dealt with. The Bharatiya Janata Party (BJP), whose ideological position is defined by *Hindutva* philosophy with an emphasis on cultural nationalism, territorial integrity and ‘unity in uniformity’,<sup>35</sup> has been opposed to the constitutional exception given to the state of Jammu and Kashmir in the Indian Constitution. Despite BJP’s opposition to Article 370, the BJP-led coalition government (1998-2003), did not try to abolish it; rather then Prime Minister Vajpayee addressed the Kashmir issue from multiple dimensions. His approach was guided by three principles: *Insaaniyat* (humanism), *Jamhooriyat* (democracy), and *Kashmiriyat* (Kashmir’s age old legacy of amity).<sup>36</sup> *Kashmiriyat* can be described as a distinct ethno-nationalist character of Kashmir.

After its defeat in the 2004 elections, the BJP reverted back to its previous stance of criticising Article 370; and its abolition was one of the key ‘selling points’ of BJP’s election manifesto in 2014. However, after assuming power, Prime Minister Modi followed his predecessor’s approach of holding talks with the Kashmiri leadership, and initiating a peace process with Pakistan as well. Contrary to expectations, Modi sought to directly engage the people of Kashmir by offering them development, employment and good governance, while ignoring its disputed nature, the role of Kashmiri leadership, and the dialogue with Pakistan.<sup>37</sup>

The BJP, in alliance with the People’s Democratic Party (PDP), has formed a government in IJK and after a month of forming the government,

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<sup>35</sup> Rekha Chowdhary, “Modi’s Roadmap for India’s Kashmir and Pakistan Policies,” *East Asia Forum*, May 16, 2014, <http://www.eastasiaforum.org/2014/05/16/modis-roadmap-for-indias-kashmir-and-pakistan-policies/>.

<sup>36</sup> Jhinuk Chowdhury, “Narendra Modi’s Grand Plan for Kashmir,” *Diplomat*, March 12, 2015, <http://thediplomat.com/2015/03/narendra-modis-grand-plan-for-kashmir/>.

<sup>37</sup> *Ibid.*

it unveiled a plan to introduce demographic changes in Kashmir. The BJP has been engaged in setting up Sainik colonies and composite townships in IHK. The purpose is to permanently settle Indian soldiers in IHK (such a colony has already become operational in Jammu), while the townships were meant to settle displaced Kashmiri *Pandits*.<sup>3839</sup> Kashmiris view these developments as an attempt to bring demographic changes in the area. Establishment of Sainik colonies is unlawful under international law. Displaced Kashmiri *Pandits* have a right to return to Kashmir, but this selective return presents serious challenges. Under Article 49 of the fourth Geneva Convention, ‘the occupying power shall not deport or transfer part of its own civilian population into the territory it occupies.’<sup>40</sup> In case of construction of settlements by Israel in Occupied Palestinian Territory, the International Court of Justice in its advisory opinion termed these settlements as an attempt to alter the demographics of the Occupied Palestinian Territory and a violation of Geneva Convention. Similarly, India’s seizing of land, displacing the local population and setting up Sainik colonies are illegal.<sup>41</sup>

Kashmiri leader Syed Ali Shah Geelani responded to these developments and said that the *Pandits* are part of the Kashmiri society and they would always be welcome in their motherland, but any plan to settle them in exclusive colonies would be completely unacceptable.<sup>42</sup> Kashmiri leaders termed BJP’s plans as an attempt to further the agenda of eroding Kashmir’s special status since under prevailing laws, non-Kashmiris are not allowed to own land in the state.<sup>43</sup> They accused BJP of using the plight of the displaced people to change the ethnic and religious demography by settling ‘Hindu fundamentalists’ along with the *Pandits* and create a permanent social division in Kashmiri society.<sup>44</sup>

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<sup>38</sup> Sikander Ahmed Shah, “Settlements in IHK,” *Dawn*, August 14, 2016, <http://www.dawn.com/news/1277429/settlements-in-ihk>.

<sup>39</sup> Editor’s Note: The Kashmiri *Pandits* (also known as Kashmiri Brahmins) are a Brahmin community from the Kashmir Valley. They are the only remaining Hindu community native to the Valley.

<sup>40</sup> Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, at <https://ihl-databases.icrc.org/ihl/WebART/380-600056>.

<sup>41</sup> Shah, “Settlements in IHK.”

<sup>42</sup> Ahmed Ali Fayyaz, “Won’t Allow Special Havens for Pandits,” *Hindu*, June 12, 2014, <http://www.thehindu.com/news/national/other-states/wont-allow-special-havens-for-pandits/article6105303.ece>.

<sup>43</sup> “In ‘Israel Style’ Policy India Plans to Resettle Hindus in Kashmir,” *Express Tribune*, April 10, 2015, <http://tribune.com.pk/story/867568/in-israel-style-policy-india-plans-to-resettle-hindus-in-kashmir/>.

<sup>44</sup> “Kashmiri Muslim Leader Opposes Pandit Settlement Plan,” *World Bulletin News*, July 4, 2014, <http://www.worldbulletin.net/haber/140042/kashmiri-muslim-leader-opposes-pandit-settlement-plan>.

The Modi government has time and again postponed talks with Pakistan. Initially, it cancelled Foreign Secretary level talks in August 2014<sup>45</sup>; and later suspended a meeting between the National Security Advisors in September of the same year in response to a meeting of the Pakistani High Commissioner Abdul Basit with Hurriyat<sup>46</sup> leaders by terming it as interference in Indian affairs. There is nothing untoward or out of the ordinary in the High Commissioner meeting with Kashmiri leaders since it has been an accepted diplomatic practice<sup>47</sup>, and even facilitated by successive Indian governments, including previous BJP administrations (1998-2003).

Denying Kashmiri leaders their legitimate role in the Composite Dialogue between India and Pakistan<sup>48</sup> is an attempt to further complicate already complex issues. Earlier, during his visit to Ladakh region Prime Minister Modi accused Pakistan of waging a ‘proxy war’ in India’s only Muslim majority province.<sup>49</sup> Pakistan has countered such statements regarding this claim of Kashmir being an integral part of India.

An analysis of Vajpayee and Modi regimes shows that despite a hardline approach, the Vajpayee government adopted reconciliatory policies towards Kashmir and Pakistan. However, events of the past one year show that the Modi government has failed to address this issue as a political one as highlighted by Kashmiri leader Mirwaiz Umar Farooq:

Kashmir is not an administrative or an economic problem, but a political issue. Instead of hacking at the leaves, Prime Minister Narendra Modi should address the root cause. It is an issue that cannot be resolved by extending political favours or economic packages, but by taking a political initiative.<sup>50</sup>

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<sup>45</sup> Mateen Haider, “India Calls off Foreign Secretary Level Talks with Pakistan,” *Dawn*, August 18, 2014, <http://www.dawn.com/news/1126123>.

<sup>46</sup> Editor’s Note: All Parties Hurriyat Conference (APHC) is an alliance of 26 political, social and religious organisations formed in 1993 as a united political front to raise the cause of Kashmiri independence.

<sup>47</sup> “Timing of Meeting with Hurriyat Leader was not Totally Right: Aziz,” *Dawn*, September 28, 2014, <http://www.dawn.com/news/1134881>.

<sup>48</sup> Aymen Ijaz, “Analysis of Pak-India Composite Dialogue,” Islamabad Policy Research Institute, September 15, 2015, <http://www.ipripak.org/analysis-of-pak-india-composite-dialogue/>.

<sup>49</sup> “Indian PM Narendra Modi Visits Kargil,” *BBC News*, August 12, 2014, <http://www.bbc.com/news/world-asia-india-28751252>.

<sup>50</sup> “Follow Vajpayee’s Policies on Kashmir,” *Hindu*, October 17, 2015, <http://www.thehindu.com/news/national/other-states/follow-vajpayees-policies-on-kashmir/article7772023.ece>.

The BJP has a different legacy vis-à-vis Kashmir than the Congress party which has ruled India as a dominant party since 1947.<sup>51</sup> The Kashmir dispute has been the legacy of Congress led by the Nehru-Gandhi dynasty.<sup>52</sup> The BJP by refusing to accept the disputed nature of IHK, by adopting hardline strategies such as introducing policies to change the demographic status of IHK has created discontent and restlessness among Kashmiri youth. Moreover, the killing of 22-year old Hizbul Mujahideen Commander Burhan Wani on July 8, 2016 has given rise to a new wave of violence. Kashmiri civilians, especially youth, have been protesting against his killing, despite an indefinite curfew imposed in the Valley.<sup>53</sup> In less than six days after Wani's funeral, 36 civilians had been killed by Indian forces and more than 1,500 injured, nearly a 100 with severe eye injuries.<sup>54</sup> With mass protests entering their fourth month, more than 75 innocent Kashmiris have lost their lives, more than five thousand Kashmiris have been injured, while over 569 people have suffered because of pellet gun injuries which the Indian government has been trying to justify by declaring use of 'non-lethal' pellets as 'modern means of crowd control.'<sup>55</sup> During this wave of violence and brutality, 73 people have lost their eyesight, 174 men and children have lost their arms, around 100 people have amputated legs.<sup>56</sup>

### **Finding Peace for Kashmir and the Kashmiris**

Resolution of Kashmir is significant due to its centrality to regional peace and stability. Though it has remained a cause of conflict between Pakistan and India, but after the nuclearisation of South Asia in 1998, Kashmir has become a nuclear flashpoint. Both countries have fought a limited war under the nuclear umbrella in Kargil in 1999. The conflict heightened fears

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<sup>51</sup> Editor's Note: Congress has been India's dominant political party since 1947. In the 15 general elections since then, it has won an outright majority on six occasions and has led the ruling coalition four times, heading the central government for 49 years.

<sup>52</sup> Shujaat Bukhari, "Kashmir in Modi's First Year," *Friday Times*, May 29, 2015, <http://www.thefridaytimes.com/tft/kashmir-in-modis-first-year/>.

<sup>53</sup> Editor's Note: Till October 27, 2016, the Valley had remained under full and partial curfew for 111 days with continuing protests, clashes and shutdown. Abid Bashir and Khalid Gul, "Day 111: Protests, Clashes, Shutdown Continue," *Greater Kashmir*, October 27, 2016, <http://www.greaterkashmir.com/news/front-page/day-111-protests-clashes-shutdown-continue/231998.html>.

<sup>54</sup> Fahad Shah, "Burhan Wani's Killing Brings Kashmir to a Crossroads," *Diplomat*, July 14, 2016, <http://thediplomat.com/2016/07/burhan-wanis-killing-brings-kashmir-to-a-crossroads/>.

<sup>55</sup> Khalid Gul and Abid Bashir, "Day 60: Toll 75-Pellets Kill another Youth as Kashmir Uprising Enters 3rd Month Today," *Greater Kashmir*, September 6, 2016, <http://www.greaterkashmir.com/news/front-page/day-60-toll-75-pellets-kill-another-youth-as-kashmir-uprising-enters-3rd-month-today/227812.html>.

<sup>56</sup> "Kashmir," *Kashmir Issue*."

about escalation of the limited war into total war because limited wars have the potential to escalate and endanger regional peace.

Pakistan has employed bilateral as well as multilateral approaches to resolve the conflict over Kashmir, but these efforts lacked the political will on the part of the Indian government. The first such attempt was made by Quaid-i-Azam in his meeting with Lord Mountbatten in November 1947 at Lahore. He suggested a three point formula 'stressing a ceasefire within 48 hours, departure of all foreign forces including Indian forces and the tribesmen, taking over of the administration of the state and arranging a plebiscite under the joint control of two Governor Generals.'<sup>57</sup> Lord Mountbatten showed his inability to agree to these proposals without the consent of the Indian cabinet which eventually ruled out the proposals. After the failure of the first dialogue on Kashmir, the subsequent efforts made by Pakistan to resolve the issue met with the same fate. In this regard, the last effort so far made has been the initiation of the Peace Process in the form of the Composite Dialogue following the 12<sup>th</sup> SAARC Summit in 2004. Pakistan has been calling for talks to find a way forward for resolution of all issues, including the core issue of Kashmir while India uses these fora to further complicate issues or as a means to buy more time to delay their resolution.<sup>58</sup> Bilateral dialogue as a conflict resolution tool usually works successfully between equally powerful states. In circumstances where one state is smaller and relatively less powerful it remains unable to make the more powerful state comply with the terms of agreement. This dynamic applies to India and Pakistan as well. India does not respect the bilateral agreements when it comes to Pakistan. Even the latter's resort to the nuclear option to achieve parity has not obliged India to respect its commitment.

To resolve the conflict, Pakistan's former President Musharraf presented various proposals. The initial proposals were the recognition of Kashmir as a dispute, initiation of a dialogue, shedding of unacceptable solutions and securing a win-win situation.<sup>59</sup> He added three suggestions to move the dialogue process forward: identification of the region; demilitarisation of the identified region; and changing the status.<sup>60</sup> President Musharraf's final set of proposals (a four-point formula) entailed soft borders, demilitarisation, self-governance and a joint supervision mechanism for Kashmir.<sup>61</sup>

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<sup>57</sup> Golam Waheed Choudhury (Pakistani diplomat and academic) quoted in Cheema, "The Kashmir Dispute," 9.

<sup>58</sup> Cheema, "The Kashmir Dispute," 5.

<sup>59</sup> *Ibid.*, 17.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

As far multilateral approach is concerned, the UNSC initially, passed a number of resolutions but could not make India comply, while the option of third party mediation has always been opposed by India. Kashmir received prominence during the Cold War years due to the extension of super power rivalry to South Asia and Pakistan being part of the Western alliance system. The U.S. policy-makers did try to advance a solution of Kashmir to bring peace to South Asia, but as Bruce Riedel, advisor to former U.S. Presidents, has noted that American diplomats learnt from years of failure that ‘Kashmir was too difficult to deal with and therefore best ignored.’<sup>62</sup> Likewise, the Soviet Union also mediated the Tashkent Agreement after the 1965 war between India and Pakistan, but with the end of the Cold War, Kashmir fell off the agenda of major powers and became a forgotten conflict. Though President Bush and his successor President Obama recognised its centrality in the India-Pakistan conflict, yet they could not play any significant role except pressurising the two states to start the dialogue process. The major powers, due to their vested interests, have been reluctant to intervene or even to condemn India for human rights violations in IHK.

## **Conclusion**

India’s desire to play greater role in regional affairs, economic interdependence, India-Pakistan rapprochement, regional stability, viability of SAARC, all depends on the resolution of Kashmir. Indian evasion to discuss Kashmir has been delaying both its resolution and forward movement on many critical regional imperatives. The anguish of Kashmiris continue unabated and the most pressing questions about the future of Kashmir remain unanswered. In the past, Indian politics played a significant role in the rise of the indigenous struggle of Kashmiri people for their right of self-determination. Sumit Ganguly, an eminent writer, identified the cause of sudden unrest and uprising in Kashmir in 1989 as the ‘short-sighted policies on the part of various regimes in New Delhi that created conducive conditions for the rise of Kashmiri freedom struggle in 1989.’<sup>63</sup> Similarly the present policies of the BJP government to erode the special and disputed status of Kashmir, denying the legitimate role to Kashmiri leadership, and turning down Pakistan’s proposals to resume the halted dialogue process have all contributed to intensify the discontent in IHK.

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<sup>62</sup> Bruce Riedel, *Avoiding Armageddon: America, India and Pakistan to the Brink and Back* (Washington, D.C.: Brookings Institution Press, 2013), 80, <https://www.brookings.edu/book/avoiding-armageddon/>.

<sup>63</sup> Kanti P.Bajpai, P.R.Chari, Pervaiz Iqbal Cheema, Stephen P.Cohen, and Sumit Ganguly, *Brasstacks and Beyond: Perception and Management of Crisis in South Asia* (New Delhi: Manohar, 1995), 88.

And yet perhaps, it is easy for a nuclear power like India to remain belligerent in its convictions because Pakistan's is the lone voice on the side of the Kashmiri people. The rest of the world community has not only remained silent, but has also remained aloof in finding solutions as indicated by the recent comments made by the UK Prime Minister Theresa May before her first bilateral overseas visit to India in November 2016;<sup>64</sup> and the stance of the United States, according to an article "Obama on Kashmir," published on the blog *Mary Scully Reports* on September 2, 2016. While the outgoing UN Secretary-General Ban Ki-moon has spoken up of late about the UN military observer in Pakistan and India not being allowed to fully function in Occupied Kashmir due to India's non-cooperation<sup>65</sup>, his views come are too little, too late. The United Nations Military Observer Group in India and Pakistan (UNMOGIP) needs to play a much more active role now more than ever to find ways and means to de-escalate tensions.

How much longer can the Kashmiri struggle for their right of self-determination go unnoticed by the United Nations and the rest of the world? How much longer can human rights violations be ignored? 'Kashmir is the unfinished agenda of the Partition of the subcontinent'<sup>66</sup> and its resolution is the key to regional peace and stability, otherwise progress and prosperity will remain elusive. ■

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<sup>64</sup> "Kashmir is a Matter for India, Pakistan to Sort out: British PM Theresa May," *Indian Express*, October 27, 2016, <http://indianexpress.com/article/india/india-news-india/kashmir-is-a-matter-for-india-pakistan-to-sort-out-british-pm-theresa-may-3105018/>.

<sup>65</sup> "UN Chief Regrets 'Curbs' on UNMOGIP in IOK," *Express Tribune*, October 1, 2016, <http://tribune.com.pk/story/1191632/indian-intransigence-un-chief-regrets-curbs-unmogip-iok/>.

<sup>66</sup> "Kashmir is Unfinished Agenda of Partition of Sub-Continent': PM," *Radio Pakistan*, September 30, 2016, <http://www.radio.gov.pk/30-Sep-2016/kashmir-is-unfinished-agenda-of-partition-of-sub-continent-pm>.