

**EVOLVING DYNAMICS OF THE KASHMIR CONFLICT:
POLICY OPTIONS FOR PAKISTAN**

By

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Dedication

"To the Memory of My Beloved Father,

In loving remembrance of a guiding light whose unwavering support, wisdom, and love have shaped the person I am today. Your presence may be missed, but your memory will forever inspire me to strive for excellence and to walk the path of knowledge with dedication and determination. Had you been around, you would have been proud of me for never giving up."

With gratitude and eternal love,

Naila Altaf Kayani

List of Abbreviations

IAK	Indian Administered Kashmir
JKLF	Jammu Kashmir Liberation Front
BJP	Bhartiya Janata Party
UNSC	United Nations Security Council
UN	United Nations
SRR	Strategic Restraint Regime
UNHCR	United Nations High Commissioner for Human Rights
UNHRC	United Nations Human Rights Commission
PLA	People's Liberation Army
ICCPR	UN's International Covenant on Civil and Political Rights
NGO	Non-governmental organizations
APHC	All Parties Hurriyat Conference
OIC	Organization of Islamic Cooperation's
AJK	Azad Jammu and Kashmir
RSS	Rashtriya Swayamsevak Sangh
IHL	International humanitarian law

Abstract

India and Pakistan's disputes stem from historical, territorial, and ideological differences, including the partition of British India in 1947, leading to the Kashmir conflict, competing claims over regions like Jammu and Kashmir, Siachen Glacier, and Sir Creek. Additionally, issues of water sharing, and divergent foreign policy priorities contribute to the ongoing tensions. These disputes are deeply rooted, aggravated by national identity, regional interests, and geopolitical factors, hampering efforts towards sustainable peace and cooperation between the two countries. The genesis of decades-long hostility between the of neighboring states can be traced in the Kashmir issue which has created uncompromising stances on the part of between India and Pakistan against each other. The Kashmir issue, which resulted from the partition of the subcontinent, has led the governments of both states to oppose each other in regional and extra-regional affairs. it has resulted in a few wars and countless border skirmishes. This trend of India-Pakistan conflict has left worse impact on the regional political order in South Asia. The role of third parties, as mediator and facilitator, and the performance of the United Nations remains ineffective in resolving the Kashmir issue between two major powers of South Asia. Additionally, the regional multilateral framework of South Asia under the SAARC also proved ineffective in addressing the inflexible standings of New Delhi and Islamabad on the Kashmir issue. The recent developments on the Kashmir issue can be identified by the constitutional changes in India regarding the autonomous status of Kashmir. The constitutional changes have marked a fundamental change I the character of Kashmir conflict. Therefore, the central theme of this research revolves around the position of Kashmir in the post-2019 scenario when the Indian government brought major changes in the form of the revocation of Articles 370 and 35-A. These constitutional changes compelled Pakistan to oppose the Indian Kashmir-specific changes in the Indian Constitution and led the government of Pakistan to highlight the Kashmir issue at international forums. This research tried to emphasize the nature of constitutional changes, the reasons behind New Delhi's decision for changing the status of Kashmir, the evolving dynamics of Kashmir following the revocation, and the reaction of Pakistan. In this way, it is more appropriate to maintain that this research is an academic endeavor to comprehend the status of Kashmir between India and Pakistan in the post-2019 scenario in which Pakistan has been pushed at a disadvantageous position in regional politics.

Drawn on neo-classical realism, this study finds that India has acted assertively and consistently to revoke Kashmir's special status. Through constitutional changes, India aims to alter the socio-political order character of Jammu and Kashmir. On the other hand, Pakistan's response remains inconsistency, reactive and event-based.

Introduction

The 1947 India-Pakistan conflict was sparked by the contentious sub-continental partition, which saw one-third of the former princely state of Jammu and Kashmir (J&K) including Azad Kashmir and Gilgit Baltistan, fall under Pakistani administration and two-thirds under Indian rule. The contested area has since been the root of several wars, military confrontations, skirmishes, and crises. India requested assistance from the United Nations as a consequence of the first conflict between two recently freed neighbors. Two United Nations Security Council resolutions, realizing that the Jammu and Kashmir dispute is primarily a political dispute, hence calls for a political solution based on the aspirations of the people of Jammu and Kashmir, one on August 13, 1948, and the other on January 5, 1949, mandated that Pakistan and India undertake a plebiscite to discover the preferences of the Kashmiri people. India accepted J&K while allowing it to keep its unique character under semi-autonomy clauses. Under Article 370, it received a constitution and legislative power independent of foreign policy, defense, and communications. Moreover, under Article 35-A Kashmiris with permanent residence are given specific privileges, including employment and property rights. New Delhi successfully degraded this autonomy over the years through constitutional orders of integration, national legislation applied to the state, and ongoing political resource management. The insurgency started as a result of rigged state elections in 1987 and has continued ever since. The Jammu Kashmir Liberation Front (JKLF) a liberal, pro-independent organisation launched it at first but as time went on, it became increasingly Islamist and pro-Pakistan. Its momentum fluctuated but it never stopped, heavy surveillance, freedom-related restrictions, a preference for counterterrorism over enfranchisement initiatives, the security forces' continued immunity from legal responsibility for violations of human rights, and the lack of any desire or need to deal with Kashmir politically all contributed to the marginalization of Kashmiri Muslims. To retain Kashmir under its control, India continued to use a variety of techniques from delaying tactics to severe repression, while Pakistan kept up its public support for the right to self-determination.

With a few notable exceptions, Indo-Pak relations have remained antagonistic throughout history. J&K had its long-standing special status withdrawn on August 5, 2019. Indian Prime Minister Narendra Modi stunned many by abolishing Articles 370 and 35-A of the Indian Constitution after years of little to no progress in the area. The evidence suggests that this course of action was consistent with Modi's hard-liner party position and the realization of a grand plan. Prior to being elected in 2014, Modi conducted a campaign centered on adopting a tougher approach against Pakistan while also encouraging a Hindu-nationalist outlook at home.

The Indian government abruptly changed Jammu and Kashmir's status on August 5, 2019, rescinding Articles 370 and 35-A of the Indian Constitution, dividing Jammu and Kashmir from Ladakh, demoting them to union territories, and dissolving their state parliament as a result. Although drastically altered since 1954, Article 370 still serves as a vital reminder of Kashmiri sovereignty, and Article 35-A's limits on population have assisted in maintaining Kashmir's unique cultural character. Several months of widespread curfews, communications blackouts, and the arrest of hundreds of state political officials under the Public Safety Act were imposed after the abrogation.

After winning a resounding electoral victory in 2019, the governing BJP has long pushed to have J&K's special status revoked, citing it as the root cause of separatism, militancy, corruption, and underdevelopment. There were both internal and external elements, and it wasn't instantaneous. Russia, as predicted, supported India, the US maintained its distance, and Saudi Arabia and the gulf nations, who had previously supported Pakistan, kept a low profile. Only three nations—Turkey, China, and Malaysia—supported Pakistan's position. In addition to helping to remove Kashmir from the world spotlight, the global COVID-19 epidemic has also advanced political measures like domicile legislation and delimitation.

The socio-political environment in Kashmir has undergone a thorough transformation with the removal of the special status. In Kashmir, there is a suffocating quiet. And the atmosphere of terror continues. The political unrest in the Kashmir Valley persists despite the absence of politics, a leadership vacuum, the suspension of civil liberties,

the use of unprecedented media gag orders, and the censorship of opposing viewpoints on social media.

New constitutional modifications are problematic. The Jammu and Kashmir Grant of Domicile Certificate (Procedure) Rules, 2020, which were passed in April of the year 2020, have superseded the previous "state subject" statute. People in Jammu and Kashmir have been worried that New Delhi is bringing non-Kashmiris into the state in large numbers in order to engineer demographic change ever since more than 2 million certificates have been awarded. Another example of confusing designs is the Land Reforms that the Delhi has introduced.

The Fourth Geneva Convention's Article 49(6) forbids the occupying power(s) from relocating its own people into the occupied territory. People in Jammu and Kashmir have been worried that New Delhi is bringing non-Kashmiris into the state in large numbers in order to engineer demographic change ever since more than 2 million certificates have been awarded. Another example of confusing designs is the Land Reforms that the center and are introducing.

Statement of Problem

The historical trajectory of India has always been seeking the consolidation of Jammu and Kashmir in political, legal and security terms. India itself sought resolution of the Kashmir issue at the United Nation Security Council, and initially agreed to the UN jurisdiction on Kashmir, but these resolutions were never implemented. India used different tactics to avoid plebiscite in Kashmir due to the fear of losing it. It has consistently worked to undermine the Kashmir issue's standing on the world stage. For instance, it attempted to label the Kashmir conflict as a bilateral matter through the Shimla Agreement and occasionally referred to local elections as plebiscite. In addition to referring to Kashmir as a matter between India and Pakistan, it has never engaged in substantive discussion on the subject. By unilaterally revoking articles 370 and 35-A on August 5, 2019, it has finally eliminated Kashmir's autonomy and forcibly

incorporated it under the Indian Constitution in an effort to strengthen its political and territorial control over the region.

This forced annexation has further aggravated the problem. Due to India's ongoing repressive actions and constitutional reforms that are opposed by every corner, the internal situation in Kashmir is getting worse. These acts will not lead to a peaceful solution of Kashmir. The objective behind altering the position of the Kashmir issue is linked to the political manifestation of Indian ideology of Hindutva and greater Bharat. This development poses policy challenges for Pakistan.

This research seeks to analyze the multifaceted implications of the revocation of Article 370 on the Kashmir dispute, with a particular focus on the international responses to this development. The central problem addressed by this research is to understand how the revocation of Article 370 has influenced the geopolitical, socio-cultural, and economic landscape of the Kashmir region, and how various stakeholders, including Pakistan, have responded to these changes. Furthermore, as the Kashmir conflict undergoes significant changes, the research also investigates the potential policy options that Pakistan can pursue to address the evolving landscape. By examining diplomatic, political, and strategic avenues, the research intends to identify pragmatic approaches that Pakistan can adopt to safeguard its interests, contribute to conflict resolution, and promote regional stability.

Through a comprehensive examination of historical context, legal frameworks, political motivations, and global interactions, this study endeavors to provide valuable insights into the multifaceted dimensions of the Kashmir conflict following the abrogation of Article 370 and to offer informed recommendations for effective policy responses by Pakistan.

Research objectives

- To find out the reasons behind India's act of abrogation of special status of Kashmir in August 2019.
- To highlight the dynamics of the Kashmir conflict evolving since the revocation of special status of Kashmir by India.
- To assess the International response, reactions of different countries and international organizations to the abrogation of Article 370.
- To examine the policy options Pakistan can exercise following the changing dynamics of the Kashmir conflict.

Research Questions

1. How has India abolished the special status of erstwhile Jammu and Kashmir?
2. Why did India abrogate the special autonomous status of Kashmir under its constitution?
3. How have the dynamics of the Kashmir conflict been evolving after revocation of article 370 and 35-A?
4. How have major powers, particularly United States, China and European Union, responded to India's decision to abrogate Article 370?
5. What policy options Pakistan has in view of evolving dynamics of the Kashmir conflict?

Literature Review

The abrogation of Article 370 in August 2019 marked a critical development in the longstanding Kashmir conflict between India and Pakistan. The decision to revoke the special status of Jammu and Kashmir had far-reaching implications, both domestically and internationally. This literature review examines existing scholarly works and research pertaining to the roots of the Kashmir conflict and the historical context

leading up to the abrogation of Article 370 by India, International response to India's decision and explores the policy options available to Pakistan in the aftermath of the abrogation. By analyzing a diverse range of academic sources, this review aims to provide a comprehensive understanding of the multifaceted issues surrounding this significant event.

To acquire the holistic understanding of situation over the years in Kashmir following literature had been used, which helped research to deal objectively and present the valid discourse. The books I read for my research, cover various aspects of the Kashmir issue, including historical context, political dynamics, human rights concerns, and the aftermath of Article 370's revocation. They offer diverse perspectives to help develop a comprehensive understanding of this complex topic. Books like *Kashmir: A Disputed Legacy* and *Paradise at War: A Political History of Kashmir* provides the historical background of Kashmir conflict and political dynamics involved, similarly books like "The Kashmir Dispute: 1947-2012" by A.G. Noorani talks especially about the question of the accession of the state of Jammu and Kashmir to the Union of India. Moreover, Books as such *The Kashmir Intifada*, *Kashmir: Beyond Article 370*, *Before and After the Abrogation of Article 370: India's Kashmir Conundrum* and Research paper like *Modi's Kashmir Policy* put up the Indian policies on Kashmir over the years. Furthermore, books as such *Hostility: A Diplomat's Diary on Pakistan-India Relations* and Research Paper like *India's "New Normal Provide the counter measures from Pakistan in relation to Kashmir*.

"*Kashmir: A Disputed Legacy*" is a seminal book written by Alastair Lamb that provides a comprehensive examination of the Kashmir issue. Lamb delves into the historical background of the dispute, tracing its origins and analyzing the conflicting narratives of India, Pakistan, and the people of Kashmir. Drawing upon extensive research and archival sources, Lamb explores the complex political and geographical factors that have contributed to the disputed status of Kashmir. He analyzes the events leading up to the partition of India in 1947 and the subsequent Indo-Pakistani wars over the region, shedding light on the intricate web of political maneuvering and international pressures. Furthermore, Lamb examines the legal aspects of the Kashmir dispute, including the relevance of UN resolutions and international law. He also

delves into the human rights violations and the impact of the conflict on the lives of the people of Kashmir. Lamb makes the case that Kashmir's admission to India in 1947 was illegitimate due to the Maharaja's disregard for the Kashmiri people's wishes and the lack of consultation with them. On legal grounds, he also contends that the Indian army's activities in Kashmir in 1947 were unlawful. In my research, "Kashmir: A Disputed Legacy" has served as a valuable resource, providing deep insights into the historical context, political complexities, and legal dimensions of the issue. It has offered me a balanced perspective, presenting multiple viewpoints to foster a comprehensive understanding of this long-standing dispute.

"Paradise at War: A Political History of Kashmir" by Radha Kumar is a compelling book that examines the complex political landscape of Kashmir. As a comprehensive political history, it provides a detailed account of the region's tumultuous past and the various factors that have shaped its ongoing conflict. Kumar's book traces the historical roots of the Kashmir issue, exploring the events and decisions that led to the division of British India and the subsequent accession of the princely state of Jammu and Kashmir to India. She analyzes the political dynamics between India, Pakistan, and the local population, shedding light on the conflicting interests, aspirations, and power struggles that have defined the region's history. Through meticulous research and extensive use of primary sources, Kumar offers critical insights into the challenges faced by successive governments in effectively addressing the aspirations and grievances of the Kashmiri people. She examines the rise of political movements, the role of various stakeholders, and the impact of external actors on the region's trajectory. Furthermore, Kumar delves into the socio-cultural dimensions of the conflict, exploring the impact on the lives of ordinary Kashmiris, human rights concerns, and the ongoing cycle of violence. Her analysis encompasses both domestic and international perspectives, providing a multidimensional understanding of the Kashmir conflict. "Paradise at War: A Political History of Kashmir" offers a nuanced exploration of the region's political dynamics. In 2010, the Indian government selected Kumar as one of three individuals to draught a possible roadmap for achieving Kashmiri objectives within the confines of Indian constitutional law. Her extensive research and balanced approach have provided

a strong foundation for my analysis, enabling me to delve into the complexities of the Kashmir conflict.

"The Kashmir Dispute: 1947-2012" by A.G. Noorani published by Tulika Books, is a comprehensive and well-researched book which traces the complex history of the long-standing dispute, and the political discontent and dissent surrounding it, relating especially to the question of the accession of the state of Jammu and Kashmir to the Union of India. 2 volumes of the book present thorough analysis of the Kashmir conflict from its inception in 1947 to the year 2012. A.G. Noorani, a renowned author and expert on constitutional law, delves into the historical, political, and legal aspects of the dispute. Throughout the book, Noorani examines the events leading up to the partition of India and the subsequent division of the princely state of Jammu and Kashmir. He explores the complex dynamics between India, Pakistan, and the people of Kashmir, shedding light on the conflicting narratives and interests that have contributed to the prolonged dispute. Using a blend of primary and secondary sources, Noorani delves into the legal dimensions of the conflict, discussing the relevance of international law, United Nations resolutions, and bilateral agreements between India and Pakistan. He analyzes the constitutional provisions and legal frameworks that have shaped the status of Jammu and Kashmir over the years. Furthermore, Noorani provides insights into the socio-political ramifications of the conflict, including human rights concerns, governance issues, and the impact on the lives of the people of Kashmir. He delves into the role of various stakeholders, including political leaders, separatist movements, and external actors, in shaping the trajectory of the dispute. The book has given me a deep understanding of the Kashmir conflict. Noorani's extensive research, balanced analysis, and comprehensive approach has provided me a nuanced perspective on the historical context, political dynamics, and legal framework surrounding the dispute.

Bashir Assad's book, *Kashmir: Beyond Article 370*, which was released by Pentagon Press in 2020, argues that the Modi government's decision to repeal Article 370 was actually motivated by the narrative surrounding Kashmir becoming more and more Pakistani and Islamic. As a result, the Indian government now needs to regain the trust of the populace through EID, de-radicalization, and rational delimitation of existing

constituencies to ensure that traditional stronghold territories can be broken. The author also advocates land grabbing tactics under the pretext of clearing encroachments on land and properties in the Jammu area that have been occupied under the Roshni Act and of acquiring property for the construction of businesses and other structures. Through numerous manipulations, the author wants a change in the current circumstances, and is in favour of modifying the conflict's nature.

"A Dismantled State: The Untold Story of Kashmir After Article 370", December 2022, Harper Collins, is a gripping book written by Anuradha Bhasin that offers an insightful exploration of the aftermath of the revocation of Article 370 in Kashmir. In this extensively researched work, Bhasin sheds light on the political, social, and human rights implications resulting from this monumental decision. The book delves into the historical context, tracing the origins of Article 370 and its significance in the region. Bhasin then meticulously unpacks the repercussions of its revocation, examining the impact on the people of Kashmir, the rise of militarization, and the erosion of civil liberties. Through personal narratives, she provides a human perspective, giving voice to those affected by the events unfolding in the region. She draws upon numerous interviews, personal testimonies and official documents, she brings to light the stories of those effected by enforced disappearances, extra judicial killings, mass graves and the constant presence of armed forces. Bhasin's writing offers a nuanced analysis of the complexities surrounding Kashmir, discussing the tensions between the Indian government, the separatist movements, and the aspirations of the Kashmiri people. She explores themes of identity, power dynamics, and the struggle for self-determination. Bhasin's book critically examines the aftermath of Article 370's revocation, analyzing the political, social, and human rights implications. As an insider's account, Bhasin's use of personal narratives and her ability to present multiple perspectives, adds depth to her analysis.

Report from the Office of the United Nations High Commissioner for Human Rights, Update on the Situation of Human Rights in Pakistan-Administered Kashmir and Indian-Administered Kashmir from May 2018 to April 2019. There has been an upsurge in human rights violations, the use of pallet weapons, and Line of Control violations. Due to both nations' failure to take appropriate action regarding Kashmir,

the report's conclusions asked the international investigative council to control over serious human rights violations.

The Kashmir Intifada, a periodical by Hafez R. Khan. Kashmiris considered launching their own freedom struggle against Indian tyranny in light of the successful liberation revolution in Iran. With respect to Kashmir, Pakistan has to forge a strong national consensus, adopt a flexible foreign policy, and apply pressure on India through the international community to abide with UN resolutions.

Before and After the Abrogation of Article 370: India's Kashmir Conundrum by Sameer P. Lalwani and Gillian Gayner, it is shown how the Indian government's abrupt cancellation of the autonomy clauses for Jammu and Kashmir in 2019 reduced the severity of the associated international sanctions and prevented serious violent reactions. The state is likely to encounter a revival of violent and quasi-violent opposition, regardless of whether it attempts revolutionary population engineering or duplicates previous political engineering. While other authors believe that US influence is limited, US officials should promote engagement with all parties involved and warn New Delhi of the obstacles to collaboration that India's choices would provide if it becomes interminably mired in the Kashmir conflict.

In their journal paper, Khurshid Khan and Pervaiz Iqbal Cheema discuss. Modi's Kashmir Policy: The Likely Impact on South Asia's Security Since Article 370, which terminated Kashmir's special status inside India, was repealed, India has adopted an assertive foreign policy toward Indian Occupied Kashmir. Pakistan rejected this action and tried to bring up this matter in various venues. The whole South Asian area may see turmoil as a result of Modi's strict and aggressive attitude toward Pakistan and IAK.

In his piece Under Modi, the 'New' India Prioritizes Aggression - and Prizes Israel's Example, Khinvraj Jangid explains the hostile stance that India has taken against Pakistan. Palette weapons, the detention of leaders of the independence struggle, the Uri incident, and LOC violations are all aggressive actions that are hastening India's nationalistic policies against Pakistan.

In his paper titled India's "New Normal," Dr. Imran Iqbal presents another notion for Modi's strategy that Pakistan would never embrace. Israel has a new normal that it uses. Modi's aggressive actions and repeated violations of the LOC reveal a new facet of Indian foreign policy, which Pakistan vehemently condemns.

Hostility: A Diplomat's Diary on Pakistan, by Abdul Basit India Relations uncovers Islamabad's internal politics and the standstill diplomacy that occurs between the two nations. Hasty decisions and improper application of their own strategy have ensnared Pakistan and its neighbour in an endless cycle. Basit characterises Pakistan's foreign policy as having a propensity to stick with tried-and-true strategies while hoping for better outcomes.

"Neoclassical Realist Theory of International Politics" by Norrin M. Ripsman, Jeffrey W. Taliaferro, and Steven E. Lobell. 1 May 2016; Online ISBN: 9780190603052. This book is considered one of the seminal works on neoclassical realism, and offers a comprehensive exploration of neoclassical realism, presenting its key concepts, theoretical foundations, and empirical insights. It covers various dimensions of the theory, including state behavior, power distribution, and domestic politics' impact on foreign policy. The abrogation of Article 370 is a significant event in international politics with implications for regional security and foreign policy decisions. This book's application of neoclassical realism has helped me understand how state actions, relative power, and domestic factors may have influenced India's decision-making process.

Research Gap

The literature on the abrogation of Article 370, international response, and policy options for Pakistan reveals a multifaceted and dynamic landscape. The varying reactions of regional and major powers, along with the implications for regional security and human rights, underscore the complexity of the Kashmir conflict.

Pakistan's policy options, ranging from diplomatic engagement to confidence-building measures, offer potential pathways toward conflict resolution and stability. However, the contested nature of the issue calls for ongoing scholarly research and diplomatic efforts to achieve lasting peace and a mutually acceptable resolution.

Core Argument

Since August 5, 2019, the Modi regime has intensified coercive tactics against the people of Kashmir after formally revoking constitutional autonomy of Kashmir by repealing Articles 370 and 35-A. While Modi regime has repeatedly been striving to shift the parameters of the Kashmir conflict, it seems that through various legislations and special powers given to armed forces, India is bent upon changing the internal character of the conflict. Pakistan's political and diplomatic response lacks consistency and remains reactionary rather than proactive.

Theoretical Framework

The underpinning theory of this research is Neoclassical Realism. The theoretical attributes of neoclassical realism were initially introduced by Gideon Rose, a renowned American academician. He tried to develop the classical thoughts of realism with the changing features of the international system in which all the states are witnessing the realities of the new world. In contemporary world politics, the behaviors of the states and the interstate relations of the states cannot be restricted in the traditional explanations of IR theories. In the traditional theoretical debates of IR, the realist school of thought mainly explains the presence of a permanent power-gaining competition between states. The two domains of realism, classicalism and neorealism, define the standings of states in different regions with their contesting positions against each other. The combination of classical and neo domains of realism identify the nature of the state and the presence of states in the anarchical structure of the international system which jeopardizes the positions of states in their respective regions. Beyond

these existing perspectives of realism, Rose's explanation of world politics and its functioning under the anarchical influences of the international system is linked to the various elements which shape the behaviors of the states beyond the conventional perspectives of realism, both classical and neorealism. Rose's upgradation addresses the intervening variables apart from the state's and structure's forces, and these variables can be from the international system and domestic politics. In this way, the neoclassical descriptions of realism mainly explain the role of various forces shaping the standings of the states in the international system. These forces mainly affect mainstream foreign policy mechanisms and can generally be considered as a multi-faceted approach to understanding international relations.

Classical realism suggests that states are primarily driven by their national interests, which often include the desire to expand and consolidate their territorial control. Neoclassical realism, as an extension of classical realism, provides a nuanced explanation for the competition between Pakistan and India over Kashmir that considers both systemic constraints and domestic political factors. India's desire for territorial control and the revocation of Article 370 may be understood as responses to both the systemic pressures of fluxing capacity and the domestic politics of nationalism, security, and public sentiment. This theoretical perspective offers a comprehensive analysis that integrates both international and domestic factors to understand complex foreign policy decisions.

Neoclassical realism acknowledges that the international system's structure is characterized by anarchy and distribution of power. This shapes states' behavior vis-à-vis other states. The competition between Pakistan and India over Kashmir is influenced by the anarchic nature of international politics. Both countries view Kashmir as an integral part of their national identity and security interests, leading to a protracted conflict over the region, which means there is a competing claim over territorial control of Jammu and Kashmir between Pakistan and India. Neoclassical realism recognizes that relative power disparities between states can lead to asymmetric competition. India's relative power status in the international system played

a crucial role in shaping the calculus behind this significant foreign policy move. India has a larger economy compared to Pakistan. It is one of the world's fastest-growing major economies. This economic strength can give India more resources and influence in the international arena, making it a significant player on the global stage. India has a larger and more advanced military compared to Pakistan. It possesses a nuclear arsenal, sophisticated defense technology, and a larger standing military, much mightier than that of Pakistan. This military advantage can project India as a regional power and provides a sense of security that may impact its decision-making regarding Kashmir. India's vast population and geographical size give it a demographic advantage over Pakistan. A large population contributes to a larger workforce, consumer market, and economic potential. The sheer size of the country enhances India's significance in global affairs. India has successfully portrayed its soft power, including its cultural influence, Bollywood films, yoga, and cuisine, which have a global appeal. This soft power projection can help shape perceptions of India positively in the international community. Most important contributing factor in India's renewed relative position vis-à-vis Pakistan is USA's China containment policy. As the US seeks to counter China's influence in the Indo-Pacific region, it is strengthening its strategic partnership with India, which has significantly impacted India's relative position vis-à-vis Pakistan. This has contributed to a shift in the balance of power in the South Asian region, with India gaining a more favorable position compared to its neighbor Pakistan. This power asymmetry may have influenced India's perception of the competition over Kashmir. The revocation of Article 370 may be seen as a manifestation of India's attempt to leverage its relative power advantage to alter the status quo. By fully integrating the region into the Indian Union, the Indian government sought to assert its sovereignty and exert control over the region, aligning with the classical realist emphasis on territorial expansion and consolidation.

Neoclassical realism also suggests that states engage in strategic calculations to pursue their **national interests**. India's revocation of Article 370 may be viewed as a balancing behavior in response to the so-called security dilemma with Pakistan as Author Dirp Lepping writes in his book, "The Kashmir Conflict from a Neo-Realistic Point of View," that "the underlying assumption is that different versions of a Common

History and, consequently, the Origin of the Conflict, can Influence the So-Called "Security Dilemma." By consolidating its territorial control, India aimed to deter potential challenges from Pakistan, signaling its resolve and strength in the region.

On the other hand, Neoclassical realism emphasizes the role of **Domestic attributes** in shaping foreign policy decisions. India's desire for territorial control over Kashmir is influenced by its domestic politics, where issues related to nationalism and sovereignty resonate with the public and political elites. The Indian government's decision to revoke Article 370 could be seen as a response to domestic demands for greater integration and control over the region.

Neoclassical realists emphasize that **domestic politics and public opinion** can significantly influence foreign policy choices. The Modi Sarkar faced domestic pressures to address the long-standing issue of Jammu and Kashmir. Many people in India viewed the special status granted to the region through Article 370 as a source of separatism and regional tensions and a barrier to full integration of Jammu and Kashmir into the Indian Union. The Bharatiya Janata Party (BJP), which led the Indian government at the time, had long advocated for the revocation of Article 370 as part of its ideological agenda of a strong and unified India. The decision can be seen as a strategic move to appeal to their domestic support base and strengthen the party's position in national politics. Neoclassical realists also assume that **Political leaders' preferences**, of which Ideology cannot be marginalized, guide their foreign policy decisions. Neoclassical realists would examine the preferences beliefs and Ideology of key political actors, especially Prime Minister Narendra Modi, who led the government during this period. Ideology can be understood as a set of beliefs and values that influence a state's preferences and inform its decisions in international affairs. Neoclassical realism acknowledges that ideology can have both positive and negative effects on international relations. On the one hand, shared ideological commitments can facilitate cooperation and lead to more stable and peaceful relationships between states. On the other hand, ideological differences can lead to conflicts and contribute to the breakdown of international order. neoclassical realism acknowledges that ideology

is an important factor that shapes state behavior and outcomes in international relations, and seeks to integrate it into its theoretical framework.

Neoclassical realists consider how **nationalism and identity politics** can shape foreign policy decisions. The BJP, which has strong nationalist, rather Hindu nationalist tendencies, saw the abrogation of Article 370 as a step towards asserting India's sovereignty over the entire territory, reinforcing its nationalist credentials. Neoclassical realism would argue that the influence of Hindutva on Indian foreign policy is shaped by both systemic and domestic factors, due to the fact that the ideological association to the Indian domestic system cannot be undermined. Ideology has played a main role in domestic Indian politics where the political authorities always prefer ideological decisions over rational ones. The distribution of power in the international system and India's relative power position would likely be important considerations in shaping Indian foreign policy decisions. At the same time, the beliefs and values of the ruling party and decision-makers in India, including their adherence to Hindutva, would also play a role in shaping Indian foreign policy. It is worth noting that the influence of Hindutva on Indian foreign policy is a matter of ongoing debate and is subject to change over time. Some observers argue that the rise of Hindutva has led to a more assertive and nationalistic foreign policy, while others argue that it has had a limited impact on Indian foreign policy. While Hindutva is an important ideological factor in shaping Indian foreign policy, its influence is shaped by a complex interplay of systemic and domestic factors.

The ideology of Hindutva, which emphasizes Hindu nationalism and cultural identity, has had a significant influence on the policies and political discourse of the Bharatiya Janata Party (BJP) and the current Prime Minister of India, Narendra Modi. This has been particularly evident in the party's stance on issues such as citizenship and religious minorities, as well as its promotion of Hindu cultural values and symbols. While the influence of Hindutva on India's foreign policy may be a matter of debate, it is clear that Prime Minister Modi's leadership has been characterized by a more proactive and ambitious approach to India's international relations. In this way, it is appropriate to maintain that the ideology has brought various changes in the mainstream framework of Indian foreign policy and altered the position of New Delhi

on various issues such as the Kashmir issue. The change in the Indian Kashmir policy is an attempt of Modi to include the disputed areas of Kashmir in the Union of India which is strictly based on ideological designs. These ideological designs have brought constitutional changes in India regarding the status of Kashmir through addressing certain Articles. These constitutional alterations are linked to the domestic political decision of New Delhi but its impacts on the status of Kashmir cannot be overlooked because of the disputed status of Kashmir. In this way, the theoretical lens of neoclassical realism can be applied in this research which is a theory determining the role of various intervening variables bringing various changes in the foreign relations of states and the standings of state governments on various issues. The changed status of Kashmir is mainly subject to the regional politics of South Asia where Pakistan is the main contender of New Delhi on the Kashmir issue.

As per the description of ideology and its undeniable role in the mainstream foreign policy of states, the Indian case is an appropriate example in the contemporary world politics where the shadows of ideology in the New Delhi's way of managing foreign relations cannot be separated from the Hindutva ideology. Hindutva ideology is a Hindu nationalist ideology that seeks to establish Hindu supremacy and the creation of a Hindu Rashtra, or Hindu nation, in India. In this context, the issue of Kashmir may be viewed as a matter of reclaiming Hindu territory and ensuring the protection of Hindu rights and interests in the region. This perspective may lead to a more confrontational and aggressive approach to the issue of Kashmir. It is important to note that not all proponents of Hindutva ideology hold the same views on the Kashmir issue, and there is a diversity of opinion within the movement. The relationship between neoclassical realism and Hindutva with regards to the Kashmir issue is complex and multifaceted, and can only be understood in the context of the broader political, cultural, and historical forces at play in the region. The Indian government is determined to alter the demographical features of Kashmiri society through installing the Hindutva ideology in Kashmir, and the revocation of the Articles in the constitution is an attempt of New Delhi for bringing Kashmiri society legislatively under the Indian influences.

In summary, the theory of Neoclassical realism explains the revocation of Article 370 by considering the domestic political considerations, such as the preferences of

political leaders, domestic politics, and nationalism, power dynamics, as well as the systemic factors like geopolitical dynamics in the region. This theoretical framework underscores the importance of understanding the complex interplay between international and domestic factors in shaping states' foreign policy decisions. It is important to note that while India might consider great power influence as a part of its decision-making process, the primary driver behind the revocation of Article 370 would likely be India's own domestic considerations, including the political will of the government, domestic public opinion, and its perception of regional stability and security. The influence of great powers, if any, would be seen as one among several factors that influenced India's actions.

Research Methodology

This study employs **qualitative** research design to explore and understand the complex issues related to the abrogation of Article 370, international response, and policy options for Pakistan. The use of qualitative research is seen as a method for creating comprehensive and holistic images. As a qualitative researcher I will try to unveil a more profound reality and deeper truth. The qualitative research approach aims at providing a multifaceted understanding of social context and human problems. It employs techniques like interviews, to investigate the motives, attitudes, experiences and opinions of people connected to the research issue to get into further details and to dig down deeper meanings of the issue at hand. This method emphasizes meanings, experiences, and descriptions, among other subjective concepts. It can be generally described as a type of research method in which a researcher attempts to explore and interpret a spatially and temporally bounded set of events.

The study will use a **case study approach**, focusing on the Kashmir conflict and the specific dynamics surrounding the abrogation, with **cross sectional** data.

As a means of **primary data**, semi-structured interviews with key stakeholders, policymakers, experts and diplomats were conducted. I have interviewed two former prime ministers of the state of Azad Jammu and Kashmir, namely Sardar Attique

Ahmed Khan (President all Jammu and Kashmir Muslim Conference) and Raja Farooq Haider Khan (Former President Muslim League N, AJK chapter), two former Pakistani diplomats, Ambassador Abdul Basit and Tasneem Aslam, legal experts on the Kashmir case, former chief justice of the AJK Supreme Court, Syed Manzoor Hussain Gillani, Director Kashmir Cell and Chairman Kashmir Policy and Research Institute Raja Sajjad Latif, and Dr. Nazir Gillani, President of JKCHR — NGO in Special Consultative Status with the United Nations based in UK. These interviews were conducted in various ways, including on the phone, through Skype, and in person. I selected these participants for interviews based on their expertise, relevance to my research objectives, and their roles in the Kashmir conflict and international relations. These interviews have provided rich insights into different perspectives and policy considerations. Official documents like a copy of the accession document, the Shimla Agreement, the decisions of the IHC Jammu and Kashmir and the Supreme Court of India regarding the revision of Articles 370 and 35-A of the Indian Constitution, and the Constitution of Azad Jammu and Kashmir were also collected. I also gathered official statements, press releases, and reports from governments, international organizations, and non-governmental organizations (NGOs) to analyze the international response. I have also used **secondary sources** like academic articles, books, media reports and policy papers to complement the data collected through primary sources.

In my thesis, I employed both **descriptive and analytical methods** for data analysis. This structure combines descriptive analysis, which provides a clear snapshot of the data, with analytical analysis, which delves into the meaning behind the data, identifies patterns, and generates insights.

Descriptive analysis involves organizing, summarizing, and presenting the data in a way that highlights patterns, trends, and key themes. I have presented and described the collected data to provide a clear and comprehensive overview of my research findings. The descriptive approach has allowed me to present a factual account of the historical events and developments leading to the repeal of Article 370 and the bifurcation of Jammu and Kashmir into two union territories as revealed in the interviews and document analysis, and have given an overview of the implications as

discussed, including impacts on governance, autonomy, and the socio-political landscape of Jammu and Kashmir. I have underlined the different viewpoints expressed by various countries and international organizations in response to the abrogation and have summarized the major concerns, criticisms, or support offered by different stakeholders. In the end I have presented the policy options and suggestions put forward by interviewees and authors regarding Pakistan's response to the abrogation. I have also highlighted common themes and potential avenues suggested for diplomatic engagement, conflict resolution, and regional stability.

On the other hand, analytical analysis involves identifying relationships, drawing connections, and offering insights based on the patterns and themes observed in the data. The analytical approach enabled me to delve deeper into the underlying motivations, policy objectives, and implications of this significant policy move, considering diverse perspectives and contexts. The dominant narrative was Hindutva and Akhand Bharat Ideology of BJP. These Identified motivations are aligned with the historical, political, and socio-economic context of the region. The analytical approach also facilitated me in a deeper examination of the various responses and reactions from the international community, analyzing the geopolitical, diplomatic, and strategic implications of India's decision on regional stability and the interests of different stakeholders. I have analyzed that countries' responses correlate mainly with their geopolitical and economic interests as well as historical relationships. I have evaluated the feasibility and potential implications of the policy options suggested by interviewees for Pakistan. Some of these options are realistic given the current geopolitical climate, and some sound fantastic and not applicable. I have tried to analyze the potential benefits and challenges associated with each policy option, considering both short-term and long-term effects. Through this comprehensive analysis, I seek to offer informed policy options for Pakistan in response to the changing dynamics in the region following the repeal of Article 370.

Delimitation

States with shared boundaries are important from a geopolitical standpoint. The Kashmir conflict between India and Pakistan, two sworn adversaries in the South Asian arena, continues to be a major point of contention notwithstanding the United Nations' decision. The worldwide stakeholders on the idea of terrorism have an impact on Pakistan's Kashmir policy in the post-September 11 era. India saw the liberation groups in Indian-occupied Kashmir as terrorist organizations and a danger to its national security.

This research is confined to the patterns that have emerged in the Kashmir Conflict since August 5, 2019, and it will look at Pakistani policy choices in this area as well as India's intentions and plans in relation to the changes that have been made to Jammu and Kashmir since then.

Significance of the study

The purpose of this research is to assess the present state of the Kashmiri disputes and provide recommendations on how they could be resolved. Academic study in the field of international relations might benefit from this investigation. Scholars and students. For South Asian policymakers and think tanks, this is a useful resource.

Organization of the Study

1. CHAPTER ONE. Kashmir Dispute in Historical Perspective
2. CHAPTER TWO. India's Revocation of Special Status of Jammu & Kashmir
3. CHAPTER THREE. India's Policy Objectives of Revocation of Jammu & Kashmir's Autonomous Status
4. CHAPTER FOUR. Response of Key Actors and Global Bodies on Revocation of Special status of J&K
5. CHAPTER FIVE. Pakistan's Response Towards Changing Dynamics and Challenges to Pakistan's Kashmir Policy
6. CHAPTER SIX. Pakistan's Possible Options on Kashmir Dispute

CHAPTER ONE

KASHMIR DISPUTE IN HISTORICAL PERSPECTIVE

Kashmir is located in the northwest of the Indian continent. The valley is also renowned as the birthplace of Sufism, a collection of leftist Islamic and Hindu practices. Pakistan is along its western border. Kashmir also includes the Chinese provinces of Aksai Chin and the Trans-Karakoram. Jammu and Kashmir is the name given to this area by the United Nations (UN). Geographically, Kashmir up to the 19th century covered the valley area between the Himalayas and the Pir Panjal mountain range. But it has now been expanded to cover the aforementioned regions. Kashmir is important to geographic studies because of the region's ongoing status issue, which frequently results in warfare. India, Pakistan, and China are currently in charge of running Kashmir.¹

This chapter is divided into four parts; Primitive Political History of Kashmir, British Policies in 19th Century, Kashmir dispute between India and Pakistan, and United Nations and Kashmir Dispute and tries to establish context of India and Pakistan on rivalry over the years in South Asia.

1.1 Primitive Political History of Kashmir

This section tries to explore the political transition of ruling elite and their policies practiced in Kashmir.

¹Bhutani, V. C. "Historical Geography of Kashmir from the Earliest Times to c. 1935." *SAGE Publications*, July 2000, pp. 1–40.

1.1.1 Hindu Era

The 'imperial' heritage of Kashmir dates back to the first century, when the Kushans from northwest China, who had already conquered all of northern India, entered the valley. King Kanishka also cherished Kashmir and frequently held court there. Intellectual renaissance was prevalent throughout the reign of the Kushan rulers. The famous Silk Road was travelled by traders who carried not only merchandise but also intellectual and artistic concepts. The years that followed are recognized as Kashmir's "golden era." As intelligent, sophisticated, and kind people, Kashmiris gained notoriety across Asia, and their contributions to European civilization were similar to those of ancient Greece.²

Asoka, whose dominion stretched from Bengal to the Deccan, Afghanistan to the Punjab, and encompassed Kashmir, invaded it again during the third century. Asoka, who had been a devoted Hindu before converting to Buddhism, dispatched missionaries to the valley. When he passed away, Kashmir reclaimed its independence. But Kashmir saw a rise in power disputes starting in the tenth century. The subsequent Hindu monarchs' isolationist approach to fending against the rise of Islam in north India meant that the kingdom's resources were insufficient to support the people.

1.1.2 Mughals and Afghans Era

Shahab-ud Din, who ascended to the throne in 1354, was the first great monarch of the Islamic era. Shahab-ud Din focused his emphasis on foreign missions following the Mongols' devastation, capturing Baltistan, Ladakh, Kishtwar, and Jammu. The rate of Islamization accelerated under the rule of his successor, Qutb-ud Din. Hinduism

²Bhat, Rashid Manzoor. "An Analytical Study of the Kushan Rule in Kashmir." *Journal of Image Processing and Intelligent Remote Sensing*, no. 24, HM Publishers, June 2022, pp. 9–14.

endured. In 1420, a new great ruler who went by the name Bud Shah—which means "great king"—ascended to the throne. He adopted the name Sultan Zain-ul Abidin and was the grandson of Qutb-ud-Din. The valley thrived under his lengthy rule, which lasted until 1470. He repaired the temples that his father's administration had demolished and was sympathetic of Brahmins. Hindus who had gone have mostly returned. However, he did not rule without the typical power conflicts. But it was only a period of time until Akbar, the ruler who had ascended to Delhi's throne in 1558, tried to gain advantage of yet another power struggle. He dispatched an expedition to capture the valley in 1586. In exile, Kashmir's last monarch passed away. The lengthy history of Kashmir as a kingdom in its own right came to an end with its integration into the Mughal Empire. Kashmiris are proud to mention both the Muslim Sultanates and the Hindu dynasties while discussing their political history.³

Most historians agree that Kashmir's modern history began with the Mughals' conquest of the valley. Kashmir served as the northernmost region of an empire with Delhi as its center of power for about two centuries. Akbar, after taking control of Kashmir, undertook a conciliation strategy and entered into matrimonial ties with the Kashmiri nobles. Both in the valley and throughout India, his authority was renowned for its liberalism. Jahangir, Akbar's son and heir apparent, is possibly the ruler of Kashmir who will be best known for his adoration of the valley. He allegedly said, "Nothing except Kashmir" when asked if there was anything he wanted when on his deathbed.

1.1.3 Sikh Era

Kashmir was governed by a number of governors, as was common under the Mughals and Afghans. A number of laws were passed that showed how Hinduism was asserted as superior than Islam. The death penalty was instituted for cow slaughter. The Europeans who started travelling to the valley more regularly created an image of

³Darzi, Sajad Ahmad. "Foundation of Mughal Rule in Kashmir." *Asian Journal of Research in Social Sciences and Humanities*, no. 9, Diva Enterprises Private Limited, 2017, p. 436.

poverty and famine. When William Moorcroft travelled through Kashmir on his route to Bokhara, he saw people living in the most miserable conditions, paying exorbitant taxes to the Sikh government and being subjected to every kind of extortion and abuse at the hands of its officials. The Moorcrofts offer a useful perspective on the state of the populace in the early years of Sikh rule. He said that the Kashmiris were considered 'little better than cattle'. The country was then gradually becoming less populated as a result of this system.

Gulab Singh, who stretched his borders farther in the name of the Sikh kingdom to encompass Ladakh, which bordered China, was ultimately responsible for the demise of the Sikh empire. Gulab Singh was in a good position to manage events when Ranjit Singh died in 1838, during the instability of the Sikh succession, not only in Lahore, the center of the Sikh empire, but also in Kashmir and the surrounding kingdoms. The East India Company enjoyed friendly connections with the Sikhs up to Ranjit Singh's passing, and the Sikhs did not want to anger the British. After his passing, the marriage broke down. In the First Anglo-Sikh War, the Sikh army crossed the Sutlej River in December 1841.⁴

The provisions of the agreement included in the Treaty of Peace between the young Sikh Maharaja, Dulip Singh, and the British, which was confirmed at Lahore on March 1846, were created to honor Gulab Singh. The East India Company demanded that the Sikhs give the provinces of Kashmir and Hazara in exchange for a one crore rupee indemnity. The Sikhs were also required to recognize Gulab Singh's autonomous sovereignty over any areas that would be transferred to him under a different arrangement.

A week shortly afterward, Gulab Singh and the British signed the Treaty of Amritsar. He was required to pay the identical amount for which the British had gained control of Kashmir a week earlier in exchange for the indemnity: one crore of rupees. Later, because the British kept some area beyond the Beas River, the 25 lakhs were waived. Gulab Singh was able to break his ties with the Sikhs according to the provisions of the

⁴Fenech, Louis E. "Woven Masterpieces of Sikh Heritage: The Stylistic Development of the Kashmir Shawl under Maharaja Ranjit Singh 1780–1839." *Sikh Formations*, no. 2, Informa UK Limited, Aug. 2012, pp. 261–65.

Treaty of Amritsar; from that point on, he was their feudatory instead as the Maharaja of Jammu and Kashmir.⁵

1.1.4 Dogra's Era

The Dogra rule in Kashmir, which lasted from the mid-19th century until India's independence in 1947, was notorious for its autocratically wayward methods of administration and its religious intolerance. In addition to forced labour being a prevalent practice, taxes were levied arbitrarily and collected via extortionate means. Police had a lot of authority. The majority Muslim population of Kashmir lived in squalor, poverty, and terror⁶.

The Dogras claimed the Kashmir valley as their own, but the Kashmiris have long believed that the Dogras considered Jammu to be their home and the valley to be a conquered territory as a result of the Sikh defeat at the Battle of Gujrat in February 1848, which led to the complete dissolution of the Sikh empire and the annexation of the Punjab by the British. Since they lacked the authority to meddle in the affairs of states, the British, who faced harsh criticism for selling the valley, were unable to do much to better the situation of the Kashmiris.

However, they wanted to put pressure on Gulab Singh to stop practicing suttee, female infanticide, and the murder of unborn infants. Along with continuing to permit all forms of religion, Gulab Singh did not forbid Hindu-Muslim unions even though he did not support them. Following the mass rebellion of sepoys, Gulab Singh's successors were unable to perform their tasks effectively, and the local men deployed in the East India Company's army began to arrive at Meerut, close to Delhi. Numerous towns were immediately affected, and hundreds of Europeans perished. Bahadur Shah II, the nominal ruler of the former Mughal empire, backed the mutinous soldiers. In addition to undermining British faith in their ability to control India, the insurrection, which

⁵Murphy, Anne. "The Formation of the ethical Sikh Subject in the Era of British Colonial Reform." *Sikh Formations*, no. 1–2, Informa UK Limited, May 2015, pp. 149–59.

⁶ Bakshi, S. R. 1997. *Kashmir: Valley and Its Culture* (New Delhi: Sarup & Sons), p. 248

lasted for more than a year, also called for devoted friends. Under the joint leadership of the sick Gulab Singh and his son Ranbir, Jammu and Kashmir responded favorably to British requests for assistance. They sent a sizable sum of money to the Punjab to pay the soldiers who had not yet received their pay. The mutineers were also prohibited from looking for refuge in Kashmir, which now bordered British India as a result of the British acquisition of the Punjab. English women and kids seeking safety from the lowlands were also given shelter in the valley.

The Dogras, foremost crucially, consented to dispatch a Kashmiri force to aid the British in the siege of Delhi, despite ongoing skepticism about their allegiance to the British keeping the soldiers idle for several months. Following the mutiny, Gulab Singh's death made the Governor-General the Queen's representative, the Viceroy, and the administration was now carried out through the Government of India rather than the East India Company. Subsequently, Ranbir Singh's twenty-eight-year rule, which was characterized by both disregard for local administration and a string of natural calamities, was made possible by Gulab Singh's allegiance. There is, regrettably, no room for question regarding the urgent need for changes in the administration of the State of Jammu and Kashmir, stated Lord Kimberley, Secretary of State for India, in a letter to the Government of India in 1884.⁷⁸

1.2 British Kashmir Policy

The fear of a Russian invasion of India through the Pamir Mountains, as well as events in Turkestan, a vast region north of the Hindu Kush and the Himalayas, where the eastern portion was nominally ruled by China, were the main influences on the late 19th century's British imperial policy towards the state of Jammu and Kashmir. The Amir of Afghanistan, whose territory reached the subcontinent's northern border, also pursued an autonomous foreign policy, which continued to concern the British. The

⁷⁸Andrabi, Dr. Syed Damsaz Ali. "Dogra Rule: State of Jammu and Kashmir 1846-1952." *International Journal of Trend in Scientific Research and Development*, no. Issue-6, South Asia Management Association, Oct. 2017, pp. 123-27.

state of Jammu and Kashmir seemed to be the perfect buffer against prospective intrusions from Russia, Afghanistan, and China into the sub-continent because of its strategic location.

It would be unnecessary for the British to spend money on strengthening the northern boundary themselves, if they could continue to preserve a viable alliance with the maharaja. Due to changes in the late 19th century, the British fought hard to preserve the region's integrity but also drew the fault lines that would ultimately determine Kashmir's fate.⁹

Therefore, British decided to free up the colonial control of Indian region as they inculcated "The 1947 Indian Independence Act which set the rules for how British India was divided. Princely states were not formally part of any dominion, therefore section 7(1)(b) of the Act stated that "suzerainty of His Majesty" over these states had ended and that its authority had been restored to them. The choice to cling to their independence or join either dominion was theoretically given to them. Without British forces available for their protection, independence was not a genuine possibility for the princely nations, many of which were fairly small, according to one journal article. The states joined one dominion or the other depending on their geographic location, religious affiliation, or other considerations, as supported by the then-viceroy Lord Mountbatten. Maharaja Hari Singh, the ruler of Kashmir, was debating whether to submit to either dominion or to maintain his independence and neutrality at the moment.¹⁰

1.2.1 British: Originator of Kashmir conflict

Mountbatten reassured the Maharaja of Kashmir that as long as he elected to join one dominion or the other by August 15, there would be no problems, since the dominion

⁹"Decolonization and the Departure of the British from India." *Independent Kashmir*, Manchester University Press, 2021, pp. 76–81.

¹⁰Brian Farrell. "The Role of International Law in the Kashmir Conflict." *Penn State International Law Review*, 12003, pp. 17–27.

joined by him will be solely responsible for the protection of state, as part of its own jurisdiction. However, neither India nor Pakistan was equally equipped to defend Kashmir. Pakistan was in relatively advantageous position in this regard as the communication links of Jammu as well as Kashmir ran to West Pakistan but there was no connection to India at all. In other words, if the district of Gurdaspur had not been partitioned in such a manner as to provide access to the state, India would not have been able to annex Kashmir. Gurdaspur District, in 1947, comprised four tehsils: Gurdaspur, Batala, Sha kargarh and Pathankot. One tehsil, Pathankot had a non-Muslim majority, although the district as a whole had a Muslim majority. At the slopes of the Himalayas, the district bordering Jammu was the sole land connection between Jammu and Indian Punjab. It is pertinent to mention here that no region of the partitioned Punjab with a majority of Hindu or Sikh population was ever allocated to Pakistan, However, on this particular instance Radcliffe divided only a portion of the district with a Muslim majority and handed it over to India which provided it the lone land access to Kashmir. The Wisdom behind such an exception is questionable according to many experts. Experts believe that if the whole district had been given to India, Muslim majority in adjacent tehsils like Batala and Gurdaspur could still prove to be a hurdle in India's way to reach Kashmir via Pathankot, hence, carving out Pathankot was the safest way to ensure it.

1.2.1.1 Mountbatten-Nehru Meeting at Simla: A Bargain

The Boundary Commission was to begin its duties by the end of June 1947. At a press conference on 4th June 1947, Mountbatten was asked why he had stated in his broadcast of the previous evening on 3rd June that "the ultimate boundaries will be settled by a Boundary Commission and almost certainly will not be identical with those which have been provisionally adopted. "Viceroy had promptly answered that there were only 50.4% Muslims in the Gurdaspur area. With such a narrow majority, it seemed improbable that the Boundary Commission would convert the whole district into Muslim-dominated districts. In actuality, Mountbatten was somewhat off; the Muslim majority comprised 51.4% of the population, while non-Muslims were

concentrated mostly in one Tehsil namely, Pathankot.¹¹ It is also worth mentioning here that this incident happened only two weeks before his visiting Hari Singh in Kashmir and about a month after the Shimla Meeting with Nehru and Krishna Menon.

1.2.1.2 Patiala Force a Coincidence

The claim that the Indian Army did not arrive in Kashmir until 22 October 1947, following the tribesmen's incursion against the Maharaja Hari Singh of Jammu and Kashmir is possibly the largest of the Kashmir dispute's falsehoods. In truth, the Indian Army was present in Jammu and Kashmir by the 17th of October 1947, five days before the arrival of the Tribes and ten days well before 27th of October. The information initially came to light when Major Khurshid Anwar stated that his soldiers confronted Patiala state troops in Uri. In the first two weeks of October, these soldiers from Patiala were sent to the state of Jammu and Kashmir, and by the 17th, they were present in three separate cities/towns of the state, namely Srinagar, Jammu, and Uri. These Patiala troops were officially part of the Indian Army at that time.¹²

Alastair Lamb notes, in discussing the legal status of these Patiala forces, states, "The legal status of the Patiala troops in Kashmir is intriguing." As a state that had acceded to India, Patiala had transferred to the Indian government full authority over defense and foreign affairs; this was a usual condition of accession. It meant that at the time of the Transfer of Power, the State Armed Forces were placed under the command of the Armed Forces of India, and their deployment beyond the Indian external borders (where Jammu and Kashmir was located prior to joining India) became an issue of foreign policy that could only be authorized by the highest level of the Government of India. The Patiala men were in Kashmir in flagrant violation of the de facto Indian

¹¹"Mountbatten Redrafted Plan for Nehru - Indian Express." *Latest News Archive: Indian Express*, <http://archive.indianexpress.com/news/-mountbatten-redrafted-plan-for-nehru-/205851/>. Accessed 09 Jan. 2023.

¹²Akram, Ahsan. "Patiala Regiment in Kashmir – an Ignored Reality." *The Kashmir Discourse – An Alternative Discourse on Kashmir*, <https://www.thekashmirdiscourse.com/patiala-regiment-in-kashmir-an-ignored-reality/>. Accessed 09 Jan. 2023.

Constitution or their presence was sanctioned by New Delhi, it would seem. If the former, then their position was very similar to that of the Pathan tribesmen; if the latter, then the Government of India sponsored direct military engagement in the State of Jammu and Kashmir before to the "attack" of the tribes, much alone the accession of the Maharaja."

1.3 Kashmir dispute between India and Pakistan

On August 1947, a conflict over Kashmir between India and Pakistan erupted. Kashmir had become a region whose unique geographic position and diverse religious communities became the reasons of overlapping interests of the newly formed neighbors. Muslims, Hindus, and Buddhists had ceremonies of more or less the same area, but on the basis of population, Muslims were in a clear majority. The division of the Indian subcontinent, Kashmir's fate became a question mark because of its location between India and Pakistan. The ongoing dispute is referred to as the Kashmir problem. Over the years, this contest between the two neighbouring nations has kept intensifying to the point where it is now, and it continues to be a significant issue in the Far East Region.

In his paper "Kashmir dispute: A brief history," Dr. Ashiq highlighted that people in the valley are as committed to Sufism as Hussain. Although Muslims make up the majority of the population, the "Kashmiriyat" ethnic group is noticeable. It is well recognized for its exceptional religious tolerance. The land was purchased in 1948 for Rs. 75,000 from the East India Company. Raja Gulab Singh of Jammu purchased it with the intention of acquiring additional areas to reign over. The final Maharaja of the Indian states of Jammu and Kashmir was Maharaja Hari Singh, who succeeded Raja Gulab Singh of Jammu. A campaign against Maharaja Hari Singh began in 1931 as a result of his autocratic behaviour. Without having been chosen as a leader, he ruled over the majority of the Muslim regions of the territories.¹³

¹³Dr. Ashiq Hussain. "Kashmir dispute: A brief history" *Word Press*, 2009, pp. 23–27.

The All Jammu and Kashmir Muslim Conference founded in 1932 by Sheikh Mohammed Abdullah to advocate for Kashmir's independence, eventually led to the National Conference in 1939. (Meanwhile Muslim Conference reemerged under the leadership of Ghulam Abbas, who was general secretary of National Congress under Sheikh Abdullah's after three years of its dissolution). The Glancy Commission was established before this, which published a report in 1932 that validated resentment and offered potential remedies. A fresh uprising arose in 1934, two years after the Commission's recommendations had been ignored. The National Conference launched the Quit Kashmir campaign in 1946, which sought to restore the population's freedom, and the people's patience ran out. The Kashmir problem began to gain relevance following this action. The charting of the Indian subcontinent caused a lot of changes for the Valley in the next year.¹⁴

National conference boycotted Parja Sabha elections of January 1947 and Muslim conference won 16 out of 21 seats¹⁵. On 19 July 1947 All Jammu and Kashmir Muslim conference organized a convention in Srinagar, this meet meant to pass a resolution of the accession of Kashmir with Pakistan in accordance with the wishes and aspirations of Kashmiri people. In August 1947 the British Empire granted independence to the British Empire of India. East Pakistan, West Pakistan, and India made up the Indian subcontinent. Kashmir, along with the other 584 princely states, was given the option of choosing Pakistan or India as its hegemon. The population's preferences and geographic proximity had to be taken into consideration while making the selection. The referendum's results were anticipated to show Pakistan as a dominion. The Hindu Maharaja, however, was postponing making a choice as he wavered between remaining independent and joining India.¹⁶

On August 12th, 1947, the Maharaja rendered a Standstill Agreement offer to both India and Pakistan. The agreement developed into the form of a bilateral arrangement between two princely states and dominions. The agreement stated: "Until new

¹⁴SabzaarKak, SabzaarKak. "The First Uprising in Kashmir, 1931 Kashmir Riots." *International Journal of History and Research*, no. 2, Trans stellar Journal Publications and Research Consultancy Private Limited, 2018, pp. 23–30.

¹⁵Sardar Mohammed Ibrahim, "The Kashmir Saga", (Verinag, 1990 - Jammu and Kashmir (India) - 275 pages

¹⁶"Pre-Partition Jammu and Kashmir." *Kashmir*, Cambridge University Press, 2017, pp. xi–xi.

arrangements were reached, all administrative arrangements then in existence between the British Crown and the state would remain unchanged between the signatory dominion (India or Pakistan) and the princely state. “Pakistan agreed to this agreement via a telegram reply whereas India did not accept it. However, no formal agreement was signed.¹⁷

During the Second World War, more than 60,000 Muslims from the districts of Poonch and Mirpur joined the British Indian Army. Many newly demobilized Second World War veterans were present in the area Following the Poonch revolt in 1947 against Maharaja due to high taxation. Muslims complained that the police were giving their deposited weapons to Sikh and Hindu families for self-defense, inciting tensions and anxiety within the community. They had a strong conviction that the State forces and the RSS were involved in a conspiracy.¹⁸

The evolving conditions stoked tensions and concerns within the Muslim community. The Times, London, documented on 10 August 1948 that at least "2,37,000 Muslims were ruthlessly slaughtered, unless they fled to Pakistan along the border, by the armies of the Dogra State led by the Maharaja in person and assisted by Hindus and Sikhs." This massacre occurred in October 1947, about a week prior to the tribal invasion and days before the Hari Singh's decision of ascension to the throne of India it on October 27, 1947. Following the victory in Poonch, on October 24, 1947, with the invasion of Kashmir by local rebels and Pashtun tribes, a provisional Azad Jammu and Kashmir government in Pallandri was proclaimed by the chieftains of Poonch, Muzaffarabad and Mirpur districts. At that time, this government was only seen as a local authority, and Sardar Mohammad Ibrahim Khan served as its pioneer president.¹⁹

¹⁷Chopra, Sondra. “UN Mediation in Kashmir: A Study in Power Politics.” *Sanctum Books*.

¹⁸Apprentice. “The Forgotten Poonch Uprising of 1947 (Indian Propaganda Exposed) | Pakistan Defense.” *Pakistan Defense*, Pakistan Defense, 23 Feb. 2016, <https://defence.pk/pdf/threads/the-for-gotten-poonch-uprising-of-1947-indian-propaganda-exposed.423314/>.

¹⁹“The Indian Journal of Political Science” Vol. 25, No. 3/4, conference number for xxvi Indian political science conference 1964: ANNAMALAINAGAR (JULY—SEPTEMBER—DECEMBER, 1964), pp. 124-135

On the other, Maharaja Hari Singh allegedly executed the Instrument of Accession with India after this rebellion and tribal invasion, on October 26, 1947, of course, under pressure from National Conference led by Sheikh Abdullah²⁰.

The following deployment of Indian armies into Kashmir precipitated the 1947 Indo-Pakistani War. In January 1948, India approached the United Nations, which resulted in Resolution 47 of the United Nations Security Council on April 21, 1948. This resolution demanded, among other things, that Pakistan immediately withdraw from the territories of Jammu and Kashmir it had occupied in 1947 and that circumstances be established for a free and impartial referendum to determine the destiny of the state.

The vote to determine the Kashmir valley's status was proposed by the United Nations Commission for India and Pakistan (UNCIP) a year later, as stated in "Part 3: Kashmir Issue - Its Current Status." Only in the absence of Indian or Pakistani armed troops was this action possible. Similar to 1948 and 1949, both nations accepted but were unable to reach an understanding because of disagreements on how to achieve this. According to "Role of United Nations in Kashmir Dispute," India was given the more productive portion of Kashmir after the war as opposed to Pakistan, which received Pakistan's territory. Later, the state was able to ensure its special position and domestic economy thanks to centralized control over the military, foreign policy, and communications. Beginning in 1949, the Cease Fire line was established ("Causes of Kashmir Conflict"). It is located in a hilly area at a height of 50,000 meters. The Line of Control separates Kashmir into Pakistani-administrated territory to the north and west and Indian-administrated territory to the east and south (9 million people) (3 million people). Azad Kashmir was given this name by Pakistan.

²⁰ Gupta, Prem Sagar, Article 370: National Unity and Integrity (New Delhi: New Age Printing Press), p. 03.

1.4 United Nations and Kashmir Dispute

The Indian-Pakistani competitiveness with one another over the years did not bring gains. The Kashmir valley's geography and religious diversity made it a persistent problem. United Nations and Western diplomacy are unable to resolve the core issue; they can only defuse the situation and spare the world from nuclear war. The Kashmir dispute is unlikely to be resolved now that the United Nations has removed it off the list of long-running conflicts. The Kashmir valley is not predicted to have a promising future. The Kashmir problem has been omitted off the United Nations Security Council's list of unresolved conflicts ("Kashmir issue remained unmentioned in United Nations"). Jammu & Kashmir was not included on the list of ongoing hostilities that have not been settled. Pakistan disagreed with this choice. Mark Lyall Grant, the representative of the UK to the UN, noted that the Council has recently been involved in other crises in the Middle East and other regions of the world.²¹

Jammu and Kashmir was one of the princely states that had to decide accede to either India or Pakistan at the time of the Indian subcontinent's division. The ideas of geographic proximity and self-determination underlie the accession of these princely republics. The British government asked the Hindu maharajah of Kashmir, Hari Singh, to choose between the two dominions but he kept delaying the matter on purpose. Kashmir was predominately a state with a mostly Muslim population. On October 27, Hari Singh signed the agreement of accession with India, and the Indian military forces entered Kashmir valley the very same day. Pakistan and Kashmir were connected geographically, culturally, racially, and historically. When the matter was taken to the Security Council, Pakistan requested creation of a commission to hold a plebiscite to decide the future of Kashmir after ensuring the ceasefire. The legitimacy of the controversial accession to India by Hari Singh was also contested by Pakistan. A three-person UN commission on India and Pakistan (UNCIP) was constituted by the Security Council on January 20, 1948, which was supposed to visit Jammu and Kashmir and

²¹Kuszevska, Agnieszka. "Nation Building and Kashmir." *Kashmir in India and Pakistan Policies*, Routledge, 2022, pp. 76–114.

assess the situation and engage in mediation. On April 21, the Council increased the commission's size to five and gave it the go-ahead to establish peace and set up a referendum following the departure of tribal forces.²²

On August 13, the UNCIP adopted a resolution urging both India and Pakistan to hold a plebiscite following their agreement on a cease-fire and total withdrawal of Pakistan's armed forces as well as tribal militants. On January 1st, 1949, the cease-fire was put into force. On January 24, the UNCIP dispatched a Monitoring Group for India and Pakistan (UNMGIP) to the area to keep an eye on the cease-fire line in accordance with its decision from August 13, 1948. As a result of cease-fire India temporarily got hold of the major of Kashmir, and the organization requested a referendum that hasn't been held yet it is pertinent to mention that Kashmir issue was subjected to Article 6 of UN, the decisions under this article are not binding for the parties involved in the conflict.

American Fleet Admiral Chester Nimitz was chosen by the Secretary General of United Nations to serve as the plebiscite administrator, but he was unable to do so since Pakistan and India opposed it due to their differing interpretations of the UNCIP decisions on the subject of demilitarization. The Security Council tasked Canadian McNaughton with negotiating a demilitarization strategy with India and Pakistan in December 1949. India opted to disregard Pakistan's consent to simultaneous demilitarization by pointing out moral and legal problems with the proposal. The attempt fell short without India's assistance. On March 14, 1950, the Security Council adopted a new resolution to implement McNaughton's recommendations, and Sir Owen Dixon, a renowned Australian judge, was chosen to serve as the new UN envoy in lieu of the UNCIP.

Dixon proposed a plan in September 1950 that would have restricted the vote to the Kashmir Valley's predominately Muslim population, but both nations rejected it. Dr. Frank Graham, a former US senator, was chosen by the Council as the UN envoy in April 1951. Graham unsuccessfully sought to persuade both India and Pakistan to agree

²²Racine, Jean-Luc and Ijaz Hussain, "Kashmir Dispute. An International Law Perspective", *Critique Internationale*, no. 1, CAIRN, Jan. 1999, pp. 71-71.

to his Secretary Council-supported demilitarization plans between December 1951 and February 1953, which called for both nations to reduce their military presence in Kashmir and Azad Kashmir before holding a plebiscite.

In order to validate Sheikh Abdullah's rule and established a constitution for Jammu and Kashmir, elections were held for a Constituent Assembly. After the Constituent Assembly of the States declared in February 1954 that Kashmir's accession to India was complete, India adopted the stance that the Assembly's decision was the same as a plebiscite. The Council and Pakistan disagreed with such claim. Later, Jawaharlal Nehru, the Indian Prime Minister, removed Sheikh Abdullah, the Chief Minister of Kashmir and a steadfast supporter of Indian sovereignty of Kashmir, and had him detained for treason since he advocated for Kashmir's independence from both Pakistan and Kashmir. Later, Abdullah stated, "Our disagreement with the government of India is not over accession, but rather the degree of autonomy."

In 1957, the UNSC repeated its prior resolution requiring the referendum making it feasible for a legal settlement based on arbitration to be adopted. The UN has designated Gunnar Jarring as the mediator between Pakistan and India. The Security Council once more dispatched Frank Graham to the region in response to Pakistani Prime Minister Sir Feroz Khan Noon's proposal for demilitarization, which said that his nation was ready to remove its soldiers from Kashmir in order to satisfy India's demands. He attempted to broker a deal between Pakistan and India, but India once more refused it. Graham submitted a report to the Security Council (CSC) in March 1958 urging it to mediate the conflict, but India, as usual, opposed the recommendation.

In 1965 a conflict over Kashmir led to war between two nations. The UN Security Council, endorsed by the US, UK, and USSR, demanded an immediate cease-fire while the fighting went on, which India and Pakistan accepted on September 6. Shastri and Khan met in the city of Tashkent (Republic of Uzbekistan) in January 1966 at the request of Soviet Premier Alexsei Kosygin, and they signed the document known as the Tashkent Declaration. Despite the fact that the agreement provided the Indians the option to forego UN and third-party mediation or arbitration on the Kashmir problem,

no meaningful discussion between the two sides occurred throughout the preceding 38 years.

The Indian government began playing around with Kashmir's internal politics instead of starting a bilateral dialogue to give its authority over Kashmir legitimacy. Abdullah was appointed chief minister of the state on February 25, 1975, and his son Dr. Farooq Abdullah took over as chief minister in 1982. However, the Awami Action Committee's Farooq and Maulvi Farooq requested the type of autonomy that had been given to his father in the 1952 Delhi Agreement. He won the 1983 parliamentary elections. His push for autonomy angered Mrs. Gandhi, who interfered in state politics and ousted Abdullah's administration in 1984. Human rights abuses occur in Jammu and the Valley after a Muslim rebellion in 1989. As stated in UN Charter Article 103, member state duties under the Charter take precedence over those under a bilateral arrangement. The UN's engagement in the Kashmir conflict is well demonstrated by the presence of the United Nations Military Observers Group in India and Pakistan (UNMOGIP) near the Line of Control in Kashmir.²³

Parallel to the conflict resolution prototype and formulas, there had been numerous mediations attempts to resolve the Kashmir conflict. These attempts were successful to some extent as they led to ceasefires and momentary de-escalation of tensions. The initial UN work through the United Nations Commission for India and Pakistan, or UNCIP is an example of such one mediation. USSR in 1965 and the US in 1990 have intervened and helped in de-escalation. India opposes the presence of a third party and wishes to settle the Kashmir problem bilaterally rather than through a global body.

Bilateral negotiations and mediation have largely failed to reach mutually beneficial agreements between India and Pakistan about Kashmir. Why does India disagree with the UN's or any other third party's participation in international affairs? India views itself to be in a dominating position in the area and may have more negotiating power now than it had during the 1971 war. Avoiding pressure to accept a solution that is averse to India is another factor to consider during bilateral discussions. The Indian

²³Kolb, Robert. "Article 103 of the UN Charter and Security Council Authorizations." *The Global Community Yearbook of International Law and Jurisprudence 2018*, Oxford University Press, 2019, pp. 165–72.

government does not like the Kashmiri people's right to self-determination. India has been successful in converting the cease-fire line into the LOC as the de facto line of control through bilateral agreements and is keen in keeping this situation as is. Last but not least, India worries that it would face international pressure to agree to a bad settlement.

Self-Determination: According to the self-determination principle, every country has the right to impose its own geographical sovereignty. Every population has the right to vote in plebiscites to decide whether or not they want to join any state. According to Article 1(2) of the United Nations Charter from 1945, the UN's aims to ensure friendly relations between member states based on the respect for the principle of equal rights and peoples' right to self-determination, as well as to take other appropriate actions to strengthen world peace. The notion of self-determination is recognized by almost all human rights agreements. All people have the right to self-determination, according to Common Article 1 Paragraph 1 of the Covenant on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights. As a result of this right, individuals are free to choose their political states as well as how their economy, society, and culture will evolve. The Kashmiri people have the power to decide their own political future thanks to these legal frameworks.

Furthermore, the preamble of the Universal Declaration of Human Rights states: "Whereas it is necessary that human rights be preserved by the rule of law if man is not to be forced to resort, as a last option, to revolt against tyranny and oppression." The Universal Declaration of Human Rights' article 1 further states that "all human beings are born free and equal in dignity and rights." They should behave toward one another in a brotherly manner since they are gifted with reason and conscience. All peoples also have the legal right to self-determination under international law. This represents the law's self-image as a defender of democracy, human rights, and peace the best. In Jammu and Kashmir, mostly in Indian-held Kashmir, there is a pervasive state of lawlessness and widespread human rights abuses.

Even though international human rights law forbids the arbitrary deprivation of life in any situation, atrocities like as gunfire into unarmed crowds of protesters and firing on

funeral processions continue to occur on a daily basis. The International Covenant on Civil and Political Rights is a treaty to which the Indian government is a party (ICCPR). Derogations from the right to life are clearly forbidden by Article 6 of the ICCPR. Therefore, no one may be unilaterally deprived of their life, even in times of need. Additionally, the ICCPR forbids the use of torture and other cruel, dehumanizing, and degrading practices.

Torture is expressly prohibited under Articles 4 and 7 of the ICCPR, even in cases of national emergency or when the nation's security is in danger. The primary government forces operating in Jammu and Kashmir are the Indian Army's Special Task Force (STF), Border Security Force (BSF), state-sponsored paramilitary organizations, and Village Defense Committee. These forces have consistently broken these fundamental principles of international human rights law.²⁴

The international community now has a duty to help and press Pakistan and India to uphold their end of the self-determination agreement. Due to the impasse in bilateral negotiations, both nations should try to choose a strict legal procedure to resolve the Kashmir conflict. In his address to the UN General Assembly on October 31, 2002, the ambassador of Pakistan to the UN, Mr. Munir Akram, emphasized that India had violated several Security Council resolutions, including Resolutions 47 of 1948 and 80 of 1949, as well as its obligations under Article 25 of the UN Charter.²⁵ As a result, India deserved to face international sanctions until the instruments were complied with. As for why bilateral agreements don't work it is referred to as an invalid agreement under the Vienna Convention on the Law of Treaties, which also specifies alternative dispute resolution procedures such as judicial resolution, arbitration, and conciliation. If, in accordance with paragraph 3 of article 65, no resolution has been achieved after a 12-month period starting from the day the objection was submitted, the following steps must be taken:

²⁴Wheatley, Steven. "United Nations Human Rights Law." *The Idea of International Human Rights Law*, Oxford University Press, 2019, pp. 65–94.

²⁵Tooba Khurshid. "United Nations Security Council Resolutions: Status of the People of Jammu and Kashmir." *Institute of Strategic Studies*, 2017.

(a) Any party to a dispute about the implementation or interpretation of articles 53 or 64 may, by written request, refer it to the International Court of Justice unless the parties voluntarily agree to arbitrate the issue.

(b) In case of a dispute about the application or interpretation of any other item in part V of the present Convention may start the process described in the Convention's Annex by submitting a request by any party to the Secretary-General of the United Nations.

1.5 Conclusion

The creation of Kashmir and the oppressive reign of its rulers had a significant impact on the state's subsequent religious beliefs. The partition of the British Indian Empire in 1947 marked the beginning of the Kashmir problem. Due to differences in religion, the newly constituted nations of India and Pakistan were vying for control of the state. This developed into a significant factor in the Indian-Pakistani war as a result of both nations' strong efforts to annex Kashmir. Conflicts between India and Pakistan have existed for many years, but the Kashmir dispute continues to be the most serious. The United Nations had a significant role in efforts to stop the crisis from escalating into a nuclear confrontation.

CHAPTER TWO

INDIA'S REVOCATION OF SPECIAL STATUS OF JAMMU & KASHMIR

Kashmir question had been bugging India and Pakistan for over seven decades now. They engaged in three wars, and their military forces remained in standoff positions on several occasions as the unresolved issue of Kashmir keeps giving birth new issues. The United Nations played an active role in the early years of the dispute and efforts were made to settle the burning issue, but the matter remained unanswered despite resolutions passed by the UN Security Council calling for a plebiscite to ascertain the desire of the people of Kashmir over uniting with Pakistan or India. As a direct result of this, the situation in South Asia had been erratic, shifting from a tense to an antagonistic one. Later on, it evolved into a devastating one not just for the area but for the entire globe when both adversaries obtained the capability to produce nuclear weapons in the year 1998. This changed the scope of the conflict's destructive potential. After the re-election of the Modi administration in New Delhi on August 5, 2019, altered its constitutional relationship with Jammu and Kashmir, which made an already difficult position much more difficult. In violation of all United Nations resolutions, bilateral agreements with Pakistan, and against the sole of the accession agreement with Maharaja of Kashmir, India had unilaterally altered the status of Kashmir. Kashmir was granted the "authority to have a distinct constitution, a state flag, and autonomy over the internal administration of the state" by the Indian Constitution under Article 370. Nevertheless, since Article 35-A "protects the demographic character of Jammu and Kashmir," people from other regions of India were prohibited from purchasing property in Kashmir. India has tried to make LOC (line of control with Pakistan administered Kashmir) and LAC (Line of actual control with China administered part of Kashmir) into permanent borders.

This chapter explains the historical context of India's Kashmir policy, the article 370, its revocation and the policies afterwards by the Indian government in the occupied territory of Jammu and Kashmir.

2.1 India's Kashmir Policy: Historical Context

Kashmir has always been a very delicate and unique subject in political history of India. Kashmir was accorded a "special status," and the Indian Constitution's Article 370 governed it. The 1947 Instrument of Accession, which established the framework for Jammu and Kashmir's future ties with India, must be understood well. Jammu and Kashmir is not the only state that the Indian Constitution granted special status to. According to Article 371A, Nagaland has a special status, and no Act of Parliament is automatically extended to Nagaland unless its legislative assembly votes so in regards to Naga customary law and practices, ownership and transfer of land and its resources, or religious or social practices of the Nagas. Even the Acts passed by the state legislative assembly do not apply to the Tuensang District of Nagaland under another level of autonomy that Nagaland enjoys. A Minister of Tuensang Affairs is required. As a result, even some districts inside a state may have autonomy²⁶. Similarly, there is a special status for Maharashtra and Gujarat in Article 371. There are special provisions for many other states as well like Assam under Article 371B, Manipur under Article 371C, Arunachal Pradesh under Article 371H and many others. This clearly shows that the Constitution of India gives varying degrees of autonomy to different states.

As far as Kashmir was concerned, India's power was restricted to dealing with foreign policy, defense, and relations with Kashmir according to the accession agreement. It was believed that the Kashmiris' will would ultimately determine how the accession question would be resolved.

Sheikh Abdullah was the obvious option for Nehru, who had no qualms about appointing Abdullah as Kashmir's chief minister for a variety of reasons. Heading the Emergency Administration was Abdullah's first political position in the state of Jammu and Kashmir's government. Sheikh Abdullah maintained up his "New Kashmir"

²⁶ H. Srikanth & C. J. Thomas, *Naga Resistance Movement and the Peace Process in Northeast India, Peace and Democracy in South Asia*, Vol. 1, Issue 2, 2005.

program after becoming the premier of Kashmir in Nehru's administration. Despite his commitment to India, Abdullah has always supported the "third option," which refers to independence. Abdullah's position was made clear when he informally discussed a third option with Warren Austin, the US representative at the UN, when visiting the US in January 1948 as one of India's UN delegates.

The relatively restrictive structure of the Instrument of Accession signed suggests that if Kashmir is to be completely integrated into India in future, it has to be done through a separate agreement. In the absence of any such renewed agreement Kashmir will continue to enjoy a "special status." When India started denying Kashmir its agreed upon right to self-determination, and started using other means to annex Kashmir to itself, the issue became apparent. Abdullah immediately objected to New Delhi's plan and mentioned that India could not exercise its authority over Kashmir outside of the three areas specified in the Instrument of Accession, namely, foreign affairs, defense, and communication.²⁷

Abdullah was successful in reaching an understanding with the New Delhi administration in July 1952 on a number of topics. History remembers this agreement as the Delhi Agreement. Kashmiris would be Indian citizens; Article 370 was accepted; Kashmir's own flag would be permitted, but the Indian flag would take precedence; It was also agreed upon that New Delhi would not be appointing governor of Jammu and Kashmir any more, Sadar-e-Riyasat would be chosen by the legislative assembly of Jammu and Kashmir, however his appointment would be considered final with the approval of the president of India. The Jana Sangh, headed by Shyama Prasad Mukherjee, was established by traditional Hindus in October 1951 with the intention of repealing Article 370 and completely incorporating Jammu and Kashmir into the Indian Union. The National Conference was seen by the Praja Parishad as a "cover for the propagation of communist ideas" in addition to being a Muslim communal party.

After serving as prime minister for five years, Sheikh Abdullah was removed from office on August 8, 1953, and placed in custody. The 1930s connections between G. M. Sadiq and Bakshi Sheikh Abdullah played a crucial role in Abdullah's collapse. On

²⁷M. Zafarullah Khan, *The Kashmir Dispute*, Karachi: Institute of International Affairs, 1968. pg.67-68

August 9, 1953, Bakshi took the oath of office as chief minister. Between 1948 and 1950, he cultivated a close friendship with Sardar Patel and Karan Singh. For 22 years, Abdullah was out of politics. At the age of 70, in 1975, he entered politics once again. Bakshi put the finishing touches on Kashmir's admission to India. In order to validate the Instrument of Admission that Hari Singh had signed in 1947, the Constituent Assembly officially accepted the state of Jammu and Kashmir's accession in 1954. This action was also intended to put a halt to any further plebiscite debate.²⁸

India inflicted the first blow to Delhi agreement in 1964 when it was suddenly announced that Articles 357 and 365 of the Indian Constitution will take the place of Article 370. This action was a total negation of the Nehru's stated position on Kashmir, who always showed commitment although verbal, to his words, throughout his lengthy, sixteen-year tenure as prime minister. Article 357 gave the parliament the authority to grant the president the authority of any state legislator. Article 356 authorized the federal government to impose the president's rule in any part of the country. The nomenclature of the head of state Sadar-e-Riyasat was changed to Governor, and that of the head of the government was changed from Prime Minister to Chief Minister. A statement stating that "the state's membership in the union was full, definitive, and irreversible" was included with these amendments.

On January 15, 1965, Jammu and Kashmir police opened fire on the protesters as the region of Kashmir marked a day of protest. Sheikh Abdullah addressed a large public gathering, he apprised the Kashmiri Muslims of the impending threats to the sovereignty of Kashmir, and counter-promise measures by India, as a result he was arrested and the situation in the occupied valley worsened. was therefore detained by the national government,

The goals of the Bakshi and Sadiq administrations for the integration of the state were largely terminated by the 1975 Kashmir Accord between Sheikh Abdullah and Indian Prime Minister Indira Gandhi. Sheikh Abdullah gave up his desire to restore Kashmir's pre-1953 political status, which made the agreement feasible. The 1975 Accord upheld Kashmir's unique status, which is outlined in Article 370 of the Indian Constitution.

²⁸Alastair Lamb, *Kashmir: A Disputed Legacy 1846-1990*. Karachi: Oxford University Press, 1992

However, a significant modification was made: Kashmir was now referred to as "a part of the Union of India."

2.2 Articles 370 and 35-A of Indian Constitution

In 1948, the Security Council adopted Resolution 47 which led to India enacting laws recognizing Kashmir's status inside its own borders. The Delhi Agreement, signed between India and Kashmir in 1952, stated that "sovereignty in all subjects other than those indicated in the Instrument of Accession remains to reside in the state" and also confirmed that the State will retain the power of defining the state subjects' rules, and rights and privileges. India passed Articles 370 and 35-A of the Constitution to give the Delhi Agreement force.²⁹

The territory was awarded 'special protection status' under Articles 370 and 35-A of the Indian Constitution. In 1949, Article 370 went into effect, With the exception of the Kashmir legislative assembly's power to decide who is qualified to live there permanently, Kashmir was exempted from the Indian constitution. It also gave Kashmiri citizens specific special rights and privileges concerning property, scholarships, public aid, welfare program, as well as jobs in the public sector. Kashmiri women were not allowed to marry a non-state subject (non-permanent resident of J&K) If they did so, they would lose their permanent resident rights to inherit or own property. Additionally, several caste groups that arrived in Kashmir as migrant workers have experienced discrimination in violation of Articles 370 and 35-A and have been denied access to opportunities and social services. Due of such discriminatory effects of Articles 370 and 35-A, some have questioned them.

However, the proponents of the privilege argue this matter was resolved by a full bench of the Jammu and Kashmir High Court in the case State and others vs. Dr. Susheela Shawnee and others by elimination of the provision of the state subject law that stated

²⁹Ali. S, "The Kashmir conundrum- post Indian abrogation of Article 370 and 35-A: The way forward" *South Asia Journal*, 2020. <http://southasiajournal.net/the-kashmirconundrum-post-indian-abrogation-of-article-370-and-35-A-the-way-forward/>.

that women who gets married to outsiders would lose their permanent resident status. The panel, in the landmark judgement on 7 October 2002, held by a majority opinion that the daughter of a legal resident of Jammu and Kashmir will not have to lose her state subject status upon such marriage.

The state of Jammu and Kashmir is a unique autonomous status inside the Indian union by way of what is referred to as a "temporary provision" under Article 370 of the Indian Constitution. In accordance with article 370(1)(b), the Union Parliament may only pass legislation for the state "in consultation with the Government of the State" with regard to the military, foreign policy, and communications-related issues included in the Instrument of Accession. Jammu and Kashmir may only be affected by other issues on the legislative subject lists with the "concurrence of the Government of the State" through a presidential decree. Other protections may occasionally be implemented to the state, according to Article 370(1)(d), "subject to such revisions or derogations" made by the president of India, also through a presidential decree, as long as they do not relate to the aforementioned matters and unless with the state government's consent. Due to this position, the state of Jammu and Kashmir passed its own constitution, which was officially ratified on November 17, 1956, by a Constituent Assembly, and went into effect on January 26, 1957.³⁰

Jawaharlal Nehru, the country's prime minister at the time, and Sheikh Abdullah, the prime minister of Jammu and Kashmir, reached a deal in July 1952 that called for the state to be subject to India's citizenship law and gave it the authority to control the privileges and entitlements of its own long-term residents. The Legislation (Implementation to Jammu and Kashmir) Order, 1954 (made based on article 370(1) of the Constitution), which incorporated article 35-A to the Indian Constitution, codified this agreement by granting the state of Jammu and Kashmir the authority to define permanent residents of the state as well as certain "special rights and privileges" attached to such residency, including the power to restrict settlement to the state and acquire real estate. 35-A. Saving of legislation pertaining to rights of permanent

³⁰Kelly Buchanan, "Article 370 and the Removal of Jammu and Kashmir's Special Status", Library of Congress, 3 October, 2019. <https://blogs.loc.gov/law/2019/10/falqs-article-370-and-the-removal-of-jammu-and-kashmir-special-status/>

residents. Despite the provisions of this Constitution, no law currently in effect in the State of Jammu and Kashmir, and no law that is enacted in the future by the State's Legislature, may: (a) define the classes of people who are, or shall be, permanent residents of the State of Jammu and Kashmir; or (b) grant such permanent residents any special rights and privileges, or impose restrictions on others with regard to employment with the State Government.

After 1954, a subsequent set of presidential decrees expanded the reach of the majority of Indian republican laws to the state, and now, almost no central Indian institution (such as administrative bodies, businesses, and banks) does not apply to Kashmir. Unsettlingly, Kashmir was included in the Indian constitution's 1964–1965 amendments that gave the federal government the authority to overthrow democratically elected state governments and take their legislative powers. Additionally, Delhi would appoint the governor rather than the state assembly as it did in the past. Later, these increases in Delhi's authority were put to terrible use.³¹

Part III of the 1956 Constitution of Jammu and Kashmir outlines the rights and benefits of permanent inhabitants. The article's proponents claim that its goal is to protect the identity and population composition of the state with a majority of Muslims. On the other hand, the state will be "completely integrated remained the slogan of Indian ruling party, the Bharatiya Janata Party (BJP), which pledged to remove the article as part of its election campaigns in 201e as well as 2019. Demographic change was considered as a way to resolve the problem in the state by BJP. The party also claimed that the provision prevented the state's economy from developing.

Article 370(3), however, which grants the president of India the authority to change or repeal Article 370 itself through a public notification (declaring that this Article "shall cease to be operative or shall be operative only with such exceptions and modifications"), is crucial for the purposes of recent developments. This is true as long

³¹Rai, Mridu. "Kashmir: From Princely State to Insurgency | Oxford Research Encyclopedia of Asian History." *Oxford Research Encyclopedia of Asian History*, Oxford University Press,

as "the recommendation of the Constituent Assembly of the State" is given before the president issues such a notification.

The struggle over Kashmir continued even after Articles 370 and 35-A were put into effect. Between April and September of 1965, Pakistan and India fought a second war over Kashmir in which Indian troops triumphed. India and Pakistan have steadily maintained control over areas with a military advantage since the end of this second war; India maintains the Kashmir Valley, Jammu, and Ladakh regions, while Pakistan has kept its grip on the Azad Kashmir region as well as Gilgit-Baltistan. A third conflict over Kashmir broke out in 1999 and was also known as the Kargil Conflict. Pakistani military forces attempted to smuggle themselves into the Kargil area there, but they were finally stopped by Indian soldiers and external pressure. Religious tensions played a significant role in the recent war, with Pakistani leaders opposing the secularization of society by enacting a national Islamization program in Pakistan and the Bharatiya Janata Party ("BJP"), a right-wing political party that has historically reflected Hindu nationalist ideology, becoming more and more popular among Hindu nationalists.³²

Another major source of worry is how India's security forces have been handling the unrest in Kashmir. As a reaction to separatism which resulted from India's continuous suppression tactics in the region and support by Pakistan, India has carried out murders, torturous acts, and disappearances. The Indian Armed Forces Special Powers Act (AFSPA) which grants military personnel broad immunity for human rights violations and moreover subsidizes armed forces personnel with "special powers" when operating in certain regions that must be classified as "disturbed," facilitates these violations of human rights. In the J&K arena, the use of administrative detentions by the government has been widespread; according to Amnesty International, "at its lowest, the proportion of administrative detainees (among the general jail population) in J&K prisons was 11.5%." (2008). This is more than 14 times the national average. The Public Safety Act ("PSA") also transgresses a number of international human rights laws and norms, according to Amnesty International: By allowing for

³²Minhas, A., Ahmad, B., & Khan, M. (2019). Seizing Kashmir's identity: Implications for the global peace and stability. *NDU Journal*, 63-82. <https://ndu.edu.pk/ndu-journal/pubnew/04-Seizing-Kashmir.pdf>

imprisonment without charge without disabling judicial review and other protections for persons in custody that are needed by international human rights law, the PSA contradicts international human rights law and norms. By defining offences so broadly that security personnel are able to imprison people for very nebulous reasons, such as exercising their right to freedom of speech and peaceful assembly, it also breaches the legality principle. Thus, notwithstanding Delhi's subsequent decision to abrogate Articles 370 and 35-A, the history described above creates a picture of India controlling Jammu and Kashmir at the time this article was written.³³

In addition to abrogating autonomy, which was a crucial condition for Kashmir's unification to India, India has divided the state into two halves and reduced its status to that of a centrally governed region. This strengthening of Prime Minister Narendra Modi's government's hardline position in Kashmir since entering office is certain to foment additional alienation and dissatisfaction. The unilateral move throws into doubt India's other federal arrangements, such as those with states in India's north-east that enjoy varying degrees of autonomy, potentially raising discontent and instability inside the nation.

Moreover, Kashmir was not the only state under the Constitution of India, with special treatment and autonomy, India made numerous states eligible for different constitutional and other privileges as part of its efforts to enlist diverse peoples and areas. For instance, eight other states still retain limitations on the sale of land, in addition to Kashmir: Assam, Arunachal Pradesh, Nagaland, Manipur, Tripura, Meghalaya, Sikkim, and Himachal Pradesh. In the states in India's northeast, close to the borders with Bangladesh, China, and Myanmar, Article 371 of the constitution grants autonomy with regard to social and religious customs, law, and land rights. The admission of persons from "mainland India" into Arunachal Pradesh, Mizoram, and Nagaland is even restricted by an inner-line permit system, which functions something like an internal visa system. However, the only factor which separates Kashmir from other territories is its being the only Muslim majority state in India.

³³Mehdi Zakerian & Negin Sobhani, International Humanitarian Laws and Laws of War: Kashmir, 3 *INT'L STUD. J.* 1, 2006.

2.3 Removal of Kashmir's Special Protection Status

The RSS first showed interest in Jammu and Kashmir on December 21st, 1931, when its volunteers marched through Lahore and pledged their complete political and militant support to the ruler of Kashmir. It was done to combat the growing sympathy and support in British India for the situation of Muslims in Kashmir. The murder of 22 innocent people caused outrage and anger (an incident known as Youm e Shohda e Kashmir, July 13, 1931) in the jail's courtyard in Srinagar. In Kashmir, the RSS sent its armed men to aid the Maharaja's army in their fight against the Muslim revolt.

The RSS's and the Sangh Parivar family's Hindutva agenda were launched as soon as the Modi-led BJP government took office in 2019 with a sizable majority (a group of Hindu right-wing associations). Removal of Article 370 was in the BJP's 2014 manifesto; it took 84 years for the BJP to finally find a way into Kashmir's power politics in March 2015.

The Indian government dissolved the Kashmir Assembly on October 16, 2019, and Kashmir had been governed by a governor named Raj since then. Early in August, IAK reinforced its security measures immediately, requested visitors to immediately leave the valley, instituted a complete communication blackout, placed all political leaders under house arrest, and outlawed all forms of public gatherings. In order to strengthen the security measures that led to the first juvenile arrests, a second force of 38,000 troops was sent to IAK. A presidential order, C.O. 272, issued on August 5th, 2019, outperformed all prior directives and accomplished two purposes. First, it altered the process for abrogating it that is outlined in Section 3 of Article 370. The mechanism outlined in Section 3 states that the President may only repeal an item with the approval of the IAK Constituent Assembly, which no longer exists as it was dissolved in 1957. Even though Mehbooba Mufti's coalition partner BJP left her administration in IAK on June 19, 2018, there was no legislative assembly in IAK since the state legislature was dissolved by Governor Satya Pal Malik on November 21, 2018. After

that, Raj served as the state's governor. Article 370 was practically regarded as irreversible. Even the Indian Supreme Court and the J&K High Court stated so in their rulings in Sampat Prakash State of Jammu & Kashmir & Anr., 1968. 9 October 2015, IHC Jammu and Kashmir, Indian Supreme Court, 2017

Article 370(3) of the Constitution, before its reading down in 2019, said:

“Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify: Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.”

On August 5, 2019, the newly inserted Article 367(4)(d) amended Article 370(3) by replacing the expression “Constituent Assembly of the State” with the “Legislative Assembly of the State”. Manzoor Gillani (Former Chief Justice SC of AJK) argues that the concurrence of the state government provided by the governor cannot express the will of the people as the governor is not an elected representative of the people of Jammu and Kashmir, but is appointed by the Indian government itself.³⁴

The occupied IAK was given unique status under Article 370, and as a result, the state had its own constitution, its own flag, and control over state administration. Second, by superseding the earlier constitutional (Application to IAK) decree of 1954, article 35-A was immediately declared invalid. Article 35-A protects the demography of the state by prohibiting non-Kashmiris from purchasing real estate in IAK. The Indian government plans to alter the demographic composition of the state by settling foreigners and repealing 35-A. Thus, the Indian Rajya Sabha (Upper House of Parliament) and Lok Sabha (Lower House of Parliament) both approved a resolution pertaining to presidential order 272 on the same day. Then, in defiance of Clauses 5 and 7 of the Instrument of Accession, Article 3 of the Indian Constitution, and all UNSC resolutions, another presidential order, C.O. 273, was issued, enforcing the whole

³⁴ Syed Manzoor Gillani. Interview by author, August 5, 2022

Indian Constitution in the state of IAK. Numerous petitions questioning the order's legality have also been filed with the Indian Supreme Court since all of these earlier actions were deemed to be extra-judicial by Indian courts' rulings. These court filings are still pending. Even in India, there are conflicting views on the legitimacy of President Order 272, as one constitutional scholar, Subhadh C. Kashyap, believes it to be a solid and lawful decision, while another expert, AG Noorani, described it as an illegal choice that is equivalent to perpetrating fraud. Not only have constitutional scholars Viplav Sharma, Jaideep Gupta, Arundat Ray, Rohan Venkatarama Krishnan, and others voiced disapproval of the process used to draught the law, but also a number of Indian political parties, intellectuals, and commentators. The lawmaker from Kashmir spoke even more vehemently against the BJP's move on its own. Mehbooba Mufti claims that it had driven Kashmiris to the breaking point, while Omar Abdullah claims that it had deserted the Kashmiris. Therefore, it will have disastrous effects.³⁵

Many observers believe that, with the exception of BJP-aligned individuals, the push for the annexation of IAK by repealing articles 370 and 35-A is for Hindu dominance and the oppression of Muslims, not for the advantages of Kashmiris as stated by New Delhi. For instance, despite secularism being a pillar of the Indian Constitution, the Indian Citizenship Amendment Act (CAA), which went into effect in December 2019, primarily discriminates against Muslims and other minority migrants. Similar to the BJP, these writers believed that article 370 was an unfair rule that exclusively benefited the Muslim community in IAK at the expense of Sikh, Buddhist, Hindu, and other minorities. As P. Chidambaram, a prominent leader of the Congress Party, said in Parliament on August 6, 2019, annexation is a "catastrophic act" that would have major repercussions for future generations, even though other experts believe it to be terrible. Ghulam Nabil Azad, the head of the opposition, referred to the action as a "cause of shame" for the government. Former Indian legislator Brinda Karat claims that Kashmiris' homes have been violently trespassed upon. They are alarmed and terrified.

³⁵Rais Akhtar, Jammu and Kashmir, *BRITANNICA*, <https://www.britannica.com/place/Jammu-and-Kashmir> (last visited Mar. 7, 2021)

Therefore, they cannot be assimilated into India by the Modi government's forceful measures.³⁶

2.4 Implications of the Abrogation of Articles 370 and 35-A

According to Justice Gillani, Article 370 was used to extend the Indian constitution into Jammu and Kashmir rather than being completely deleted. He opines that India purposefully maintained the article so that it could be later deleted with consultation of the Jammu and Kashmir legislative assembly when the time would be ripe and the BJP would have gained control of the former state in some way through electoral maneuvering³⁷.

The BJP's ideology which is now in power made it a priority to incorporate AK into the Indian Union by repealing Article 370 of the Constitution in line with the RSS's aim. Therefore, the BJP promptly implemented the point in accordance with its platform, which projects Hindutva or the idea of Hindu nationalism. The repercussions of the governing party's racism are many. It is believed that anytime when the current restrictions are loosened, and people get an opportunity to express themselves, a renewed liberation movement might start, result in unprecedented bloodshed. New Delhi's crackdown on every voice of dissent and the Indian intervention in legislative matters of Kashmir have disastrous consequences and send the whole area into chaos. Indian soldiers may resort to holocaust in an effort to quell the uprising. Inappropriate use of force against unarmed protesters, and demolition of people's houses during cross firing incident is evident of such possibilities. India would alter the state's demographic makeup to further RSS's long-term dream of turning the only Muslim majority state into a minority. According to a 76-page report published by the government of J&K in August 2021, more than 41 lakh domicile certificates were issued till the time of publication of the report, under Jammu and Kashmir Grant of Domicile Certificate

³⁶Akhtar, Kashmir, BRITANNICA, <https://www.britannica.com/place/Jammu-and-Kashmir> (last visited Mar. 7, 2021)

³⁷ Justice Manzoor Hussain Gillani, Interview by the author, 5 August 2022

(Procedure) 2020, out of these 55,931 were given to Bengali refugees, whereas thousands of them were granted to other non-Kashmiris. the BJP's officials have allegedly. This action makes the BJP's strategy of 'engineered demography change' for converting Muslims into a minority in IAK extremely clear. Modi regime will go to any length to spread the Hindutva philosophy in J&K.³⁸

As the former chief of RAW, A. S. Dulat expresses his worry about the existential danger that Modi's government presents to Kashmir, which goes beyond just removing Article 370 and seeks to destroy both its Muslim and Kashmiri identities. By denying Kashmiris equal opportunity, India would reduce them to the status of third-grade citizens. Additionally, a frustrated India may decide to initiate a conflict with Pakistan by blaming Pakistan of supporting the Kashmiri independence movement as a last resort to deflect attention from domestic issues. Due to India's fascist mentality, if such a conflict occurred between the two nuclear powers, it would go beyond the range of conventional weapons. Then it will not only completely destroy the area but the whole globe as well.³⁹

Regarding Pakistan, it is an important party in the Kashmir dispute. As a result, Pakistan vehemently opposed the Indian government's unilateral action and said that it would use all legal means to resist Indian belligerence. On August 6, 2019, the Pakistani National Assembly passed a resolution in which incorporation by India was categorically opposed and the world's leading nations were encouraged to pay attention to India's violations of UNSC resolutions. The diplomatic mission with India had since been reduced by Pakistan. Additionally, it had restricted transit services and prohibited bilateral commerce. Imran Khan, the prime minister of Pakistan, warned that if the international community did not act, there may be a military conflict between "two nuclear-armed powers." On September 27, 2019, he warned that the eventual lifting of the present lockdown might result in a slaughter in IAK while speaking at the UN General Assembly. He predicted that India's repressive activities would be retaliated against, Pakistan would be held accountable, and the two nuclear-armed neighbors

³⁸Reuters News Service, "Settlement Plan of Pundits in Kashmir: Report," *Al-Jazeera*, 12 July 2019

³⁹Anadolu Agency, "BJP Proposes Replacing Occupied Kashmir's Language Script with Hindi," *Express Tribune* 20 October 2019

would meet face to face as we did in February 2019 after the Pulwama event. The Pakistani Foreign Office met with diplomats from powerful nations and friendly nations to discuss the sensitive nature of the Kashmir issues. Pakistan had asked the Human Rights Council and UNSC to create a commission to investigate Indian atrocities in IAK. The Pakistani Foreign Offices described the deteriorating situation on the LoC regarding cross-border firing and said that the Indian army had violated the ceasefire 882 times in the first four months of 2020 while targeting innocent people in AJK. India said that its targets were launch sites and gun stations to stop infiltrators. The Pakistani Foreign Office reaffirmed the moral and diplomatic support of Kashmiris for their right to self-determination in accordance with UNSC resolutions in response, categorically rejecting the Indian assertions as illogical and anti-Pakistan propaganda. Pakistan had also requested that the UN use its military observers to verify India's baseless assertion that there are supposed launch sites in AJK. The blame game, which includes allegations and denials, as well as Indian aggression and Pakistani retaliation, is ongoing. A revised political map that includes IAK as disputed territory had also been authorized by the Pakistani government; the ultimate status of IAK will be determined on August 4, 2020 in accordance with the relevant UNSC resolutions. This was done to make Pakistan's viewpoint clear and to refute India's new Kashmir claim map. It is also an appropriate reaction to the Indian map that was released on October 31, 2019, which included Gilgit-Baltistan and Kashmir as parts of India.⁴⁰

China, in addition to Pakistan, is a partner in the Kashmir conflict over the acquisition of Ladakh by IAK, since Beijing has a claim on a portion of the Ladakh Valley. That is why China declared the Indian Act to be unconstitutional and null and invalid, claiming that it jeopardizes its territorial integrity and threatens its strategic interests. After altering the status of the disputed territory of Ladakh as well as a Line of Actual Control (LAC) on August 5, 2019, India began renovating the 255-kilometer-long Dulat Beg Oldie road of military-operational importance and an airfield along the LAC, despite Beijing's demand to halt development. Then, a new map of India depicting the disputed region of Ladakh and even Aksai Chin as Indian union territory

⁴⁰"British Broadcasting Corporation. (BBC) *World News*. Article 370: What happened with Kashmir and why it matters2019. Retrieved from <https://www.bbc.com/news/world-asia-india49234708>"

obliged China to respond immediately in order to avoid unlawful Indian actions. As a result, China sent People's Liberation Army (PLA) forces to the LAC, resulting in a deadly conflict with Indian army troops in the Pangong Tso area on May 5, 2020. Aside from minor skirmishes, on June 15, 2020, a more serious conflict between two nuclear-armed nations happened in Galwan Valley, killing at least 20 Indian troops. China had alleged Indian forces of targeting PLA members, which the Indian side had denied. Despite both parties' willingness to deescalate. The senior military commanders from India and China met on June 6th and 22nd, 2020, to ease the issue, but the military standoff is intensifying. According to army sources, the PLA is engaged in "aggressive posturing" in Pangong Tso Lake, Demchok, and Dulat Beg Oldi. India responded by increasing its military presence in Ladakh, Uttarakhand, Arunachal Pradesh, and north Sikkim. According to defense specialists, the situation is exceedingly severe in an already troubled area, and "it is a watershed point in the history of the two nations," said Shadhank Joshi, defense editor of the Economist Magazine.

According to Chinese military experts, a large-scale, intensified military battle would result in a conflict similar to the one in 1962. Another well-considered perspective is that given the state of electromagnetic spectrum warfare technology now, it would be riskier than the conflict of 1962. Prime Minister Modi is now under pressure from Hindu nationalists in his own country and is also discouraged by the hostility of all of his neighbors, so he may engage in any misstep that might harm regional peace and security. It is abundantly obvious from the present Sino-Indian standoff that the J&K dispute is a trilateral matter that requires the attention of the world community, rather than just a bilateral one between India and Pakistan. In addition, Pakistan, China, and India all possess nuclear weapons. These nations each have a separate claim to Kashmir's territory. If hostilities broke out between these nations, they would initially try to stay below the nuclear threshold, but since the Indian defense minister too had stated that situations will determine whether to choose nuclear option, there is a chance that any actor will cross the red line for its survival. The Kashmir conflict and the nuclear problem are intertwined in Indo-Pak ties, according to Ahmad (1998), who issues a warning to big countries after nuclear explosions. The situation along the Line

of Control is always tense; there is a real risk that it could develop into a conflict between antagonistic neighbors that may suddenly become nuclear, as is evident from the belligerent stance of the Hindu nationalist leadership in India. Each nation will attempt to equip itself with cutting-edge missile technology, anti-satellite weapons, and ballistic missile systems because to the volatile atmosphere in South Asia. A new weapons race would start in this manner, endangering the world and the area.

An Indian expert claims that if the situation in Kashmir deteriorates further and Hindu nationalist initiatives, particularly the CAA have a negative influence on India, the circumstances for a military conflict would ripen. When they believe that India is helpless and had no backing from the rest of the world, Pakistan's military forces will launch an assault. According to different research, the vast majority of militants are really locals and not from Pakistan. Even then, India may hold Pakistan responsible for the crisis, over which it had little influence. Pakistan would prefer to support a limited insurgency rather than have it operate from its territory. This would increase the likelihood of conflict between the two South Asian nuclear powers and keep the regional disagreement hanging over Indo-Pak ties.

2.5 Conclusion

The issue is whether the Indian governing party can achieve its political goal in Kashmir by using such transparent gerrymandering. The simple answer is "no," since its intentions have been met with such widespread and vocal criticism and condemnation from the Kashmiri people. For almost seventy years, India had unsuccessfully sought to impose a government on Kashmir that is widely disapproved of. The imprisonment of Kashmiri leaders had not "imprisoned" the public desire for independence from Indian control. Delhi's oppressive and deceptive methods in Kashmir have not only failed but have deepened estrangement among the local population. Whenever they are conducted, the so-called polls will be another farce that the vast majority of Kashmiris would refuse to participate in. Resolving the problem in line with the demands of the Kashmiri people and UN resolutions is the only way to

put an end to the dark period in Kashmir. Until then, the tragedy will unfold, and peace will be absent from South Asia.

CHAPTER THREE

INDIA'S POLICY OBJECTIVES OF REVOCATION OF JAMMU & KASHMIR'S SPECIAL STATUS

The BJP has always had issues with the provisions of Articles 370 and 35-A because they "see India as a fundamentally Hindu country" and are wary of a "Muslim majority state with special privileges." In the most recent election the Hindu nationalist party actively promoted the revocation of this statute Articles 370 and 35-A, according to Prime Minister Modi and other BJP leaders are a barrier to success for Kashmiris slowing economic growth, promoting "dynastic rule and bribery," and fostering "terrorism and separatism" in the area. The overwhelming win of the BJP in the 2019 general elections and the subsequent surge in BJP supporters' public support for the revocation show that Prime Minister Modi is popular with a sizable segment of the Indian populace.

The Bharatiya Jana Sangh passed numerous resolutions in the 1950s and 1960s demonstrating its commitment to this fundamental concern. "We, therefore, reaffirm our faith in one and united India and pledge ourselves to renewed efforts for the fulfilment of this ideal of Akhand Bharat," its all-India general council proclaimed in 1953. The same organisation stated in 1965 that it hoped "India and Pakistan will be united to form Akhand Bharat" one day.⁴¹

India has gradually reached to the level where it decided to annex the territory of Jammu and Kashmir. This chapter has discussed the historical overview of Indian Policies Kashmir dispute and their ultimate motives behind revocation of Jammu and Kashmir's special status.

3.1 India's Delaying Tactics

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Jaffrelot, C. (2003). BJP and the Evolution of Hindu Nationalism: From Periphery to Centre. *Indian Historical Review*, 30(1–2), 263–265. <https://doi.org/10.1177/037698360303000232>

The history of Indian policies on Kashmir conflict shows that India's narrative project conflict resolute but it's been a proven truth it has never been interested in the resolution of Kashmir dispute, in fact, it has always used delaying tactics to achieve the ultimate goal- annexation of Kashmir. The first move came when India produced a fake instrument of accession to land their forces in the territory of Jammu and Kashmir. When the situation becomes unsustainable on the ground, Indian government decided to involve the United Nations and made promises to hold the plebiscite for the self-determination of Kashmiris. Indian government never took any step which might pave the way towards holding the plebiscite in the disputed territory. It took the advantage of Pakistan's failure in 1971 war and declared Kashmir issue as bilateral issue between Pakistan and India. For the next many years, India continued to use the Shimla Agreement to prevent the international pressure to stop the genocide of Kashmiris and hold the plebiscite for their right to self-determination. Then it comes the day, 5th August 2019, when Indian government decided to revoke the special status of Jammu and Kashmir which was given under the instrument of accession in 1950s.

This move came during the then Pakistani Prime Minister Imran Khan's state visit in July 2019 only weeks after former US President Donald Trump's comments about U.S. mediation between India and Pakistan on the Kashmir problem. According to the principles of the 1971 Shimla Agreement, India has always insisted that any dialogue on Kashmir must be strictly bilateral. President Trump's assertion that Prime Minister Modi had approached him to mediate between the two sovereign states, which was promptly refuted by the Indian government, generally caused distress in New Delhi. It's possible that the timing of Prime Minister Modi's decision on Jammu and Kashmir on August 5 was a response to the same occurrence, giving him the chance to establish himself as the region's strongman and rally Hindu nationalist support behind that strongman image.⁴² The classical realism theory, which contends that states are the primary players in the international system and that they pursue policies to further their national/self-interests, may best explain this move by the Indian government. Consolidating Kashmir's seized territory is crucial for the Indian government's national

⁴²Melissa Dalton and Hijab Shah, "Indian Revocation of Kashmir's Special Status", *CSIS*, 12 August 2019. <https://www.csis.org/analysis/indian-revocation-kashmirs-special-status>

interests since Kashmir's resources are important to the country's economy. Additionally, it will boost Indian influence in South Asia. Therefore, the strategy of having direct control over the occupied territory of Kashmir meets Indian hegemonic goals in the area the best.

The government of Prime Minister Narendra Modi unilaterally removed Kashmir from Indian administration in 2019 and said the action would put an end to decades of violent struggle in the area and bring about peace and prosperity. Practically three years later, the contested Himalayan valley is still without peace because to the nearly daily shooting deaths of insurgents, Indian security personnel, and civilians. The senior leadership of the BJP celebrated the historic decision and believed they had put an end to the protracted Kashmir conflict, but the reality in the area was very different and even contradicted their assertions. A historically unprecedented military presence within one of the most militarized areas in the globe supported the decision to deprive Kashmir, which is controlled by India, of its meagre autonomy. A security closure in the valley lasted for months as part of the "muscular" approach that Modi's administration implemented on the unrest-ridden area, which resulted in the arrest of hundreds of politicians, including former chief ministers, rights campaigners, lawyers, and students. Fears of a population shift and claims of a "settler-colonial agenda" in the area were stoked by the introduction of a new domicile legislation that permitted foreigners to live permanently in Indian-administrated Kashmir.⁴³

3.2 Indian intentions behind taking away the autonomous status of Kashmir

⁴³Staff, Al Jazeera. "Has India's Kashmir Policy under Modi Failed? | Narendra Modi News | Al Jazeera." *Breaking News, World News and Video from Al Jazeera*, Al Jazeera, 15 June 2022, <https://www.aljazeera.com/news/2022/6/15/has-india-kashmir-policy-under-modi-failed>.

In accordance with a Hindu Right dogma, only a show of might can earn India its rightful place in the world. The Modi administration looks to be testing this concept in Kashmir with this risky approach. The strengthening of Hindu nationalism in India means that the government would likely adopt a more aggressive attitude in international affairs, particularly when it comes to matters of national security.⁴⁴ In their future interactions with India, international decision-makers should prepare for a more rigid and unyielding India. When 22 young Muslims were shot dead in an altercation that history remembers as "Youm e Shohda e Kashmir" of Kashmir Martyrs Day on July 13, 1931, the Maharaja of Kashmir was having difficulty quelling an uprising. This is when the RSS first became interested in J&K. RSS volunteers paraded through the streets of Lahore on December 31, 1931, showing political and military support. Soon after Article 370 was created in 1951, the Bharatiya Jan Sangh (BJS; Indian Peoples Union), the forerunner of the BJP, started a campaign against it. In truth, the BJP's website refers to Syama Prasad Mukherjee, the founder of BJS, as "a martyr spearheading the campaign for total integration of Jammu and Kashmir." He passed away in jail in 1953 after suffering a heart attack while opposing the article. Thus, the BJP has had the repeal of the article on its agenda from the beginning. However, coalition politics' demands made sure that this matter was put on hold until today. India has decided to change its posture and flex muscles and resolve the conflict of Kashmir to settle it by force and by changing its character.⁴⁵ India policies and tweaks in laws can be seen as proofs to this claim.

3.3 Demographic Shift in Kashmir

⁴⁴Delhi, Joe Wallen New. "Indians Mobilize for 'resettlement' amid Warnings over Hindu Nationalist Occupation of Kashmir." *The Telegraph*, The Telegraph, 11 AD, <https://www.telegraph.co.uk/news/2019/08/11/indians-mobilise-resettlement-amid-warnings-hindu-nationalist/>.

⁴⁵Bhagavan, Manu (2008), *Princely States and the Hindu Imaginary: Exploring the Cartography of Hindu Nationalism in Colonial India*, in: *The Journal of Asian Studies*, 67, 881–915.

The people of Kashmir have been heroically fighting for their independence from Indian tyranny for the last seven decades. The vulnerable Kashmiris now suffer at the hands of the pellets and bullets that were formerly used to hunt animals. In order to deny the innocent Kashmiris their legal right to self-determination, India is engaged in a ruthless campaign against them. The right to self-determination is protected by Article 1 of the United Nations Charter as a cornerstone of international law. Another fundamental tenet of the International Covenant on Civil and Political Rights (ICCPR), which India has ratified, is the right to autonomy.

The Kashmir conflict has been addressed in 18 resolutions that the UN Security Council has already adopted. In the Indian-occupied region of Kashmir, the Indian government has utilized harsh laws to quell the protests of individuals who daily endure brutality, murder, forced incarceration, rape, and humiliation. The international world and human rights organizations have been unable to convince India to stop violating the human rights of the Kashmiri people. By creating circumstances that would turn the plurality of Kashmiris into a minority or just at the edges, India is manipulating the demographics of occupied Kashmir to sway any future vote in its favour and invalidate their collective voice. According to the census, the number of Muslims in occupied Kashmir has changed from 1951.⁴⁶

India has been eroding the inalienable rights of the Kashmiri people by taking unlawful and unconstitutional actions, such as killing and torturing the Muslim population, leasing land to non-state subjects, renouncing Kashmir's special status, and most recently altering the demographic makeup of Kashmir by relocating non-Kashmiris under the new domicile law and Reorganization Order 2020. The contemporary sociocultural climate in occupied Kashmir has been influenced by the Indian government's aim to alter the population. There would be major religious difficulties as a consequence of the relocation of Pundits' families. Thus, Kashmir's diverse ethnic community is being transformed into a one-ethnic, fundamentalist, and extremist society. Simply put, the BJP-led administration is attempting to indigenize Jammu and Kashmir. The new domicile legislation will bring to a scenario similar to Palestine in

⁴⁶"Indian Atrocities in Occupied Jammu & Kashmir," Embassy of Pakistan, Washington D.C, <http://embassyofpakistanusa.org/wp-content/uploads/2018/12/Indian-Atrocities-in-Occupied-Jammu-Kashmir.pdf>.

the South Asian area. For the people of Kashmir or Pakistan, this is unacceptable, and neither should it be for the UN or the rest of the world. However, the globe is becoming more and more isolated, as was seen during the Coronavirus epidemic, when individual nations, even those in supposedly more coherent regional groups, had to fend for themselves.

Since 1947 every Indian administration has fallen short under the delusion that Jammu & Kashmir is a natural extension of India. The Hindu residents of occupied Jammu and Kashmir have somehow been brainwashed into believing this to be true, yet the Muslims in Kashmir do not identify as Indians. Over the past seven decades, their fight for self-determination and admission to Pakistan has gone through many stages; they have remained steadfast in their pursuit of freedom and have suffered terrible injuries at the hands of the merciless Indian forces, but they have pledged to never surrender until their dream of freedom is realized. The valley has become a battleground because India has suppressed their rights there. The effects of this transformation will jeopardize not just the referendum mechanism but also the Kashmiri people's sense of self.

3.4 Domicile Laws

Similar to the introduction of new domicile law, new constitutional modifications are problematic. In April 2020 (adoption of State laws order-2020), New Delhi introduced new domicile laws for Jammu and Kashmir in order to forward its aim of strengthening its control over the state. Millions of non-Kashmiri Hindus from other regions of India have received residence certificates under these regulations, which is a serious breach of the Fourth Geneva Convention.⁴⁷ These regulations let Indian people who have lived and worked in the area for fifteen years or who have attended school there for seven years to own property and live there permanently. This includes security forces

⁴⁷ Khan, Dr. Muhammad, and Ms. Sidra Khan. 2023. "ROADMAP FOR THE POLITICAL AND LEGAL RESOLUTION OF THE KASHMIR DISPUTE". *NDU Journal* 37 (May):85-100. <https://doi.org/10.54690/ndujournal.37.149>.

personnel who have always taken a part in atrocities against native Kashmiris. In addition to refugees from Pakistan, children of Indian government employees who have resided in Kashmir for 10 years are also qualified to get residence certificates.⁴⁸

The Indian government has also abolished a provision put in place in 1971 under which Indian security forces had to seek a specific certificate in order to purchase property in Kashmir, despite the fact that the Indian army already occupies more than 54,000 acres of land. Up to 400,000 persons have received domicile certificates in Jammu & Kashmir since May 18. Additionally, India has altered various development laws to permit the construction of long-term buildings on military bases already occupied by soldiers and their families as well as on sites the Indian military deems appropriate. In addition to the 700,000 military and paramilitary forces already stationed in the area, India transferred about 50,000 people last year. The world's most heavily militarized region is still Kashmir. Numerous military bases are located on either private or state-owned land. Another option to permit the building of communities is via the designation of "strategic regions" for the army.⁴⁹

The latest acts, according to Indian Prime Minister Narendra Modi, would promote regional economic growth, stabilize Kashmir, and create employment. In defiance of the requests of Kashmiris to concentrate instead on constructing agricultural land and generating green employment, the Indian government has allocated more than 1,200 acres of state land for industrial development for outside investors. The harshness of India's military presence in Kashmir may perhaps be the main obstacle to growth and stability in the region.

We can expect the implementation of similar tactics to those intended to disenfranchise Palestinians and depopulate Jerusalem with its native people in light of recent attempts by the Indian government to change the demographic makeup of Kashmir. It is

⁴⁸News Desk. "Orders of J&K Delimitation Commission Take Effect | Latest News India - Hindustan Times." *Hindustan Times*, 21 May 2022, <https://www.hindustantimes.com/india-news/orders-of-j-k-delimitation-commission-take-effect-101653071632723.html>.

⁴⁹Zainab Ramahi and Azadeh Shahshahani, "Destroying to Replace: Settler Colonialism from Kashmir to Palestine", *VERSO*, 10 August 2020. <https://www.versobooks.com/blogs/4817-destroying-to-replace-settler-colonialism-from-kashmir-to-palestine>

conceivable that Indian communities will begin to sprout in Kashmir near military encampments as a result of the widening of eligibility for residence provided to non-Kashmiris. For the safety and freedom of movement in Kashmir, this is probably going to have far-reaching effects.

Applications of law used to justify contempt for human rights are well known to Kashmiris. Before Kashmir's semi-sovereign status was abolished under Indian military occupation, the region was bound by the harsh restrictions of the Public Safety Act (PSA) and the Armed Forces Special Powers Act (AFSPA). The AFSPA gives the Indian Armed Forces extraordinary authority to detain people without a warrant, shoot them to death, and damage property in ostensibly "disturbed regions." The PSA permits the "preventative" detention of an individual to stop them from behaving injuriously against "the security of the state or the preservation of the public order. "The historian and poet is now concerned about the culture and people of Kashmir after India enacted a new rule in May allowing outsiders to live there permanently. Kashmir is a Muslim-majority region. We have a garden in Kashmir. The major city of Kashmir, Srinagar, was the location of Zareef's phone conversation. "The new rules have opened the floodgates for plunderers to wreck it," he stated. He said, "The days when we won't have any employment prospects or economic resources, including land and forests, are not far off." "People from Kashmir would be treated as second-class citizens in their own country."

Moreover, the legislation allows non-Kashmiris to become permanent residents, which has caused locals to worry that non-Kashmiris would be given preference when it comes to housing, employment, and education. It comes after India removed Jammu and Kashmir's special status in August 2019, which allowed non-Kashmiris to own real estate, get government employment, and enroll in higher education institutions. According to Haroon Reshi, a freelance writer living in Srinagar, those acquiring domicile certificates include war refugees, Gurkha troops from Nepal who had fought in the Indian army, and marginalized groups like sanitation workers from the state of Punjab. Everything, including our traditions and languages is at jeopardy, according to Reshi, who spoke to the Thomson Reuters Foundation.

3.5 Delimitation Commission

On May 5th, the delimitation panel announced its final ruling increasing the number of seats in the Union territory's parliament from 83 to 90 by allocating 43 to the Hindu-majority Jammu area and 47 to the Muslim-majority Kashmir valley. The commission was established in 2015, and its findings are based on the 2011 census count of 12.5 million people living in Jammu and Kashmir. Despite being published only last week on May 5th, it reveals precisely zero surprises. What was expected of this carefully selected group has been met and beyond.⁵⁰

The overall number of seats has increased from 83 to 90 according to the delimitation commission, with six seats going to the Hindu-majority district of Jammu and one going to the Muslim-majority territory of Kashmir. The Hindustan Times said, "For the first time, the panel earmarked nine seats for scheduled tribes..." the number of Lok Sabha seats was kept at five, but they were reallocated, renamed, and redrawn. Assembly seats were also affected. There are presently 18 assembly segments in every Lok Sabha constituency. Further, it suggested that candidates be sought among the Kashmiri diaspora, which is mostly made up of Pandits who fled the area at the height of terrorism in the 1990s. The panel said, "It is assured by the commission that every assembly constituency will be included wholly in one district, and the lowest administrative divisions i.e. Patwar circles (and wards in Jammu Municipal Corporation) were not split and were preserved in a single assembly constituency.

Both Prime Minister Narendra Modi and Deputy Home Minister Amit Shah have said on many occasions that assembly elections in Kashmir would not take place until the delimitation commission's findings is made public and implemented. The prime minister and his deputy both felt the commission would increase Jammu's leverage, and it has done so. Jammu may win a majority in the assembly by bribing some Srinagar representatives who are easy to identify. When these things happen, Narendra Modi

⁵⁰ A. G Noorani, "Delimitation report", *DAWN*, 14 May 2022. <https://www.dawn.com/news/1689610>

will have gotten his wish (a Hindu chief minister in Muslim-majority Kashmir), and the terrible process began on August 5, 2019, to strip Kashmiris of their identity would be complete. Article 370 of India's constitution was repealed on that day, realizing a 71-year-old Hindutva goal of stripping Kashmir of its autonomy.

In truth, Jawaharlal Nehru began the process of Kashmir's autonomy being eroded on August 8, 1953, when he removed Sheikh Mohammed Abdullah from the position of premiership and imprisoned the Kashmiri leader for 11 long years. This was in direct violation of his pledges to the Kashmiri people. Modi has ripped off the mask that Nehru constructed.⁵¹

Political parties have not been pleased with the most recent delineation report. The J&K Delimitation Commission's suggestions are obviously unreasonable and irrational, according to the Communist Party of India (Marxist). The recommendations of the panel, according to this statement, were "obviously politically driven with the purpose of altering the demographic character and makeup of J&K. Therefore, it is necessary to reject their proposals. The imbalance of six seats for Jammu and only one for the Kashmir Valley was brought up by the party. Jammu would have 48 percent of the seats with 44% of the population, whereas Kashmir, with 56% of the population, will only get 52% of the seats, according to the report. The goals of New Delhi are clear. It is noteworthy that the report of the Delimitation Commission has been rejected by all the main political parties in Kashmir. This situation is totally unheard of. Now that elections will be conducted in these seats, the borders will be drawn appropriately. Politicians from Kashmir who are known to be paid shills for New Delhi have shied away from publicly endorsing their employers there.

Political parties' rejection was articulated in a joint statement from the platform of the All Parties United Morcha, which was established in response to the proposals, in harsh words. Senior leaders of the major opposition parties have joined hands in rejecting the final recommendations of the report, which they described as being "highly partisan,

⁵¹News Desk. "Article 370 Debate: Who Said What as Modi Govt. Scraps J&K's Special Status, Divides It in 2 UTs - India Today." *India Today*, India Today, <https://www.indiatoday.in/india/story/article-370-debate-who-said-what-modi-govt-scrapsjammu-kashmir-special-status-1577956-2019-08-06>.

motivated, and against all basic norms of delimitation like contiguity, connectivity, population, physical features, public convenience, and aspirations of people of different areas." The commission members had disregarded the reality on the ground. However, a conundrum exists for these stakeholders. They provide the hirelings of New Delhi the advantage if they abstain from the elections conducted in accordance with the report. If they object, they support the false report of the false delimitation commission. But the worst is yet to come since there is a concerted attempt being made throughout the whole country of India to silence the opposition.

3.6 Kashmir: Another Palestine in Making

Both the Palestinian State and Kashmiris' right to a referendum on their future were guaranteed by the United Nations Resolutions of 1948, but none of these pledges has been kept. Instead, according to researchers, there have been several efforts to repeatedly try "demographic engineering" in order to take what little sovereignty the communities do have. Between 700,000 and 900,000 Palestinians were compelled to leave in 1948. Additionally, by 1967, 600,000 Israelis had moved into the West Bank, occupying more than 60% of the area. Estimates indicate that one in three refugees worldwide are Palestinians.⁵²

Various efforts have allegedly been made to alter the demographics of Jammu and Kashmir, according to scholars like Fahad Nabeel. Many facts and figures have been used to support this argument. The percentage of Muslims living in India-controlled Jammu and Kashmir fell from 78% to 69% between 1941 and 1961. In his book *Kashmir: Palestine in the Making*, Dr. Sheikh Showkat explores the causes of this peculiar decline and suggests that genocide, ethnic cleansing, and the settling of "non-state subjects" in the State are the main contributing factors. Similar to Palestine, thousands of Muslims have been killed, and many more have been forced to leave their homes. In the autumn of 1947, half a million or so had almost completely disintegrated,

⁵²M. K. Bhadrakumar, "Can India do a Palestine in Kashmir?", *Rediff*, 20 November 2019. <https://www.rediff.com/news/column/can-india-do-a-palestine-in-kashmir/20191130.htm>

according to Ian Stephens, a former editor of *The Statesman*. The remaining had fled into Pakistani Punjab, while about 200,000 simply vanished, presumably butchered or killed by diseases and exposure while attempting to flee.

In addition, Nabeel provides a thorough description of the Sainik Colonies and townships that India built in Jammu and Kashmir specifically for its soldiers and Kashmiri Pandits. He elaborates that these structures are unlawful according to Article 49 of the Fourth Geneva Convention, which forbids an occupying force from relocating its own population within an occupied territory.

He also discusses how the judgement to issue domicile certificates to the refugees from West Pakistan was seen as an effort to alter the region's demographics. Nabeel uses the 2008 rebellion as an illustration of the resentment and dread that shifting demographics instill in Kashmiris. The Shri Amarnathji Shrine Board has been granted 99 acres of Kashmir's forest area by the State of Jammu and Kashmir and the Indian Central Government in order to build temporary accommodations for Hindu pilgrims. The abrogation of Article 370, which granted Indian people the ability to own real estate in the State, was for Kashmiris the last straw in this series of events.

There is currently a resurgence of anxiety among Kashmiris due to their State's already significantly changed demographics. They believe that the abrogation's ripple effects on the population of their country would be comparable to those that the founding of Israel had on the Palestinian population. Thus, it seems that repealing Article 370 "changed India from an administrator to a fully-fledged colonizer, mirroring, in many respects, Israel's methods"¹⁰. This "neo-colonial" component of the abrogation is further explained by Goldie Osuri, who claims that we "desperately need to reexamine our West vs non-West understanding of the geography of colonialisms." Israel and India became independent nations in 1948 and 1947, respectively. Palestinians and Kashmiris are scarred by these years. Azad Essa also skillfully summarizes the potential demographic difficulties for Kashmir after the abrogation: As part of a wider effort to erase the Palestinian presence from these regions, Israel has methodically carried out ethnic cleansing of Palestinians through occupying their houses, paying off opposition, quelling protest, and adopting aspects of their culture, including their food.

Palestinians are hence effectively second-class non-citizens. In contrast, India intends to subjugate Kashmiri Muslims to the greater Indian agenda via a program of "domestication," or, in the words of BJP leader Ram Madhav, "instilling India" into Kashmiri Muslims. They would subsequently be classified as "Indian Muslims," who are second-class citizens in Indian society by all achievement and equality metrics. The ultimate goal is to encourage a demographic change in Kashmir by luring more Hindus from India to relocate there.

After poring through historical records and dissecting academic writings, it becomes clear that despite holding opposing ideas, Israeli Zionists and Hindu Nationalists have a mutual admiration society. In response to a question from a group of Kashmiri Pandits, Consul General Sandeep Chakravorty said: "I believe the security situation will improve (in J&K), allowing the refugees to return. And in your lifetime, you will be able to return... and you will be able to find security, because we already have a model in the world. I'm not sure why we don't adhere to it. The Middle East has seen it. We can do anything the Israeli people achieve if they can. According to scholars, Israel and India have a belief in an ethno-religious connection to a distant past, which gives them a claim to territorial superiority over other ethnic groups. For Zionists, it is the birthplace of Judaism and the location of the sacred places, while for Hindus, the Nationalist vision of a Hindu India centers on purifying India by restraining Muslim impact.⁵³

3.7 Indian Settler Colonialism

J&K has traditionally been seen as a colony by India. Laws like the Jammu and Kashmir Public Safety Act (PSA) and the Armed Forces (Jammu and Kashmir) Special Powers Act (AFSPA) go counter to the ideals of natural equity and fairness and are

⁵³ Azad Essa, "India's annexation of Kashmir is straight out of the Israeli playbook", Middle East Eye, 6 August 2019.

<https://www.middleeasteye.net/opinion/indias-annexation-kashmir-straight-out-israeli-playbook>

typical of Indian control in the area. Human rights groups have referred to the AFSPA and PSA as "lawless legislation."

Since this necessitates the national government to obtain approval from the federal government before a member of the Indian armed forces is prosecuted, the AFSPA effectively protects the Indian armed forces in Kashmir from prosecution for a variety of accusations, along with the execution of civilians, sexual assault, custodial mass killings, illegal detentions, enforced disappearance, and inhumane treatment. In 50 incidents that happened between 2001 and 2016, the J & K government has requested such a punishment in order to prosecute military personnel. Appeals were still ongoing in three instances as of 2018, while the Indian government rejected permission to prosecute in the other 47 cases.

The AFSPA's de facto immunity provision covers allegations of sexual harassment by the army as well. The Justice J. S. Verma Committee, which was established in the wake of the 2012 Nirbhaya rape in Delhi, suggested in 2013 that the AFSPA be reviewed, noting that "systematic or isolated sexual violence in the course of Internal Security duties, is being legitimized by the Armed Forces Special Powers Act, which is in force in large parts of our country."

Patrick Wolfe, an Australian historian, presents us with two colonization models. According to the first, colonizers conquer a nation and eventually become a very tiny minority. This minority therefore continues to exercise power over the vast majority of indigenous people while still relying on them for labour. The foundation of a second paradigm, settler colonialism, is the eradication of local civilizations. Invasion is a structure, not an occurrence; the colonizers come to stay.

The removal of Kashmir's unique status is another proof that the country has switched from Wolfe's first to second colonial models. The Indian government removed the limited autonomy granted to Kashmir under Article 370 of the Constitution on August 5, 2019. India has justified these measures by claiming that J & K is "backward" and requires development, much like previous colonial powers in the past. The Indian government has pledged to establish a "New Kashmir" that is prosperous and free of "terrorist." The illusion of modernization and its "civilising mission" that the British

colonial empire promoted is similar to the "development" narrative that India promotes. Additionally, Joseph Stalin promoted the idea that by establishing ethnic Russians in the 'backward' Baltic areas, he was exporting 'scientific advancement'; this rhetoric assisted in reducing Baltic nationalism and facilitating changes in the ethnic makeup of the Baltic republics. Without ideological backing, such actions might backfire in the colonizer's own nation, therefore story development is crucial. A government cannot afford to receive excessive criticism when it invests money and the lives of its own citizens to build up a massive security apparatus in the colonized zone.⁵⁴

The state's legislative standing was being changed to remove any potential legal obstacles to maintaining authoritarian authority over Kashmir. They are a component of the abrupt change from Wolfe's first colonization model to the second model (essentially the wholesale extermination of the local populations). Such a transformation would make sense if the ruling class still saw settler colonization as the only viable option.

Since 1947, Kashmir has been colonized by the Indian state, but recent developments show how this colonization effort is increasingly being carried out by settlers. Settler-colonialism, as opposed to traditional colonialism, which seeks to forcibly maintain control of a territory, exploit its resources, and deny its people the right to self-determination, seeks to acquire land so that colonists can live there permanently and establish new societies in what they perceive as their new "home." We have seen a blend of traditional and settler-colonial tactics in Kashmir.

The following are some significant characteristics of settler-entry colonialisms into Kashmir, drawing on several contexts:

3.7.1 Land Seizure, Settlement & Apartheid

The goal for expansion held by both the settler state and settlers makes occupation of areas traditionally held by Indigenous peoples an essential component of settler-colonial state activities. In the backdrop of Turtle Island, also known as North America

⁵⁴ Fahad Nabeel, "Altering Demographics of Indian-Held Kashmir", *CSCR*, 17 January 2020. <https://cscr.pk/explore/themes/politics-governance/altering-demographics-indian-held-kashmir/>

in colonial lingo, we can observe that white settler governments have been continuously acquiring new territories for the last five hundred years. Even in Kashmir, over the course of many decades, the Indian state and military have acquired control of an increasing amount of territory, highlighting the way in which an ongoing settler-colonial enterprise is growing. Indian settlers will have access to greater financial resources, allowing them to acquire more property in Kashmiri territory, as a result of the Indian government's decision to repeal Articles 370 and 35-A of the Indian Constitution, which had limited landholdings to Kashmiri provisions.⁵⁵

Similar to the way that Israel has established colonies in Palestine, it's possible that India may soon begin constructing communities in Kashmir that are just for Indians. In Kashmir, the governing party, the BJP, has previously voiced support for the creation of Hindu-only enclaves. Apartheid is a term that refers to a system of legally sanctioned discrimination or segregation. These settlements will come equipped with their very own militarized infrastructure, which will include additional troops, walls, checkpoints, and military watchtowers. They will also have their very own economy and systems of governance. In addition to the establishment of new settlements, senior officers of the Indian army have advocated for the establishment of "DE radicalization camps" for young people in Kashmir. These camps would be analogous to the internment camps that China maintains for the Uighurs.

3.7.2 Killing, Genocide & Dehumanization of Indigenous Peoples

The murdering, mutilating, and eradication of Indigenous peoples by settlers and colonizers in a bid to take control their land is one of the characteristics that distinguishes settler-colonialism from other forms of colonialism. The numerous killings of Kashmiris, extrajudicial killings, the use of Kashmiris as human shields, and the use of pellet guns make it abundantly clear that the lives and dignity of Kashmiris do not matter to the Indian military or to Indian citizens, as Kashmiris have always been seen as expendable in their eyes.

⁵⁵ZainabRamahi, "Kashmir and Palestine share the struggle for self- determination against colonial Occupation", *Mondoweiss*, 8 August 2019. <https://mondoweiss.net/2019/08/palestine-determination-occupation/>

Kashmiri Muslims are rendered powerless as a result of their disposability, which also serves to degrade them (this dehumanization is clearly visible in portrayal of Kashmiris in Indian popular culture). The eradication of indigenous people is a precondition for the success of settler colonialism, which depends on the acquisition of land. Kashmiri Muslims have been subjected to a slew of massacres and homicides throughout their history, the first of which occurred in 1947 in Jammu and commencing at that time. Since August 2019, this slow but steady genocide has only become worse, which is what prompted Genocide Watch to issue a genocide notice for the region of Kashmir.

3.7.3 Capitalism & Resource Extraction as “Development”

In addition to the acquisition of land, other important economic logics behind the construction of settler-colonial state structures include the creation of wealth and the exploitation of resources. The interests of the state's capitalists coincide with and often influence the colonial endeavours. India has long had its eye on Kashmir's water resources and its ability to create power for the rest of India, while at the same time deliberately denying Kashmir access to the electricity that it generates.

Within a few of days after the repeal of Article 370, major Indian firms such as Reliance Industries started formulating strategies for making significant investments in Kashmir. We are already aware that the Indian companies mentioned in this sentence would be the ones to benefit financially from these investments. Indian firms are also being granted the rights to participate in significant sectors such as mining. Indian businesspeople also have their sights set on becoming dominant players in the hospitality and tourist sectors. Kashmiris would lose what little job security they had as a result of the increasing number of economic and employment options that are made available to Indians in Kashmir.⁵⁶

3.7.4 Rewriting History & Knowledge Production

⁵⁶Dr Lubna Abid Ali& Sana Imtiaz Kitchlew, ‘South Asian Palestine’ and ‘Middle Eastern Kashmir’: Parallel Case Studs of Occupation Forces and Crackdown on Youth, *IPRI Journal*, Summer 2019. <https://ipripak.org/wp-content/uploads/2019/10/Article-5-IPRI-Journal-XIX-2-Sou-Asi-Pal-ED-SSA.pdf>

The colonizer strives to re-make or usurp the history of the indigenous people so that it may suit its own ideological goal in order to build legitimacy for the rule that it has imposed on them. It does this by constructing its own fictitious historical records, which cast doubt on the manner in which the occupation started and discredit Indigenous peoples' long traditions of resistance. In addition to this, it does so through altering textbooks, the names of buildings and significant monuments, by mandating the use of Hindi, and by constructing a new history narrative with which the Indigenous people must become familiar in order to learn how to dis/identify with it. In Kashmir, the Indian government is working to erase its unlawful occupation of the region while simultaneously attempting to portray Kashmir as an essential component of the concept of a Hindu homeland. Indians are quick to adopt such bogus myths in an effort to claim Kashmir as their own country's territory. The recounting of these histories by Indian nationalists is relied on by international media and organizations as well, which often results in the erasure of Kashmiri histories and voices from the global sphere.

3.7.5 Colonizer's Religious Nationalism

The discourse of Hindutva regarding "Hindu rashtra" is employed to vindicate the Indian colonial project in Kashmir. This is similar to how Christianity and "Manifest Destiny" were used by European settlers to colonize Indigenous territories in North America, and how Zionism is used to continue the occupation of Palestine.

In order to assert their authority over Indigenous territory, colonizers strive to degrade those they have conquered and discriminate against the religious identities of Indigenous people. Settlers often argue that their chosen profession was predetermined by their respective faiths. In spite of Kashmir's multi-ethnic and multi-religious history, local Kashmiri Muslims are often portrayed as "foreigners" or "invaders" to the region, while local Kashmiri Hindus are often portrayed as the "original aborigines" claiming ownership over the land, despite the fact that both groups are equally indigenous to the region. In this perspective, the extensive advertising of pilgrimages such as the Amarnath Yatra helps to support the perception that Kashmir is "integral" to the holy jurisdictional of India.

3.8 Conclusion

Since a very long time ago, Hindu nationalists have yearned for India's complete incorporation of the Kashmir valley. Hindu nationalism has been able to garner support over the past couple of decades, which has led to the removal of Kashmir's autonomous status. Despite the fact that it was once considered an obscure voice in Indian politics that was incompatible with Indian values, Hindu nationalism has been able to do so. Kashmiris have been forced to endure a significant deal of suffering as a direct result of this ideology's divisiveness. However, in fact, Modi and his party have built an India that is home to religious discrimination, intolerance, and violence. He pretends to be a champion of Kashmir and the rest of India, but in reality, he and his party have produced this India. The modification to the Citizenship Act is just one more example of the policies that his administration has put into place that have been detrimental to the lives of millions of Indians. Nationalism and religious nationalism are on the rise all across the globe, especially in Myanmar, Northern Ireland, Sri Lanka, and the United States. In light of the findings presented in this study, it is abundantly obvious that the tendencies in question are capable of producing violent results such as unrest, riots, displacement, and the infliction of severe suffering on members of minority groups.

CHAPTER FOUR

THE GLOBAL RESPONSE ON ABROGATION OF ARTICLE 370

The resolution to the Kashmir problem involves a great deal more than the mere exercise of self-determination rights this is not to imply that self-determination does not play an important part, but there are various elements to the conflict that must be considered. Regardless of the challenges, it is evident that the situation has now deteriorated to the point where foreign diplomatic assistance is required. In light of recent developments, the United Nations Security Council after avoiding the topic for over four decades has taken it up again. For the first time since 1965, a closed-door consultative conference completely focused on the situation in Kashmir was conducted on August 16, 2019. However, nothing came of the encounter. Even the most basic level of Council action, the publication of a press statement, did not take place. Given Pakistan and India's nuclear arsenals, rising tensions, and the future of Kashmiris at stake, inaction is simply not a choice. Any action, meanwhile, would have to expertly negotiate South Asian politics while still putting Kashmiri human rights concerns at the forefront.

India changed its constitutional ties with the former state of J&K, and as a result, shifted to a diplomatic offensive. It contacted the P5 nations and informed them of its decision. India asserted that the recommendations for Kashmir are internal to India and are intended at ensuring good governance, social fairness, and economic growth in Jammu and Kashmir. Foreign secretary Vijay Gokhale briefed the envoys of the five permanent members of the UN Security Council - China, France, Russia, the United States, and the United Kingdom - on developments in Kashmir, while the delegations of other countries were informed by secretaries of the external affairs ministry in charge of territorial divisions. Pakistan, on the other hand, opted not to reach out to the P5 countries for whatever reason and instead sought backing from particular sources. This chapter examines the reactions of major global players and organizations to India's aggressive unilateral drive to divide the world's princely states into Union Territories. It also seeks to examine whether the response of international organizations

and major players was centered on the UN resolutions on Kashmir or on "maintenance of peace and stability in the area by exhibiting constraints".

The worldwide reaction to India's unilateral decision to withdraw Kashmir's special protection status seems to be lukewarm. The misery of the Kashmiri people has not stirred important global players and entities. It cannot be argued that Pakistan's attempts to internationalize the Kashmir issue have been completely unsuccessful, but the general response has been far from overwhelming. The international world continues to see the Kashmir conflict as a bilateral issue to be resolved by discussion between Pakistan and India. Right before the Indian action on August 5, 2019, then-President Donald Trump promised to intervene on the long-standing Kashmir dispute if both nations agreed and he quickly bowed to Indian pressure. India got a diplomatic boost as right after having words with Prime minister Modi on the sidelines of the G7 summit on 26th August, 2019, Trump conceded that Kashmir was a bilateral issue. Media reported him saying Modi "feels" the situation in Kashmir "is under control". Indian Prime minister at the occasion emphasized that all issues between India and Pakistan were bilateral and could be resolved through discussions.

The Indian government continues to act in denial, oblivious to the deteriorating conditions in Kashmir that have been made public by international organizations and the media. Modi's position is that the annexation of IAK was carried out for the development of the state and for the elimination of corruption, nepotism, and malpractices in governance, in spite of all reports to the contrary. The majority of state people oppose the measure and are utterly outraged by the move. In contrast to Indian media, the international media is also expressing serious concerns. On the other side, while the COVID19 Pandemic's spread in IAK, Indian oppression, lockdown, communication blackout, and indiscriminate atrocities are ongoing. This terrible scenario cannot continue indefinitely. Finally, this repression will reverse course and negatively impact both the regional and global state of peace. Many European commentators point out that a non-violent protest will undoubtedly happen after the present crackdown; the Indian troops will attempt to manage the situation harshly; as a result, the majority of Kashmiri youth will likely adopt radical ideologies and join militant organizations. India may have to deal with this major issue in the near future.

4.1 United Nations (UN)

Given to Beijing's direct involvement, the UNSC convened a private closed-door meeting of 15-members of Security Council in mid-August, on the Kashmir problem but ended up expressing its worries without making any official statements. It is worth mentioning here that even this informal meeting on Kashmir was convened by UNSC after a break of more than 50 years. Even though Pakistan's efforts have brought the Kashmir conflict to the attention of the world, due to the great powers' double standards and the predominance of economic interests in international relations, the world had not yet taken appropriate action against India for its ongoing violations of human rights in IAK. Human Rights Organizations, Pakistani government, and the military have shown their willingness to fight for Kashmiris' inalienable right to self-determination amidst the world's tepid response.

Before India's arbitrary decision to annex IAK, the Office of the United Nations High Commissioner for Human Rights (OHCHR) had been warning that people in Kashmir continue to suffer from abuses and violations of their human rights. They have endured seven decades of conflict, which had resulted in a significant number of fatalities. The report draws attention to an ongoing pattern of Indian security force violations going unpunished. The OHCHR noted serious human rights violations committed by Indian forces in IAK with impunity in its second report, which was published on July 8th, 2019. The commission subsequently requested that the Indian government recognize Kashmiris' right to self-determination. While Pakistan welcomed the report and asked for clarification of its generalized statements, India rejected the UN Secretary-General also urged all parties to exercise the greatest amount of caution in response to the lockdown and limitations in IAK. He also made it clear that the UN's position on Kashmir continues to be based on its Charter and UNSC resolutions. Yet UN has proven to be ineffective in resolving the issue of Kashmir or exerting enough pressure on both parties in this regard. UN is more concerned about maintaining peace and avoiding escalation between two parties than giving Kashmiris their right to self-determination.

4.2 United States of America (US)

The United States took a cautious approach to the revocation of Article 370. While there was no outright condemnation, the U.S. State Department called for dialogue between India and Pakistan to address the issue peacefully and encouraged the two countries to maintain restraint and avoid actions that could escalate tensions. The U.S. administration emphasized the importance of respecting human rights and ensuring regional stability.

The strategic relationship between the United States and India is based on the United States' objective of containment of China. "Shared principles, especially a commitment to democracy and preserving the rules-based international order," is the latest punch line used by the US against India. The United States and India have mutual interests in containing China, combating terrorism, and promoting economic growth via trade, investment, and connectivity. It also denied press claims that India had taken the US into confidence before revising constitutional ties with IAK. Following the Trump administration's apparent acceptance of India's suspension of Article 370 and the communications blockade in Kashmir, Democrats in the House of Representatives organized two Congressional hearings, one by the House Foreign Affairs Committee (HFAC) on 22 October 2019 and one by the Tom Lantos Human Rights Commission on 14 November 2019.

The US Congress had questioned if unilateral action by India would have a detrimental impact on regional stability. What can Washington do in such case? Or how should it deal with the possible instability? Etc. The US Congress expressed moderate to strong disapproval of the Indian Act. The shift from an extremist to a more moderate stance on the Kashmir issue might also be attributed to political considerations. Although Indian Americans overwhelmingly support the Democratic Party in US elections, Democrats' criticism of the Kashmir issue has been cited as a major factor in Democratic presidential candidate Joe Biden's 12 percent fall in support among Indian Americans when compared to voting patterns in 2016.

Despite New Delhi's denials, numerous reports from international organizations have long exposed Indian oppression in IAK. However, the most recent report from the United States Commission for International Religious Freedom (USCIRF) had included information that previous reports have left out. It emphasized its concerns regarding IAK autonomy, the current state of IAK, discrimination against Muslims as a result of the implementation of the Indian Citizenship Amendment Act, widespread violence against religious minorities committed with impunity under the protection of BJP-led governments, and national policies violating religious freedom based on BJP parliamentary majorities. In its report from 2020, the USCIRF downgraded India's ranking for the freedom of religious minorities and added it to the list of "countries of particular concern" (CPC). According to a report published on April 28, 2020, "India took a sharp downward turn in 2019" and that "religious freedom in India deteriorated in 2018." The commission recommended that the United States government punish New Delhi severely. Amit Sha, the Indian Home Minister, was one of the individuals recommended for targeted sanctions under the US Act of International Religious Freedom Act (IRFA), as Modi's visa was revoked in 2005 as a result of his involvement in the riots in Gujarat in 2002. The New York Times acknowledged that the study is of a special kind, in that it exposes India's exaggerated claims to liberalism and secularism and dumps it, adding it to the blacklist. Srivastava, a spokesperson for the Indian government, rejected the report, calling it biased and tendentious. Recently a two-part investigative documentary on Modi's alleged role in 2002 Gujrat anti-Muslim bloody riots that killed over a 1000 people, is making a round on the global media. This documentary points out concerns and poses serious questions about his Hindutva nationalist agenda, The Washington Post along with other renowned media houses has raised concerns over the emergency clauses invoked by the Indian government to block the BBC documentary's viewership in India. This situation further brings to the light the deplorable situation of freedom of expression and right to the access of information in the country.

Despite having built strategic ties with India, the US was unable to hide its disapproval of the recent development that threatens to destabilize South Asia. The US State

Department expressed concern on arbitrary detentions and human rights abuses in IAK and urged all sides to preserve tranquilly and stability along the LoC.

4.3 Organization of Islamic Cooperation (OIC)

The role of Organization of Islamic Cooperation (OIC) had not been different from the UN in case of Kashmir dispute. Though, the OIC had always condemned human rights violations in Kashmir by the Indian forces and demanded the right to self-determination for the people of Kashmir but it did not take concrete steps that could have paved the way for the resolution of Kashmir dispute. Since the repeal of Article 370 and the reclassification of Indian-held Kashmir as a union territory, OIC nations, notably the Gulf states, have mainly avoided taking sides. Former Foreign Minister Shah Mahmood Qureshi blasted a group of Muslim nations in 2021 for postponing a special OIC Foreign Ministers summit on Kashmir. The two-day OIC session, however, was not anticipated to produce a miracle. Even Nevertheless, the OIC Foreign Ministers' Conference issued a broad statement on the Kashmir conflict that reflected the Kashmiri people's aspirations. Furthermore, for the first time in history, the Kashmir problem was addressed in depth in the joint statement.

The joint statement affirmed support for Kashmiris' right to self-determination in accordance with UN Security Council resolutions and the Kashmiri people's aspirations. Human rights abuses in Occupied Kashmir have been categorically denounced. The OIC further condemned India's unilateral actions on August 5, 2019, which intended to change the demographic structure of the occupied areas and impede Kashmiris' intrinsic right to self-determination. Above all, the OIC urged India to rescind any unlawful or unilateral actions done on or after August 5, 2019. In a statement, the OIC urged India to allow an OIC special envoy and an OIC fact-finding expedition to visit Indian-held Jammu and Kashmir and undertake an impartial examination of the human rights situation there. According to an examination of the joint statement, the government of Pakistan, in partnership with the OIC Secretariat in Jeddah, succeeded in publishing a complete declaration after extensive diplomatic

efforts. However, the OIC has yet to take any tangible efforts towards resolving the Kashmir problem.

India, is a vigilant actor on global arena and has an active foreign policy. It has been trying to identify and gain from the rifts in the Islamic world. India was able to counteract Pakistan's influence in the OIC thanks to its diversified engagement with the UAE in recent years. For instance, the 46th ICFM meeting in Abu Dhabi included Sushma Swaraj, India's then-external affairs minister, as its honoree. UAE has also indicated that it is in favour of India's decision to withdraw Article 370 and believes that this will enhance the social and security situation in J&K. Furthermore, Bangladesh suggested an OIC reform in 2018 that it would favour allowing countries with sizable Muslim populations, like India, to join the organization. Azerbaijan unconditionally supports Pakistan's position on the Kashmir problem, and Pakistan has done the same by backing Azerbaijan's position against Armenia. Iranian voices have also criticized India's Kashmir policy and urged New Delhi to respect the rights of the Kashmiri people often, however Pakistan's inclination to Saudi Arabia and Indian investment in Iran are tilting the balance against Pakistan gradually. New Delhi is furthering its foothold in Islamic world by engaging Cyprus and Armenia that share volatile relations with Turkey and Azerbaijan respectively.

Despite Kashmir's closeness to a region that is home to a number of OIC member states, little is known about the appeal of the problem across the Muslim world. While some members, like Turkey and Pakistan, who are motivated by ideological and ideational commitments, have gained a deeper understanding of the problem, other members, like the UAE and Egypt, who are motivated by strategic and economic considerations, exercise restraint when discussing the problem. Even yet, Kashmir is likely to remain a topic of discussion inside the OIC given the nature of the problem, which involves the interests of the Muslim world, and its centrality in Pakistan's foreign policy.

Whilst Pakistan anticipated cooperation from Muslim nations, particularly the Kingdom of Saudi Arabia and the United Arab Emirates, they were held captive by economic, national, and regional interests. Instead of showing support with Kashmir,

the Arab world has a hazy understanding of the situation, which allows India to act without fear of consequences. Saudi Arabia has advised "discipline," while Kuwait, Qatar, Bahrain, and Oman have made no remarks. Another important friend for Pakistan is Turkey, which has a \$7 billion economic tie with India. Iran has released remarks encouraging dialogue and peace, but nothing more. The most significant move came from Saudi Arabia's Aramco, which invested \$15 billion in India's Reliance at the start of the week. The Saudi crown prince has said that they would spend an extra \$100 billion in the next years. According to sources, the trade volume of Muslim nations and India is over \$100 billion, thus the response of these countries should not be surprising. Furthermore, about 7 million Indians work in Arab nations as engineers, physicians, managers, and laborers; as a result, the Arab world is not as loud about the Kashmir issue as it should be. The United Arab Emirates degraded Occupied Kashmir's status as a domestic Indian-Pakistani dispute.

4.4 The European Union (EU)

The European Union (EU) responded to the abrogation of Article 370 in a manner consistent with its usual approach to issues of territorial disputes and human rights. The EU did not take a unified stance on the matter, as individual member states often have their own foreign policy positions. However, some general trends can be observed:

1. **Non-Interference:** The EU generally adhered to the principle of non-interference in the internal affairs of sovereign nations. While there were concerns raised about the situation in Jammu and Kashmir, the EU did not intervene directly in India's decision to revoke Article 370.
2. **Calls for Dialogue and Restraint:** Many EU member states, along with the EU as a whole, urged India and Pakistan to engage in dialogue to resolve the Kashmir issue peacefully. They emphasized the importance of maintaining peace and stability in the region and avoiding actions that could escalate tensions further.
3. **Human Rights Concerns:** Some EU member states raised concerns about the impact of the revocation on human rights and the restrictions on communication

and movement imposed in the region. There were calls for the restoration of fundamental rights and freedoms in Jammu and Kashmir.

4. Diplomatic Engagement: The EU maintained diplomatic engagement with India and Pakistan, expressing interest in facilitating dialogue and conflict resolution. The EU also continued to support various initiatives aimed at promoting peace and stability in South Asia.

The EU has historically prioritized human rights, as seen by its practice of issuing legislative resolutions on international human rights transgressions. Human rights provisions and their implementation play an important role in EU bilateral discussions. Dider Reynders, The European Commissioner for justice, proclaimed the year 2020 to be a "human rights year," and declared that new legislation on human rights will be implemented in 2021. As far as the bilateral framework with India is concerned, the EU has never hesitated sharing its apprehensions on human rights situation in India. Several prior EU-India developments have also included specialized chapters outlining expected standards of human rights and transgressions, as specified by the European Parliament resolution (2017) on bilateral political relations. It is unsurprising that the European Parliament has adopted a similar stance in response to India's violation of Article 370 and the communications embargo in Kashmir.

In August 2019, Federica Mogherini the then-EU High Representative for Foreign Affairs and Security Policy met with Indian Foreign Minister S. Jaishankar and released a statement emphasizing "the need of actions to restore the rights and freedoms of the people in Kashmir." To ease the EU's worries, Jaishankar participated in a series of aggressive diplomatic initiatives, including tours, conferences, and talks with diplomatic peers such as EU trade commissioner Phil Hogan, the most recent of which was his February 2020 trip to Brussels. The European Parliament expressed worry over the events in Jammu and Kashmir in September 2019, stating worries about "the well-being of the people in the valley under such an unprecedented lockdown." The EU also discussed the subject at the Human Rights Council meeting in Geneva on September 10, 2019, seeking an apolitical venue to express its concerns, while

diverging from India's long-standing stance against internationalizing the Kashmir problem.

On 22 January 2020, the European Parliament responded to the presentation of the Citizenship Amendment Bill in December 2019 with six resolutions (B9-0077-2020 to B9-0082-2020)⁵⁷. Three of the six resolutions raised EU concerns over India's conduct in Kashmir during and after the repeal of Article 370. The most extreme EU response came from the United Kingdom (before Brexit), where the Labour Party leadership adopted a resolution pushing for international intervention in Kashmir, and Pakistani-origin members of the UK parliament called the repeal of Article 370 an "orchestrated coup," despite the Conservative majority's insistence that the issue was internal.

The EU's approach is inconsistent with UN resolutions or Kashmiris' right to self-determination. However, its historical significance in providing a Pan-European voice on human rights problems makes it too essential to overlook. The India-EU Bilateral Trade and Investment Agreement (BTIA) is predicated on the 2017 EU Resolution on Political Relations with India, which requires human rights elements in any bilateral agreement between the two nations.

In contrast, eight human rights organizations issued a joint statement urging European Union officials to highlight the subject of India's rapidly worsening human rights situation at their May 8 summit with Indian leaders in Portugal. They emphasized that "European leaders must push the Indian government to roll back its violent and aggressive and discriminatory policies and immediately release all human rights defenders and other critics who have been jailed for peacefully exercising their rights to freedom of expression and peaceful assembly," according to the eight organizations, which include Amnesty International, Christian Solidarity Worldwide, Front Line Defenders, Human Rights Watch and the International Commission of Jurists.

It is important to note that the EU's response to the abrogation of Article 370 reflected the diverse views and interests of its member states. While some countries within the EU expressed stronger positions on human rights and called for greater engagement on

⁵⁷ Joint motion for a resolution - RC-B9-0077/2020 European Parliament, <https://www.europarl.europa.eu/portal/en>

the Kashmir issue, others adopted a more cautious approach, prioritizing diplomatic channels and respecting India's internal decision-making.

4.5 China

China's response to the abrogation of Article 370 by India was primarily negative for India, and it reflected the sensitive geopolitical dynamics between China, India, and Pakistan in the context of the Kashmir issue ⁵⁸. Here are some key aspects of China's response:

1. Disapproval and Concerns: China expressed its disapproval of India's decision to revoke Article 370, which altered the special status of Jammu and Kashmir. It voiced concerns over the potential impact of the move on regional stability and the disputed territory of Aksai Chin, which is claimed by India but administered by China.
2. Claim on Aksai Chin: Aksai Chin is a region located in the eastern part of Jammu and Kashmir, which China claims as part of its territory. China's claim on Aksai Chin dates back to historical territorial disputes between India and China. The abrogation of Article 370 by India was seen by China as an attempt to assert its control over the region, potentially affecting the ongoing dispute over Aksai Chin.
3. Support for Pakistan: China has maintained a close and strategic relationship with Pakistan, which also claims parts of Jammu and Kashmir. In response to India's decision on Article 370, China expressed support for Pakistan's stance on the Kashmir issue. China has consistently emphasized the importance of resolving the Kashmir dispute through peaceful dialogue and in accordance with international law.

⁵⁸ Vivek Kumar Mishra, "The Abrogation of Article 370 International Reactions" *Indian Journal of Asian Affairs*, Vol. 33, No.1/2 (June-December), pp. 120-129 (10 pages).

4. UN Security Council Meeting: In the aftermath of India's decision on Article 370, China requested a closed-door meeting of the United Nations Security Council (UNSC) to discuss the Kashmir issue. While the meeting did not result in any formal action or resolution, it highlighted China's efforts to bring international attention to the matter and advocate for a peaceful resolution⁵⁹.
5. Infrastructure Projects in Pakistan-administered Kashmir: China's Belt and Road Initiative (BRI) includes projects in Pakistan-administered Kashmir. India's objection to these projects on the grounds that they are in disputed territories has been a point of tension between India and China.

Overall, China's response to the abrogation of Article 370 demonstrated its careful consideration of its own territorial interests and strategic partnership with Pakistan. China's stance on the Kashmir issue remains consistent with its call for peaceful dialogue and a negotiated settlement between India and Pakistan, while also maintaining its own interests in the disputed region.

4.6 G20 Summit 2023

In 2022, India, received rotary presidency of G-20 countries for the year 2023, a group of 20 governments made up of the EU and 19 other nations which produces 80 percent of the global gross domestic product (GDP). India decided to take the opportunity and made a controversial decision to conduct one leg of the G20 meetings in Indian-administrated Kashmir, which according to locals and experts, was intended to convey "normalcy" in the contentious area⁶⁰.

The third G20 working group meeting on tourism was held in Jammu and Kashmir from May 22 to 24, 2023. Pakistan reached out to its close friends in the Group - China, Turkey, and Saudi Arabia - to boycott the conference in response to New

⁵⁹ <https://news.un.org/en/story/2019/08/1044401>

⁶⁰ Staff Members, Aljazeera, "Is India projecting 'normalcy' in Kashmir by holding G20 meeting?" May 17, 2023

<https://www.aljazeera.com/news/2023/5/17/is-india-projecting-normalcy-in-kashmir-by-holding-g20-meeting>

Delhi's decision. Some of the member countries decided to remain silent on the Indian decision to hold an international summit in disputed territory under the UN resolutions. China, on the other hand openly opposed India's decision and boycotted all three moots in disputed territories of J&K, Leh and Arunachal Pradesh. Turkey, Egypt (a guest country) and Indonesia also took the cue from China and distanced themselves from Srinagar huddle. Some other countries including Saudi Arabia decided to show downgraded participation.

Fernand de Varennes, the UN Special Rapporteur on Minority Issues, took to the twitter and called out India for attempting to normalize the "brutal and repressive denial of democratic and other rights of Kashmiri Muslims and minorities." by hosting a G20 summit in the contentious region. He also noted that India was trying to use G20, the world's premier forum for international economic cooperation, to further its geopolitical agenda⁶¹.

4.7 Conclusion

Given India's long-standing resistance to internationalizing the Kashmir problem, the Modi administration's revocation of Article 370 and ensuing curfew in Kashmir gained international attention, owing mostly to individual nations' impulses to politicize the subject. For example, Pakistan launched a comprehensive publicity campaign in the Western media about the Indian security establishment's complicity in IAK and subsequent human rights violations. Some nations, like Malaysia, Turkey, and Iran, used Kashmir as a rallying cry to oppose the Saudi-dominated Organization of Islamic Cooperation platform. However, it has been observed that the majority of global players and international organizations see India's involvement in J&K as a domestic affair of India or are worried about the fundamental human rights of the people of IAK.

⁶¹ Dr Fernand de Varennes (@fernanddev). 2023. "Holding a [#g20](#) meeting in [#jammuandkashmir](#) while massive [#humanrights](#) violations are ongoing is lending support to attempts by [#India](#) to normalize the brutal & repressive denial of democratic & other rights of [#kashmiri](#) [#Muslims](#) and [#minorities](#)." Twitter, 1:27 PM · May 15, 2023. <https://twitter.com/fernanddev/status/1658026322772336640?lang=en>

Although not legally enforceable, several legislative moves taken by the US Congress and the EU parliament may jeopardize India's relations with the Western world.

India has fostered diplomatic relations with major world powers, including the United States, European Union countries, and other influential states. These ties provide India with a network of support and strategic partnerships, influencing international reactions to its actions.

However, despite India's relative power advantage, the international community's reaction to the forced annexation of Kashmir has been varied and complex. Several factors contribute to this response:

Geopolitical Considerations: Many countries, especially major powers, have strategic interests in the region and may be cautious about intervening or taking a strong stance on the Kashmir issue due to their own geopolitical concerns and relations with India and Pakistan.

Focus on Bilateral Approach: The Kashmir issue is often perceived as a longstanding bilateral dispute between India and Pakistan, and some countries may prefer to encourage dialogue and peaceful resolution through diplomatic channels rather than openly criticizing India's actions.

Regional Stability: The international community may prioritize regional stability and may be reluctant to take actions that could exacerbate tensions between India and Pakistan, two nuclear-armed neighbors.

Non-Interference: The principle of non-interference in the internal affairs of sovereign states is a fundamental aspect of international relations. Some countries may be hesitant to interfere in India's internal decisions regarding Kashmir based on this principle.

Multifaceted Issues: The Kashmir conflict is a highly complex and multifaceted issue with historical, political, and social dimensions. The international community may struggle to reach a consensus on the best approach to address the conflict.

Overall, India's relative power advantage may have an impact on how the international community responds to the issue of the forced annexation of Kashmir. However, the international reaction is also shaped by a range of geopolitical, strategic, and ethical considerations that make the response nuanced and varied. International media outlets like the New York Times, the Guardian, the Economist, the Diplomat, and BBC News, among others, strongly urged the big powers to oppose India's bold steps in Kashmir since it is an international dispute that threatens to upend regional peace rather than an issue that is solely within the country's borders.

CHAPTER FIVE

PAKISTAN'S RESPONSE TOWARDS CHANGING DYNAMICS AND CHALLENGES TO PAKISTAN'S KASHMIR POLICY

Pakistan's approach to Kashmir has been retaliatory, primarily in response to Indian actions on the continent. As a result, Pakistan's attitude to India's policy towards Kashmir has not much changed from the past. In spite of Pakistan's lack of action, Kashmiris continue to suffer at the hands of Indian occupation troops in the occupied valley. If Pakistan had taken such action, it would have provided some respite to the oppressed people of Indian-occupied Jammu and Kashmir. However, Pakistan has been aggressively bringing up the Kashmir problem in diplomatic settings, including the UN and OIC, the two highest fora on the planet. The tenets of Pakistan's Kashmir policy should be described in order to comprehend its reaction, its strategies against shifting dynamics, and the problems it faces.

The chapter is divided into three major sections; these sections include foundations of Pakistan's Policy, Evolution of Pakistan's Strategy, and Challenges to Pakistan's Kashmir Policy.

5.1 Significance of Kashmir for Pakistan

From the beginning, Pakistan's grand design included Kashmir as an essential component. The first letter "K" will be included into the name of the new Muslim nation that will be established on the subcontinent. In addition, there have been

substantial racial, cultural, geographical, and economic ties between the two areas. Pakistan's defense parameters are stretched to dangerously vast proportions as a result of India's military presence in Kashmir, and Pakistan is effectively cut off from the rivers that provide its source of lifeblood. The military establishment in Pakistan is of the opinion that incorporating Kashmir into Pakistan will provide the country with a strategic depth that it does not now have. However, the majority of India is still beyond of reach for Pakistani aircraft, hence the whole country of Pakistan is at risk of being attacked from the air by India. The Shakergarh salient and, more crucially, the Grand Trunk Road that connects Lahore and Islamabad are under danger as a result of Indian ground troops that have established a presence in Southern Kashmir, according to Pakistan's point of view. In light of this information, the authorities in Pakistan began to have the belief that Pakistan would be unable to protect itself against an unscrupulous administration in India if it did not control Kashmir. Sardar Abdul Qayyum, a veteran politician from Kashmir, asserts that "Pakistan could not survive as an independent country by abandoning its claim to Kashmir." It will become a virtual captive to India, and its continued existence will be contingent on the length of time that India would let it to continue to exist. Kashmir's distinctive geo-strategic position, in which it is flanked by China to the north and east, the Central Asian republics and Russia to the west, and the land mass of the subcontinent to the south, was another reason that further enhanced Kashmir's strategic relevance for Pakistan. In this regard, strategically speaking, Kashmir and the Northern Territories provide Pakistan with the stability it needs to continue existing, something that Pakistan's four provinces are unable to provide. The economic significance of Kashmir was far more for Pakistan than it was for India. The reason for this is explained by Mahnaz Ispahni, who says that Kashmir "had several linkages to Pakistan's land." Because its waters were crucial to the irrigation and electricity supply of (Pakistan) West Punjab, its wood resources were rafted down West Punjab's river, and its willow and resin were utilized in Pakistani industry, its separation has created economic devastation. Kashmir is of critical significance to Pakistan's economy since it is a source of wood and the headwaters of three rivers that flow into Pakistan from the Kashmir region: The Indus, the Jhelum, and the Chenab. These rivers are essential to the expansion of Pakistan's

agricultural sector. These rivers have the potential to become a significant source of hydroelectric power for the nation as a whole.⁶²

The main ideological implications of Kashmir for Pakistan were the two nation theory, which served as the foundation for Jinnah's desire for a distinct Muslim country. "Kashmir's admission to Pakistan was not only an issue of desire but of essential necessity for our distinct existence," General Akbar Khan said. The battle is "as much a confrontation of identities, imaginations, and histories as it is a struggle over land resource, and peoples," as one may say when summarizing its importance.

5.2 Foundations of Pakistan's Kashmir Policy

Understanding Pakistan's Kashmir policy requires looking at the historical development of the Kashmir conflict and the strategic importance of the region to Pakistan. These two reasons ultimately came to define Pakistani strategy in Kashmir. The British handover of their imperial position in South Asia, known as the "mechanics of division," is the direct source of the catastrophe in Kashmir. Pakistan views the Kashmir conflict as the result of British and Hindu plots to overturn the partition and maintain Indian unity. The research of British professor Alastair Lamb, whose magnum opus *Kashmir: A Disputed legacy: 1945-1990* (Karachi: OUP, 1993) provides a very candid analysis of the long-term interests of British rulers in this region, lends further credence to this view. Lamb's research reveals the main rationale behind Hindu-British connivance to prevent Kashmir's accession to Pakistan. Based on Lamb's findings, the British concluded that between its two sub continental successor dominions, India would be in a considerably stronger position to defend itself against a potential Russian invasion (which by now had transformed in to the communist threat) Lamb argues that the British government's northwest strategy was founded on the need of stopping the Russians from reaching the warm seas of South Asia. Burke thinks India gained control of Kashmir not via covert political pressure but rather overtly through the "minister of

⁶²P.R. Chari, Pervaiz Iqbal Cheema and Stephen P. Cohn, *Perception, Politics and Security in South Asia* (London: Routledge Curzen, 2003), pp. 36.

states." Because of India's attitude on the accession of Junagadh, Hyderabad, and Jodhpur, Burke claims this was done to give the idea that the majority of Kashmir wished to join India of their own free will. If this standard had been used, the Indian Kashmir case would have been doomed. Kashmir's incorporation into India was impeded by three primary factors.⁶³

The state's leader, Maharaja Hari Singh, had a strong aversion to the Indian prime minister. Indirect ties between the state and East Punjab did not exist. Muslims made up the most of the population in this state. These roadblocks were dismantled methodically. Mountbatten had a contentious role in the history of Pakistan due to his facilitation of Kashmir's accession to India. At least three of his actions were crucial in bringing about the disaster in Kashmir. Some examples of this include his dubious reputation stemming from his involvement in the infamous Gurdaspur affair, his ambiguous stance on the topic of state accession, and his role in helping ensure that only Congress leaders were permitted to go to Kashmir. This allowed them to sway the Maharaja. The most pivotal factor in Kashmir's eventual accession to India was the awarding of the Gurdaspur District to India. It was only when the Muslim-majority Tehsils of Gurdaspur and Batala were transferred to India that the country gained access to Kashmir via road.

Jammu Khutta Road's completion "made it feasible to maintain an Indian Air Force at Jammu, centered on Pathnakot as a rail head and which allowed India to reinforce her defenses southwards all the way from Uri to Pathankot border. Even Andrew Roberts admits that it "is not difficult to imagine that Mountbatten also pressured Redcliff to guarantee that "Gurdaspur finished up in India." The British government had a highly conflicted stance on the topic of state admission. This was done to make it easier for Congress leaders to annex additional states to the Indian Union. The fact that the phrases pertaining to the accession problem were very ambiguous and imprecise is clear. There is a considerable amount of circumstantial evidence to support the idea that Congress leaders had "free hand" in this situation. This claim is adequately supported by Sardar Patel's confession, which was made before the Indian parliament

⁶³Mussarat Sohail, *Partition and Anglo-Pakistan Relations, 1947-51* (Lahore: Vanguard, 1992), p. 132

in 1949. He said that "Congress only approved the dominion status on the condition that it should be granted complete discretion in the question of state accession." The way in which Nehru was permitted to influence state politics adequately revealed the inconsistency in British policy on the admission of Indian states.⁶⁴

Historian Sher Muhammad Garewal of Pakistan claims that Mountbatten welcomed Indian dignitaries including Sardar Patel, Acharya Kripalani, Nehru, and Gandhi to the Kashmiri region. In reality, Gandhi travelled to Kashmir twice, but Jinnah was denied entry. The visits of Indian leaders had a significant role in altering Maharaja's outlook. Gandhi's second trip to Kashmir, in particular, had a significant impact on the region's politics, with Prime Minister Ram Chander Kak being ousted "within a week of his arrival." Since it was Kak who had persuaded the Maharaja not to accede to any dominion and instead to pursue independence, his dismissal paved the way for Kashmir's admission to India. Hindu Prime Ministers such as Janak Singh and Mehar Chand Mahajan succeeded Kak. Because of the access they gained to the Maharaja's inner courtier, a group of hardline Hindus were able to persuade him to throw Kashmir's lot in with India.

The legal basis for India's claim to Kashmir is the argument that Kashmir legally became a part of India on October 27, 1947, when Hindu Maharaja officially signed the instrument of accession. As a result, India sent soldiers to Kashmir the same day on the pretext that Pakistani tribesmen had invaded Kashmir, which had been annexed by India, with the help of the Pakistani government. Some researchers contend that either the signature was faked, the date was modified, or the whole document was made up. Known British author Alastair Lamb disputes Indian assertions in his works *Kashmiri Birth of Tragedy* (1994), *Kashmir: A Disputed Legacy* (1990), and *Kashmir: An Incomplete Division* on the basis of his investigation into the sequence of the incidents of days of the division of the subcontinent (1997). Lamb has shown that Indian military action on October 27, 1947, occurred before Maharaja had legally joined India. Since the Instrument of Accession is allegedly "lost" from Indian records, it is unclear if the Maharaja actually signed one. 19 By asserting that a senior Indian official, V.P.

⁶⁴S.M. Burke, Lawrence Ziring, *Pakistan Foreign Policy: An Historical Analysis* (Karachi: Oxford University Press, 1990), pp. 17-26.

Menon, had been to Jammu on October 26 to get such an instrument, Lamb demonstrates that the record was false from the start. In reality, Menon never went to Jammu on this day.⁶⁵

Lamb reveals that the Indian government published the text of two letters, one from the Maharaja to Mountbatten dated 26 October, 1947, and the other from Mountbatten to the Maharaja dated 27 October, 1947, raising questions about the legality and nature of the letter of succession in light of subsequent events. VP Menon unquestionably wrote both of them. He claims, "We can be confident that it was not on 26 October, but we have no direct proof as to when the Maharaja's letter was really signed (if, indeed, it was ever). His suspicions extend to the letter of accession itself. However, the Maharaja's letter from October 26, 1947, provides zero hints as to the form the "Instrument of Accession" would take. Lamb notes that a sample wording of an Instrument of Accession, like the one drafted by the state department on the eve of the transfer of authority, was published in the Indian White Paper on Kashmir in 1948. He claims that the Government of India Act of 1935 and the Indian Independence Act of 1947 served as inspiration for this text. There were blanks for the state's name, the ruler's signature, and the date August 1947 on the printed form. The date of August 1947 was left blank where the Governor General's acceptance should have been. For the unique conditions in Jammu and Kashmir in October 1947, he calls this text "singularly unfit." Additionally, he claims that the paper given to the UN Security Council in 1961 was unlike to the one contained in India's White Paper on Kashmir from 1948.⁶⁶

The circumstantial evidence of the progression of events further reveals that V. P. Menon had the instrument of accession signed on October 27, 1947, although the Maharaja had already departed Srinagar from Jammu, thereby relinquishing control of the city. In addition, the Indian Army was sent prior to the actual signing of the accession documents. This reality has been brought to light through the writings of Justice Yousaf Saraf, Alastair Lamb, and the papers of Patiala State, all of which show that Indian forces had infiltrated Kashmir via the neighbouring East Punjab States.

⁶⁵Latif Ahmed Sherwani, "Kashmir's Accession to India Re-examined", *Pakistan Horizon* 52 (October 1999), p.55

⁶⁶Lord Birdwood, "Two Nations and Kashmir", *Robert Hale*, 1956, p. 74

Specifically, the gunners of Maharaja Patiala were present in Kashmir prior to the invasion that was carried out by the tribal forces. Since the first few days of October, the Sikh Maharaja of Patiala has been providing Maharaja Hari Singh with a battalion of soldiers and a battery of mountain artillery that he has leased to Maharaja Hari Singh for use in Jammu and Kashmir. At the very latest, Patiala gunners had established themselves at the Srinagar airstrip by the 17th of October, and they were there when the Indian soldiers arrived on the 27th of same month. Ijaz Hussain draws the conclusion, using this information as a point of departure, that the whole of this activity is rendered illegitimate when seen in the perspective of international law. According to his interpretation of the relevant provisions of article 49 of the Vienna Convention on the Law of Treaties, which states that "A treaty is invalid if its conclusion is procured by the threat or use of force in violation of principles set forth in the charter of the United Nations," these provisions should be considered applicable in the present circumstance. The fact that the accession that was agreed to by both sides was "provisional" is another flaw in this contract that adds greater support to the notion that the instrument is illegitimate. Mountbatten replied the following in response to the letter that was sent by the Maharaja: "In consistence with their policy that in the event of any state where the subject of accession should be determined in line with the preferences of the people of the state... As soon as peace and order have been restored in Kashmir and her land has been freed of the invaders, my government's hope is that the matter of the state's accession should be determined by reference to the people."⁶⁷

The Chief of the Pakistan Army, Sir Frank Messervy, said that there was enough proof that the accession had been purposefully organized for some weeks before to the events. By way of the "Thakore Hariman Singh's Plane incident," the viewpoint is further supported. Thakore Hariman Singh, the ambassador and cousin of the Maharaja, forced his aircraft to land at Lahore. A draught treaty between India and Kashmir was found in one of Thakore's suit cases after a crowd assaulted this aircraft and his suit cases were taken. The intriguing thing about the Maharaja's letter of accession is that he did not blame Pakistan with aiding or planning the invasion,

⁶⁷S.M. Burke, Lawrence Ziring, "Pakistan Foreign Policy: An Historical Analysis", *Oxford University Press*.1990
pg.23

although Indian authorities did not think twice to do so. As Pakistani policymakers tried to correct this predicament by obtaining Kashmir's liberation from Indian rule, all of these disputes had a significant impact on their thinking. As a result, they adopted an anti-status quo stance from the beginning. The geostrategic importance of Kashmir in the setting of Pakistan's security, economic interests, and the ideological underpinning were some of the other elements that may also be considered as forming influences behind Pakistan's Kashmir policy.

5.3 Flaws in Pakistan's Kashmir Policy

Justice Manzoor Hussain Gillani, Ex Chief Justice Azad Jammu and Kashmir states that Indian policies towards state have remained consistent ever since it secured accession from ruler of the state. India included state in Indian Union as its territory and state on 26th of January 1950 when Indian constitution was promulgated. Act 1 of the constitution defining territories of India was extended to state through Art 370 in 1950. It extended bulk of its constitution to state in 1954 which included Art 35-A.

Since then, it kept on strengthening its constitutional hold on state by extending several other provisions and union entries to state through successive presidential orders numbering around 47. 5th August action was the climax of streamlining the state in Indian Union by bringing state at par with rest of Indian territories down grading and bifurcating it in two parts with the status of Union territory. Act 370 still remains intact as it was. But as nothing remains to be done under it, except repealing it through parliament and striving for capturing Pakistan administered areas of Kashmir which India claims as part of state acceded to India.

Pakistan, it appears has been consistently repeating the mistakes which has landed Pakistan as well as Kashmiris in trouble. It is debated that Pakistan didn't follow the spirit of standstill agreement by the ruler of state, as it was supposed to appoint its agent in Srinagar, just as the British did soon after its agreement. It didn't take over the functions of British India government by stepping in its shoes on account of agreement. Pakistan, was more focused on Hyderabad and Junagarh in comparison with Kashmir.

Many scholars are of the view that Indian leaders particularly Sardar Patel made an offer to leave Junagarh and Hyderabad and talk on Kashmir, but this suggestion was not accepted.

Some historians believe that Pakistan shouldn't have accepted the cease fire agreements in 1949 with India through intervention of UNSC. It was a trap to defeat the marching ahead of Kashmiri rebels in Kashmir till Indian forces arrived and repelled their advance. Tashkent and Shimla agreements are also considered counter-productive by many. It is also discussed that an open and declared war (like India in East Pakistan) would have been sufficient to win over Kashmir if the timing was right, for example in 1962 when India was already entangled by China. There were so many other opportunities which Pakistan could not avail, particularly, intifada of Nineties.

Pakistani policy on Kashmir has always been reactive and event based.

5.4 Historical Mistakes

- Islamabad has lost a few key chances to internationalize the Kashmir problem and enlist the support of the international community for a peaceful settlement by opting to pursue a strategy of strategic restraint. First, in its party platform for the early 2019 elections, the BJP pledged to repeal Article 370. Within months of taking office for the second time, Prime Minister Narendra Modi's Hindu nationalist government fulfilled this promise by dividing and annexing the disputed territory in clear violation of UN Security Council resolutions, as well as removing what little autonomy remained in the state of Jammu and Kashmir. The passage of the Indian Citizenship Amendment Act, the deliberate promotion of the Hindu pilgrimage known as the Amarnath Yatra, and the escalation of the military campaign in the Kashmir Valley came after Prime Minister Modi was re-elected in May 2019, and they were all clear indications of the impending hell the Kashmiri people would experience. However, until

August 2019, Pakistan did not implement any preventative or proactive measures to stop Indian trespass⁶⁸.

- The United Nations itself offered Pakistan a second chance that was lost prior to this Indian violation. The Indian security forces used excessive force that resulted in the illegal death of 145 people between 2016 and 2018, according to the UN Human Rights Office's first-ever report on the condition of human rights in Jammu and Kashmir, which was released in June 2018. According to a later report by the UN High Commissioner for Human Rights, which was published in July 2019, Indian security forces frequently used excessive force to respond to violent protests that started in July 2016. This included the continued use of pellet-firing shotguns as a crowd-control tool despite the fact that they have killed and injured many civilians. The UN High Commissioner for Human Rights had promised to implore "the UN Human Rights Council to consider setting up a commission of inquiry to undertake a thorough independent international investigation into accusations of human rights abuses in Kashmir" while releasing the report. India obviously denied access to any such commission or fact-finding mission. Pakistan could have grabbed the opportunity by allowing the mission to visit the part of Kashmir under its control as it had nothing to hide, but unfortunately, Pakistan also refused to allow access to any such mission unilaterally. Additionally, the Armed Forces Special Powers Act and other harsh legislation were later asked for to be repealed by India by the International Commission of Jurists.⁶⁹ Pakistan may have persuaded the necessary number of member nations to sponsor a special session of the UN Human Rights Council. However, it couldn't.
- Islamabad has squandered several exceptional opportunities as a result of India's unlawful activities in Jammu and Kashmir as well in August 2019. It might have, for starters, used this crucial occasion to challenge India's unilateral move as a violation of UN Security Council resolutions in the International Court of Justice (ICJ). In his statement before the National Assembly shortly

⁶⁹ Dr. Nazir Gillani, "UNGA, UN Human Right Council and Kashmir", The Pakistan Observer, Sep 17 2022, <https://pakobserver.net/unga-un-human-rights-council-and-kashmir-by-dr-syed-nazir-gilani/>

after the illegal Indian decision, Prime Minister Imran Khan had stated his determination to appeal to the International Court of Justice. However, there was no follow-up.

- Even though the OIC Contact Group on Kashmir had earlier issued a resolute statement in response to India's unlawful action in Kashmir, the then former foreign minister Shah Mahmood Qureshi unnecessarily irritated Saudi Arabia in June 2020 by complaining about the OIC's refusal to hold a special session of its Council of Foreign Ministers on Kashmir. In the absence of the diplomatic deadlock with Saudi Arabia, the OIC's pillar country, it might have actively participated the Contact Group in Kashmir problems⁷⁰.
- Islamabad failed to get the requisite backing from the member states in order to convene a special session of the UN Human Rights Council on the subject during 2020 and last year. More recently, it was unable to host a side-event on the escalating crisis in Kashmir at the OIC Council of Foreign Ministers' exceptional meeting in Islamabad on the humanitarian situation in Afghanistan.⁷¹

5.5 Pakistan's Response and Challenges to Changing Dynamics

Pakistan ignored Kashmir issue at the UNSC for 30 years and remained un consistent with the Kashmir posture, with the brought up of Hindutva government in India raised concerns for Pakistan.

5.5.1 Pre-Revocation/ Debate Period

⁷⁰ Dr Syed Nazir Gilani, "Two major failures on Kashmir & Indian undeserved success", The daily Times, 15 sep,2020

⁷¹The Newspaper's Staff Reporter. "Qureshi Asks OIC to Stop Dragging Feet on Kashmir Meeting - World - DAWN.COM." *DAWN.COM*, <https://www.dawn.com>, 6 Aug. 2020, <https://www.dawn.com/news/1572857>.

Hindutva groups in India claim that Jammu & Kashmir is an essential part of India. According to Ambassador Abdul Basit in the book "Hostility," The BJP General Secretary and former member of the RSS National Executive Council, Ram Madhav, declared that the Modi administration was dedicated to deleting Article 370 and that it will happen sooner or later regardless of what Pakistan said or did during their meeting on October 24, 2014. In 2018, less than 48 hours after the BJP ended its coalition with the PDP in Kashmir, internet discussions of repealing Article 370 gained traction. In a tweet from 2018 on "why Article 370 may be removed without Parliament agreement, and by a Presidential concurrence," BJP MP Subramanian Swamy claimed to have written to the PMO. According to former chief minister and head of the BJP National Conference Omar Abdullah, "accession would halt if Article 370 is removed since the accession is reliant on it." According to Aman M. Hingorani, who is a Supreme Court advocate on record and mediator as well as the author of the book "Unravelling the Kashmir Knot"⁷², even if the BJP is successful in repealing Article 370 on its own, doing so would have grave consequences for Jammu and Kashmir. While the BJP may (legally) integrate a territory, this integration will lack any political or demographic support. Although Kashmir will merge, Kashmiris (even those who belong to the political demographics of the mainstream) would feel isolated.

The BJP is attempting to use the courts to circumvent the barrier created by Clause 3 of Article 370, but after the Supreme Court of India bench, consisting of Justices Adarsh K. Goel and R.F. Nariman, noted on April 4, 2018, that "it is impossible to abrogate Article 370 of the Constitution, conferring special rights upon the State of Jammu and Kashmir," Hakim Yasir Abbas Assistant Professor, School of Law University of Kashmir Assistant Professor stated.

Additionally, the BJP made the merger of Jammu and Kashmir a campaign promise for the 2019 Indian general election, just as it has in previous election manifestos from 2014. In order to keep its promise to the Hindutva elements, the BJP began advancing its Kashmir agenda. A round of national level debate, discussion and lectures by BJP

⁷² Aman M. Hingorani, "Unravelling the Kashmir Knot" (India: SAGE Publications, 2016) History - 528 pages

officials on "Correcting the Historical Wrong Done by Nehru" started in India but in spite of everything, Pakistan carried on with the ostrich approach.

Although the Supreme Court of India (SCI) has issued a number of decisions pertaining to Article 370, two landmark cases, Prem Nath Koul v. State of Jammu & Kashmir (1959 SCJ 797)⁷³ and Sampat Parkash v. State of J&K (AIR-1970 1118)⁷⁴ all heard by five-member constitution benches, have carefully considered the law and given it permanence.

Other cases include State of Jammu and Kashmir v. Ashok Kumar and Others the Jammu Kashmir High Court's 60-page ruling on the same day, And Ors, regarding the removal of special status, also prohibited the BJP from reading down Article 370 and 35-A.

Then, BJP submitted a plea to the Indian Supreme Court. In a historic decision rendered on April 4, 2018, the Supreme Court maintained Kashmir's unique status. The precise quote was, "Article 370 of the Constitution has gained permanent status through years of existence, making its abrogation unlikely. It confers unique status to Jammu and Kashmir and limits the Central government's capacity to pass legislation for the state."

At the envoy's conference in Islamabad on August 1-3, 2017, Ambassador Abdul Basit, who served as Pakistan's High Commissioner in New Delhi from 2014 to 2017, gave a thorough presentation on how and when the "Modi administration will be dispensing with Article 370, depriving IAK of its unique status." He emphasized the need to step

⁷³ P Gajendragadkar, "Prem Nath Kaul vs The State Of Jammu & Kashmir", 2 March, 1959, 1959 AIR 749, 1959 SCR Supl. (2) 270
Bench: Das, Sudhi Ranjan (Cj), Das, S.K., Gajendragadkar, P.B., Wanchoo, K.N., Hidayatullah, M.

⁷⁴ V Bhargava, "Sampat Prakash vs State Of Jammu & Kashmir & Anr", 10 October, 1968 1970 AIR 1118, 1970 SCR (2) 365
Bench: Hidayatullah, M. (Cj), Shelat, J.M., Bhargava, Vishishtha, Mitter, G.K., Vaidyalingam, C.A

up diplomatic efforts in Kashmir. His request was ignored, nevertheless. He said, "It seems Kashmir was not on the government of Pakistan's list of priorities."⁷⁵

5.5.2 Short term Response

On the day following the revocation, on August 6, 2019, the Pakistan Foreign Office released a statement saying, "As a party to this international dispute, Pakistan would exercise all conceivable measures to fight the illegitimate acts." It referred to the cancellation as a "unilateral action." The Pakistani army chief said on August 6, 2019, during a conference of commanders, that the army will "go to any limit" to back the Kashmiri people in their rightful battle until the very end. The National Assembly and the Senate convened a combined emergency session to examine the issue. In a joint parliamentary session on August 7, a resolution was voted denouncing India's action as a "illegal, unilateral, careless, and forceful endeavor to change the disputed status of Indian controlled Kashmir as reflected in the UNSC resolutions."

The National Security Committee voted to downgrade Pakistan's diplomatic ties with India on August 7th. The Indian High Commissioner to Pakistan was expelled, while the High Commissioner of Pakistan to India was summoned back. The Thar Express and Samjhauta Express train services were halted the next day by Pakistan's Minister of Railways, Sheikh Rasheed Ahmad. All cultural interactions with India have been outlawed by the Ministry of Information and Broadcasting, including the showing of Indian movies and plays within Pakistan. A significant portion of Pakistan's commercial contacts with India were legally halted on August 9 of this year, and all exports and imports to and from India were outlawed.

Imran Khan, the then prime minister of Pakistan, likened the Indian government to "Nazis" on August 11. He said that India was using ethnic cleansing to try to alter

⁷⁵Abdul Basit. "Hostility- A Diplomat's Diary on Pakistan India Relations." *South Asia Journal*, 2021, Pg. 177-178. <http://southasiajournal.net/book-review-abdul-basit-hostility-a-diplomats-diary-on-pakistan-india-relations/>.

Kashmir's demographics, which are dominated by Muslims. In a statement released on Tuesday, August 13, 2019, Pakistan's foreign minister Shah Mehmood Qureshi stated that he had written a letter to the head of the UN Security Council requesting the calling of an emergency meeting of the council to discuss India's "illegal actions that violate UN resolutions on Kashmir." The letter should be sent to Security Council members, the foreign minister also said.

The matter would be brought before the International Court of Justice, Pakistan said on August 20. It said that the focus of its case will be on alleged human rights breaches by India. On September 14, 2019, Minister of Law and Justice Farogh Naseem said that Pakistan could not submit a case to the International Court of Justice on Jammu and Kashmir. Other swift responses included Pakistan cutting off trade with India, closing its airspace to all Indian commercial aircraft, and deciding to observe a minute of silence each week after the legislative Friday prayer. On prominent locations, a clock counter was set up to track the number of days Kashmir was under lockdown.

5.5.3 Long term Response

Pakistan seeks to bring its diplomatic practices to favour its stance on Kashmir. It brought up its political map and tried rally support from friendly nations and international organization.

5.5.3.1 Pakistan Political Map

Pakistan administration announced that his cabinet had given its approval to a new 'political map,' which it said should be regarded as the official map of the country inside Pakistan as well as outside the country. An image of the map was distributed to the media in Pakistan by the office of Pakistan's Prime Minister. The map depicted areas in the Himalayan Kashmir valley that are disputed with India as being a part of Pakistan. The following text was printed across the relevant parts of the map: "Indian

illegally occupied Jammu and Kashmir." (Disputed territory — Final status to be decided in line with relevant UNSC resolutions.)⁷⁶

On the new map, the dotted line that had previously been used to denote the contested regions has been deleted. In 1948 and again in the 1950s, the United Nations Security Council passed a number of resolutions on the dispute between India and Pakistan over the territory. One of these resolutions states that a referendum should be held to decide the future of the mostly Muslim province of Kashmir. Another resolution urges all parties to "refrain from making any remarks and from doing or causing to be done or permitting any actions that would exacerbate the situation." This is part of the request to "cease any and all activities that might aggravate the situation."

According to Pakistan's prime minister of that time, "It is critical that the world community intervenes swiftly and backs up its condemnation with concrete actions that will drive India to reconsider its current path towards the Kashmiri people." "Pakistan will stand shoulder to shoulder with its Kashmiri brothers and sisters till the they recognize their unalienable rights right to self-determination through free and impartial plebiscites conducted under the auspices of the United Nations in accordance with relevant UNSC [United Nations Security Council] Resolutions," Pakistan stated. "Pakistan will not stop until its Kashmiri brothers and sisters understand their legitimate right to self-determination."

5.5.3.2 International Reach

Pakistan was able to garner additional support once the special status of Kashmir was overturned. However, China was the first country to express its support for Pakistan, stating that it would do so on "topics relating to Pakistan's vital interests." Pakistan welcomed this statement. Turkey and Malaysia were also on Pakistan's side over the Kashmir issue. Kashmir was and continues to be one of the most important issues on

⁷⁶Siddiqui, | Naveed. "In Landmark Move, PM Imran Unveils 'new Political Map' of Pakistan - DAWN.COM." *DAWN.COM*, <https://www.dawn.com>, 4 Aug. 2020, <https://www.dawn.com/news/1572590>.

the Organization of Islamic Cooperation's agenda, and the OIC has joined other organizations in expressing support for a peaceful settlement to the conflict in Kashmir. However, the diplomatic victory did not last for very long. During Prime Minister Modi's visit to Riyadh in October 2019, Saudi Arabia maintained a neutral stance on the Kashmir dispute and gave India support on the problem of cross-border terrorism. The United Arab Emirates has also said that the decision to abolish Article 370 is a domestic issue for India. In addition, the United States, Russia, France, and the United Kingdom, all of whom are permanent members of the United Nations Security Council, turned down the Chinese request to have the council discuss the Kashmir problem.

The American situation is especially intriguing with regard to Kashmir. Donald Trump, the former president of the United States, has often stated his willingness to serve as a mediator between the two nations if they so desired. While Pakistan continues to raise the prospect, India has made it plain that it does not want American intervention in the Kashmir conflict. India's assertion that the repeal of Article 370 was a domestic affair was stated in a balanced statement by the U.S. State Department in August 2019. Analysts contend that although Islamabad continues to be a tactical ally on the subcontinent, India has displaced Pakistan as Washington's principal ally. China, however, is becoming a more significant role on the continent and views Pakistan as an "all-weather ally." Due to its passage through the portion of the valley that is governed by Pakistan, the ambitious China-Pakistan Economic Corridor (CPEC) has a significant impact on Kashmir. Some observers have also said that the current impasse between China and India in the Galwan Valley was sparked by the Kashmir problem.⁷⁷

However, Pakistan's objective of maintaining the status quo in its Kashmir policy has benefited from recent events in the subcontinent, particularly the standoff between India and China.

Pakistan, it seems is becoming less in touch with the evolving ground realities in the contested territory because its administration has been unable to create a coherent

⁷⁷Muhammad Akbar Notezai, "What Does the China-India Standoff in Ladakh Mean for Pakistan?" *The Diplomat*, 24 June, 2020. <https://thediplomat.com/2020/06/what-does-the-china-india-standoff-in-ladakh-mean-for-pakistan/>

Kashmir strategy like its predecessors. Pakistani governments have, in addition to providing moral and material support to Kashmiri freedom fighters, wasted time pinning false hopes on Track I and II diplomacy with India or have been preoccupied with rebutting Indian allegations that they are supporting terrorism and insurgency in the disputed territory. Islamabad has, at best, made an effort to bring attention to the international community's responsibilities with regards to Kashmir. And it, too, was fruitless.

India, in contrast to Pakistan, has always been quite transparent about its intentions and course of action in the disputed area. By continually declining to use the UN option for Kashmiri self-determination, it has disregarded the will of the international world. Since the unrest began in 1989, India has used force to put an end to the Kashmiri independence movement, initially under the pretext of counterterrorism and subsequently counterinsurgency. The existence of an estimated 700,000 security personnel (one armed person for every 17 civilians), the policing of draconian laws like the Armed Forces Special Powers Act and the Public Safety Act, and the ensuing arbitrary arrests, enforced disappearances, and extrajudicial killings are all manifestations of Indian oppression of Kashmiri Muslims over the past three decades or more. Human rights organizations believe that since 1990, there have been approximately 8,000 extrajudicial executions, with over 2,000 of the deaths occurring between 2008 and 2018. BJP's 2009 and 2014 Election's manifesto included plans for repealing 370 and 35-A, Cases in IHC about revocation of special status Jammu Kashmir High Court 60-page long judgement on 9 October 2015⁷⁸. BJP then filed a petition in Indian Supreme Court, on 4 April 2018, ruled it is impossible to abrogate Article 370 of the Constitution, conferring special status on Jammu and Kashmir, because it has acquired permanent status through years of existence. The observation came from a bench of Justices Adarsh K Goel and R F Nariman⁷⁹. The exact words were, "Article 370 of the Constitution, conferring special status on Jammu and Kashmir and limiting the Central government's power to make laws for the state, had acquired permanent status through years of existence, making its abrogation

⁷⁸ Parshant Shama, "Ashok Kumar And Others vs State Of JK And Ors", 9 October, 2015

⁷⁹ PTI, "Article 370 not a temporary provision, says Supreme Court", 4 April, 2018

impossible. “However, country wide discussions and speeches of BJP leaders on "Correcting the Historical wrong done by Nehru" and preparations were made in J&K but Pakistan did not take any concrete steps in the meantime. With the revocation of Article 370, India has not only abandoned its pretense of sovereignty over Jammu and Kashmir, but the simultaneous repeal of Article 35-A which was added to Article 370 in 1954 has resulted in the cheap sale of Kashmiri land, the reshaping of Kashmiri demographics to accommodate Hindu settlers, and the exclusion of Kashmiri Muslims from Kashmiri identity.⁸⁰

Due to Pakistan's inaction on Kashmir, both before to and after August 2019, India has been able to further its campaign of militarization, which has had a profound effect on the demographics and identity of the Kashmiri people. As with the Composite Dialogue in the 1990s and its revival during the Musharraf administration, when Pakistan even abandoned the UN option and presented a four-point formula as a 'out of the box' solution, India has utilized the bilateral peace process with Pakistan to gain time and attain status quo ante in the disputed region. Almost half a million non-Muslims have earned residence in Kashmir under a new Domicile Order as part of the ruling Bharatiya Janata Party's saffron initiative, which intends to Hinduize the region. Agricultural land, which makes up 90% of the occupied area, may now be used for other purposes by non-resident Indians according to the new Land Act. Indian investors are making a play for a piece of the action under the pretense of tourism and development, and they're getting vociferous backing from the government. There has been a concerted effort recently to dilute the political power of Kashmir's Muslim majority by altering the borders between the Kashmir Valley and the neighbouring Jammu area. Naturally, Pakistan is to blame for contributing to the deterioration of the situation in Kashmir. During the 1990s, it turned a blind eye while terrorists from the globally supported jihad in Afghanistan wreaked havoc in Jammu and Kashmir, which was then under Indian control, giving India an opening to accuse Pakistan of supporting cross-border terrorism. During the Global War on Terror, Pakistan was attacked by jihadists. At least three times between 1999 and 2019, the Subcontinent

⁸⁰Hamza Rao, “India’s attempts at ‘demographic invasion’ of Kashmir”, *The Express Tribune*, 28 October 2021. <https://tribune.com.pk/story/2326685/indias-attempts-at-demographic-invasion-of-kashmir>

was on the verge of a conventional conflict escalating into a nuclear confrontation between India and Pakistan. However, following the terrible earthquake in 2005, a window of opportunity opened up to find a bilateral solution to the Kashmir problem.

In 2006, the two nations reached a framework for resolving Kashmir. Under this framework, the Line of Control would be frozen; Kashmiris on both sides of the divide would gain autonomy; India and Pakistan would gradually demilitarize the conflict zone; and India, Pakistan, and the Kashmiris would come up with a joint mechanism to monitor the Line of Control and the concomitant trade and movement of people. If all the concerns were resolved within 15 years, a peace and friendship treaty would be signed. Mirwaiz Umar Farooq, head of the All-Parties Hurriyat Conference, implicitly supported this concept and advocated for a future United States of Kashmir. As the political situation in Pakistan deteriorated and India's commitment wavered, particularly in the aftermath of the 2008 Mumbai terrorist attacks, this excellent chance for a peaceful solution in Kashmir was also wasted. Pakistan has recently shown signs that it is once again open to negotiating peace. Providing New Delhi agrees to a "fair and peaceful settlement of the Jammu and Kashmir conflict," Pakistan hopes to strengthen ties with India as part of its "strategy of peace at home and abroad," as stated in the country's National Security Policy for 2022-26, which was released last month. The reaction from India has not changed from defiant. It is unwilling to shift an inch from its settler colonial stance in the contentious area. As far as Kashmir is concerned, India's success means Pakistan's failure. Still, the administration has only responded to Indian atrocities by sometimes delivering proclamatory remarks and organizing sympathy activities on Kashmir. Neither the media nor the public are discussing the situation in Kashmir.⁸¹

In terms of blood and sorrow, the Kashmiris have already paid a tremendous price. India's settler colonialism in Kashmir is targeting the Muslim people there for elimination. The International Human Rights Association of American Minorities filed a report on Indian human rights breaches in Jammu and Kashmir before the UN

⁸¹Pranay Sharma, "What does Pakistan's first national security policy say about India, China, US?", SCMP, 21 January, 2022. <https://www.scmp.com/week-asia/explained/article/3164176/what-does-pakistans-first-national-security-policy-say-about>

Human Rights Council session in February-March 2020, labelling these atrocities as "war crimes" and "genocide." Thus, it may be best to appeal to the International Criminal Court, although neither Pakistan nor India have done so. Nonetheless, Pakistan may file a lawsuit against India at the International Court of Justice, which has the authority to settle international legal issues. As a result, a state that violates its commitments under international law may be taken to court. It's possible that India would veto any attempt to use Article 36 (2)'s "compulsory jurisdiction," therefore this strategy is dead in the water. Article 36 (1) of the Statute allows Pakistan to bring India to the ICJ over an international dispute to which both nations are legitimate parties because of India's violations of international law (UN Security Council resolutions). Therefore, it may not be too hard to establish that the ICJ does have jurisdiction to hear this matter. Pakistan's legal staff had done a poor job, leading to the loss of the potentially-winnable Kulbhushan Jadhav case before the ICJ in 2019. The stakes are higher than ever, yet it's not yet too late to make a difference. Pakistan must not leave the Kashmiri people alone in their hour of greatest need.

5.6 Conclusion

India's unlawful unilateral actions, and the subsequent subjugation and displacement of the Kashmiri people, provide ample grounds for legal action, and all the government needs to do is assemble an effective team of legal counsels, including from among the Kashmiri diaspora, to prepare a convincing case. At the same time, it may organize a proactive diplomatic campaign across the world to shed light on India's intention to colonize the native Muslim people of Kashmir.

CHAPTER SIX

PAKISTAN'S POSSIBLE OPTIONS ON KASHMIR DISPUTE

Pakistan and India are parties to the Kashmir issue, India's unilateral move of reading down articles 35-A and 370 of its constitution on August 5, 2019 has put Pakistan in a situation where it is on the cross roads of Kashmir. Historically, there were many occasions where Pakistan's position was much stronger than it is today. Pakistan seems to have missed many such opportunities due to lack of coordination of its actions.

World powers have verbally opposed India's unilateral move, but no such action has been taken that could force India to vacate its actions of August 5, 2019. The basis of the global response appears to be the human rights situation in Indian-administered Kashmir rather than UN resolutions.

Pakistan is aware of its fragile economic condition, as the then prime minister of Pakistan Imran Khan questioned the world powers in his UNGA address of 2019: "Will these big countries keep looking at their markets only?" Despite this, Pakistan understands the importance of Kashmir strategically. In this context, Pakistan has options in the diplomatic, legal, and strategic domains to find solutions for the resolution of the Jammu and Kashmir dispute.

By using political, diplomatic, military, and media channels as well as press briefings, it is crucial to update the public and provide them the most recent information. For the purpose of achieving national unity, it is crucial that the country be regarded seriously. At all costs, civil-military hierarchies must remain in harmony. It is best to refrain from making hostile statements since they would harm Pakistan's reputation. Although they should only be used as a last option, nuclear weapons may be employed as a frightening aspect.

In this context, Pakistan has options in diplomatic, law fare and strategic domains to find the solutions for the resolution of Jammu and Kashmir dispute.

6.1 Diplomatic Avenue

By using political, diplomatic, military, and media channels as well as press briefings, it is crucial to update the public and provide them the most recent information. For the purpose of achieving national unity, it is crucial that the country be regarded seriously. At all costs, civil-military hierarchies must remain in harmony. It is best to refrain from making hostile statements since they would harm Pakistan's reputation. Although they should only be used as a last option, nuclear weapons may be employed as a frightening aspect.

6.1.1 UN Framework

On the diplomatic front the fundamental issue for Pakistan is whether it should adhere to the UN resolutions on Jammu and Kashmir or launch a new campaign under the flag of human rights slogans. Experts have differing opinions on this matter. Some scholars emphasize that Pakistan should never distance itself from the UN's Jammu & Kashmir framework as it is only a party to the litigation due of UN resolutions. These decisions define who is deemed to be a Kashmiri and which regions comprise the state of Jammu and Kashmir. Abandoning the UN road map would be like to chopping off the limb you're sitting on. Therefore, Pakistan should continue to approach global organizations Pakistan should continue to remind the international community of the UN resolutions and pledges on Kashmir.

Sardar Attique Ahmed Khan. Former Prime Minister Azad Government of the State of Jammu and Kashmir states that 'Pakistan must seek international support for the implementation of UN Security Council's Kashmir resolutions to which India has already committed herself as party to Kashmir dispute; seeking international support must be pivotal practical policy of Pakistan'.

As we should highlight for all times that it was India who had taken Kashmir as a dispute to the United Nations Security Council and got it registered as a dispute on Jan 1st 1948; luckiest aspect is that the UN Security Council passed resolutions on Kashmir dispute accepted by all members-countries of the United Nations Organization and approvingly signed both by India and Pakistan as parties to the

dispute of Kashmir; those resolutions do not accept Indian claims on Kashmir; those resolutions prescribe holding of an international plebiscite under UN auspices in Jammu and Kashmir to let the people of Kashmir and Jammu decide with whom they want to go - Pakistan or India; but India, knowing that Kashmiris would vote against her, is causing serial delays by one pretext or the other; it is fit course of action that Pakistan should follow those resolutions and orchestrate international opinion for holding that promised plebiscite.

“To this day, the UN framework on Kashmir is the major source for dealing with the situation. To be safe, the Pakistani government should carry out its operations and align its affairs with the original UN framework. The Pakistani government bears a great deal of responsibility for adhering to the UN framework on Kashmir. Whether it is the country’s military or its politics, they must ensure that the UN framework is followed. Dr Syed Nazir Gillani President JKHRC wrote in a letter on 26 July, 2022 to Prime Minister of Pakistan.

6.1.2 Departure from Shimla Agreement

It is also discussed in the previous chapters though, that the global powers do not take Kashmir issue as an international issue anymore rather they consider it a bilateral dispute between India and Pakistan after the Shimla Agreement between the president of leftover Pakistan (in aftermath of war of 1971 between India and Pakistan) Zuleika Ali Bhutto and Indian Prime Minister Indira Gandhi on 2nd July 1972 which declares that “the two countries are resolved to settle their differences by peaceful means through bilateral negotiations.”⁸²This agreement converted the cease-fire line into the Line of Control (LOC). India believed it converted the actual control into to legal ownership. Kashmiris never accepted this agreement as they were not a party in it and still call LOC as Ceasefire line. Even in his recent visit 2022 to Pakistan, UN Secretary General Antonio Grattes, in response to a question in a press Conference in Islamabad,

⁸²“The India-Pakistan Simla Agreement, 3 July 1972.” *Survival*, no. 5, Informa UK Limited, Sept. 1972, pp. 242–242.

in the presence of the Pakistani Foreign Minister Bilawal Bhutto Zardari, reiterated that India considers Kashmir a bilateral issue and does not want to talk about it.

Numerous Kashmiri researchers and specialists, like Raja Sajjad Lateef, the director of the Kashmir Liberation Cell in Azad Jammu and Kashmir, assert that India has unilaterally weakened article 35-A in the disputed Kashmir territory. India was compelled under the Simla Agreement, which it utilises to prevent the international community out of the Kashmir Case, to keep the matter bilateral. Pakistan should proclaim the Shimla Agreement to be null and invalid immediately. He further contends that this nullification would not invalidate the Indus Basin Treaty or any other deal Pakistan has signed with the assistance of an international organisation, since these agreements are not bilateral and are backed by international assurances. The LoC will go back to Ceasefire Line in this way. This might get worldwide attention and aid in determining the severity of the situation.

6.1.3 Kashmiri Representation

Khurshid Hassan Khursheed, who was the first elected president of Azad Kashmir and founder of a political party, the Jammu Kashmir Liberation League (JKLL) came up with a formula to ensure an all-out and focused struggle to liberate Jammu Kashmir areas from India. The three major Kashmiri political parties of that time, Muslim Conference, Azad Muslim Conference and JKLL formed an alliance popularly known as “Ittehad-e-Salaasa” in 1968 on the basis of his four-point program, including recognition of the AJK government as a ‘revolutionary provisional successor government’ of the deposed ruler of the erstwhile princely state of Jammu and Kashmir, a freehand to take the Kashmir freedom movement to its logical end, the assurance that Jammu Kashmir is an indivisible entity and that no solution shall be imposed on the Kashmiri people against their wishes and aspirations.

Azad Jammu and Kashmir Prime Minister Raja Farooq Haider reiterated this idea maintained that the substantive representation should be in the hands of Kashmiris.⁸³ It goes without saying that Pakistan should back them politically and morally, but the

⁸³Raja Farooq Haider, Interview by author, December 22, 2022

domineering impact should be of Kashmiris themselves, “because any exercise sans Kashmiris involvement, as primary party to the dispute, will as usual end up in futility”.⁸⁴

This can be achieved in two ways,

- (a) By inciting the ousted Kashmiri leadership, setting them free from India, finding them in AJK or anywhere else in the world, and designating them as a government in exile. "This government in exile could be significant in the continuance of the Kashmir problem and may come before the UN. China may even promote this option as a counter-narrative to the Dalai Lama's presence in India, albeit, as previously said, China is conscious of, and realistic about, its strategic interests at stake."
- (b) By employing legal leverage such as amending Article 2 of the AJ&K Interim Constitution of 1974. ‘Azad Jammu and Kashmir’ means the territories of the State of Jammu and Kashmir which have been liberated by the people of that State and are for the time being under the administration of Government and such other territories as may hereafter come under its administration; However, it can be amended as "All the territories of the State of Jammu and Kashmir, as existed on 24th October 1947". Pakistan can give good image to Kashmir’s position and this way government of AJK shall be able to appear before UN and put forward its voice on legal grounds.

Amending the AJ&K constitution sounds more reasonable and appealing, as a government in exile can be complicated, also Pakistan is facing challenges in Baluchistan and India may reciprocate or atleast try to support Baluchistan Liberation Army (BLA) to form a similar government in exile.

⁸⁴Naqash, Tariq. “AJK Premier Asks Kashmiris to Reject Pak-India Bilateral Talks - Pakistan - DAWN.COM.” *DAWN.COM*, <https://www.dawn.com>, 12 Mar. 2021, <https://www.dawn.com/news/1612031?ref=whatsapp>.

6.2 Strategic Avenue

Pakistan has a lot of choices that should be executed. Pakistan should choose any measure with logic, reason, and concentration. Pakistani decision-makers may take into account the following facts. In the modern day no kinetic warfare, especially media warfare is necessary to attract support, and Pakistan excels at it. It must be used by Pakistan to address this problem. The Pakistani government might try to initiate talks, and the Strategic Restraint Regime to handle the issue bilaterally (SRR). On the realms of religion, society, and politics, there must be peace in Pakistan and Kashmir. Pakistan should set up trips for foreign experts and human rights organizations to Azad Jammu & Kashmir so that they may observe for themselves how India violated international law and human rights by nullifying Articles 370 and 35-A with reference to Kashmir. It is hoped that the whole world community would oppose India once they are aware of its actual nature as an aggressive country that has violated Articles 370 and 35-A over Kashmir.⁸⁵

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⁸⁵Connah, Leoni. “International Law vs. Domestic Law in Kashmir.” *Peace Review*, no. 4, Informa UK Limited, Oct. 2021, pp. 488–94.

Jammu and Kashmir to let the people of Kashmir and Jammu decide with whom they want to go - Pakistan or India; but India, knowing that Kashmiris would vote against her, is causing serial delays by one pretext or the other; it is fit course of action that Pakistan should follow those resolutions and orchestrate international opinion for holding that promised plebiscite.

Subsequently, Ambassador Abdul Basit stressed the need of appointment of a special envoy for J&K. He is convinced that the coordination required for the Kashmir diplomacy cannot be done at the foreign ministerial level, as he cannot humanly do justice to the multifaceted Kashmir diplomacy, this includes mobilizing Kashmiris who are residing around the globe as well. He also talked about strengthening AJK government and keeping it in the loop at every step.

To expose India's illegitimate and fascist role in Kashmir, Pakistan should publish an impartial report on human rights violations and research. The possibility of utilizing a military option in the India-Pakistan situation cannot be discounted. However, Pakistan should only employ military force as a last resort if it wants to maintain international backing.

6.2.1 Musharraf's Out of Box Solution

Pakistan should encourage General Musharraf's Four-point formula to gather the International support as it construct the middle ground for the peaceful solution of Kashmiri issue.⁸⁶Congressman Ackerman in 2000 established that each party India, Pakistan and Kashmir will benefit, no one will lose each of them will be a winner by employing Musharraf's Four-point formula, the formula involves the following:

- Demilitarization or phased withdrawal of troops
- There will be no change of borders of Kashmir. However, people of Jammu & Kashmir will be allowed to move freely across the Line of Control.

⁸⁶News, Foreign Policy. "Musharraf's Four-Point Formula: The Devil in the Details – Foreign Policy News." *Foreign Policy News*, Foreign Policy News, 4 Mar. 2017, <https://foreignpolicynews.org/2017/03/04/musharrafs-four-point-formula-devil-details/>.

- Self-governance without independence
- A joint supervision mechanism in Jammu and Kashmir involving India, Pakistan and Kashmir.

Firstly, The United Nations and particularly Sir Owen Dixon of Australia, have advocated for demilitarization. The Kashmiri resistance leadership has demanded that demilitarization from both sides of the Ceasefire Line open the ground for a genuine and intelligent settlement to the Kashmir problem. Secondly, the Line of Control is a line of conflict that must be undermined so that the people of Kashmir may freely migrate from one region to another. Thirdly, self-governance has a wide definition. Self-government entails liberty, independence, and autonomy. It signifies that the people will be masters of their own fate. Finally, international protections a joint body that oversee the developments and working of Kashmir will reap the benefit for both actors but for Kashmir it will benefit the most. This formula has its pros and cons. It has strong proponents and opponents in J&K across the cease-fire line. Some, including Sardar Attique Ahmed Khan, former Prime Minister of AJK and his father late Sardar Muhammad Abdul Qayyum Khan were proponents with a suggestion of an overall governing board comprising of all the units of J&K, whereas some including late Hurriyat leader Syed Ali Gillani considered it an instrument of division of J&K on permanent basis. However, this formula still resonates in influential think tanks as a possible solution of Kashmir Question.

6.2.2 Kashmir Cell/Desk

Shah Mahmood Qureshi, the then Foreign Minister of Pakistan Foreign Minister had announced the setting up of a special cell on Kashmir at the Foreign Office and a desk at all embassies days after the revocation of Article 370. A focal person in each of these embassies was supposed to ensure a coordinated effort. However, a Parliamentary Special Committee on Kashmir, already exists in Pakistan and is responsible for bringing up the important issues relating to Kashmir at both the national and international levels. Senior Pakistani senators and MNAs make up this committee. The Pakistani government has to reach an agreement on the Kashmir problem in a

national dialogue conference where all political parties, the executive, military, and judicial branches should come together.⁸⁷

The nomination of a capable diplomat as the head of the Kashmir Committee is one of the practical actions, which will reevaluate the plan for resolving the problem by involving the international community. Both, the proposed Cell and Kashmir Committee should work in an intertwined manner and should have the authority to invite journalists and lawmakers from other states to visit Kashmir and brief them in detail.

6.2.3 Pressure Groups

The need for civil society to grow is important and the Kashmiri diaspora is a significant voting force in Western nations. They have the power to affect the UK, Denmark, and other nations. Pakistan must maintain drawing attention to and bringing the matter to the world's attention so that it may one day be heard. It is necessary to do institutional follow-up. It should be made clear that the Kashmiri people will reject any attempt by India to revoke Articles 370 and 35-A. The Kashmir problem will be brought up in an international forum once again in an effort to find a settlement. Reality on the ground is peculiar because for governments, interests take precedence above the realities of the Kashmir conflict.

Two options exist in the face of cold-blooded facts. First, the Kashmiri people may continue fighting inside themselves. Second, Pakistan continues to make the problem a priority by taking various actions. As noted at a conference conducted on August 5, 2020 in QAU by Ambassador Retired Riaz Hussain Khokhar, there is a need to provide Kashmir full spectrum assistance (not in a military sense). Expect no concession from the international community if it does not address the problem since nations act in accordance with their own interests.

⁸⁷“Kashmir Cells to Be Established in Bar Councils in across Pakistan | Pakistan Today.” *Pakistan Today | Latest News from Pakistan*, Pakistan Today, 15 Aug. 2022, <https://www.pakistantoday.com.pk/2022/08/15/kashmir-cells-to-be-established-in-bar-councils-in-across-pakistan/>.

6.2.4 Kashmir Study Centers

Pakistan must establish Kashmir Study Centers at its universities and those of its friendly neighbors, including Turkey, Iran, Malaysia, China, Russia, and other friendly countries. Diaspora from Pakistan and Kashmir must participate in western countries by holding meetings in their senates and parliaments, organizing seminars, and raising this subject in their Think Tanks and international forums. To acquire a genuine official declaration or settlement for addressing this issue, Pakistan has to speak out in international forums and draw attention to this problem. Pakistan must draw attention to Kashmir's grave security and human rights problems via the media, by dispassionately reporting on them, or by organizing trips to the Kashmir Valley. To make unified pronouncements on the changing conditions within Kashmir, Pakistan should set up a tri-party commission including representatives from China, India, and Azad Kashmir. To get greater support for itself on the global stage, Pakistan has to expand its diplomatic influence. Pakistan should run a vigorous media campaign to promote its own narratives and counter the media's propagandistic efforts in India. Initiating Pakistani Missions Abroad is crucial for Pakistan.

6.2.5 Armed Struggle

During the anti-Soviet fight in Afghanistan, the U.S. supported and promoted the strategy of assisting Islamic insurgents. Whereas Pakistan functioned as the steppingstone for containment of USSR, and Islamist militants' uprising from 1979 to 1988, it is thought by analysts that the Pakistani ruler, General Zia Ul Haq, at that time considered using the covert operations techniques learned in Afghanistan to the war of liberation in Kashmir.

Jammu & Kashmir was witnessing a major turmoil due to years of mismanagement and interference from New Delhi. The manipulation of election 1989, added fuel to the fire. Protests and unrest began in Indian administered Kashmir without any incitement from outside. The slogan of 'Azadi' (Liberation) reverberated in the streets of Kashmir.

India handled the crisis with an inappropriate use of force and placed the blame on Pakistan to deflect criticism of its human rights abuses. But as Victoria Schofield claims that India was plainly responsible for the complaints amongst the Kashmiris, because the progressive degradation of the 'special status' guaranteed to the state of Jammu and Kashmir in 1947 was a festering wound, and their feeling of being abandoned by their leaders was real. Kashmir would not have been a problem, according to Tavleen Singh, if the valley had not burst due to the wrong policies of New Delhi, with the passage of time people of Kashmir would have forgotten about the differences and disagreements with India. Had India been a little considerate, the LOC would have been accepted as the boundary, but as Sheikh Abdullah warned times again, Kashmir transformed into an "explosive scenario".⁸⁸

Pakistan decided to support indigenous insurgents at the beginning, but over the period of time, Islamists from Pakistan and other Islamic nations started infiltrate into the troubled Jammu and Kashmir. Initially, India's official reaction to the militancy, which was marked by violence, deepened Kashmiris' estrangement and harmed India's international standing. India, which formerly took pride in being a secular and democratic country, was facing accusations of blatant human rights violations. Amnesty International in its report published in 1992 accused Indian army, the paramilitary Border Security Force (BSF) and Central Reserve police force (CRPF) of "Widespread human rights crimes in the state since January 1990". The report mentioned "Frequent cordon-and-search operations" which were used to curb the armed resistance. The report also pointed out that during these CASO often include torture. Interrogation centers, police stations and prisons were used to torture Kashmiris on slightest suspicion. Rape was used as "a weapon of war" as part of a systematic effort to humiliate and frighten the indigenous populace during counter-insurgency operations.⁸⁹

⁸⁸Schofield." Kashmir in the Crossfire", *Amnesty International*, pg. 236 (New York, 1992).

⁸⁹"India: Torture, Rape and Deaths in Custody - Amnesty International." *Amnesty International*, <https://www.facebook.com/amnesty>, <https://www.amnesty.org/en/documents/asa20/006/1992/en/>.

Although this strategy of supporting armed struggle has succeeded in putting some pressure on India in the past and has brought India on negotiation table a couple of times, yet things have drastically changed after 9/11 and subsequent incidents. This is also true that, in agreement with international humanitarian law, wars of national liberation have been specifically recognized as a protected and necessary right of occupied people worldwide by the adoption of Additional Protocol I to the 1949 Geneva Conventions.

Moreover, 3 December 1982 Any uncertainty or disagreement over the occupied population's legal right to oppose occupying forces using any and all legal means was eliminated by UNGA resolution 37/43. Reaffirming "the validity of the peoples' battle for independence, territorial integrity, national unity, and freedom from colonial and foreign control and foreign occupation by all appropriate measures, including armed conflict," the resolution calls for international cooperation.

Pakistan could find little solace in India's censure for human rights breaches, since India was under little obligation to concede to Pakistan's demand for a referendum. As Pakistan intended, the world community continued to see Kashmir as a matter of self-determination. However, after the first few years, criticism of Islamabad for its backing of terrorists outweighed international pressure on India to address Kashmiris' concerns. Militancy engaged a huge number of Indian soldiers in counterinsurgency operations, which Pakistani military strategists saw as a success in and of itself. However, there was no other discernible Pakistani plan for resolving the Kashmir dispute. Over the years India has successfully portrayed the Kashmiri armed struggle as sponsored by Pakistan and is still portraying freedom fighters as infiltrators. Pakistan is under a lot of economic pressure and is facing a heavy brunt of terrorism, it also blames India for the worsening situation at home. However, in current situation it is not feasible for Pakistan to support armed struggle in Jammu and Kashmir.

6.3 Legal Avenues

Pakistan must organize its affairs and get a mandate from the legislature, and include all relevant institutions, including the MOFA, the MOD, the legislature, the opposition,

the judiciary, the armed forces, and the war fighting corps. For instance, by connecting the Kashmir problem to Baluchistan or Gilgit Baltistan, India might minimize the conflict in Pakistan. In order to defend Kashmiris against Indian violations of Articles 370 and 35-A, Pakistan must ratify the UN's Responsibility to Protect (R2P) mandate from 2005.⁹⁰ This is necessary since 20 million Kashmiris have a right to live in dignity.

Moreover, Justice Syed Manzoor Gillani who is former Chief Justice of the Apex Court of Azad Jammu and Kashmir, advocates provincial status for AJK and Gilgit-Baltistan, which are both disputed territories as of now.

He views that the provincial arrangements in G-B and AJK at the moment is “de-facto” and it needs to be altered and should be formalized in the Constitution of Pakistan. “Both territories need similar, simultaneous constitutional reforms to be empowered as ‘special territories of Pakistan akin to provinces’, with representation in all policy and decision-making institutions under the Constitution”⁹¹, including national legislative assembly (Parliament of Pakistan) and Upper House, Senate.” He is of the view that “The people chosen through elections will be the elected representative of the people of Kashmir and will voice their issues to their counterparts around the globe”.⁹²In Azad Kashmir, the supporters of this proposal are very few and the opponents are many, However this proposal should be discussed as an academic discussion.

6.3.1 Under Human Rights Law

Pakistan must engage effectively the International bodies like UN, to its leverage as the legal system which is present in domestic law of nations as well as international law, has to be employed via a well-funded and coordinated campaign to highlight human rights breaches. In order to attain this goal, Kashmiris should get assistance in

⁹⁰Shamsa Nawaz. “Violation of the UN Resolutions on Kashmir: India’s Quest for UNSC Permanent Membership.” *Strategic Studies*, no. 1, Institute of Strategic Studies Islamabad (ISS), Apr. 2018, pp. 145–62.

⁹¹ Interim Constitution of Azad Jammu and Kashmir (1974)

⁹²(Manzoor Gillani, Interview by Author, 5 August, 2022)

gathering credible evidence of specific actions by both persons and organizations, as well as in properly documenting and presenting that information to UN bodies including the Human Rights Council and General Assembly. Pakistan must participate in thwarting Indian efforts by demonstrating that Article 370 may be challenged in the Indian Supreme Court and that the Indian Army and security forces are an occupying force in order to put pressure on India to revoke Article 370. According to International Humanitarian Law (IHL), occupation is defined as the use of force by an occupying power that does not have sovereign authority over the territory in question. Factual requirements for occupation should be emphasized in order to recognize the human rights abuses by the Indian Army as war crimes and demonstrate that the law of armed conflict applies to the Kashmir conflict.

6.3.2 The Law of War

In addition to the Human Rights Law, the Law of War also directly applies to IAK because it is occupied. In order to help victims, the norms of the Geneva Conventions and customary international human law should be put into practice. Similar to a war crime, the utilization of pellets by Indian security forces is a burial site violation of human rights law. A war crime is also committed by the Indian Army when they break into a house, torture detainees, or violate a person's right to habeas corpus. According to Human Rights Watch (HRW) and article 427 of the UN's International Covenant on Civil and Political Rights (ICCPR), state-sponsored militias must adhere to international humanitarian law (IHL). Additionally, per article 59 of the Fourth Geneva Convention, the occupying force must guarantee that the population has access to essential services¹. Additionally, in accordance with Article 56 of the Fourth Geneva Convention, unrestricted movement of international humanitarian assistance must be made possible. Failure to fulfil obligations/duties as an occupying force, particularly in natural disasters like COVID-19, to assist the populace of an occupied territory in meeting basic health and security needs also constitutes a violation of the aforementioned article.

It is necessary to project the theme of the Indian occupation forces' genocide of Kashmiri Muslims. At international forums like the Human Rights Council, the risk

factor, early warnings of massacres, and the ten steps of genocide (as defined by Genocide Watch) should be vehemently emphasized. Evidence of precise and specific Indian human rights violations under the laws of peace and war should be gathered and documented in cases involving both individuals and entities, rather than simply condemning Indian atrocities against Kashmiris in general. This evidence should then be presented to groups like the UN General Assembly and the Office of the High Commissioner for Human Rights (OHCHR).

6.3.3 Universal Jurisdiction

This provision should be easier to invoke for Kashmiris under the domestic laws of nations like the United States, the United Kingdom, Australia, Argentina, Belgium, Canada, Germany, Spain, Sweden, and Norway. In accordance with this paragraph, an offender who committed an offence outside of their territorial authority may be tried under the domestic law of a nation. Countries such as Argentina do not even need the presence of an offender on Argentinian territory in order for him to be prosecuted; as a result, the nation ought to be recognized as a priority country for the filing of such cases. It is necessary to make use of domestic legislation that ban help to a human rights' abuser, such as Australia's "Autonomous Penalties Act 2015," in order to have aid barred for Indian security forces or to impose specific sanctions against individual offenders. For an illustration of one of these statutes, please refer to Annex-C.⁹³

The people of Kashmir need all the assistance that can be given to them in order to compile proof of the systematic atrocities committed by the Indian occupying troops in order to construct a case of human rights violations. As a result of the fact that the local law remedies clause does not apply to crimes against humanity, they are quite simple to prosecute in international fora. Therefore, it is not necessary in these kinds of situations to try all of the available local cures. Cases may be brought either by the victims or their families, or on the victims' behalf, by non-governmental organizations (NGOs) as such Trial International, the Center for Justice and Accountability, and the International

⁹³O'Keefe, Roger. "Universal Jurisdiction." *SSRN Electronic Journal*, Elsevier BV, 2006.

Federal for Human Rights and Remedy are examples of organizations that provide pro bono assistance in this field.

6.4 Recent Happenings

It has been discussed in a previous chapter that there are around 2 dozen petitions lying pending in Supreme Court of India questioning if India's legislative actions in Jammu and Kashmir is legal or illegal. Now after 4 years a five-judge constitution bench, comprising Chief Justice of India D.Y. Chandrachud and Justices S.K. Kaul, Sanjiv Khanna, B.R. Gavai and Surya Kant, has started hearing a batch of 23 petitions challenging the reading down of Article 370 of the Indian constitution that bestowed special status on the erstwhile state of Jammu and Kashmir since A. It is yet to be seen if Indian judiciary will be able to establish its credibility.

6.5 Conclusion

Pakistan's jugular vein, Kashmir, cannot be disregarded. It has been the core dispute between India and Pakistan ever since their independence from British Raj. Since August 2019, after the Indian reading down of Articles 370 and 35-A, tensions relating Kashmir have increased. Pakistan needs to change its course and expedite its efforts to control the damage being done to the Kashmir Case. The people of Kashmir need Pakistan's help, which Pakistan must provide them. The prerequisite for security and stability in the South Asian area is Kashmir's peace and security. A thoughtful and timely plan must be used. Pakistan and Kashmir must continue their fight until and until the UNSC steps in to interfere and put an end to the conflict and the world recognizes it. Let's hope for the best while preparing for the worse in the meantime.

Conclusion

Since the Jammu and Kashmir conflict is fundamentally a political one, it calls for a political resolution based on the desires of the local populace. The Kashmir conflict may be traced back to 1947, when it was triggered by the partitioning of the British Indian Empire. The newly formed states of India and Pakistan were competing with one another as to fulfill their national interest for control of the state because of the religious divisions that existed between them. Kashmir ended up becoming the key issue in the series of conflicts between India and Pakistan as a result of the intense attempts made by both nations to annex it. Although there have been many tensions between India and Pakistan for many years, the Kashmir dispute continues to be the most problematic one. The international organizations played an important part in the measures that were made to prevent the situation from developing into a nuclear conflict.

The requirements for the conduct of a plebiscite in the State for the ultimate award of the right to self-determination to the people of Jammu and Kashmir were explicitly laid forth in two UNCIP decisions, dated August 13, 1948, and January 5, 1949. India acknowledged and recognized the right of Kashmiris to self-determination according to these UNCIP decisions, but has obstructed its actualization for more than 70 years. People in Jammu and Kashmir became frustrated and uneasy due to India's continued denial of a political settlement to the Kashmir dispute. The long-term Indian occupation of Kashmir, discrimination against Kashmiris living in their own state, widespread abuse, and denial of internal autonomy to the state—all of which were agreed upon under Articles 370 and 35A of the Indian Constitution—are to blame for the frustration of Kashmiris. Subsequently the question that has to be answered is whether or not the Indian ruling party can accomplish its political aim in Kashmir by using such obvious gerrymandering as they revoke the legal barriers and acted offensively. Since its goals have been faced with such broad and outspoken criticism and condemnation from the people of Kashmir, the clear answer is "no," given that these responses have been received. India has been trying, unsuccessfully, for close to seventy years to impose a government on Kashmir that is not well received by the

people living there. The public's yearning for independence from Indian authority has not been "imprisoned" as a result of the detention of Kashmiri political leaders. Not only have the harsh and dishonest tactics used by Delhi in Kashmir been unsuccessful, but they have also served to further alienate the indigenous community. When they are finally carried out, the purported elections will be nothing more than another charade, and the great majority of people in Kashmir will refuse to take part in them. Only by finding a solution to the issue that satisfies the needs of the people of Kashmir and the resolutions passed by the United Nations can put an end to the miseries of Kashmir. Up to that point, the tragedy will continue to play out, and South Asia will not experience peace.

Hindu nationalists have, for a very long time, aspired for India's total inclusion of the Kashmir valley into the country's territory in its whole. Over the course of the last couple of decades, Hindu nationalism has been successful in gaining popularity, which has ultimately resulted in the elimination of Kashmir's autonomous status. The success of Hindu nationalism must be attributed to the fact that it has been able to persevere despite the fact that it was originally seen as an insignificant voice in Indian politics that was incongruous with Indian ideals. As a direct consequence of the fact that this ideology promotes division, the people of Kashmir have been made to go through a great amount of pain and anguish. In spite of this, Modi and his party have succeeded in creating an India that is characterized by intolerance, violence, and prejudice based on religious beliefs. In public, he presents himself as a supporter of Kashmir and all of India, but in truth, he and his party are responsible for the current state of India. The amendment to the Citizenship Act is just one more example of the policies that have been put into place by his government that have had a negative impact on the lives of millions of Indians. The development of nationalism and religious nationalism may be seen all throughout the world, but it is most notable in Myanmar, Northern Ireland, Sri Lanka, and the United States of America. It is abundantly clear, in light of the findings presented in this study, that the behaviors in question are capable of producing violent results such as unrest, riots, displacement, and the infliction of severe suffering on members of minority groups. This conclusion is supported by the fact that the study's findings were presented.

India's unlawful unilateral actions, brings out classical world of anarchy which is also benefitted by the down fall of relative power of Pakistan in anarchic system- as well as the subsequent subjugation and displacement of the Kashmiri people, provide ample grounds for legal action. All that is required of the government is to assemble an effective team of legal counsels, including those from among the Kashmiri diaspora, in order to prepare a convincing case in response to India's unlawful actions. At the same time, it is possible that it would organize a proactive diplomatic campaign around the globe to throw light on India's aim to colonize the local Muslim population of Kashmir. This would be done simultaneously.

Pakistan's strategic driven policies views Kashmir as its major pillar, but down fall of its relative power triggered India's unlawful ambitions but it's as it is a major participant in Kashmir equation hence cannot be neglected. Since the abolishment of legal norms via India's offensive actions called for severe crisis which in return brings competition to anarchic world as Kashmir has been a source of contention between India and Pakistan the two nuclear armed states and, the number of times that India has violated Articles 370 and 35-A in relation to Kashmir has grown since August 2019. Pakistan is going to need to follow a variety of the steps outlined in the research in order to find a solution to the issue. The people of Kashmir want assistance from Pakistan, which should be made available to them by Pakistan. The maintenance of peace and security in Kashmir is a precondition for the achievement of security and stability in the South Asian region. It is necessary to make use of a well-considered and timely strategy. Both Pakistan and Kashmir are obligated to keep up their battle until the United Nations Security Council (UNSC) intervenes to put an end to the war and the rest of the world acknowledges that it has been resolved but recent developments plight a differently.

Findings

- Kashmir Issue is often described as a territorial dispute between Pakistan and India, but in reality, it is a political issue, which calls for a political settlement.

- India's approach towards the Kashmir issue has been marked by a series of delaying tactics, since its inception. These tactics include taking the matter to the UN itself, inconsistent commitments to implement UNSC resolutions, variety of excuses to postpone dispute resolution efforts such as citing security concerns, insurgency, domestic politics etc. These maneuvers helped India in gaining time, maintaining its control over the disputed territory and keeping the issue in limbo.
- It is commonly perceived that the Kashmiris have never been recognized as the actual party, and the UN considers India and Pakistan as the main parties to the Kashmir dispute. Although Kashmiris are not a party to any Kashmir-related agreements so far between Pakistan and India, including the Lahore Declaration and the Shimla Agreement and the Kashmir dispute has never been directly discussed or negotiated with Kashmiris in any direct capacity, however, UNSCR 51 (1948), UNSCR 80 (1950), UNCIP Resolution 1948, UNCIP Resolution 1949 reaffirm that the final disposition of the Jammu and Kashmir dispute will be in accordance with the will of the people of Kashmir expressed through a free and impartial plebiscite.
- Ever since the incorporation of article 35A in the Indian constitution, RSS had reservations on Kashmir's special protection status. Neo-classical realism argues that the domestic attributes have a say in shaping foreign policy of a State, and the ideology of Hindutva has had a significant influence on the political discourse of RSS from the beginning. As RSS backed Modi regime came into power with required majority, and got favorable domestic conditions, it followed the Hindutva ideology vis-à-vis Kashmir.
- Indian government under BJP rule repealed the articles 370 and 35-A of the Indian constitution in violation of rulings of Indian courts, including the Supreme Court of India (SC). The SC's 2017 ruling in the State Bank of India Vs. Santosh Gupta case, which had declared that the article 370 had gained permanent status in the Indian constitution and could no longer be repealed,

ended the debate over it.⁹⁴ In deciding a petition for the repeal of the article 370 filed by Kumari Vijay Lakshmi Jha on April 4, 2018, a bench of the SC made up of Justices K Goel and R F Nariman upheld this stance.

- Pakistan missed out remarkable chances of progress on Kashmir case over the period. Pakistan failed to raise the Kashmir question at UNSC for 31 years i.e., from Nov 5, 1965 to Sep 15, 1996. At certain other important instances also, such as Pakistan's UNSC's rotating presidency in January 2013, Kashmir Issue was never raised, despite the fact that 16 meetings and 18 consultations were held during this tenure.
- Pakistan's foreign policy at times exhibits external pressures and corresponding limitations, which makes it inept to meet the challenges of the shifting world order. Pakistan's erratic management of relationships with its traditional allies and strategic neighbors, is a foremost illustration to this effect.
- Pakistan could not timely and effectively comprehend continuous alarms regarding the obvious Indian plans of abolition of Articles 370 and 35-A of Indian constitution. Debates about possible revocation were taking rounds right after the demise of BJP-PDP alliance in Jammu and Kashmir in June 2018. Pakistan's the then High Commissioner to India (2014-2017) highlighted the prospects of aforesaid revocation in Envoys Conference, Islamabad in 2017. Besides, the BJP Election Manifestos of 2009, 2014 & 2019, included clear promises to scrap Article 370 of the Indian Constitution.
- In response to India's unilateral move to revoke Kashmir's special status, the international community failed miserably to respond in a manner consistent with the spirit of relevant UN resolutions. Instead of opposing the revocation itself, major States primarily voiced concerns over grave human rights violation in the

⁹⁴ J. "State Bank of India vs Santosh Gupta And Anr. Etc", 16 December, 2016, (2017) ibclaw.in 57 SC

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erstwhile State followed by forceful annexation. This can be explained in the context of India's advantageous strategic, diplomatic, political, and economic outreach vis-a-vis Pakistan.

- Pakistan needs to improvise a comprehensive, well thought out and coherent plan of furthering Kashmir diplomacy while giving due consideration to the changing dynamics of the Kashmir conflict and emerging international political landscape. Because of domestic political turmoil and economic and security concerns, Pakistan has not been able to prioritize focus on Kashmir Issue in an eloquent manner. The long-standing goal of internationalizing the Kashmir case seems to have gone behind the curtain.

Recommendations:

- Pakistan's Kashmir policy needs to be revisited to further emphasize on the relevant UN resolutions, while effectively enhancing diplomatic engagement with international community. In addition to the UN, the role of various other multilateral frameworks can also be productive in this regard. India is investing its potential to keep away the attention of multilateral forums / international community from the Kashmir Issue. Formerly, India has been projecting Kashmir dispute as a bilateral issue and now, since the scrapping down of Kashmir's special status, it is propagating Kashmir as an integral part of its territory. Therefore, Pakistan needs to make strenuous efforts to highlight the Kashmir Issue both at regional and international forums.
- Through increased engagement with different States on bilateral level, Pakistan can garner better support on multilateral platforms for the amicable settlement of the Kashmir dispute. The aforesaid bilateral engagement / cooperation can help provide Islamabad with an advantageous position as compared to India, which is portraying Kashmir as a bilateral issue of South Asian regional politics.
- The role of great powers cannot be undermined in the context of Kashmir Issue because South Asian politics in general, and India-Pakistan politics in particular,

cannot remain isolated from their influence. An integration between South Asian regional politics and great power politics is an undeniable reality, on which the governments of India and Pakistan often have to rely upon. As such, the support of extra-regional powers can be very effective in improving Pakistan's placement in the great power politics. However, in order to enhance its ties with the great powers, Pakistan would need to think beyond the conventional patterns.

- Pakistan needs to continue capitalizing on the Kashmiri society which is divided across the LOC, and whose vast majority is ambitious to join Pakistan instead of India. However, Pakistan must ensure meaningful inclusion of Kashmiris at every stage, during the consultation and decision-making process in relation to future of Kashmir.
- The role of diaspora in keeping the Kashmir Issue alive among the international community is crucial. Engagement with the overseas community living across the globe would support Islamabad in sensitizing the world leaders regarding significance of the Kashmir Issue in international politics. The active role of the diaspora which always remained an ignored dimension of Islamabad's Kashmir policy, can also play a very significant role in projection of the Kashmir cause. The on-going political polarization in Pakistan is affecting the unity of Kashmiri diaspora to a great extent, which needs to be arrested on priority basis.
- Pakistan's foreign office should appoint a special envoy on Kashmir, whose duties should include rallying support on Kashmir through multiple means, including *inter alia*, launching in-depth discussions in domestic as well as international intellectual circles to emphasize the need for a workable solution of the Kashmir dispute. This envoy should actively involve and engage Kashmiris from both sides of the divide as well as diaspora, in all the activities and discussions with regards to an effective course of action for amicable solution of the Kashmir Issue.
- The AJK government should appoint a "Plebiscite Advisor" without further ado, as prescribed under Article 11 of the Azad Jammu and Kashmir Interim

Constitution of 1974, to advise the Pakistan government regarding plebiscite in the State of Jammu and Kashmir in terms of the UNCIP Resolutions as well as to establish a relationship with the UN and keep the UN interest in Kashmir alive.

- India is determined to alter the demographics of Kashmir. Therefore, Pakistan should prepare for the referendum that is supposed to take place at some point of time, which is stipulated as an inalienable right of the people of Jammu & Kashmir in various UNSC resolutions. The population of Gilgit-Baltistan, Azad Kashmir, Kashmiri immigrants living in Pakistan, and the Kashmiri diaspora living overseas should all be included in the data set. This database needs to be reliable and approved by relevant International organizations and bodies.⁹⁵
- Pakistan must strengthen the institutions responsible for formulating its policies. The dedication and skill of those chosen for the crucial roles shouldn't be compromised. Particularly in forums like the Kashmir Committee, individuals should be chosen after careful consideration. Suitable persons who are well conversant with the Kashmir conflict, UN laws, foreign policy considerations, and international affairs should be assigned this very important task. These designatories must be competent enough to effectively and diligently present Pakistan's stance on various fora / venues.

⁹⁵ Sardar Attique Ahmed Khan, Interview by author, 19 July 2023

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