

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS (ISSN 2582 - 6433)

VOLUME 2 ISSUE 6
(April 2022)

Email –

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Website – www.ijlra.com



IJLRA

INTERNATIONAL JOURNAL
FOR LEGAL RESEARCH & ANALYSIS

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ISSN

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THE AMNESIAS OF INTERNATIONAL LAW IN KASHMIR CONFLICT: PERSPECTIVES & NARRATIVES

By: Jeezan Riyaz

ABSTRACT

The overarching argument of this annotation is solution based and analytical. By providing valuable insights into the conundrum of justice dispensing system, this piece offers a holistic view of the right to self-determination reenter into the discussions about Kashmir and ultimately to have it restored as the cornerstone to peace. The essay will examine the recourses, if any; Kashmir has under both the international laws and the domestic laws.

This annotation provides a holistic view of the perspectives and narratives held by both Pakistan and India with respect to Kashmir in Part II. Part III deals with crisis constitutionalism by outlining the conflicted events in the past that has been the main rift between the two nuclear-armed states. Part IV deals with the inadequacy of current international law frameworks in responding to the unending stalemate, i.e. the Kashmir issue, and Part V concludes with some observations regarding resolving the Kashmir crisis, and stressing the important role that realization of the right to self determination and bilateral negotiations can play in achieving peace throughout the region.

I. Background context

India and Pakistan have been in a state of war since 1947 and almost after 73 odd years and 4 Indo – Pak wars, the problem is yet to be solved. The sole reason for the heightened tension between the two nuclear armed states have been Kashmir with respect to its status – quo. It can also be said that post partition, the legal claims put forth by both the countries have somewhat lead to an indefinite stalemate, and even after much deliberation it is almost impossible to reach a middle ground because of lack of consensus by both the countries, i.e. Indian & Pakistan.¹

¹ Michael Brecher, The Struggle for Kashmir, (New York 1953).

After World War II, it was certain that India was on a success road to achieve independence ending the years of oppressive British Raj, but what was not anticipated was the coming of the big divide between the two religious groups, i.e. Hindus and Muslims. The majority of the Indian National Congress led by Jawaharlal Nehru pitched in with the idea of a unified, secular and independent India but the same idea was opposed by the All India Muslim League led by Mohammad Ali Jinnah, fearing that the country would lead to Hindu supremacy and Muslims would be reduced to a minority status, and accordingly favored a “two nation theory”.² Therefore the Cabinet Mission plan of 1946 favoring “one nation theory” was abandoned and the road was left open for the partition of Independent India further into two nations, i.e. Dominion of India & Dominion of Pakistan.³ On August 15, 1947, the two nations were partitioned.

After Partition, the tussle between the two nations continued as India viewed Pakistan as an illegitimate nation, which was carved out of India, and Pakistan viewed India to be a main threat to its religious population, thereby aggravating the conflict.⁴ However after the British Paramountcy lapsed, the individual state rulers were free to decide the fate of their princely state⁵. Three (3) princely states refused to join either of the dominion, i.e. Junagarh, Hyderabad and Jammu & Kashmir.⁶ But the states were encouraged by the then viceroy Lord Mountbatten to join either of the dominion as the princely states were small in size, power and economic status, thereby would not be in a position to protect themselves in the event of any conflict or emergency and therefore needed support for its better functioning.⁷ Amongst the princely states, Kashmir held a strong position with its bordering areas closely knitted to china and Pakistan. Muslims were in majority catering for more than 70% of the Population of and was connected to the outer world through Indus river and Srinagar- Rawalpindi road, both of which further connected it to Pakistan.⁸ All these factors when looked at in tandem would make it obvious for Kashmir to accede to the Dominion of Pakistan. The ruler of Kashmir, Maharaja Hari Singh was a proud veteran of his power and fearing that with accession he might lose all his political supremacy at one go, decided against joining any of the Dominion. The Independence could not be long maintained as the princely state was under constant radar from Pakistan with threats and unrest.

² Douglas C. Makeig, War, No- War, and the India-Pakistan Negotiating Process, 60 PAC. AFF. 271, 278 (1987).

³ Damodar R. SarDesai, The Origins of Kashmir's International and Legal Status, in PERSPECTIVES ON KASHMIR: THE ROOTS OF CONFLICT IN SOUTH ASIA 81 (Raju G.C. Thomas, ed. 1992).

⁴ Sisir Gupta, Kashmir, A Study in Indo-Pakistan Relations, (Bombay 1966).

⁵ The Indian Independence, Act, 1947.

⁶ V. P. Menon, The Story of the Integration: of the Indian Princely States, (Calcutta 1956).

⁷ Alan Campbell Johnson, Mission with Mountbatten, (London 1951).

⁸ James Howley, Alive and Kicking: The Kashmir Dispute Forty Years Later, 9 DICK. J. INT'L L.88 (1991).

On October 22, 1947, the Pakistani tribesman attacked Kashmir in order to acquire it, therefore the ruler of Kashmir turned to the Dominion of India for help. Being a very pragmatic individual, Hari Singh made it clear that after the unrest is over, the security forces should leave the erstwhile state depending upon the will of the people and accordingly entered into an agreement, i.e. the instrument of accession on October 26, 1947. Lord Mountbatten accepted the terms and condition and sent across a personal letter addressed to the Maharaja stating:

“My Government has decided to accept the accession of Kashmir State to the Dominion of India. Consistently with their policy that, in the case of any State where the issue of accession has been the subject of dispute, the question of accession should be decided in accordance with the wishes of the people of the State. It is my Government's wish that as soon as law and order have been restored in Kashmir and its soil cleared of the invader, the question of the State's accession should be settled by a reference to the people”.⁹

If viewed holistically from an international law standpoint, the guarantees in the instrument of accession and the trust deficit that followed therein by not giving the people the right to self-determination has been a triggering factor for the Kashmir conflict.¹⁰

II. The Unending Misery: perspectives and narratives

After the Indian constitution came into force, J&K being a princely state was not under the complete control of the Dominion of India. Article 370 was the legal provision, introduced which assured Kashmir of its autonomous status. It meant that the state of J&K would have its own constitution, state flag, Criminal Code (i.e. Ranbir Penal Code) thereby limiting the authority of the Indian state whereas External affairs, Defence and Communications continue to remain the preserve of the Central government.¹¹ As a result, the state could frame its own rules related to ownership of property, permanent residency and fundamental rights. The provision further bars Indians from outside the state to purchase property or have permanent settlements in the state. In nutshell, Article 370 was considered to be a bridge that connected the state of J&K to India.¹²

Pursuant to the Presidential order 1954, the President has the power to decide which provisions of Indian Constitution could be applied to the state of J&K but the same has to be done after

⁹ Letter from Lord Mountbatten to Maharaja Hari Singh (Oct. 27, 1947), in CHRISTOPHER B. BIRDWOOD, *Two NATIONS AND KASHMIR* 207 (1956).

¹⁰ Nafisur Rahaman Sufi, *Kashmir's Bid for Freedom*, (Muzaffarabad 1956, Publication of Azad Jammu and Kashmir Government, 1956).

¹¹ JAMMU AND KASHMIR CONST. § 3. No amendments to this section are permitted under the constitution.

¹² INDIA CONST. art. 370.

taking the ‘concurrence’ & ‘consultation’ of the State government.

1. Pakistan’s perspective

A Constituent Assembly was convened and a state constitution was adopted in 1956. This Constitution reaffirmed the Maharaja's accession and provided that the state was an integral part of India. In addition, it confirmed that the state consisted of all territory under the sovereignty of the Maharaja on the date of the partition. By doing so, the Constitution claimed all territory occupied by Pakistan to be a part of the state.¹³ In the meanwhile, the Constituent Assembly was established and the National Conference was elected as the ruling party with Sheikh Abdullah as its Prime Minister. The manner of the setting up of constituent assembly was criticized by Pakistan and had taken the matter up with the UN Security council alleging that it was the strategy of India to ratify the previously held rules of accession of Kashmir to India and was trying to amend the position by legitimizing its control over Kashmir. That said, it would problematize the current dynamics of the possibility of right to self – determination.¹⁴ The UN Security Council further held that the action of the Assembly should in no way curb the freedom of the right to self – determination and the autonomous status of Kashmir. The ruling party also had certain recommendations for Kashmir’s future, i.e. independence with external affairs being jointly controlled and coordinated by the Indo – Pak forces.¹⁵ This connotation was not approved off by the Indian government and eventually lead to the arrest of Sheikh Abdullah.

In 1954 when Pakistan’s strong foreign relations evaporated, the Indian parliament by way of amendments started making inroads into the constitution and autonomous status of J&K. By the Presidential Order, 1950, certain subjects of union list were expanded to the state of J&K.¹⁶ Further by the Presidential Order, 1952, Sadar-i- Riyasat was replaced with the governor of the state¹⁷ and later by the Presidential order, 1954, Delhi agreement 1952 was incorporated into the state of J&K which meant that the Indian Citizenship was extended to all the residents of J&K, the Jurisdiction of the Supreme Court was extended to the state etc.¹⁸ This clearly shows how insecure the Dominion of India was to control the territory of Kashmir.

¹³ Meher Chand Mahajan., Accession of Kashmir to India: The Inside Story, (Sholapur 1950).

¹⁴ M. Zafrulla Khan, The Kashmir Dispute, (Karachi 1950).

¹⁵ Reeta Chowdhari Tremblay, Nation Identity and the Intervening Role of the State: A Study of the Secessionist Movement in Kashmir, 69 PAC. AFF. 471, 483 (1996).

¹⁶ Das Gupta, Jyoti Bhushan, (1968), Jammu & Kahmir, Springer, p. 187.

¹⁷ Das Gupta, Jyoti Bhushan, (1968), Jammu & Kahmir, Springer, p. 200.

¹⁸ Chowdhary, rekha, (2015), Jammu & Kahmir: Politics of Identity & Separatism, Routledge, p. 48.

2. India's Perspective

After Sheikh Abdullah's arrest, Jawaharlal Nehru was optimistic in holding talks with Pakistan regarding the future of Kashmir. Nehru's stance was not due to any external pressure or internal conflict, it was purely out of the belief that he didn't want to hold the people of Kashmir against their own wishes and therefore offered to hold talks with Pakistan regarding the Plebiscite of the people of Kashmir.¹⁹ However Pakistan did not want to solve the conflict because of its military leader Mohd. Ayub Khan's expansionist interests, as he wanted to facilitate his reign as the Muslim leader in the aftermath of the crumbling of the Muslim League.²⁰

In the meanwhile, Pakistan was committed to developing its foreign diplomatic ties, as America wanted the support of an ally in the Asian belt to fight the USSR and its policies. Normally it would have been India but owing to India's neutral stance in the cold war and its commitment to non-aligned movement, it was impossible to fetter with India's perspective on the same. On the other hand, Pakistan saw this as an opportunity to join hands with America to fight the USSR and accordingly entered into a mutual assistance pact with the U.S. in 1954.²¹ This led to US supplying arms to Pakistan to fight the Soviet – Afghan war. It would also mean that India was made aware of the development of Pakistan's intelligence agency and armed groups, which would further escalate the tension at the Line of Control. India strategically told Pakistan that any attempt to break away from the non-aligned movement would have serious repercussions far beyond the borders and would be a deterrent in the possibility of determining Kashmir's future.

III. Crisis Constitutionalism & International law

The significant source of tension in theory is the conflict between the right to self-determination and the principles of state sovereignty. The right to self-determination is defined in Common Article 1 of the ICCPR which states "all peoples have the right to self-determination". When both these principles are looked at in tandem, the situation becomes further confused when the people in question occupy a territory that is contested between two sovereign states, as is the case in Kashmir. Therefore the Conundrum of Kashmir issue has been a theatre of war for both the nuclear-armed states.

¹⁹ Gowher Rizvi, India, Pakistan, and the Kashmir Problem, 1947 - 1972, in Perspectives on Kashmir, supra note 4, at 58.

²⁰ Id. at 59.

²¹ This pact was reinforced by Pakistan's subsequent entry into the Central Treaty Organization (CENTO) and the South East Asian Treaty Organization (SEATO).

1) Right to Self – determination

It is the ability of the people to “determine their own political status and to freely pursue economic, social and cultural development”. The right to self-determination is the fundamental principle of International human rights law as it stems from people’s choice and will of governance.²² The principle of right to self-determination stipulates the right of every nation to be a sovereign territorial state and is commonly used to justify the aspirations of minority ethnic groups.²³ With respect to Kashmir, self-determination opens up various options i.e. to either accept India or Pakistan or chose to remain independent, hence the conflicted nature of the territory. India has always kept the issue of Kashmir away from the International communities by stating that it’s their personal matter, to be solved internally. While at the same time Pakistan has always stressed upon determining the future of Kashmir in accordance with the Instrument of Accession which was duly approved by the then Viceroy.²⁴

On 01 January 1948, India took the matter of Pakistan’s involvement in Kashmir before the U.N. Security council alleging them of their role in helping the Pakistani tribesman carry out attacks in Kashmir by providing them with ammunition, support and avenues. India took recourse to article 35 of the UN charter by stating that international peace cannot be compromised for personal benefits.²⁵ However, at the same time, Pakistan denied all such allegation and stated that India has been responsible for the killing of Muslims in Kashmir, waging war against Pakistan and therefore requested the Security Council to order India to cease fire, ensure withdrawal of outside forces and hold a plebiscite to determine the future of Kashmir.²⁶

Considering the claims put forth by both the state actors, and bearing in mind the international legal obligations, U.N. Security Council by way of a resolution, established the United Nations Commission on India and Pakistan (UNCIP) to uncover the desirous struggles for right to self determination by adopting a three-part resolution:

²² Chen, Self-Determination as a Human Right, in TOWARD WORLD ORDER AND HUMAN DIGNITY 198 (W.M. Reisman & B. Weston eds. 1976);

²³ Article 1(2), 1 UNTS, 1945.

²⁴ Josef Korbel, The Kashmir Dispute and the United Nations, 3 INT’L ORG. 278.

²⁵ Letter from the Representative of India to the President of the Security Council (Jan 1, 1948), U.N. Doc. S/628 (1948). In its complaint, India indicated that it would resolve the accession issue once conditions in Kashmir allowed.

²⁶ Letter from the Minister of Foreign Affairs of Pakistan to the Secretary General (Jan. 15, 1948), U.N. Doc. S/646/Corr. 1 (1948).

- Part I called for an immediate ceasefire between the armed forces of the two countries.²⁷
- Part II ordered Pakistan to withdraw its troops from the Pakistan Occupied Kashmir and at the same time ordered India to delegitimize its troop movement in the state of Jammu & Kashmir. The main aim was to restore peace in the territory and pave way for an effective settlement of the dispute through Plebiscite, as it's the right held by the people and not by the governments.
- Part III was the final nail in the coffin, which talked about the right to self – determination of people by a vote of its population (Plebiscite), as it lies at the heart of the Public International law.²⁸

2) The Tashkent Declaration

With the main aim of infiltrating terrorists in the territory of Kashmir, Pakistan launched operation 'Gibraltar'. It was a well thought about move to fight the Indian occupation and make them drain economically and socially. With unrest and chaos being the hallmark of Pakistan's strategy to rechristen a new terror plot, India retaliated and the two countries went on a war in the year 1965. Too much bloodbath, chaos, loss of lives and uncertainty along the cease-fire line was enough to attract a foreign deliberation to adjudicate the dispute and aim at fostering peace in the region. In the meanwhile, for the first time Soviet Union (present day Uzbekistan) made both the countries sign the declaration, i.e. "The Tashkent Declaration" to end the war with the main agenda of instilling peace, cooperation and strong bilateral ties between the two countries.²⁹ However the Security Council did try its best to end the 1965 war with the help of Soviet Union³⁰, but the possibility of a Plebiscite was not discussed and a more nuanced approach was undertaken to restore peace.³¹ Eventually both the parties signed the declaration on 10th January 1966 to end the Indo – Pak war of 1965. The main aim of this declaration was to put both the countries in the pre- 1965 war position and encourage the possibility of a ceasefire agreement, duly accepted by both the parties³².

In a similar vein, it can be argued that the international law failed miserably by undermining the importance of holding sanctions against both the countries for violation of the peace pact. The failure to do the same is the reason why both the countries ended the peace pact and resorted to

²⁷ Resolution for a Cease-Fire Order and Truce Agreement Adopted by the United Nations Commission on Indian and Pakistan, U.N. SCOR, 3d Sess., at 3, U.N. Doc. S/995 (1948).

²⁸ Id. at 5.

²⁹ M.S. Rajan, The Tashkent Declaration: Retrospect & Prospect, 01st Jan, 1966.

³⁰ S.C. Res. 210, U.N. SCOR, 20th Sess., 1238th Mtg., U.N. Doc. S/6662 (1965).

³¹ S.C. Res. 211, U.N. SCOR, 20th Sess., 1242nd Mtg., U.N. Doc. S/6694 (1965).

³² Bratersky, Alexander (12 January 2016), At Tashkent, Soviet peace over India and Paksitan, *Russia Beyond website*. Retrieved 24 July 2020.

violence by exchanging heavy fire and mortal shells along the cease-fire line ending the Tashkent declaration. This reflects most perfectly ‘the law’s self-image as a guarantor of peace, human rights and democracy’.

3) The Simla Agreement

The war started when Pakistan launched an attack on Indian airbases, and to counter the same, all the Indian forces fought in unison for the first time. Soon war broke out in 1971, with India being in a dominant position, ended up entering the East Pakistan on the grounds of humanitarian intervention. The war only lasted for a couple of weeks as the Pakistani army signed the instrument of surrender, which finally resulted in the liberation of East Pakistan, (present day Bangladesh). The “Indian Army brought Pakistani army to its knees, took 93,000 Pakistani prisoners and gave 75 million people of Bangladesh their independence”.

Therefore the President of Pakistan and the Prime Minister of India met in the capital city of Himachal Pradesh, i.e. Shimla, and signed the Simla agreement³³, stressing upon some important issues:

- i. Both India and Pakistan should put an end to the war and come with a free mind on the negotiating table. Kashmir, which for obvious reasons continues to remain the roadblock for good relations between the countries, should be solved through deliberations no matter what.³⁴
- ii. On 17th December 1971, the United Nations converted the cease-fire line as the Line of Control (LOC) from which no derogation was permissible.³⁵
- iii. Lastly strict adherence should be given to the charter of United Nations, as it shall govern the relations between the two countries.³⁶

Article 103 of the UN Charter, provides for the need to respect the charter obligations and accordingly the presence of United Nations Military Observers Group in India and Pakistan (UNMOGIP) at the Line of Control in Kashmir is a clear evidence of the UN’s attempted involvement in the Kashmir issue. However India stressed upon the non- involvement of any third party even the United Nations with respect to its internal matters, on the top of which lies the Kashmir issue. Subsequently, the two groups initiated numerous attempts at truce but to no

³³ A leaf from history : Simla Agreement, at last. *Dawn (newspaper)*. 23 September 2012.

³⁴ Simla Agreement, supra note 83, at art. VI.

³⁵ Agreement between the Government of India and the Government of the Islamic Republic of Pakistan on Bilateral Relations (Simla Agreement), United Nations Peacemaker.

³⁶ Article 103, 1 UNTS, 1945.

avail. It was believed that no agreement at any given point of time, could pin both the countries down to good future behavior and neighborliness.

4) 1990 Surge of Militancy and The Lahore Declaration

Three Indo-Pak wars, numerous legal declarations and loss of lives on both sides, the only possible interpretation was that the international communities were back to square one. With envy, hatred and failure at the hands of the Indian armed forces, the then Army General Zia-ul-haq would not have settled for anything less and accordingly aimed at retribution. To assume power, Zia-ul-haq ran a cold war military intelligence programme, 'Operation fair play', which tied Zulfikar Ali Bhutto in a military coup with the approval of the Supreme Court of Pakistan. Zia, being this rational intelligent man, quick to think on his feet, devised the doctrine to "bleed India with a thousand cuts". This doctrine was aimed at infiltrating the trained terrorists into the territory of Kashmir, to make India drain economically, strategically and psychologically for years to come. The biggest weapon of Zia was the people of Kashmir and the anti-India sentiment that would run in their minds.

In 1990s when the militancy was at its peak, as alleged by some political fractions, the then governor of J&K, Jagmohan saw it as a perfect opportunity to go for the ethnic cleansing of the Kashmiri Muslims, ordering the Kashmiri Pandits (the minority population of Kashmir) to migrate from the valley, thereby giving it a communal colour. What followed thereafter was a no brainer as people were mercilessly killed; vandalism and bloodbath crippled the entire valley.³⁷ The exodus of Kashmiri Pandits was seen as a strategy to make Hindu's flee their homeland on the lines of religious turbulence.

In the aftermath of the exodus of the Pandits and the surge of militancy, an MoU was signed by both the countries to end this guerilla warfare and restore themselves to the same position as was agreed in the Simla agreement. The declaration signed was known as Lahore Declaration, which further ensured a shared responsibility on both the countries to neither intentionally nor unintentionally use nuclear power in any manner against each other, as it will have consequences far beyond the border.³⁸³⁹

5) International Law on the use of Pellet Guns in Kashmir

In 2016, the security forces had gunned down the commander of the terror outfit Hizbul

³⁷ Shamshad Ahmad, "Reversing the tide of history: Kashmir policy - an overview-II" The Dawn. August 6, 2004.

³⁸ Thomas P. Thornton, "A Long Way to Lahore: India and Pakistan Negotiate" in Craig Baxter, Charles H. Kennedy, (eds), Pakistan 2000, (Karachi: Oxford University Press, 2001), P.67.

³⁹ Lahore Declaration February, 1999 A Major Initiative for Peace in South Asia Amjad Abbas Maggsi.

Mujahideen that led to widespread protests in the entire valley. Pellet guns were used as a crowd dispersing strategy which mercilessly blinded the entire population including school going children, old – age people, etc. The mortar fired hundreds of pellets at one go without taking any safety measures. Not only this, the after effects of pellet guns have been very scary as people suffered from acute psychological morbidity thereafter.⁴⁰ The issue of protection of individuals against the use of lethal pellets has remained an insufficiently explored area of international law, even though the UN basic principle on the use of force and firearms is central to this discourse.⁴¹ Therefore the victims were forced to let go off simple pleasures, and prepare for difficult futures; as it is the human cost of government's highhanded crackdown on the civilian population.⁴²

The UN human rights committee which monitors compliance with the International Covenant on Civil & Political Rights, in General Comment no. 37 clearly specified that firearms or unwarranted weapons which are prima facie lethal, should not be used as a means to control the crowd.⁴³ Not only this Articles 4 and 7 of the ICCPR explicitly bans torture,⁴⁴ even in times of national emergency or when the security of the country is threatened.⁴⁵ The office of the United Nations High Commissioner for Human Rights (OHCHR) said that firing of metal pellets is the most lethal means of dispersing a crowd and needs to end with immediate effect. It violates the provisions of ICCPR and other human rights law and has to be ended.⁴⁶ Till now, the law enforcement agencies have not stopped using pellets and it's like telling the people of Kashmir that you have lost your eyesight, assume you never had one.

6) International Law on the Abrogation of Article 370

On 5th August 2020, the Union govt. unilaterally scrapped off the special status of J&K by abrogating article 370.⁴⁷ Home minister Amit Shah announced the Presidential order abrogating Article 370 at a time when there was no Legislative Assembly functioning in Jammu and Kashmir which is completely illegal and immoral as there was no concurrence and consultation of the state government thereby making the move completely undemocratic. The state is under

⁴⁰ Office of the United Nations High Commissioner for Human Rights, Update of the Situation of Human Rights in Indian-Administered Kashmir and Pakistan-Administered Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan.

⁴¹ Section 11(c), Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

⁴² LOSING SIGHT IN KASHMIR – THE IMPACT OF PELLET-FIRING SHOTGUNS, Amnesty International, INDIA.

⁴³ ICCPR/C/GC/37, General comment no. 37 of 2020. Human Rights Committee.

⁴⁴ International Covenant on Civil and Political Rights, 19 December 1966, 999 UNTS 171, Article 4, No 47, [ICCPR].

⁴⁵ International Covenant on Civil and Political Rights, 19 December 1966, 999 UNTS 171, Article 7, No 47, [ICCPR].

⁴⁶ India : Stop using Pellet – firing shot guns in Kashmir, Human Rights Watch, Sep 4, 2020.

⁴⁷ Id at 10.

the President's rule from December 2018 and governor holds the position of the senior most figure in the Indian politics but is not equivalent to that of the state legislative assembly. This leads to a series of questions as to how the government can take the permission of the governor and equate it to the stature of the state legislative assembly.

The United Nations Security council has adopted a muted response on the Kashmir issue and its not unfair to say that the International Law has done nothing to the decades long privilege of the Kashmiri's, that were immorally scrapped off. Further UNSC didn't even call for a joint format meeting or issued a statement, it's only when China pushed it that it convened a close door informal private meeting of 15 members.⁴⁸ The stance of the International community was proactive rather than reactive and it explains the entire fiasco from a vantage point.

IV. Failure of international law & Lack of Bilateral Negotiations: the main reason for Kashmir conflict

United Nations always viewed Kashmir conflict to be India's internal matter to be solved through peaceful deliberation and bilateral negotiations between the two countries. Political propaganda further aggravated the situation as this dispute got worsens with time and party politics played a role of an antagonist in the main conflict. Such arguments rarely rely on firmly grounded international laws. Granted, the line between law and politics is often blurred in this context, but where clear international law exists, it should not be ignored. Competing passions frequently fail to appreciate the difference between binding or "hard" international law,⁴⁹ non-binding or "soft" international law,⁵⁰ and non – legal” arguments.

When a law is established for a particular cause, non – compliance with the same attracts sanctions, which in a way helps in stronger implementation of those laws but that concept didn't exist with respect to the Kashmir conflict. Self – determination according to the current state of affairs is a legal norm of international law from which prima facie derogation is not permissible.⁵¹ With respect to self – determination, the doctrine of inter – temporal law is normlly applied, which states that the situation in question has to be solved and analyzed as per the international law covenants that existed at the point of time when the dispute arose.⁵² Therefore the issue of self – determination is to be looked from the 1947 proposition of international law as to what provisions would apply and what was the force of law at that time.

⁴⁸ John Cherian, International reaction to abrogation of Article 370: Muted response, FRONTLINE, Sep 27, 2019.

⁴⁹ IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 1-31 (4th ed. 1990).

⁵⁰ Id at 49, supra note 97, at 1 I-15.

⁵¹ JOSHUA CASTELLINO, INTERNATIONAL LAW AND SELF-DETERMINATION 149 (2000).

⁵² BROWNLIE, supra note 97, at 129 (discussing application of the doctrine of inter temporal law).

International law failed to honor its commitments and a classic example for that would be not implementing the Belfast model or agreement in the Kashmir issue. Belfast agreement highlighted the role of international law and treaty laws by putting in place an institutional framework that would help in achieving peace and stability.

V. Conclusion

This note aims to highlight the rechristened model that can be the basis of effective safeguards against the unending conundrum of the Kashmir issue. Although the current paradox can be assessed as per the conflict theory where different factors are looked at in tandem. In Kashmir, the Centre of conflict is the people of Kashmir and an abstract Centre of conflict is the people's cry for self-determination or independence. Therefore holding the entire population against their own wishes highlights the failure of the international legal frameworks and non-fulfillment of the conventions that are quintessential to establish a constitutive view of the right to self-determination. Even though, none of the parameters are conclusive in its own understanding of solving the issue but a more nuanced approach which is reactive and made participatory by the international communities can go a long way in fighting this unending stalemate.