



KASHMIR

THE DISPUTED TERRITORY

CSSPR COUNTRY STUDY SERIES



**THE
UNIVERSITY OF
LAHORE**



PAKISTAN POLITICAL

Scale 1: 3,000,000
Kilometers 0 25 50 75 100 125 150 175 Kilometers



INDIAN ILLEGALLY OCCUPIED JAMMU & KASHMIR
(DISPUTED TERRITORY - FINAL STATUS TO BE DECIDED
IN LINE WITH RELEVANT UNSC RESOLUTIONS)

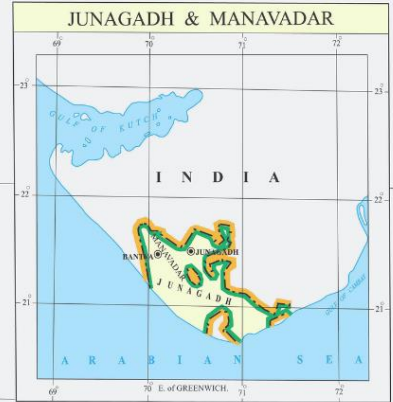
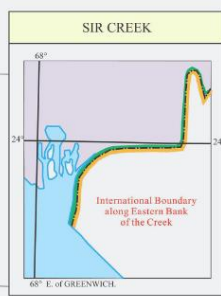
The red dotted line represents approximately the line of control in Jammu & Kashmir. The state of Jammu & Kashmir and its accession is yet to be decided through a plebiscite under the relevant United Nations Security Council Resolutions.

Actual boundary in the area where remark FRONTIER UNDEFINED appears, would ultimately be decided by the sovereign authorities concerned after the final settlement of the Jammu & Kashmir dispute.

*A.S.C stands for Azad Jammu & Kashmir as defined in the A.J.K. Interim Constitution Act, 1974.

LEGEND	
Capital of Country	ISLAMABAD
Headquarters, Province	PESHAWAR
Boundary, International	(Thick green line)
Boundary, Province	(Thin green line)
Boundary, Working	(Dashed line)
Line of Control	(Red dotted line)
River	(Blue line)

GOVERNMENT OF PAKISTAN
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Contents

Disputed Territory - Kashmir	5
Geographic Contours	5
1. Terrain.....	5
2. Climate.....	6
Historical Perception	6
Society	15
1. Demography.....	15
2. Ethnic Groups	15
3. Languages	15
4. Social Structure.....	16
5. Religion	16
6. Education	16
7. Health Care	17
8. Sports.....	18
Government.....	18
1. Constitution	18
2. Government Structure	19
3. Political Parties.....	20
Economy	20
1. Agriculture.....	20
2. Industry and Service Sector	21
3. Human Resource Management	21
4. Communication Infrastructure	22
Defense & Security.....	22
1. Law and Order	22
2. Security	23
External Environment & Geopolitics	24
1. Kashmiri Freedom Struggle.....	24

2.	A Bilateral Matter or an International Humanitarian Crisis?	25
3.	Revision of Special Status and Implications	25
4.	Indian and Pakistani Perceptions of Kashmir	26
	International Humanitarian Law Violations	26
1.	Indiscriminate Use of Force.....	28
2.	Use of Torture	28
3.	Use of Rape as a Weapon of War	28
4.	Impunity for Perpetrators	29
5.	Chronology of Indian War Crimes	30
	UN Reports on Human Rights Violations in J&K	34
	The Tale of Heaven and Hell in Kashmir: AJK vs. IIOJK	35
	Endnotes	36

Disputed Territory – Kashmir

Kashmir is a disputed territory located in South Asia. The greater Kashmir region borders the Pakistani provinces of Khyber Pakhtunkhwa and Punjab to the west, the Wakhan Corridor of Afghanistan to the north, the Chinese administered Aksai Chin, the Chinese Autonomous regions of Xinjiang and Tibet in the east, and the Indian state of Himachal Pradesh to the south.

Geographic Contours

1. Terrain

Jammu and Kashmir is divided into four zones. First, the mountainous and semi-mountainous plain known as the Kandi belt, second, the hills including Siwalik ranges, third, the mountains of the Kashmir valley, Pir Panjal range, and the fourth is the Tibetan tract of Ladakh and Kargil. It is predominantly a mountainous region with deep and narrow valleys and high barren plateaus within and around its circumference. Kashmir is sparsely wooded and irregular in its terrain configuration. As for demography, Kashmir is divided into three distinct parts, with each having its own distinct and peculiar characteristics.

Its lower portion comprises temperate territory with Oak forests, Deodar and Pines drained by deep gorges of Chenab River. The Pir Panjal Range holds the main Kashmir Valley drained by the Jhelum River. The upper part is an offshoot of the Himalayas consisting of Astor, Baltistan, and Ladakh drained by the Indus River. Extending north-westward are the lofty peaks of the Karakoram Range, including K2, the second highest peak in the world after Mount Everest. The total area of Kashmir is approximately 222,236 Km².¹ Chenab, Tawi, Jhelum, and Indus are the main rivers running through the region. The valley has an average height of 1850 meters, Pir Panjal surrounding stands at average 3000m and it increases disproportionately along Himalayas and Karakoram Ranges.²

Sturdy mountaineers of numerous tribes wring from nature a simple livelihood in the Indus regions amid the glaciers and gorges of Gilgit, the Karakoram giants of Baltistan and the arid uplands and plateaus of Ladakh. The Kashmir Valley, also known as the *Vale of Kashmir*, is an intermontane valley in the portion of the Kashmir region bounded on the southwest by the Pir Panjal Range and on the northeast by the main Himalayas range.

Administered by Pakistan, Azad Jammu and Kashmir (AJ&K) is a part of the Kashmir region liberated in 1947 by local, pro-Pakistan Muslim groups, and their militias and paramilitary troops (scouts), with localised tactical and logistic support from the Pakistan army. Since its establishment, it has its own government in place for day-to-day administration. It borders the

Pakistani provinces of Punjab and Khyber-Pakhtunkhwa to the south and west, respectively, Gilgit-Baltistan to its north and the Indian Illegally Occupied Jammu and Kashmir (IIOJK) to the east. It is about 400 kilometres in length and 16 to 60 kilometres in width.³

2. Climate

The climate of the region ranges from subtropical in the south-western lowlands to colder temperatures throughout the mountainous areas. Variable degrees of precipitation prevails in the region. Rainfall is heavier in the south-western region where monsoon winds cross it to roll into heavy rains, but continental conditions prevail in its north-eastern areas. It can generally be described as cool in the spring and autumn, mild in summer and cold in the winter. The Kashmir Valley, which is under the illegal occupation of India, remains quite pleasant with temperature varying from 14 to 30 degrees Celsius.⁴

The southern part of Azad Kashmir including Bhimber, Mirpur, and Kotli districts, has extremely hot weather in summers and moderate and cold weather in winters. It receives rains mostly in monsoon.

Historical Perception

Kashmir traces its history from the Mauryan Emperor, Ashoka, who introduced Buddhism in the region. From the 9th to the 12th century, the region achieved considerable prominence as a centre of Hindu culture until 1346, when it came under the Muslim rule.⁵ The Muslim rule lasted for about five centuries when Kashmir was annexed by the Sikh Kingdom of Punjab in 1819 and then to Dogra Kingdom of Jammu in 1846.⁶ Raja Gulab Singh and his dynasty then ruled it till the partition of the Subcontinent in 1947. The British established their paramountcy over Gulab Singh via the 1846 Treaty of Amritsar in which he unequivocally acknowledged 'the supremacy of the British Government'.⁷ In return, the British sold him an inalienable title to hereditary and other land that comprised Gulab Singh's existing domain as Raja of Jammu, land in Ladakh, Kashmir Valley and land located in what was later called Jammu and Kashmir's Frontier Districts Province. In lieu of his 'territorial windfall', Gulab Singh paid the British 7.5 million rupees.⁸ Following some territorial adjustments soon after, the second Maharaja Ranbir Singh finally and fully incorporated the northern Gilgit area of the frontier districts into Jammu and Kashmir in the late 1870s. The modern entity known as Jammu and Kashmir had fully emerged.

From a strategic point of view and in the context of the security of British India, the location of the Kashmir Valley was immensely important. This is primarily because it was viewed as an entrenched camp situated on the flank of any force attempting the invasion of the empire from the west, when it lay directly on the road of an enemy advancing by the routes from Badakshan, Kashgar, and Yarkand.

Under the stipulations of the India Independence Act 1947 and the 3 June Plan, the princely states in British India had the choice to remain independent or accede to one of the two dominions of Pakistan or India. Since the basis of partition was along religious lines i.e. Muslim or non-Muslim, it was declared that the accession of any princely state would be unacceptable where the ruler professed a different religion than those of his subjects. In such a scenario, the people of the said state could be asked to decide their future.

Maharaja Hari Singh did not accede to either Pakistan or India by August 15 and chose to remain independent. The Maharaja signed a 'Standstill Agreement' with the Pakistani government that transferred the responsibility of administering the telegraph, railway, and postal services from Indian authorities to Pakistan. No such Agreement was concluded between the State of Kashmir and the Dominion of India.

By the third week of October 1947, Hari Singh fled Jammu and Kashmir on account of 'independent Pashtoon forces' creating disturbances in the region. The first Indo-Pakistani war started in 1947 when apprehensions about the Maharaja's accession to India spread in the state region. However, contrary to Indian claims, even before tribesmen entered the fray, pro-Pakistan Muslims in south-western Kashmir had instigated the Kashmir dispute. In this regard, the Poonch Rebellion stands out. On October 24, 1947, the provisional government of Azad Kashmir was established.⁹ Later, tribal Islamic lashkars, local militias, and irregular Pakistani forces moved in the Kashmir region and headed for Srinagar (capital), but on reaching Barmulla, a town in the near vicinity of Srinagar, the tribal lashkars got involved in localized infighting in various towns occupied by them.

Instead of maintaining the momentum of their advance which would have given no respite and chance to state forces to regroup and reinforce, the whole operation got stalled and ended up in besieging various captured towns.

An 'Instrument of Accession' to the dominion of India is purported to have been signed by the fleeing Maharaja on 26th October 1947. Lord Mountbatten in his letter of acceptance to the accession of Jammu and Kashmir said that in the case of any state where the issue of accession is under dispute, the accession was to be "*decided in accordance with the wishes of the people of the State*" and "*settled by a reference to the people*" after law and order had been restored.¹⁰

In response to the Maharaja's supposed appeal for military aid, troops of the Indian Army were sent to Kashmir "*to defend his territory and to protect the lives, property and honor of his people*".¹¹ Under this cover, the Indian troops were immediately airlifted to Srinagar because the available railhead was located considerably far off from Srinagar. All available Dakotas (30 in number) were requisitioned to move a sizable Indian force to Srinagar.¹² Small-scale military operations, including ambushes, raids, attacks, and counter-attacks continued.

What ensued was an armed conflict between India and Pakistan. The Indian cabinet raised the issue of Kashmir with the United Nations Security Council (UNSC), with Pakistan raising its concerns at the very forum soon after. The UNSC adopted Resolutions 38 and 39, on January 17 and January 20, 1948, respectively. UNSCR 39 established the United Nations Commission on India and Pakistan (UNCIP) to investigate the allegations made by both states.¹³ Subsequently, Resolution 47, adopted on April 21, 1948, advised the governments of India and Pakistan to withdraw troops and tribesmen. The resolution further recommended that an interim government, which represents the major Kashmiri political groups, be established, and a five-member UNCIP be sent to Kashmir to help restore law and order and arrange a fair plebiscite of the Kashmiri people.¹⁴ UNSCR 47 puts greater responsibility on India to take necessary steps for holding a plebiscite in Jammu and Kashmir. As per the resolution, among other things, the Government of India is required to form a Plebiscite Administration that will help hold a decisive plebiscite to determine the future of the disputed region.

The demilitarization of Kashmir never took place. Islamabad feared that New Delhi would not exercise restraint as it had previously annexed the princely states of Junagadh and Hyderabad, with Junagadh having formally acceded to Pakistan during the partition of 1947. Pakistan asserted that any withdrawal from Kashmir should be simultaneous, something that UNSCR 80 also alludes to. The Indian government, however, maintained that Pakistan should withdraw first and only then would Indian troops withdraw.

Localized warfare continued during 1948 and ended, with the intervention of the United Nations, by dividing the territory. Azad Jammu and Kashmir, where a provisional government was established in 1947, along with the Federally Administered Northern Areas (now Gilgit-Baltistan) came under the control of Pakistan, and the rest remained under Indian occupation. A Ceasefire Line (converted into the Line of Control in 1972) divided Azad Jammu and Kashmir (AJK) and Indian Illegally Occupied Jammu and Kashmir (IIOJK). Resisting the region's accession to India, the people of Gilgit removed the Dogra Governor and swore allegiance to Pakistan, on November 1, 1947. Gilgit-Baltistan is a much larger area than Azad Kashmir and has been given the provisional status of a province pending the final resolution of the Kashmir dispute.

AJK comprises an area of 13,297 sq.km with 10 administrative districts and a population of 4.361 million.¹⁵ It is separated from IIOJK by the Line of Control (LoC), which has served as the de facto border between Indian and Pakistani controlled parts of Kashmir. It has a parliamentary form of government with its capital in Muzaffarabad. It has its own judicial system with its own High Court and Supreme Court, but is not represented in the parliament of Pakistan.

The wider Kashmir region has seen, and has been a source of, wars and skirmishes, involving India, China, and Pakistan. With Beijing, New Delhi, and Islamabad laying claims to Kashmir,

the area will increasingly witness the security-trilemma take shape. Right from the 1962 border war, to Indo-Pak wars and crises, Kashmir has been an important theatre for the three countries. Other diplomatic and political initiatives have also affected Kashmir.

Sino-Indian Conflict of 1962

Also known as the Indo-China war, it was fought between China and India in 1962 over the disputed Himalayan border between both countries. Counter claims of China and India on Aksai Chin and Arunachal Pradesh, respectively, became the main cause of hostilities. Both countries are sharing the longest and most treacherous border over an area of 4,056 kilometers.¹⁶ This poorly-demarcated border lies on a very difficult terrain with harsh weather conditions and sparse population around. It is virtually an uninhabited wasteland in the larger region of Kashmir and Tibet. From 1959 onwards, hectic efforts were undertaken to settle the border issues, but India's forward-defense policy became the precursor to the 1962 Sino-Indo war. After trying hard to deal with the border issue through diplomatic efforts, China advanced in Ladakh and across the McMahon line in the North-East Frontier Agency (NEFA). China, in a swift battle, captured Aksai Chin and an important town of Chushul across the Karakoram. Indian forces were annihilated by the People's Liberation Army (PLA), and India suffered a humiliating defeat which continues to cast a long shadow on its relations with China.

Indo-Pak War 1965

Kashmir has been a vital plank and a constant factor in Pakistan's foreign policy. It is one of Pakistan's vital interests. Across governments, the Kashmir issue has remained a priority for Pakistan. Its efforts have geared towards extending legal, political, and moral support to the people of Kashmir fighting for their right to self-determination, which the United Nations has promised to give them. By virtue of being in possession of the larger chunk of Kashmir, India decided to undertake systematic measures almost immediately after the occupation to legalize the annexation of Kashmir. This was achieved by India through a long politico-diplomatic process. In the UN, it enlisted Russian support, which consistently vetoed every move Pakistan made in the very forum. Thus, by the mid-1960s, India had almost succeeded in removing the Kashmir problem from the world stage. In Pakistan, the decision to 'de-freeze' the Kashmir issue was taken in 1964, only after the talks between both the countries failed to bring about any worthwhile results.

It was only after the failure of the FM-level talks that Pakistan began to consider employing the military instrument to resolve the Kashmir issue. A guerrilla operation was undertaken to instigate a local insurgency in IIOJK. After India retaliated to Pakistan's 'Operation Gibraltar', Operation 'Grand Slam' was launched in May 1965, change from covert operation to an all-out offensive, which also involved Indian aggression across the International Border. Pakistan tried to confine the operation to the territory of Kashmir in the hope of keeping the conflict limited, but lost initiative in the process and made itself vulnerable to Indian forays in Punjab. The war is regarded as a watershed moment in the military history of the Subcontinent. It lasted for 17

days (6th Sept to 23rd Sept, 1965) and witnessed the largest engagement of armoured vehicles and largest tank battle since World War II.¹⁷ The efforts to resolve the issue of Kashmir led to a full-fledged military conflict and the outcome of the war was a stalemate. The 1965 war is remembered due to the valour of Pakistan's armed forces that they displayed to defend cities like Lahore and Sialkot.

Negotiations in Tashkent concluded in January 1966 when both sides withdrew their armies from the frontlines. Though the Tashkent agreement achieved its short term goals, tensions in South Asia reignited in the form of 1971 Indo-Pak war.

1971 Indo-Pak War and Simla Agreement of 1972

The political crisis after the 1970 general election in East and West Pakistan with its related offshoots became the main reason for tensions, which culminated in the 1971 Indo-Pakistan War. This gave birth to the civil war which spread over nine months commencing in March 1971 and ending with the fall of Dhaka in December 1971.

The Indians made the best use of a situation they helped create. They were instrumental in training and supporting the Mukti Bahini, organizing the command structure of revolted east Bengal regiments and other armed Bengali establishments and, above all, in taking over the role of saviors of East Bengal for the impending, final bout. On November 21, 1971, India moved into East Pakistan with a mighty military onslaught, making its way to Dhaka by December 16, 1971. Meanwhile, Pakistan retaliated on December 3, 1971 on the western front, but no worthwhile results were witnessed. This ended in the dismemberment of Pakistan, making way for the formation of Bangladesh, and led to the 1972 Simla Agreement between Pakistan and India on July 3, 1972 at Simla, the capital city of Himachal Pradesh in India. At stake were 5,139 square miles of Pakistan's territory captured by India during the conflict, and over 90,000 prisoners of war held in Indian PoW camps.¹⁸ India was ready to return them in exchange for a "durable solution" to the Kashmir issue. It was agreed to take steps for the normalization of mutual relations and also lay down the principles that would govern their future relations. Zulfikar Ali Bhutto, the President of Pakistan, and Indian Prime Minister Indira Gandhi agreed to settle their states' differences peacefully through bilateral negotiations. Kashmir, being a bilateral issue as per India's stand, was to be settled bilaterally. The Ceasefire Line was converted into the Line of Control (LoC), and it was decided that it will not be altered unilaterally, irrespective of mutual differences and legal interpretations.

Indian and Pakistani forces were to retreat to their sides of the International Border. Trade, travel facilities, and air links were to be re-established and hostile propaganda be prevented by both sides. National unity, territorial integrity, protocol independence, and sovereign equality of each other would be respected. Basically, it was a peace agreement, seeking to reverse the consequences of the 1971 war, and facilitate withdrawal of troops and release of the prisoners

of war. This agreement, however, did not prevent the relationship between the two countries from deteriorating.

Siachen Glacier Issue

The Siachen glacier is a glacier located in the eastern Karakoram in the Himalayas just northeast of Point NJ9842 where the LoC between India and Pakistan ends. It is a 76 kilometer-long glacier lying at an altitude of 5753 meters.¹⁹ Both India and Pakistan lay territorial claims over it. Pakistan draws the strength of its claim from the United States and Pakistani maps that consistently indicate it as a Pakistani territory but India takes it as a cartographic error and in violation of the Simla Agreement.

In 1984, India launched Operation 'Meghdoot' and took over control of the entire glacier including its tributaries and since then it is controlling all its dominating heights. Harsh weather is a bigger source of human casualties than combat-related incidents. Prior to 1984, neither country had any military presence in the area. It is the highest battleground on earth where both countries are fighting intermittently since the start of the dispute in 1984.

India had long wanted Pakistan to consider the current LoC as the International Border. A proposal to declare Siachen region as a 'peace park' to preserve its ecosystem is still not making any headway due to India's hegemonic designs. India basically wants to maintain its control to monitor the activities of Pakistan and China in the area. The Indians have the advantage of controlling the high-altitude areas whereas the Pakistan Army is sitting at lower altitudes.

Lahore Declaration

It was signed by the Prime Ministers of India and Pakistan on February 21, 1999 during Indian Prime Minister Atal Bihari Vajpayee's two day visit to Lahore. Both Prime Ministers discussed a wide range of bilateral issues, to include regional cooperation on various issues through the South Asian Association for Regional Cooperation (SAARC) and various other matters of international concern. It was decided that the foreign ministers of both the countries shall meet periodically to discuss issues of mutual concern and undertake discussion on World Trade Organization, cooperation in IT, liberalization of visa and travel regimes etc. It was taken as a foundation for the 2004 Composite Dialogue between both countries. It was decided to stabilize the relations over a range of issues, including water, cross-border trade as well as about the settlement of Jammu and Kashmir region.

The Kargil Conflict

It was an armed conflict between India and Pakistan which lasted from May to July 1999 in the Kargil District of Kashmir. Pakistan, in another effort to 'de-freeze' the Kashmir issue and internationalize it at global forums, undertook this venture and infiltrated Kashmiri Mujahideen's with the assistance of Pakistan Army in the Kargil sector. Pakistan maintained that it was the

venture of Kashmiri freedom fighters, and in the initial thrust, took control of dominating and commanding points threatening the mainline of communication from Srinagar to Leh.

Pakistan wanted to sever the link between Kashmir and Ladakh and cause the Indian forces to withdraw from the Siachen Glacier, thus forcing India to negotiate a settlement of the Kashmir dispute. Pakistan also believed that any tension in the region would internationalize the Kashmir issue helping it push its favorable resolution. Finding their lifeline in danger, the Indians retaliated militarily with full support of the Indian Air Force. This high altitude warfare in the mountainous terrain posed significant logistical problems for both combating sides. Fierce battles took place, resulting in India recapturing some of the dominating peaks and subsequent withdrawal of Pakistani forces under international pressure.

2001-2002 Twin Peaks Crisis

This was the second military standoff between Pakistan and India following the successful nuclear tests in 1998 and the Kargil conflict of 1999. Troops amassed on both sides of the border and along the LoC at a high state of readiness to fight. This military build-up in Kashmir was initiated by India following the attacks on the Indian Parliament in New Delhi in December 2001. New Delhi claimed that the attacks were carried out by Lashkar-e-Taiba and Jaish-e-Mohammad, who it maintained were based in Pakistan - a charge that Islamabad denied. An attack on an army camp at Kaluchak near Jammu in May 2002 escalated the tensions. 34 people were killed and India accused Pakistan of cross-border terrorism. Shelling, mortar and artillery fire were exchanged by both forces across the LoC during the ten-month-long standoff. Tensions de-escalated by international diplomatic mediation followed by a withdrawal of troops by Pakistan and India in October 2002.

The Mumbai Attack

In November 2008, an alleged terrorist attack occurred in India's largest city and commercial hub of Mumbai. Once again, India shifted the responsibility of the attack to Lashkar-e-Taiba alleging that the perpetrators came from Pakistan by sea. Ajmal Kasab, the only surviving perpetrator of the Mumbai attack, was tried and sentenced to death. Pakistan fully cooperated in joint investigations by providing DNA evidence and photographs, and arresting a number of people, but India still blamed that Pakistan had not done enough to bring the perpetrators of the attack to justice. India refused to accept the findings of the Pakistani judicial commission on the matter. Indian claims that the dossier shared with Islamabad contained key evidence, but Pakistan outright rejected the provision of inadequate evidence to deal further with those who were allegedly accused of involvement in the attack.

The Pathankot Incident

The attack on the Pathankot Air Force Base on January 2, 2016 was allegedly carried out by heavily armed groups as claimed by India. The gun battle and subsequent combing operation lasted for another day resulting in casualties of the attackers and security personnel. This

operation lasted till January 5, 2016 and its responsibility was claimed by a Kashmir-based mujahedeen group 'United Jihad Council' as per the official Indian records.²⁰ It was believed to be an attempt to derail a fragile peace process that was meant to stabilize the deteriorating relations between India and Pakistan, but India once again outrightly linked it to Pakistan.

Investigations later confirmed that the Pathankot attack was related to the international drug mafia stretching from Afghanistan. A five-member Pakistani investigating team visited the air base on March 28, 2016 and collected evidence through interviews with witnesses and survivors. Investigations later confirmed that it was nothing but a false flag attack staged by the Indian government to malign Pakistan. Such unfounded allegations only served to deepen the trust deficit even further.

The 2016 Uri Crisis

An Indian Army brigade headquarters in Uri, near the LoC was attacked in September 2016 in IIOJK. New Delhi again blamed Islamabad for cross-border terrorism and boycotted 19th SAARC summit that was planned to be held in Islamabad. The Indian Army claimed to have conducted retaliatory "surgical strikes" on what it termed "launch-pads" used by militants in AJ&K. Pakistan rejected the claim of a surgical strike, stating that Indian troops had only engaged in cross-LoC firing on Pakistani soldiers.

The 2019 Pulwama-Balakot Crisis

On February 14, 2019, a convoy of vehicles carrying security personnel on Jammu-Srinagar highway was attacked by a vehicle-borne suicide bomber in the Pulwama district of IIOJK. It resulted in the deaths of 40 Central Reserve Police Force (CRPF) personnel. Its responsibility was claimed by Jaish-e-Muhammad (JeM) as per the Indian news media, but the main attacker was later found to be a local native of Pulwama, who became radicalized after he was beaten by the Indian police.²¹ He was found to be a habitual offender, was reportedly arrested six times by Indian authorities, but was released every time on account of non-availability of requisite proof. Serious tensions erupted in the region and on February 26, 2019, India conducted an air strike on an alleged JeM terrorist camp inside Pakistan. India claimed to have killed many terrorists, but practically it was a failed operation highlighting nothing but an operation carried-out for domestic consumption ahead of the general election. Pakistan retaliated the very next day with its own airstrikes in IIOJK. Pakistan's response was well calibrated, the targets were carefully selected and precisely targeted to convey a stern message to the Indian leadership. Two Indian Air Force aircraft were shot down by PAF and one Indian pilot was captured, but later returned to India as a goodwill gesture by Pakistan.

The Jammu and Kashmir Reorganization Act, 2019

On August 5, 2019, the Government of India revoked the special status, or limited autonomy, granted under Article 370 of the Indian Constitution to Jammu and Kashmir. The President of India, Ram Nath Kovind, issued Presidential Order C.O. 272.²² Article 370 (1)(d) grants the

president the authority to apply other constitutional provisions “as modified” to Jammu and Kashmir (provided the President act is in “concurrence” with the state government of Jammu and Kashmir). The President used Order C.O. 272’s authority to amend a separate constitutional provision, Article 367 (p.239), not through the regular constitutional amendment procedure but to apply it to Jammu and Kashmir. Article 367 provides guidelines on interpreting the constitution and earlier contained three clauses. Order C.O. 272 added a fourth clause to this article, only for the “purposes of this Constitution as it applies in relation to the State of Jammu and Kashmir.”

According to C.O. 272, Article 367(4)(c) shall state that “references to the Government of [Jammu and Kashmir] shall be construed as including references to the Governor of Jammu and Kashmir”. Additionally, Article 367(4)(d) shall state that the expression “‘Constituent Assembly of the State’ ... shall read ‘Legislative Assembly of the State’”. Therefore, in C.O. 272, the president drew on the authority given to him by Article 370(1)(d) for modifying other parts of the constitution in relation to Jammu and Kashmir and used it to modify Article 367. The modifications to Article 367 ensure that, going forward, amendments to Article 370 itself will be less cumbersome because they will not require actions from the long-dissolved constituent assembly; instead, the state’s legislature will suffice.

The Rajya Sabha - India's upper house of parliament - passed a statutory resolution on 5 August 2019. On 6 August, the Lok Sabha - India's lower house of parliament - debated and passed the reorganization bill. The resolution “recommend[ed]” the president of India to use his Article 370(3) amending powers to abrogate much of Article 370.²³ Because the concurrence of the “Constituent Assembly” of Jammu and Kashmir was no longer needed to amend Article 370 and the “Legislative Assembly” of the state would suffice under C.O. 272, moreover, because the state’s legislature was dissolved and the state was under direct national rule, the governor’s concurrence would also suffice—so far as the Indian government’s legal reasoning indicates.

On the same day, Aug. 6, Presidential Order C.O. 273 was issued and stated that “[a]ll provisions of this Constitution, as amended from time to time, without any modifications or exceptions, shall apply to the State of Jammu and Kashmir,” thus revoking the state’s special status.²⁴ Over the same period, the Jammu and Kashmir Reorganisation Act, 2019, was also passed by the Indian Parliament. The goal of this legislation was to reorganize Jammu and Kashmir from being one state, autonomous or non-autonomous, into two union territories (units of governance that are always under direct national control). One union territory, which would include the Kashmir Valley, would have a legislature, whereas the other, Ladakh (a mountainous region bordering China that has also seen some border skirmishes), would be without a legislature.

A corresponding security lockdown had been imposed in IIOJK since August 5, 2019. Tourists were made to leave, pilgrimages were cancelled, and a communication blackout and strict

curfew was enforced on the Kashmiris which still holds. As of today, IIOJK is under military siege. Delhi has increased the armed forces' presence in the region to sniff out all dissent. The UNSC in August 2019 considered the volatile situation surrounding Kashmir for the first time since 1965 but nothing tangible came out of it. India at present holds 55% of its land mass with 70% population whereas Pakistan administers 30% of the region and about 15% of the area is controlled by China.²⁵

Society

1. Demography

Indian Illegally Occupied Jammu and Kashmir (IIOJK) has a population of 12,541,302 million out of which 27.2 % is urbanized and the remaining 72.8% lives a rural lifestyle. The decadal growth rate of the state is 31.42% (against 21.54% for the country) and the population of the state continues to grow at a much faster rate than the national rate.²⁶

Azad Jammu and Kashmir (AJK) has a population of 4,361 million and 73.24% of the population is urbanized while 33.29% is rural.²⁷

2. Ethnic Groups

Kashmiris are a Dardic ethnic group native to the Kashmir Valley who are primarily located in Jammu and Kashmir. Since the term "Kashmir" was historically employed to identify the Kashmir Valley, ethnic Kashmiris are predominantly concentrated in the valley, and are not in significant numbers in other parts of the Kashmir region, i.e. Jammu, Gilgit-Baltistan, Azad Kashmir, and Ladakh. The Anthropological Survey of India had studied 111 ethnic communities/groups in Jammu and Kashmir under its People of India project.²⁸ The major ethnic groups in Jammu and Kashmir are Bakarwal, Ladakhis, Balti, Brokpa, Chibalis, Dogras, Gujjars and Hanjis. Moreover there are numerous other small ethnic groups like Argon, Afghan, etc. which have significant concentration in isolated pockets of the region. AJ&K has communities from a diverse ethno-linguistic group of 'Pahari People' that includes Gujjars, Sudhans, Jats, Rajputs, Mughals and Kashmiris. Aksai Chin contains an extremely small population of Tibetan origins numbering less than 10,000 inhabitants.²⁹

3. Languages

The Kashmiri language, which is classified as a part of the Dardic branch of the greater Indo-Aryan languages, serves as the Kashmiri ethnic group's native language. Urdu is the official language of the Government of AJ&K and IIOJK. Besides Kashmiri, Urdu, Gojri, Pahari, Pothohari, Hindku and Punjabi are frequently spoken in the region. Kashmiri has the maximum speakers in Kashmir division, Dogri in Jammu and Ladakhi and Balti in Ladakh.³⁰

4. Social Structure

a. Kashmiriyat

Kashmiriyat redefined existing national identities that were previously delineated along religious and ethnic boundaries. Kashmiri identity is exemplified by the strength and resolve of the Kashmiri peoples' struggle against armed occupation, systemized violence by state authorities in India and the struggle for a fair shot at self-determination.³¹ In Jammu and Kashmir, familial bonds and kinship, ethno-religious affiliations, territorial and communal allegiances are major aspects of the overarching Kashmiri identity. A consciousness of continuity in a long history of Jammu and Kashmir through turbulent times have served as a cohesive force in building a national identity against Indian armed forces' belligerence.

b. Women and Gender Roles

Economic and political conditions had caused an increase in gender disparity in the region. Literacy rate among women in IIOJK is 58.01% with a higher female high school dropout than males.³²

Women are highly under-represented in the political structure of Azad Jammu and Kashmir, occupying only 10% representation in the legislative assembly. The present Legislative Assembly of Azad Jammu and Kashmir comprises 49 members, with only five reserved seats for women (10%).³³

IIOJK also has very little political representation of women in the political framework. The elected members of IIOJK Legislative Assembly stand at 87, out of which only two are women.³⁴

5. Religion

In IIOJK, Islam is practiced by about 68.3% of the population, while 28.4% follow Hinduism and small minorities follow Sikhism (1.9%), Buddhism (0.9%) and Christianity (0.3%) as per the last census conducted in 2011.³⁵ Muslims are in majority in the Kashmir Valley but the Jammu and Ladakh Divisions have a higher concentration of Hindus and Buddhists. Muslims are in majority in AJ&K.

6. Education

IIOJK was the only state in India that had made education free to all its citizens at all levels. Nonetheless, literacy at 67% lags behind the all-India level of 74% while AJ&K has a higher literacy rate of 77%, higher than Pakistan's provinces.³⁶ In 1970, the state government of IIOJK established its own education board and university. Education in the state is divided into primary, middle, high secondary, college, and university levels. IIOJK follows 10+2 pattern for education of children. This is handled by Jammu and Kashmir State Board of School Education (JKBOSE). There is a high academic cost that students pay due to long periods of closure and breaks in education. The most tangible impact of long closures is the pressure on institutions to complete the prescribed syllabus in shorter time periods. In 2016, the state government announced mass promotion of 8, 9 and 11 standard students due to inability to complete the

syllabus. Close proximity to armed action along the LoC has led to the closure of schools in Jammu, Samba, and Kathua districts. Gender inequality is another outstanding issue in its education system and needs to be focused on for improved results. Teachers' workforce lacks adequate training and outdated textbooks need revision. Higher education system in IIOJK suffers from inadequate funding and resources, thus forcing students to pursue postgraduate degree programs in universities of other provinces

The Government of AJ&K, despite numerous economic austerities and fiscal hardships, is committed to laying down a broad based foundation for education policies and gives top priority to primary/ elementary education in its development initiatives and normal budgets. The AJ&K schooling follows a similar 10+2 pattern for education of children. High dropout rates in schools persist due to the volatile security situation along with closure of schools due to infrastructural damage. On November 12, 2016 mortar fire by Indian troops destroyed hundreds of houses and schools in the Nakyal and Battal sector of Azad Jammu and Kashmir (AJ&K). This led to the immediate closure of 25 girls' and 34 boys' schools in the Nakyal sector.³⁷ Higher education in AJ&K sector is still struggling with capacity issues whereas the private sector has swept up a substantial number of students. The number of PhD level faculty staff in the public sector is at minimum scale.

7. Health Care

AJ&K's healthcare system "is still inadequate" due to decades of conflict in the region but its rebuilding is being undertaken by the AJ&K government, aided by the Pakistan government and private medical authorities.³⁸ Lack of access to medical facilities and physical/psychological trauma from the Indian armed forces belligerent position on the LoC are significant problems in this field. AJ&K healthcare status is improving slowly and still much is needed to bring it to some optimum level.

Communication infrastructures inhibited by the mountainous terrain and lack of required number of ambulances handicap emergency services in AJ&K. There are approximately 2,620 hospital beds available in the area averaging one bed per 1738 people. There is a ratio of 0.05 per 1000 population with respect to specialists, 0.14 with respect to medical officers and 0.02 in respect of dentists/surgeons. The mortality rates of infants and mothers are still higher; Infant Mortality Rate (IMR) is 62/1000, Mother Mortality Ratio (MMR) is 201/100000 Live Births.³⁹

IIOJK's total fertility rate is 2.3 and the infant mortality rate is 51.⁴⁰ There are 4,433 government health institutions at primary, secondary and tertiary levels with 6,674 doctors' in-position. The bed capacity of different hospitals is 12,965, comprising 6,967 in Kashmir and 5998 in the Jammu region.⁴¹ Most of the health indices of IIOJK were better as compared to all India level. This is especially the case with life expectancy, crude birth rate, crude death rate, infant mortality rate, and institutional births. But sanitation coverage, which ought to be a way of life to safeguard health, is inadequate in IIOJK. Lack of trained medical workforce is a major cause of concern in its primary health care system. Health care quality and resources vary widely from urban to rural areas. Concerted efforts in terms of resource allocation are required to revitalize

hospitals, especially primary health care units. The current lockdown and snapping of all modes of communication have made it very difficult for people in the Kashmir Valley to access health care.

8. Sports

Football, cricket, and volleyball are very popular in Azad Kashmir. Many tournaments are also held throughout the year. During the holy month of Ramazan, night-time flood-lit tournaments are also organised. Popular sports in Indian Illegally Occupied Jammu and Kashmir include cricket, football, and winter sports, along with sports like golf, water sports, and adventure sports.

Government

1. Constitution

Azad Jammu and Kashmir (AJK) is nominally a self-governing state and has its own elected president, Prime Minister, Legislative Assembly, High Court and official flag. The 1974 Interim Constitution Act was passed by the 48-member Azad Jammu and Kashmir unicameral assembly.

a. Pakistan's Provision Relating to the State of Jammu and Kashmir

Chapter 4, Article 257 of the Constitution of Pakistan has a special provision relating to the state of Jammu and Kashmir. When the people of the State of Jammu and Kashmir decide to accede to Pakistan, the relationship between Pakistan and that State shall be determined in accordance with the wishes of the people of that State.⁴²

b. Previous Special Status of Kashmir

The Constitution of India granted special status to Jammu and Kashmir among Indian states, and it was the only state in India to have a separate constitution. The Constitution of Jammu and Kashmir was the legal document which established the framework for the state government of Indian Illegally Occupied Jammu and Kashmir. The constitution was adopted on November 17, 1956, and came into effect on January 26, 1957.

Article 370 of the Constitution of India stated that the Parliament of India and the Union government jurisdiction extends over limited matters with respect to the State of Jammu and Kashmir (namely defense, foreign affairs, and communications) and in all other matters not specifically vested in the Federal government. Also, unlike other states, residual powers were vested with the state government. Because of these constitutional provisions, the State of Jammu and Kashmir enjoyed a special but temporary autonomous status as mentioned in Part XXI of the Constitution of India. The Constitution of Jammu and Kashmir was rendered

infructuous on August 5, 2019 by an order signed by the President of India and ceased to be applicable.

2. Government Structure

a. Self-Governing Entity of AJ&K.

The government established on October 24, 1947 was working like a war council. The rules of business were framed in order to run the administration of Azad Jammu and Kashmir under which the executive as well as the legislative authority vested with the President. The major constitutional changes came in 1970 when the system of adult franchise was adopted and a democratic setup was introduced in Azad Jammu and Kashmir through Azad Jammu and Kashmir Act, 1970. For the first time, the Legislative Assembly as well as President of Azad Jammu and Kashmir were also elected on the basis of adult franchise by the people of the state, and the refugees from IIOJK settled in Pakistan.

The presidential system of government worked for about four years when in 1974, the parliamentary system was introduced in AJ&K under the AJ&K interim Constitution Act 1974, which has undergone 13 amendments so far.⁴³ The pattern of AJ&K is almost the same as the one established in Pakistan. Legislative Assembly comprises 49 members, out of which 41 are directly elected and 8 are indirectly elected a member each from the technocrats, Mushaik, overseas Kashmiri and 5 females.⁴⁴

b. Jammu and Kashmir Reorganization Act, 2019 and Unionization

The Government of Jammu and Kashmir is the governing authority of IIOJK and its two divisions and 20 districts. Jammu and Kashmir is administered as a union territory under the terms of Article 239A (which was initially applied to Puducherry is now also applicable to the union territory as per The Jammu and Kashmir Reorganization Act of 2019) of the Constitution of India. The Union Territory of Jammu and Kashmir will have executive, legislative and judicial pillars for its governance. Srinagar and Jammu are the summer and winter capitals of Jammu and Kashmir.

The administrator of the Union Territory of Jammu and Kashmir is a Lieutenant Governor, appointed by the President of India on the advice of the central government. The Chief Minister is the head of government and chairs a Council of Ministers. A Council of Ministers led by a Chief Minister is appointed by the Lieutenant Governor from the membership of the legislative assembly. Its role is to advise the Lieutenant Governor in the exercise of functions in matters under the jurisdiction of the legislative assembly. The legislative branch is a unicameral legislative assembly, with a tenure of five years. The legislative assembly may make laws for any of the matters in the State List of the Constitution of India except "public order" and "police", which will remain the preserve of the central Government of India. Elections for the Jammu and Kashmir Legislative Assembly are to be held following the implementation of new constituency boundaries which is expected to be completed in 2021. The union territory is under the

jurisdiction of the Jammu and Kashmir High Court, which also serves as the high court for Ladakh.

3. Political Parties

Currently, there are more than seven political parties active in AJ&K, among these, three parties are dominant and enjoy a stronghold in the legislative assembly. These parties include: All Jammu and Kashmir Muslim Conference, Pakistan People's Party and Muslim League (N). The current President of AJ&K is Sardar Masood Khan and the current Prime Minister of AJ&K is Raja Muhammad Farooq Haider Khan.

The main political parties active in IIOJK are the Bharatiya Janata Party (State President, Ravinder Raina), the Indian National Congress (President, Ghulam Ahmad Mir), the Jammu & Kashmir National Conference (President, Farooq Abdullah) and the Jammu and Kashmir People's Democratic Party (President, Mehbooba Mufti).

Economy

Within the mountainous environment of the Kashmir region, however, there is a great variety of ecological niches on which people base their livelihood. The local economy of Azad Jammu and Kashmir (AJ&K) depends heavily on agriculture and livestock as well as remittances. Industry and tourism are two of the viable options but so far remained unregulated in this region. IIOJK's economy is primarily services-based and agrarian. The Kashmir Valley is also known for its sericulture and cold-water fisheries. The services sector contributed 60.08% to IIOJK's Gross State Value Added (GSVA) in 2018-19, followed by the industry (22.16%) and agriculture and allied industries (17.76%) sector.⁴⁵

1. Agriculture

Small land holdings and scarcity of cultivable land are the main factors limiting on-farm income generation. More than 80% of households in AJK live on some type of farmland and nearly 40% of their income is generated from growing crops and raising livestock. Apple, apricot, pears, potato, turnip and spinach are the major fruits and vegetables grown here. Important crops include wheat, rice, and maize. The sale of eggs, milk, and meat from the livestock also contributes to income. Despite the fact that the official reports claim that the region's underutilized agricultural productions can be optimized, limited attention is paid for overcoming the concerned problems.

Horticulture contributes a large portion of IIOJK's economy. A vast natural resource base has enabled IIOJK to develop land for cultivating major fruits. With varied agro-climatic conditions, food processing and agro-based industries thrive in the region. Horticultural produce from the state includes apples, apricots, cherries, pears, plums, almonds and walnuts.

2. Industry and Service Sector

In AJ&K, the movement of supplies and goods is difficult due to its geographical location and limited infrastructure facilities which hinder the growth of the industrial sector. However, textile, pharmaceutical, paper mills, steel works, printing presses and furniture warehouses are the few industries surviving. AJ&K is a popular tourism destination, however, the volatile political situation, lack of infrastructure and high occurrences of landslides and earthquakes hinder the growth of the tourism industry.

In the energy sector, AJ&K's high altitude favors hydro-power generation over fossil fuel power generation. Numerous projects are underway, including the Neelum-Jhelum project (969MW) and Kunhar River Power Project (147 MW). There is a high demand for skills in AJ&K that can be facilitated by private sector associations. AJ&K power producing potential is estimated at around 18,000 MW.⁴⁶

Though small, the manufacturing and services sector is growing rapidly, especially in the Jammu division. Small-scale and cottage industries have been the main source of livelihood for most people.

The tourism economy in the IIOJK continues to struggle due to the occupation and lockdown by the Indian armed forces, however, the holy shrines of Jammu and the Buddhist monasteries of Ladakh have remained popular pilgrimage and tourism destinations.

As of August 2020, IIOJK had a total installed power-generation capacity of 3,422.27 MW, comprising 1,812.35 MW under central utilities, 1,535.48 MW under union territory utilities and 74.44 MW under private utilities. The identified hydro power potential for the IIOJK is 20,000 MW.⁴⁷

3. Human Resource Management

The unemployment rate in Azad Jammu and Kashmir (AJK) for all age groups was estimated at 18.44% as compared to other regions and provinces but COVID-19 has hampered employment opportunities further for the large youth population. Unemployment status of females fell from 30.5% to 22.6% from 2016 to 2018.⁴⁸ The poverty rate was 25% at the time of the last poverty index survey (2016/17) by UNDP Pakistan and is expected to have worsened since due to declining per capita incomes.⁴⁹

Standing at 16.2%, IIOJK has the second-worst unemployment rate among states/union territories in India and the unemployment percentage among women is 76.5%.⁵⁰ Misgovernance, poor administration and corruption have been the biggest problems in IIOJK. The overall labour participation rate in IIOJK is 45.72%, with 73.50% for men and 12.66% for women.⁵¹

4. Communication Infrastructure

As per J&K economic survey 2017-18, IIOJK had a total road length of 35,289 km of which national highways constituted 2,423 km.⁵² Asia's longest 'Chenani-Nashri Highway Tunnel' is on Jammu-Srinagar Highway. Five other tunnels are being developed in the Union Territory at a cost of US\$ 3.42 billion by National Highway Infrastructure Development Corporation (NHIDCL).⁵³ The tunnels will have all weather access and will be completed by 2024. Railway links in IIOJK include the Katra-Qazigund (129 km) and Qazigund-Baramullah (119 km) rail links. There are two major airports in the region, the Sheik-ul-Alam Airport in Srinagar and the Jammu airport. AJ&K has 8865 Km of paved roads and two airports in Muzaffarabad and Rawalakot.⁵⁴ Kohala-Muzaffarabad Road is a 40 km long strategic highway linking Kohala with Muzaffarabad.

Defense & Security

1. Law and Order

The valley has a plethora of paramilitary organizations deployed by New Delhi. The Central Armed Police Forces present in IIOJK include the Border Security Force, the Central Reserve Police Force, the Sashastra Seema Bal and the Indo-Tibetan Border Police. Apart from this, there is the elite police anti-insurgency force in the region, the Special Operations Group of the Jammu and Kashmir Police. Though their prime objective is to maintain law and order in Jammu and Kashmir, these forces have launched violent crackdowns on civilians to stifle the freedom struggle against the illegal Indian occupation.

Ever since the security lockdown and communications blackout has been initiated by the Central Indian Government after the unilateral revocation Article 370 on August 5, 2019, these forces have detained many Kashmiris under the pretext of curbing unrest, violence, protests and terrorism. Nearly 8 million people in Kashmir have been living through this lockdown since August 5, 2019.

In AJ&K, the Azad Kashmir Police is responsible for law enforcement. Home Department AJ&K is responsible for maintenance of law & order and protection of life and property of the citizens. The Home department has six wings namely General Wing, Police Wing, Prisons Wing, Internal Security Wing, Judicial Wing & Public Safety Wing. Prime Minister of AJ&K is the administrative head of the department.

In comparison to IIOJK, Kashmiris living in AJ&K have freedom of movement, speech and thought, with their civil liberties and human rights respected to make them feel progressive.

2. Security

a. Indo-Pak Deployments on the LoC

Indian Armed Forces have been a constant presence in the Kashmir region after 1947. New Delhi has deployed the Indian Army Special Forces and Rashtriya Rifles, Air Force Garud Commando Force, and Navy Marine Commandos (MARCOS) along with tri-service units of the Armed Forces Special Operations Division (AFSOD). The BJP government has buttressed its 500,000-strong troop presence in the region by adding tens of thousands of additional troops.⁵⁵

On the other side of the LoC, Pakistan has deployed 100,000 troops in different parts of AJK and Gilgit-Baltistan including Punjab Rangers, Gilgit and Northern Area Scouts, and Mujahid Battalions raised specifically for the defense of AJ&K. Aerial defense responsibility stays with the PAF.

This large armed presence in a 222,236 km² area makes Kashmir one of the most militarized areas in the world and the flashpoint of Pak-India armed conflict.⁵⁶ The region has been the center point for the Indo-Pakistan wars of 1947, 1965, 1971 and 1999. The recurring Siachen conflict since 1984 has been fought to gain the Himalayan stronghold. Past skirmishes and standoff indirectly or directly, were caused due to the Kashmir dispute include:

- 1) The 1986-1987 Brasstacks Crisis
- 2) 2001-2002 India-Pakistan standoff following the attack on the Indian Parliament
- 3) 2008 India-Pakistan standoff following the Mumbai attacks
- 4) 2011 India-Pakistan border shooting incident across the Line of Control in Kupwara District/Neelam Valley, resulting in the killing of five Indian soldiers and three Pakistani soldiers.⁵⁷
- 5) 2013 India-Pakistan border incident in the Mendhar sector of Jammu & Kashmir resulted in the killing of 22 soldiers (12 Indian and 10 Pakistani).⁵⁸
- 6) 2014-2015 India-Pakistan border skirmishes, a series of gunfire exchanges between the Indian Border Security Force and the Pakistan Rangers.
- 7) 2016-2018 India-Pakistan border skirmishes after India claimed to have conducted surgical strikes against militant launch pads within AJK. This resulted in dozens of military and civilian casualties on both sides.⁵⁹
- 8) 2019 India-Pakistan standoff following an attack on an Indian convoy.
- 9) In October 2020, India accused Pakistan of 3,800 ceasefire violations across the LoC after Pakistan had recorded 1,595 ceasefire violations by India.⁶⁰

b. The China Security Factor

The war clouds in South Asia are getting thicker with Chinese presence on the northern tips of Jammu and Kashmir. Confrontations between China and India along the Line of Actual Control (LAC) are not trivial skirmishes or isolated incidents. The primary reason for these recent

clashes were the infrastructure developments along the southern side of the undemarcated LAC. Besides, India's tinkering with Ladakh's status on August 5, 2019, is also one of the reasons that has led to a crisis in Ladakh. Skirmishes along the Pangong Tso Lake in Ladakh and the Nathu La Pass in Sikkim have led to a surge of troops camping along several disputed zones, mutually claimed by both sides with each accusing the other of trespassing. India's construction of bridges, advance landing grounds (ALGs) and roads near the unmarked LAC is a point of concern for China and its authority in Tibet and Xinjiang. It is predicted that Beijing will place itself in a position to exert greater influence in the region and along the LAC. This will allow China to tighten its control over the Tashkurgan junction from where the China-Pak Economic Corridor (CPEC) crosses into Gilgit-Baltistan. India wants to increase its oversight on CPEC, and this conflict complicates the security situation for all parties involved in the Kashmir region.

External Environment & Geopolitics

1. Kashmiri Freedom Struggle

The Kashmiri freedom struggle dates back to the partition of the subcontinent in 1947. Kashmir, predominantly a Muslim majority area was under the rule of a Hindu Maharaja who under duress, decided to accede with India caring less about the will of the state people.

The ill intentions of the Maharaja led to the creation of an organized movement against the state administration by the local tribal militias, assisted by tribal Lashkars from Pakistan and some irregular paramilitary troops already situated in the northern head of the valley. India moved in and attempted to squash indigenous dissent. This igniting story developed within the valley in different forms like protests and small-scale skirmishes of civilians against the state security apparatus. The matter also remained in circulation in various international forums, but got snubbed due to the vested interests of global stakeholders.

The Kashmiris have been in the streets since the early 1980s with protests fluctuating in size and scale at different times. Pakistan, under all sets of prevailing norms, is extending its moral, political, and diplomatic support to the Kashmiris for their just demand of self-determination. The Indian crackdown on the civilians has been brutal. Hundreds of people have been blinded because of the security forces indiscriminate use of pellet shotguns to disperse civilian protests. Despite the overall killings and mass blinding of Kashmiris, communication blackouts, curfews, augmented Indian security presence, as well as human rights violations by security forces, the Kashmiris have not wavered in their resolve to fight for self-determination.

2. A Bilateral Matter or an International Humanitarian Crisis?

The freedom struggle based upon its indigenous resources has continued throughout the seven decades since its inception. All efforts to dilute the uprising and restoration of order in the valley have been unsuccessful. India pulled off a political gimmick while settling the terms of Simla Agreement. It was included in the Simla Agreement that all issues irrespective of their nature, scope and size between both the countries shall be settled through bilateral mechanisms. Though India insists that multilateralism was dropped from the list of conflict-resolution approaches under the Simla Agreement, it did not call for an end to invoking multilateralism. Now under the cover of this agreement, India, in spite of all the human rights violations and prevailing terror in the valley still wishes to point to the terms of the Simla Agreement. That said, the revocation of Articles 370 and 35A repudiates the terms and spirit of the Simla Agreement where it was decided that “*neither side shall unilaterally alter the situation [in Jammu and Kashmir] nor both shall prevent the organization, assistance or encouragement of any acts detrimental to the maintenance of peace and harmonious relations*”.⁶¹

But Kashmir is not a bilateral issue. It is a trilateral issue because there are three parties to the dispute - Pakistan, India and the people of Kashmir who have been denied the right to self-determination because of India’s unilateral measures. Denying the Kashmiri people of their freedom of movement and communication and putting them in a strict lockdown since August 2019 is a humanitarian crisis of epic proportions. The UN Security Council Resolutions are the only legal resort to solve the conflict of Kashmir.

Pakistan continues to internationalize the Kashmir issue diverting the attention of the international community to the deteriorating humanitarian condition of the Kashmiris under brutal siege and the longest lockdown in the valley. Pakistan’s Prime Minister Imran Khan, addressing the 74th Session of the General Assembly of the UN last year, presented the Kashmir case to the world community in the most befitting manner. Human rights violations and atrocities have to be addressed through the commission of justice and not by capping them in the dustbin of bilateral agreements.

3. Revision of Special Status and Implications

The BJP-led government revoked Articles 370 and 35A from the Indian constitution. Article 370 granted special rights to the only Muslim-majority state including the right to its own constitution and autonomy to make laws on all matters, except defense, communication, and foreign affairs. Article 35A forbade outsiders from, inter alia, permanently settling, buying land, and holding local government jobs in the region. Now Indian settlers are being pumped in to buy land and maintain residency in the valley, something that will drastically change the demographics of the region and worsen communal tensions that are already plaguing India.

The state is planned to be administratively reconstituted into two federal territories, namely Jammu and Kashmir and Ladakh. Jammu and Kashmir would have a state legislature, but Ladakh would be under direct central governance. Jammu is a Hindu-majority area and Ladakh a Buddhist-majority area, leaving only Kashmir with a Muslim majority. Future referendums in IIOJK will be influenced by its bifurcation and subsequent demographic changes. Any such referendum, following demographic changes will be unlawful and illegal under International Law.

4. Indian and Pakistani Perceptions of Kashmir

Both India and Pakistan claim full right to Kashmir but rule portions of it. The region by itself has strategic importance and is being viewed accordingly by both states. Pakistan considers Kashmir as its natural extension whereas India maintains its right for control under the cover of the so-called Instrument of Accession. For Pakistan, it is the lifeline for its survival since the fountainhead of all the waterways reaching Pakistan are located in the valley and India may hijack it for strategic leverage over Pakistan.

Kashmir's cultural and panoramic values aside, its possession will otherwise connect India directly with Afghanistan and Central Asian States encircling Pakistan. CPEC, the flagship project of China-Pakistan collaboration finds its way to Pakistan through Pakistan's Gilgit-Baltistan region. India continues to maintain apprehensions about the validity of CPEC to operate in Gilgit-Baltistan, which it sees as an "integral part" of its territory. From India's standpoint, Kashmir still serves as a buffer zone for protection from its unfriendly neighbors and is its Atoot Ang (integral part).

Occupying Kashmir provides fair opportunities to India to maintain its hold on local strategic nerve centers while keeping its adversaries, namely China and Pakistan, in check. It may also rescale the existing water system by diverting the river flows and constructing new dams to dry out Pakistan territory.

International Humanitarian Law Violations

The State of Jammu and Kashmir historically has been under occupation by India. Occupation under the confines of International Humanitarian Law (IHL) is a matter of fact. The existence of an occupation does not depend or require a declaration by the Occupying Power. It requires that the said occupation meet the defined factual criteria to be classified as an occupation. The definition of an occupation is given in Article 42 of the Hague Regulations 1907 which states:

*Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.*⁶²

Though Pakistan and India are not parties to the Fourth Hague Convention of 1907 to which The Hague Regulations are annexed, it is widely accepted as being the regulatory international law applicable to all states.

There are three conditions for an occupation to be classified as such under IHL:⁶³

- 1) Territory which the Occupying Power is not entitled to under International Law
- 2) The Occupying Power is a hostile army
- 3) That the Occupying Power has effective control and exercises its authority over the territory.

In the case of Kashmir, a territory can be considered occupied even when the status of the territory is contested between two states. This was also held by the Eritrea-Ethiopia Claims Commission.⁶⁴ A territory, even if it is contested under contending claims of ownership, can still fall under the classification of occupation.

India does not have legal title to J&K because Security Council Resolution does not recognize Indian claims of legal title. Therefore, any attempt to include it in its own state amounts to an act of occupation and illegal annexation. Thus India cannot under International Law take a unilateral action to annex a state which it occupies. This is evidenced by the Security Council's unequivocal rejection of previous Indian attempts to unilaterally alter the status of Jammu & Kashmir in Resolutions 91 of 1951 and 122 of 1957.

Hostile Army on an Occupied Territory

Though the term 'hostile army' was limited to foreign forces, precedents set by international instances like the former Federal Republic of Yugoslavia and Israeli occupation in the West Bank and Gaza Strip have evolved a more inclusive definition. For Kashmir, the traditional and modern requirements are both met.

India has argued that their forces were invited by Maharaja Hari Singh in 1947 but India's actions post August 5, 2019 are a material breach of Hari Singh's Instrument of Accession.⁶⁵

"5. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or of the Indian Independence Act, 1947, unless such amendment is accepted by me by an Instrument supplementary to this Instrument"

And

7. Nothing in this Instrument shall be deemed to be a commitment in any way as to acceptance of any future Constitution of India or to fetter my discretion to enter into arrangement with the Governments of India under any such future Constitution"

And

8. Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or save as provided by or under this Instrument the exercise of any powers,

authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State.”

India’s abrogation of Article 370 is a clear violation of the purported Instrument of Accession and as such holds no grounds as far India’s claim to legal title is concerned. The material breach of Hari Singh’s Instrument of Accession renders it as a hostile army for violation of the terms of accession, annexing the state into its Union, denying the people of Jammu and Kashmir the right to self-determination through a fair plebiscite and the historically subjugating occupation.

The classification of an occupation by a hostile army is not limited to the foreignness between Occupying Power and Subjects. The Eritrea-Ethiopia Claims Commission award supports this approach as it held that the law of occupation could be applied to contested territory. The Commission stated, referring to the Fourth Geneva Convention and The Hague Regulations of 1907 that, “neither text suggests that only territory to which is clear and uncontested can be occupied territory”.⁶⁶

1. **Indiscriminate Use of Force**

The Indian Army’s widespread use of pellet guns against protestors violates the laws of war, which deal primarily with the principle of distinction and humanity. An estimated 3,000 people in the region have sustained eye injuries - known as the ‘dead eye epidemic’ as pellets in the retina fired by Indian forces cause partial or full blinding for life.⁶⁷ The Indian Central Reserve Police has itself admitted in court to using 1.3 million pellets in 32 days in Kashmir. There have been no such inquiries into these serious injuries and deaths. The lack of inquiry itself points to India’s non-fulfillment of obligations under Article 146 of the Fourth Geneva Convention.

2. **Use of Torture**

Torture is regularly used against detained Kashmiris to investigate presumed affiliation with terrorist and insurgent groups. Many human rights organizations have detailed instances of torture inflicted on the Kashmiri people from electrocution, beating, burning, and simulated drowning, with some situations turning gangrenous and leading to amputation of the detainee later on. The State of India has not been fulfilling its obligations under the Geneva Conventions as well as the Convention against Torture, as it has been consistently failing to prosecute and indict those who resort to inflicting torture on the occupied residents in IIOJK.⁶⁸ The armed forces and police enjoy a high level of impunity due to the requirement that any prosecutions are to be sanctioned from the central government - something that is rarely granted by New Delhi.

3. **Use of Rape as a Weapon of War**

Cordon-and-search operations are frequently conducted in areas infested by armed opposition or after attacks on the Indian security forces, with districts being sealed off and house-to-house

searches conducted. The women of this area are subjected to rape as a collective punishment on the community for their alleged involvement with terrorist groups. Under IHL, these are not domestic crimes but systemized war crimes under the International Criminal Tribunal for Yugoslavia's decision in Brđanin where it held that rape committed during weapon searches by combatants and members of forces were to be seen 'in the context' of an armed conflict and so were war crimes.⁶⁹ India's own Committee on Amendments to Criminal Law (popularly referred to as the Justice Verma Committee) was a three-member committee headed by Jagdish Sharan Verma, a retired Supreme Court judge, set up by the central government in December 2012, to review laws against sexual assault. The committee was formed a week after the New Delhi gang rape of 2012. In the committee's final report for amendment of the criminal law, the committee highlighted 'that impunity for systematic or isolated sexual violence in the process of Internal Security duties is being legitimized by the Armed Forces Special Powers Act, which is in force in large parts of our country'.⁷⁰

The United Nations Security Council Resolution 1820 condemns the use of sexual violence as a tool of war, and declares that "rape and other forms of sexual violence can constitute war crimes, crimes against humanity or a constitutive act with respect to genocide". Human Rights Watch and Amnesty International have reported that Indian security forces in IIOJK have used rape as a "counterinsurgency tactic" during counter-offensives as part of a bid to methodically shame local Kashmiri communities.⁷¹

4. Impunity for Perpetrators

The state of Indian Occupied Jammu and Kashmir (with the exceptions of Leh and Ladakh districts) is classified as a "disturbed area" under section 3 of the Armed Forces (Jammu and Kashmir) Special Powers Act (AFSPA). Section 4 of the AFSPA empowers officers (both commissioned and non-commissioned) in "disturbed areas" to "fire upon or otherwise use force, even to the causing of death" not only in cases of self-defence, but against any person contravening laws or orders "prohibiting the assembly of five or more persons".⁷² The classification of "disturbed areas" detailed in Chapter V, has allowed the army and paramilitary forces to argue that they are on "active duty" at all times and that therefore all actions carried out in the state - including human rights violations - are carried out in the course of official duty, and are to be treated as service-related acts instead of criminal offences.⁷³ The Armed Forces (Special Powers) Act (AFSPA) in effect allows the state to override rights in the 'disturbed areas' in a much more intrusive way than would be the case under a state of emergency, since the right to life is in effect suspended, and this is done without the safeguards applicable to states of emergency. AFSPA violates International Law and a number of UN treaty bodies have pronounced it to be in violation of International Law, namely the Human Rights Council (HRC) in 1997, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 2007, Committee on the Elimination of Racial Discrimination (CERD) in 2007 and Committee on Economic, Social and Cultural Rights (CESCR) in 2008.⁷⁴ Accountability is

circumvented by invoking AFSPA's requirement of obtaining prior sanction from the Central government before any civil prosecutions can be initiated against armed forces personnel. In the Army's case, the concerned authority is the Ministry of Defence. For cases involving members of the internal security forces, permission has to be obtained from the Ministry of Home Affairs.

5. Chronology of Indian War Crimes

The violence in Jammu and Kashmir has taken a terrible human toll. From 1990 to 2011, the IIOJK state government reportedly recorded a total of over 43,000 people to have been killed. Of those killed, 21,323 were said to be "militants", 13,226 "civilians" (those not directly involved in the hostilities), 5,369 security force personnel and 3,642 "civilians" killed by security forces. (Numbers subject to accuracy and credibility of the state government).⁷⁵

1947

The Times, on August 10, 1948 reported that "237,000 Muslims were systematically exterminated - unless they escaped to Pakistan along the border - by the forces of the Dogra State headed by the Maharaja in person and aided by Hindus and Sikhs. This happened in October 1947, five days before the Pathan invasion and nine days before the Maharaja's accession to India."⁷⁶ Reportedly, as a result of the massacre/migration, Muslims who were a majority (61%) in the Jammu region became a minority.

1985

Amnesty International listed that 415 individuals reported to have died in the custody of the security forces in India in the past seven years.⁷⁷

1989

Details of 208 people who had reportedly "disappeared" under the custody of security forces was publicly released by Amnesty International India. 128 of them were in Jammu and Kashmir, and 80 in Punjab.⁷⁸

1990

Widespread human rights violations in the state since January 1990 had been attributed to the Indian Army, and the paramilitary Border Security Force (BSF) and Central Reserve Police Force (CRPF). 715 detainees had died in the custody of Indian security forces in the state of Jammu and Kashmir in the period 1990-1994.⁷⁹ They were allegedly tortured to death or shot outright. In areas where government forces were engaged in counter-insurgency operations against armed groups fighting for independence or for the state to join Pakistan, "the entire civilian population was at risk of arbitrary detention, torture, even death". Most of the victims had been young men, detained during "crackdown" operations to identify armed militants.

Almost all those detained were tortured, many did not survive, and others left disabled or mutilated.

In May 1990, Mubina Gani, a teenage bride, was detained at a roadblock and raped by BSF soldiers on her way from the marriage ceremony to her husband's home. Her aunt, who was seven months pregnant, was also raped.⁸⁰

The Gawkadal massacre was named after the Gawkadal Bridge in Srinagar, Kashmir. That is where, on January 21, 1990, the Indian paramilitary troops of the Central Reserve Police Force opened fire on a group of Kashmiri protesters killing 50 people.⁸¹

47 people were killed in Srinagar on May 21, 1990 by members of the Central Reserve Police Force (CRPF) who opened fire on men and women participating in a funeral procession mourning the death of Srinagar's Islamic leader, Maulvi Mohammed Farooq.⁸²

The Zukoora and Tengpora Massacre was the killing of protesters calling for the implementation of a United Nations resolution regarding the plebiscite in Kashmir at Zakoora Crossing and Tengpora Bypass Road in Srinagar on March 1, 1990. 33 people were killed and 47 injured by Indian security forces.⁸³

1991

At least 23 women, and possibly many more, were allegedly raped on the night of February 23, 1991 in the village of Kunan Poshpora, Kashmir, by Indian soldiers from the 4th Rajputana Rifles, posted in the border district of Kupwara, close to the LoC.⁸⁴

1993

The Sopore massacre was committed by Indian Border Security Forces (BSF), which resulted in the killings of at least 43 civilians who were travelling on a bus from Bandipur to Sopore in Kashmir on January 6, 1993.⁸⁵

The Lal Chowk fire refers to the arson attack on the main commercial center of Srinagar that took place on April 10, 1993. Government officials allege that the fire was ignited by a crowd incited by militants. However, civilians and police officials interviewed by Human Rights Watch alleged that the Indian Border Security Forces (BSF) set fire to the locality in retaliation for the burning of an abandoned BSF building by local residents. Over 125 civilians were killed in the conflagration and the ensuing shooting by BSF troops on civilian protestors.⁸⁶

The village of Janwarpora was cordoned off by the army on November 22 and soldiers were also deployed in the neighbouring village of Warapora. On November 22, 1993, a young woman, Sara, was reportedly raped by members of the security forces in Warapora and was subsequently killed by them.⁸⁷

1994

In November 1994, 16-year-old Hanifa was reportedly gang-raped by soldiers of the 26th Punjab Regiment during a search operation by the army at Lathi Shot near Sopore. Another woman, Naseema, had been gang-raped by members of the security forces, her husband was shot dead, and her brother-in-law was tortured.⁸⁸

1996

On March 8, 1996, Jalil Andrabi, a prominent Kashmiri human rights lawyer was detained in Srinagar by Major Avtar Singh, of the 35th Rashtriya Rifles of the Indian army. Three weeks later, Andrabi's body was found floating in the Jhelum River. An autopsy showed that he had been killed days after his arrest.⁸⁹

2000

On March 25, 2000, five Indian Army officers killed five men in Pathribal village of Anantnag district, claiming that the victims were "foreign militants" responsible for the previous Chattisinghpora attacks.⁹⁰ Despite a 12-year probe into the incident by Central Bureau of Investigation (CBI), the Indian Army closed the case against its personnel as evidence collected by it did not establish a prima facie case against any of the accused invoking the protection of the AFSPA.⁹¹

2009

Two young women in May 2009 at Bongam, Shopian district were abducted, raped and murdered by local Indian Army troops. Their bodies were found the next day, both one kilometer apart.⁹²

The International People's Tribunal on Human Rights and Justice in Kashmir said that the graves were found during the past three years in some 55 villages. The group said that nearly all of the 2,943 bodies were male. Its report accused Indian military and paramilitary forces of carrying out extra-judicial killings and secretly arranging to have the victims buried in scattered graves.⁹³

2010

Between January and September 2010 alone, 322 people had reportedly been detained by the Indian security forces.⁹⁴

Ninety-six people had been killed since June 2010 when protests broke out in Jammu and Kashmir after the killings of three young men, reportedly by the security forces. The vast majority of these killings were attributed to the state police and the Central Reserve Police Force (CRPF) paramilitary personnel. Protestors defied curfew regulations, held demonstrations and often clashed with security personnel.⁹⁵

16-year-old Zahid Farooq Sheikh was killed in 2010 by the Border Security Force personnel, as he was walking home after playing cricket with friends in Srinagar.⁹⁶

On April 28, 2010, three young Kashmiris, Shazad Ahmad Khan, Riyaz Ahmad Lone, and Mohammad Shafi Lone, travelled to Machil, an area close to the Pakistani border, for work. They were killed by Indian troops who said they were infiltrators though their families suspected it was a fake encounter.⁹⁷

2013

On July 19, four people were killed and forty injured in Gool, Ramban district, when paramilitary personnel of the Border Security Force (BSF) opened fire on protestors demonstrating against the alleged roughing up of a cleric by the security forces.⁹⁸

2014

3,500 people were reportedly arrested and 120 detained under the Jammu and Kashmir Public Safety Act (PSA) in 2014. The Jammu and Kashmir State Home Department, in response to an RTI application, disclosed that a cumulative 16,329 people had been detained in administrative detention under the PSA at various times since 1988.⁹⁹

On November 3, 2014, two men were killed and two others seriously injured in Budgam district when Indian army personnel opened fire at their vehicle after it failed to stop at two army checkpoints. In an unusual move, the army authorities publicly admitted responsibility for the deaths of the two young men, Faisal Yusuf Bhat and Mehrajuddin Dar, and said that the killings were “a mistake.”¹⁰⁰

2016-2017

The killing of a young Kashmiri leader, Burhan Wani, at the hands of the Indian occupation forces on July 8, 2016 had engulfed IIOJK in a mass uprising. Thousands joined Burhan Wani’s funeral, and anti-government protests started soon after in which at least 100 civilians were killed and thousands more blinded and maimed. Curfew was imposed in all 10 districts of the valley and mobile services were suspended by the government.

2019-2020

Security lockdown and communications blackout have been imposed throughout Indian Illegally Occupied Jammu and Kashmir, following the revocation of Article 370. Nearly 2,300 Kashmiris were detained without charge, including former chief ministers, political leaders, activists, lawyers and journalists. The Indian security forces have used brute force, torturing hundreds of Kashmiris in the garb of taking steps to “prevent loss of life” and “maintain order.” The government blocked opposition politicians, foreign diplomats, and international journalists from independent visits to Kashmir.

UN Reports on Human Rights Violations in J&K

India's grotesque, high-handed policies in IIOJK have merited global attention. New Delhi has been lambasted for its continuous human rights violations in IIOJK, by a forum no less than the United Nations. In 2018, the first-ever report on human rights in the disputed territory of Kashmir was published by the Office of the United Nations High Commissioner for Human Rights (OHCHR). The 49-page report called out India for a series of human rights abuses, especially after 2016. The report noted India's use of excessive force that resulted in unlawful and extra-judicial killings. The report categorically called out India for its unrestrained use of pellet guns, and impunity while raising serious concerns on its schemes to obstruct the normal course of law and provision of justice. In this regard, the report discussed the cover that the Armed Forces (Jammu and Kashmir) Special Powers Act 1990 (AFSPA) and the Jammu and Kashmir Public Safety Act 1978 (PSA) give to India in order to commit acts of violence. Thus, the report recommended the institution of an inquiry on India's abysmal human rights record in IIOJK. The report was vehemently rejected by India. This international opprobrium was followed by the release of another report by OHCHR, in 2019. The 43-page report berated India again for using disproportionate force against civilians, and impeding all conduits and pathways to seek justice. Taken together, the two reports, coupled with gory stories of Indian oppression, have fully exposed India in front of the world. As of today, no capital, regardless of its ties with New Delhi, has given India a free-pass in regard to its human rights violations. Therefore, the more force India applies, the more problems will the people of Kashmir create for India, which will have international repercussions.

There are nearly 8 million people living in IIOJK, who, since August 5, have been living through a telecommunications blackout. The government of India is restricting freedoms by shutting down their ability to communicate with each other and the rest of the world, and by imposing curfews. In wake of the Coronavirus (COVID-19) pandemic, New Delhi must lift the military siege in IIOJK, restore full access to internet services in the region of Jammu and Kashmir, and ensure that people have full access to health and safety related information. Human rights approach must be at the center of all prevention, preparedness, containment, and treatment efforts, to protect public health and support the most vulnerable groups. The right to health, as guaranteed under the Universal Declaration of Human Rights, provides for the right to access healthcare facilities. Access to health-related information is also a crucial part of the right to healthcare. Providing "education and access to information concerning the main health problems in the community, including methods of preventing and controlling them" is considered an "obligation of comparable priority" to the core obligations of the right to health.¹⁰¹

The Tale of Heaven and Hell in Kashmir: AJK vs. IIOJK

Divided by the LoC, AJK and IIOJK are starkly different, not least in terms of how the areas are treated by Pakistan and India, respectively. While the people of AJK believe in, and commit themselves to, exercising their right of self-determination to join Pakistan, the people of IIOJK consider India and its forces as occupiers of their land. As evidenced by the history of, and political developments in AJK, people enjoy autonomy and freedoms. Killings, torture, the use of pellet guns, and other kinds of gross human rights violations, are not witnessed in AJK. This is emblematic of unity and strong bonds between AJK and Pakistan. Both Islamabad and Muzaffarabad are committed to achieving one goal: Kashmiris' self-determination.

On the other hand, IIOJK's story is one of horror, violence, and tragedy. Apart from illegally occupying and annexing IIOJK, India has, through the use of brute force, tried subjugating the Kashmiri people. As opposed to the sentiments in AJK, which is typified by a strong desire to join Pakistan, the incarcerated people of IIOJK have not hunkered down in their resistance to Indian occupation. While Islamabad-Muzaffarabad ties are based on valuing the aspirations of the Kashmiri people, those between New Delhi and Srinagar are marked by India's revanchist colonization proclivities. Unremitting atrocities, coupled with illegal efforts to alter the demography of IIOJK, are examples of India's war crimes. That people are at the heart of Pakistan's approach towards Kashmir is reflected in how the country shows restraint on the LoC while responding to Indian aggression. Considering people on both sides of the LoC as its own, Pakistan's retaliatory actions do not target civilians, something which is in sharp contrast to what India does. While the people of AJK look up to and revere Pakistani security personnel as their defenders, the oppressed people of IIOJK have to protect themselves from the brutalities perpetrated by the Indian occupying forces. While the Kashmiris in AJK are happy and free, those in IIOJK are hapless. This is what sets apart both Kashmiris, and differentiates Pakistan from a revisionist colonizer that India is.

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