

# CSSPR Policy Brief #1

## October 2020

ON THE EDGE OF THE ABYSS  
THE REALITY OF  
INDIAN WAR CRIMES IN  
**KASHMIR**

Kashmir dispute's trajectory is mired in and marred by continued inertia and maximalist proclivities.

**There are no two ways about the fact that India's August 5, 2019 gambit has dealt a severe blow to Indo-Pak relations, with New Delhi trying to dictate its terms in illegally Occupied and Annexed Kashmir, something that is repugnant to all bilateral commitments that it made.**

But as the adage goes, the more things change, the more they remain the same.

Though the space for parleys has indeed shrunk, the window was not big enough to be exploited even before August 5th, 2019. Thus, we are back to square one. But can the two countries talk, or have they reached the precipice? The answer lies somewhere in the middle.

There are many things to consider here but two are instructive. One, both countries have not completely severed their ties. Despite the fact that India dealt a severe blow to bilateralism on August

5, 2019 Pakistan went ahead with launching the Kartarpur Corridor. That the government was eager to press ahead with the project is reflective of the political will for creating an environment of peace and harmony in the region. **The Kartarpur corridor example is instructive in more ways than one. It showed that when constituencies for peace are strong on both sides, political recalcitrance has to give way to pragmatism. This phenomenon is well and truly evidenced by how India accepted, albeit begrudgingly, Pakistan's Kartarpur offer. This is indicative of how pressure groups can work, even in some of the most tumultuous times.** Perhaps playing cricket with India or allowing Bollywood movies back in the Pakistani cinemas would be akin to a public mockery of the Kashmiris. That said, both countries could still engage in a manner that allows them to stop further decay. COVID-19 provided an ideal opportunity for, and to, both countries to cobble up for a common cause, but the very chance went begging. The tone and tenor of this acrimonious relationship has further

vitiating the environment, a trend that is likely to continue.

Second, regrettably, India's behavior has not helped one bit. On the one hand it claims that it is unfazed by Pakistan, but on the other hand, it resorts to snubbing events where Pakistan is in the fray, too. Recent examples include Indian NSA's walk-out from a multilateral moot, and that by an Indian diplomat at the United Nations. Even then efforts could be made to harness conduits of co-existence.

Post August 5th, 2019 the mood across the border reeks of arrogance. The language coming out from important quarters in New Delhi is symptomatic of grandiose plans to snatch territories from Pakistan, an utterly suicidal thing to even contemplate.

Facing an ideologically-charged Indian polity, Pakistan is at pains to go on a limb for peace. Yes, one of the major features of ties post-Aug 5, 2019 is a clear-cut, unapologetic expression of belief in revisionism, as if what happened on

August 5, 2019 is just the start of Operation Akhund Bharat.

The simmering situation in Kashmir has once again brought both countries on the cusp of a major conflagration, raising both the impediments to, and the opportunities for resolving the decades-long, festering issue. This is not something new, but what is diametrically different this time is India's insistence on treating Pakistan as a non-party in the Kashmir dispute. Resorting to unilateralism on behest of its perceived superiority over a nuclear-armed neighbor, is but a manifestation of hawkishness and exclusivism. All this is an anathema to stability in a nuclearized region that is in real need of jumping on the train of economic connectivity and integration. Pouncing on geoeconomics is a pipe dream until and unless the issue of Kashmir is resolved. That is a far short in its right. Therefore, both countries have to think as to how tensions can be reduced.

Any idea to reduce tensions in Kashmir is a hard-sell at this time, given that both sides are not ready to budge an inch from their stated positions. That said, both sides can undertake efforts to cool temperatures over Kashmir while sticking to their official positions. Happymon Jacob's latest [USIP report](#), while acknowledging the troubles in using the four-point formula as a framework for negotiations, calls it the best-available one. Jacob is right in saying that granting self-governance and making borders irrelevant are not viable in the current milieu. However, he is a bit optimistic with regard to the viability of the other two points. Demilitarization and the establishment of joint institutions are steps that are least likely to garner a buy-in from both sides. In such a fraught environment where each side does not want to climb-down, dialogue will be a dead rubber. So what should be done to, at the very least, lower tensions over Kashmir?

Three steps can be taken in the short to medium term, and that too without both countries

needing to compromise on their official narratives.

**First**, India should halt its attempts to reshape the demography of Kashmir, an act that is not only illegal, but also goes against its stated rationale for its actions last year. A pause in its veritable colonization project (based on revocation of Article 35-A and promulgation of domicile laws) of Kashmir will not only help drive away, to a degree, the fear of Kashmiris' fast-eroding identity, but also dispel the impression within Pakistan that time to act is limited. The fizzling-out of the 'level of urgency' could provide both countries with breathing space, something that will not lead to conflict-resolution, but will lessen trepidations and slow down the intensity of the situation.

**Demographic change has the potential to fully neutralize any possibility of a plebiscite in the disputed territory of Kashmir. Therefore, it is a clear attempt by India to undermine the UNSC resolutions which is unacceptable at all costs. Moreover, under the Law of Armed**

**Conflict (IHL), transferring population into and from an occupied territory is a war crime as per the 4th Geneva Convention.** Even the transference of Kashmiri youth detainees to the detention centers outside the disputed territory to New Delhi or elsewhere is a war crime.

**Second,** India must do away with a communications-blackout, it must release prisoners, cease massive human rights violations. That the brave Kashmiris in J&K have not hunkered down even in the face of brazen sledgehammering by India is an indication that this heavy-handed approach is futile. If India shows sagacity, bravery, and will, it can considerably remove the biggest sources of tensions and violence.

**A major, consistent, and irreversible reduction in violence, by the Indian security forces will be a face-saver for India.** It will be spared from much of the criticism both from Pakistan and the rest of the world. If India thinks that its new terms can dictate and shape the scaffold of Kashmir without resistance, it is

mistaken. New Delhi's zealotry, coupled with the unremitted use of force, is all but a recipe for carnage. So, India ought to stop its brutalities, if it wants to, in any manner, convince the Kashmiris and the world that it is sincere and not a land-grabber.

**Third,** both countries need to learn from history. The correct, reasonable, and just thing to do in today's milieu, is for both India and Pakistan to step back and let the major stakeholders of the dispute, the Kashmiris on both sides, do the talking. **Given that both India and Pakistan are, as of now, unwilling, and frankly, incapable of negotiating with each other, it is time for them to allow Kashmiris from both sides of the LoC to communicate with each other.** It is proposed that at the track 2 level, two working groups be established comprising Kashmiris from both sides of the divide.

The working groups could then meet once a month at least virtually. The working groups could discuss agenda-items ranging from cross-LoC trade to travel.

**Empowering the Kashmiris will reduce the much-problematic credibility and trust-deficit.**

While a fully-functioning government is running Azad Kashmir, J&K is under military siege. Where and who is Kashmir's voice in J&K? Pakistan is all in readiness to take the plunge. But all this hinges on India's capacity to think about the Kashmiris rather than Kashmir. Is it willing to end the military siege and release political prisoners?

Absent political commitment and will, the Kashmiris will wilt under Indian aggression, but will not succumb. And then the cycle of violence will continue unabated.

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