



Lawfare, its Prospects and Strategies for Pakistan: The Kashmir Case

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Abstract

The 74-year military occupation of Jammu and Kashmir is regarded as the longest in modern history, with approximately 700,000 armed forces deployed in UN-recognized Disputed Territory. Political and legal experts believe that the unilateral annexation of Indian-occupied Jammu and Kashmir (hence referred to as IOJK) on August 5, 2019 altered the region's status from colonialism to settler colonialism. With at least forty (40) constitutional and administrative amendments influencing the demographic condition of IOJK, the Bharatiya Janata Party (BJP) government planned lawfare campaign in 2019 posed a severe threat to the civilian population. Surveillance, detentions, and fear politics—a three-pronged strangling paradigm shaped the security theology of the Indian state to dominate Kashmir. In the case of Kashmir, India has been consistently violating international law since the beginning of the conflict. From its illegal occupation to its refusal to implement UN Security Council decisions, India is consistently exhibiting a disregard for international law while imposing a repressive system filled with human rights violations and crimes against humanity. To counter a focused, detailed, and well-resourced lawfare campaign

led by Pakistan and Kashmiris is essential to support our diplomatic efforts. The primary purpose of this paper is to analyze the reasons which make it necessary for Pakistan to emphasize on Lawfare regime.

Keywords: Lawfare, Kashmir, Humanitarian Law, Human Rights.

Introduction

Kashmir has been a burning issue, owing to the three nuclear-armed countries engulfing it and the never-ending human tragedy that has been unfolding there for the past twenty-five years and, in a less intense version, for decades before that. In 2004, Kashmir became ‘the highly militarized territory in the world,’ with ‘one soldier for every ten people.’¹ According to Amy Hawkins, the world is harvesting the crop of turmoil sown by the British Empire, and “locals are still paying for the disaster the British left behind in Hong Kong and Kashmir.”² To comprehend the modern political dynamics and violence in Kashmir, it is necessary to contextualize this assertion in order to trace the genealogy of this conflict. Anti-colonial uprisings in India, China, the Arab world, and others did not result in independence or democracy for the nations ruled by the British Empire. The issue has its roots in India’s partition plan, which gave 565 princely states the option of joining either India or Pakistan based on religious, geographic, economic, and ethnic affiliations.³ Despite the fact that Jammu and Kashmir was the only Muslim majority state that desired to join Pakistan, Maharaja Hari Singh’s instrument of accession to India drew India and Pakistan into three wars since 1947, the first two of which were over

¹ Sikander Ahmed Shah, & Uzair J. Kayani, *War to Lawfare: Spotlighting the India-Pakistan Conflict* (Jinnah Institute, 2019).

² Mona Bhan, “Militarism, Humanitarianism, Occupation,” in *Routledge Handbook of Critical Kashmir Studies*, (Taylor and Francis, 2022), 93-96.

³ Bruce Hoffman, & Haley Duschinski, “Contestations Over Law, Power and Representation in Kashmir Valley,” *Interventions* 16, no. 4 (2014): 501-30.

Kashmir, and the confrontation on the borders [LOC] continues to escalate tensions between India and Pakistan. Since then, India committed genocide, ethnic cleansing, and crimes against humanity, all while violating fundamental human rights recognized by the United Nations. The invading Indian forces slaughtered around 100,000 innocent peasants, illegally held thousands in detention camps, and imposed a slew of draconian laws that violated fundamental human rights.⁴ Kashmir is a source of conflict between India and Pakistan, both of which have nuclear weapons. In Indian-administered Kashmir, the Indian state's authority necessitates the employment of discipline and death as social control methods. The militarized governance system in Kashmir needs dispersed and intense types of psychosocial management. India's goal as an established nation-state has been to discipline and incorporate Kashmir within its borders.⁵ To achieve so, the Kashmiri peoples had to be tamed using pain and death as selective regulatory mechanisms. Military presence, monitoring, punishment, and terror all have an impact on discipline. To administer death, both 'extrajudicial' and 'legal' procedures are used. Using death and deception, psychosocial control is employed to chastise the living. Discipline promotes amnesia, isolation, and depoliticization.⁶ Kashmir has become one of the most militarized locations on the planet. According to sources, almost seven million soldiers have been deployed, with an extra million people just dispatched, to confront what the Indian army claims is now a small group of 'Islamist terrorists.' Facts deny this myth and reality is totally opposite to it which can be proved with a detailed analysis of the events that took place during last three decades. Prime Minister of

⁴ Hoffman, & Duschinski, "Contestations Over Law, Power and Representation in Kashmir Valley," *Interventions*, 501-30.

⁵ Hoffman, & Duschinski, "Contestations Over Law, Power and Representation in Kashmir Valley," *Interventions*, 501-30.

⁶ Inamul Haq, "Law and Detention: A Critical Analysis of Law in the Kashmir Valley"

Pakistan Imran Khan reiterated in his UN general assembly speech: What India has done in Kashmir over the last 70 years is unfathomable and reprehensible to the rest of the world. An estimated 70,000 people have been killed in the battle, thousands have gone missing, scores of women have been raped, hundreds have lost their sight because of pellet guns, and tens of thousands have passed through torture such as Abu Gharib. The vast majority of armed insurgents operating in the valley today are young Kashmiris who have witnessed and experienced the most horrible forms of brutality. They are armed and trained on the spot. They do so knowing full well that once they pick up a firearm, their ‘life expectancy’ is unlikely to be more than six months, and in some cases, like in the case of Mohammad Rafi, an assistant professor of sociology at Kashmir University, it may be as little as 48 hours. When a kid is killed, tens of thousands of Kashmiris go to bury the victim, who is revered as a shaheed, or martyr.⁷ The people of Jammu and Kashmir are fighting for their rightful right to self-determination, which has been recognized by international peacekeeping organizations and civilized nations alike, but India refuses to acknowledge it. Meanwhile, in India, years of mismanagement and brutal government laid the way for an uprising in the late 1980s, and Srinagar’s streets experienced a new phase of the intifada. Major demonstrations of civilian killings, kidnapping, extra-judicial killings, gang rape, and property devastation were documented across the region as Indian police violently quashed the legitimate demand. In violation of international human rights law, the Indian central government enacted draconian legislation and provided cover for Armed Forces stationed in Jammu & Kashmir to perpetrate overt crimes of genocide.⁸

⁷ Haq, “Law and Detention.”

⁸ C. Christine Fair, “India’s Move in Kashmir: Unpacking the Domestic and International Motivations and Implications,” *Lawfare*, August 12 (2019).

Human Rights Violations in Indian Occupied Kashmir

Nation-states have authority over their internal and external policies, and they are accountable for not protecting their inhabitants from damage and danger. They enact specific legislation to protect citizens' fundamental rights and keep them secure from persecution. India's democratic and secular worldview is regularly lauded. Nevertheless, the crisis in Indian occupied Kashmir and Jammu remains perplexing. Since the establishment of Pakistan, Indian occupation troops have been brutally abusing the basic humanitarian demands of the people in Indian occupied Kashmir and Jammu. Paramilitary forces engage in systematic killings and grave abuses of basic human rights on purpose, and they use a litany of harsh laws to justify their brutal treatments and killing of innocent citizens. After 1989, dictatorial enforcers have killed hundreds of thousands of Kashmiris to alter the region's demographics.⁹ Human rights situations deteriorated considerably when Indian troops launched a 'capture and kill' campaign against suspected insurgents in late 1992 and early 1993. The number of convicts executed summarily by security personnel has escalated since then. The violation of human rights and criminal activities carried out by the Indian Armed Forces and terrorist organizations in Kashmir had been monitored by the Physicians for Human Rights (PHR) and Asia Watch in 1992.¹⁰

In April 1993, a report conducted by Asia Watch, sent another convoy to Indian Occupied Kashmir in response to an increase in savage reprisal in opposition to the Kashmiri citizens and violation of human rights in the year 1992 and 1993, in partnership with organizations responsible for humanitarian law.¹¹ The following is a

⁹ Fair, "India's Move in Kashmir."

¹⁰ Fair, "India's Move in Kashmir."

¹¹ Fair, "India's Move in Kashmir." See Also Nasir Qadri, Musaib Manzoor, & Sabah Aslam, "Atrocity Crimes, Constitutional Onslaught, & Genocide Threat in

detailed list of India's human rights abuses, organized by year, from January 1989 through January 31, 2022.¹²

- More than 95,000 homicide
- More than 7000 Homicides in Custody
- More than 164,000 Civilians detained
- More than 110,000 buildings and entities put to fire and destroyed
- More than 22,000 Women Widowed
- More than 107,000 orphans
- More than 11,000 Women sexually harassed and raped

Following the repeal of Article-370, thousands of people in Jammu and Kashmir were subjected to arbitrary mass arrests and detentions, which also include human right activist from national and international NGOs and leaders from different political parties, attorneys, along with civilians. According to sources, 4,000 persons have been imprisoned since August 5th, at least two weeks later the repeal of the Indian Constitution's Article 370.¹³ The administration notified Parliament on November 20, 2019, that 5,161 people had been imprisoned since August 5, with 609 still being held. However, these figures did not include information concerning the laws under which people were arrested or the crimes for which they were arrested. The Act of Public Safety (1978) allowed individuals to be placed in detention centers for not more than 2 years without any charge and have been frequently practiced in Indian occupied Jammu & Kashmir against Human Resource Developments (HRDs) and political activities. Although it has been difficult to establish accurate facts and figures on detention activities and arrests due to the forced restriction over the freedom of expression and sharing of knowledge. The government claimed on September 06, 2019 that it had arrested 3,800 people under the PSA, 2,600 of whom had been

IOJK: Role Human Rights Watchdogs," *Islamabad Institute of Conflict Resolution* (2022).

¹² Kashmir Media Service, Human Rights Violations in IOJK; Qadri, Manzoor & Aslam. "Atrocities Crimes, Constitutional Onslaught, & Genocide Threat in IOJK."

¹³ Lindsay Marie Massara, "Law as Violence in the Post-Colonial State: The Case of Lawfare in Kashmir," PhD Dissertation University of Oregon, 2022.

released.¹⁴ Many of the individuals victimized to imprisonment and detention have been sent to the jails of different locations of the State of Uttar Pradesh in India like Lucknow, Agra, Varanasi etc. and some in New Delhi. It represents most of the young individuals and low-profile activists.¹⁵

Moreover, the individuals arrested from the family are not sure of their families and families on the other hand are not provided about the information of the detention camps here their family members are kept, and data has been kept private and their families do not even know the health status of their relatives. PSA successfully identified whereabouts data of 45% of the more than 600 arrested and detained citizens in jails while no clue was found about the 55% of them.¹⁶ As per the plea of 144 juvenile delinquents inclusive of even a 9-year-old submitted by the Committee of Juvenile Justice Courts before Highest Tribunal of India on September 26, 2019, as arrested on August 05. Local human rights organizations' field investigations, on the other hand, appear to suggest that there were far more instances of juveniles being illegally imprisoned, with some being kept for more than 24 hours. In Jammu and Kashmir, 16 incidences of torture have been reported since August 05. Many of those seized during night raids, especially young people, claimed to have been tortured while detained. Many of the arrested teenagers and young men have been accused of sexual abuse.¹⁷ Despite

¹⁴ Rashida Abbas, Adeela Ahmed, & Muhammad Tabish, "Mediation in Armed Conflict: A Case of Kashmir," *Pakistan Journal of International Affairs* 5, no. 2 (2022).

¹⁵ Abbas, Ahmed & Tabish, "Mediation in Armed Conflict."

¹⁶ Pyar Singh, & Ramesh Chauhan, "Critical Media Analyzation in Review of Scrapping Article 370 from the Indian Constitution: A Case Study of Union Territory Jammu & Kashmir," *Journal Homepage: www. ijrpr. com ISSN 2582: 7421*.

¹⁷ Adeela Ahmed, Arsim Tariq & Rashida Abbas, "Demographic Changes in Indian Occupied Jammu and Kashmir (IOJK) and the Future of UN Resolutions," *International Journal of Kashmir Studies* 3, no. 2 (2021).

multiple serious reports of detainee abuse, it is uncertain whether any investigations into these reports have taken place.

Kashmir's Settler Colonialism

We now have settler-colonial overtures in 2020, after five centuries of settler-colonialism premised on the physical, epistemic, and institutional genocide of indigenous peoples, and after the establishment of an entire UN to presumably support a decolonial process following World War II. As this happens, the United Nations, which has already been accused of aiding the construction of another settler-colonial state in Israel, sits back and watches as the Indian state begins to prepare plans for the movement of settlers to Kashmir. To be clear, Kashmir was already colonized by India when it broke free from British colonialism, and it is not a new phenomenon; removing the natives is a long-term process.¹⁸ The Indian state has been involved vigorously for a long time, from confining space to restricting mobility, from large estates to exploitation, from capitalist development colliding with imperial goals to record omissions and thorough monitoring. Recent events are only a subject of ongoing dispossession and slaughter accompanied its control of Kashmir. In the recent past, the Indian government removed the Articles 370 and 35A debilitating the autonomous rights of Kashmiri citizens to attain their political goals, ushering in a new age of settler colonialism. The primary purpose of settler colonialism, on the other hand, is to claim the colonized territory indefinitely: Settler states attract settler classes who 'carry a putative sovereign right to build a new state on someone else's soil.' While the preceding statutes are based on settler colonial logic, the repeal of Article 35A allows for the recruitment of a settler community on indigenous soil. The repeal ensures 'the distinct, irreducible characteristic of settler colonialism, territoriality.' By

¹⁸ Mark Galeotti, *The Weaponisation of Everything: A Field Guide to the New Way of War* (Yale University Press, 2022).

this action of not retaining these articles of 370 & 35A in Indian Constitution, India can consume the natural resources and devoid the local community of their own status of decision making thereby populating the area of their own resources. Their purpose through settler colonialism is not only to recruit the people of their choice to this disputed land but also to attain the natural resources derived from this land.¹⁹

As citizens not belonging to Indian occupied Kashmir settle in the state, India's identity as a settler state evolves. By delegating sole authority to Kashmir's legislative assembly to define 'permanent residents,' the 35A Article of Indian Constitution makes sure to retain the genuine identity and integrity of Kashmir in practical terms. With this act of abolition of the afore mentioned Article, the state's government reawakened a long-held threat among Kashmiris: that India will escalate violence in Kashmir, stifle dissent, and employ the people not directly belonging to the occupied territory to water-down the ethnic and religious entities of the indigenous population. Till July 2020, 400,000 people will be accredited to settle in the Kashmir, confirming forecasts that demographic shifts in the Muslim-majority Himalayan province will begin soon. The certificate, which serves as a form of right to citizenship in the area that was previously only available to the local population. The entire objective of repealing this article had been to bring in all kinds of people to the occupied Kashmir and to dissolve demographic identities. This now provides specific tools and empowers so many different types of Indians to have their presence in Kashmir legalized.²⁰

¹⁹ Muhammad Usman Askari & Lal Khan Niazi, "Indian Hybrid War against Pakistan: A Strategic Theory Perspective," *Journal of Indian Studies* 8, no. 1 (2022): 189-208.

²⁰ Askari, & Niazi, "Indian Hybrid War against Pakistan."

Invisibilization in and by Law

While the preceding statutes are based on settler colonial logic, the repeal of Article 35A allows for the recruitment of a settler community on indigenous soil. The exclusion of colonized people from the legal system is an important part of the settler colonial agenda since it makes them unidentifiable and further dominate them. In this territory, such actions are not related to unavailability or incapability of the rule of law.²¹ But it is as how the law determines ‘the parameters of its own suspension, approval, and implementation,’ as explained by a lawyer and researcher. As a result, the law institutionalizes lawlessness, to accelerate the model of transforming demographic representation of disowning, the conflicted state issued habitation rules and regulations that limited natives’ rights to land, property, and jobs. The phrase ‘permanent inhabitants’ has been replaced by ‘domiciles of Jammu and Kashmir.’ According to the order:

Everyone who has stayed in the UT of Jammu & Kashmir for just a period of fifteen years and who may have been schooled for a period of seven years and appeared in the Level course 10th/12th exam in an accredited college situated in the UT of Jammu & Kashmir and who had been enrolled as an expatriate by the Recovery and Rescue Commissioner.²²

Indian people who have resided in the territory for a certain amount of time can now apply for a ‘property ownership license,’ according to the ruling.²³ Kids of adults who are registered can apply for their own certificates even if they have never visited the territory. These guidelines are applicable to armed officers and their children deployed in Kashmir. Potentially creating a new class of settlers among Kashmir’s hundreds of thousands of armed soldiers. The

²¹ Kalpana Kannabiran, ed. *Routledge Readings on Law and Social Justice: Disposessions, Marginalities, Rights* (Taylor & Francis, 2022).

²² Omer Aamir, “Kashmir Imbroglio: Moving Beyond the Horizon,” *SSRN* 4267400 (2022).

²³ Aamir, “Kashmir Imbroglio.”

decision by the Jammu and Kashmir administration to repeal a 1971 circular requiring the Security Force of Border, Indian Military Force and other forces to get 'no objection certificate' while attaining the land in this particular region has also been treated as an agenda to colonial settler.

The rulings also provoked outrage between many residents, who had already long dreaded Delhi's coercive incorporation of the fractious territory into union of India. However, spectators alleged Narendra Modi's right-wing government to employ the Covid-19 disease outbreak as an instrument to progress its Hindu colonial settler organization within geographical area, asserting it is a website straight out from the Israeli playbook to change the region's demographics. 'J&K's demography is guaranteed to be modified beyond imagination,' says Mirza saaib Baig, a Kashmiri lawyer working in the United Kingdom "and at such a fast rate that obtaining a resident certificate will appear to be a quasi-colonial exercise."²⁴ "By claiming domicile, these non-Kashmiris are now eligible to apply for any local government jobs previously reserved for Kashmiris, such as those in law enforcement or administration." The removal also allowed for unscrupulous resource mining in the area. Because of Kashmir's special status, non-local businesses were barred from operating in the territory unless they signed a lease arrangement with the government. Apprehending the repeal, all mining proposals were requested on the internet beginning in January, during a period when internet service in Kashmir was still prohibited. The result was a 'death blow to [Kashmiri] business': for the first time, non-Kashmiris acquired almost 70% of Kashmir's resource extraction contracts. Similarly, disturbing is the state's authority to integrate 'strategic areas[s]' for martial purposes without prior interaction with local governments. As the wholesome

²⁴ Aamir, "Kashmir Imbroglio."

impact of such actions is uncertain, this particular aspect is certain: J&K is currently on the market for sale.²⁵

The United Nations and international human rights organizations must intervene immediately in IOJK due to atrocity crimes, constitutional violations, and the approaching threat of genocide. The following part will go through international human rights law and how it sets obligations on various organizations, as well as their effectiveness.

Humanitarian Practices as a Fundamental Component of Global Legal Rules & Regulations

According to a few analysts, commonly recognized humanitarian rights have achieved worldwide law's conventional standing. Throughout this chapter, I would then investigate this assertion and make the argument that an overall legal principle, that is also articulated as a means of resolving disputes in Article 38(1) of the International Covenant of Fairness, is the prescriptive origin of rights public law, enabling for the imposed from certain commitments on global human rights organizations.

Human Rights as International Conventional Legal Practices

Inside the Arctic Ocean Continental Shelves Judgment, the International Court (ICJ) asserted that configuration necessitates verifying all these enduring recognizable roles of the state and evidence of presumption that this exercise is made mandatory by the creation of a legal system needing it. In the area of human rights, nevertheless, it's been contended that proof of tradition might be predicated on General Assembly's resolutions and other international bodies, illustrating the international community at large strong commitment to certain values, whereas inaccurate due

²⁵ Aamir, "Kashmir Imbroglio."

process would not have been an obstacle to recognizing such practice.²⁶

Put another way, it's been envisioned that state's practice in the area of human rights comprised of approved public statements and ability to participate in the negotiating process of humanitarian law, and the integration of new of human rights into nationwide legal orders, again for specific purpose of customary determination. This viewpoint has been supported by at least two or three arguments. First, separating the 'practice' from *opinion juris* within the substantiation of the beginnings of a rule of customary law may be artificial, so because due process which makes a difference is something that is right role (as it gave testimony to the onset of the rule), as well as the *initio juris* can only be recognized from State practice.²⁷

Its 1987 Tautology (Third) of a United Governments International Security Law, in example, thinks that state's practice arises from states' backing for announcements or treaties recognizing civil dignity, or from condemnation of other states' violations. Human rights abuses, on either hand, are particularly difficult to prove since they concern a state's relationship with its own citizens. They elicit less responses from other nations than infractions of civil conventions that jeopardize the other's objectives, thus 'tradition' in the field of human rights would only emerge after considerable effort.

As a result, in the sphere of human rights, a 'modern' view on custom acquired a lot of traction. This viewpoint is offered as a counterpoint to the customary approach stated in Article 38(1) of the

²⁶ Sughra Alam Muhammad Nawaz Bhat & Muhammad Waris Awan "Abrogation of Articles 370 & 35A of the Indian Constitution: Implications for Peace in South Asia," *International Review in Social Sciences* (2020): 9-20.

²⁷ Alam, Bhat & Awan, "Abrogation of Articles 370 & 35A of the Indian Constitution," 9-20.

Statute of the International Court of Justice. State ‘practice,’ in the traditional sense of ‘action,’ is less determinative than authoritative declarations issued by states or multilateral agencies, according to the ‘modern’ approach.²⁸

Human Rights as General Principles of Law

The Tribunal of Prosecutor’s strategy enhances the recognition of the Convention on Human Rights as a form of legal requirements. The Board refused to recognize the Proclamation as just cogens in its totality. It, nevertheless, made frequent allusions to the Article, generally in the context of a particular privilege also without always citing the Declaration’s authority source. “Unjustly dispossessing humans of their liberty and exposing them to physiological restriction in challenging times is patently violative of the UN Charter, as well as the basic tenets elucidated in the Convention on Human Rights,” says the UN inside the specific instance of the Captives, referring to Article 9 of the Universal Declaration, which prohibits random detainment or internment.²⁹ The terms used to refer to such ‘basic tenants’ are not new. In the Famous Case East Timor, the ‘concept’ of autonomy too was referenced to as ‘one of several essential elements of present international law.’

Role of Human Rights Watchdogs amidst Indian Atrocities in IOJ&K

Human rights, as previously noted, are associated to international law, and generally recognized humanitarian basis are as connectivity on international organizations like the matter of international law. The violations of human rights in Indian-occupied Kashmir pose a

²⁸ Alam, Bhat & Awan, “Abrogation of Articles 370 & 35A of the Indian Constitution,” 9-20.

²⁹ Zaheer Abbas Chohan, Naveed Anjum Naru & Huma Ikhlaiq, “International Law and Self Determination: A Case for Kashmir’s Special Status,” *International Journal of Kashmir Studies* 3, no. 2 (2021).

significant challenge for international organizations, particularly the United Nations, to demonstrate their effectiveness in preserving human lives and sustaining peace, protection, and prosperity worldwide. The UN-recognized this territory as a conflict between India and Pakistan to employ their armed forces against each other, with the two nations fighting four major wars over Kashmir. Despite the DGMO LOC agreement, ceasefire violations and border clashes have intensified. As a result, the two countries are embroiled in an international military conflict (IAC). A suicide explosion on a bus in Pulwama district on February 14, 2019 killing about 42 paramilitary troops in Lethapora, India. Adil Dar, a local indigenous armed rebel affiliated with Jaishh-e-Muhammed, took responsibility of attacking this land. Foreign Office of Pakistan denied India's assertions that the security forces and armed forces are allegedly involved to carry out this attack while suggested India to conduct reliable investigations and not to breach their security models. Following the attack, India carried out airstrikes on an alleged militant training camp in Balakot, Pakistan. On February 27, 2019, the Foreign Minister of Pakistan stated their Air Force from the Arial boundaries of their Line of Control carried out Air Strike.³⁰

A representative from Pakistan's military units announced on the very day Indian aircraft breached its boundaries and blown out of the sky two airplanes. The commander from one of the warplanes was killed when it fell here on Indian side of Kashmir, while the other grounded in the territory of Pakistan.³¹ Pakistan later turned the pilot over to India, reducing friction between the two nations. As confrontations all along Demarcation line persisted over 2019, hostilities among Pakistan and India remained elevated, or the use of power by both sides was not unusual. Pakistan reported that Indian military killed three military personnel and one citizen in April

³⁰ Chohan, Naru & Ikhlaiq, "International Law and Self Determination."

³¹ Egor Lazarev, *State-building as Lawfare: Custom, Sharia, and State Law in Postwar Chechnya* (Cambridge University Press, 2023).

2019, whereas India alleged that Pakistani fire killed five of its personnel. The danger is that if the contested character of Kashmir is not settled quickly among two nations having nukes neighboring each other might imperil peace and stability. Numerous human rights government regulators, notably the UN, can play an important role in shaping the Kashmir dispute and ongoing infringements.³²

The UN Secretary General's Position

According to the Article 99 of UN Ordinance, the previous sections are in response to the threat of genocide and the tipping point of the India-Pakistan armed conflict over Kashmir, both of which have far-reaching implications for global safety and stability. According to this context, the Secretary General (SG) of UN can assume the following responsibilities. In terms of international peace and security, Article 99 of the UN Charter, which delegated powers to the SG, is the most important. It gives the Secretary-General the authority to bring to the Security Council's attention any situation that, in his opinion, may jeopardize the maintenance of international peace and security. According to the UN Preparatory Commission's report, The Initiative's draughtsmen were well conscious of the implications of the document and entrusting this task to the SG: "the responsibility it confers upon the Secretary-General will require the exercise of the highest qualities of political judgement, tact, and integrity." Given that the present Cabinet tendencies may render it hard to reach consensus on how to handle future catastrophes, the Treasurer may choose to use his Article 99 authority more regularly. Calling such instances to the knowledge of the Cabinet would permit it to focus on its peacebuilding function and the Chapter VII options available.

³² Lazarev, *State-building as Lawfare*.

Prosecutor Office International Criminal Court (ICC)

As per accounts, there are scores of mass disasters in Kashmir. Inside the IOJK, violence, abduction, and assault were mostly prevalent. Assault has been used by Indian colonizers and police to as ell to penalize, terrorize, compel, disgrace, and denigrate people. The administration's use of frequent military forces, the activist group of indigenous armed rebels into the military services with commanding officers personally liable for those combatants' behavior and proficient of complying to laws of military conflict commitments, the military existence of activities conducted on both sides, and the size of the rebels as well as the state's military forces, all contribute to ubiquitous and frequent fighting in Kashmir. The Geneva Conventions are applied to the military struggle in Kashmir. However, the Indian government believes that it does not meet the criteria for applying Common Article 2 or 3.

That's due to the fact that India treats these problems as internal matters, albeit beyond the level of 'law and order', but well below the threshold of National or International Armed Conflict. But the Common Article 2 or 3 stipulates that its usage "shall not impact the legal status of the Parties to the conflict," this aversion persists.³³ In this situation, the judiciary has failed to provide tribunal testimony according to the article's demands. This ongoing dispute in Kashmir and the North-Eastern area depicts why the government is anxious about reporting the violence to the ICC. India continually refuses to implement the Geneva Accords, alleging that the threshold has not been met. Additional Protocol II, which includes a lower bar under Article 1(2), could have been useful, but India has yet to ratify it. With the occupied Kashmir setting new records for egregious human rights violations and crimes against minorities in various states, there is concern that if India adopts the Rome Statute, it may fall under the jurisdiction of the ICC. However, the Rome Statutes

³³ Lazarev, *State-building as Lawfare*.

afforded the Prosecution Sou Moto ability to take cognizance of international crime without the need for treaty approval.

Article 15(2) goes over the preliminary examination procedure and how to get more information. According to the Section 3 of Article 15, unless the Attorney believes there really is a valid cause to advance with an enquiry, one must make a petition to the Pre-Trial Panel for authorization to begin an inquiry, along with any corroborating information obtained.³⁴

Recommendations

- The legal regime exists both inside countries' local domains and as international law, which must be leveraged through a well-resourced and structured effort to identify human rights and IHL transgressions. To that aim, Kashmiris should be assisted in gathering solid evidence of specific acts by entities as well as individuals, which should then be properly documented and presented in front of UN bodies such as the Human Rights Council and General Assembly.
- Gathering evidence of atrocities/human rights breaches through special committees established by statute.
- AJ&K government, Ministry of Foreign Affairs, and Ministry of Defence capacity building in international law.
- A public sector Center of Excellence/Think Tank, preferably in a university, should be formed to build a pool of international law specialists.
- The Kashmiris should be given all feasible assistance in gathering evidence of systematic atrocities committed by Indian occupying forces in order to build a case of crimes

³⁴ Lazarev, *State-building as Lawfare*.

against humanity. Crimes against humanity are simple to pursue in international forums since they are free from the local law remedies clause. As a result, there is no need to exhaust local remedies in such circumstances. Cases can be initiated by victims or their relatives, or by non-governmental organizations (NGOs) on their behalf. Trial International, the Center for Justice and Accountability, International Federal for Human Rights, and REDRESS are among the non-governmental organizations that provide pro bono assistance in this area.

- The legal regime exists inside countries' internal jurisdictions as well as international law, which must be leveraged through a well-resourced and organized effort to highlight human rights and IHL abuses. To that aim, Kashmiris should be assisted in gathering solid evidence of specific acts by entities as well as individuals, which should then be properly documented and presented in front of UN bodies such as the Human Rights Council and General Assembly. A Vice Chancellor may notify a committee as a statutory entity under the Act of any University or its connected Area Study Center for the collecting and documentation of evidence, which should be sponsored as a project by the Ministry of Finance.
- There is a need for capacity training in legal topics, particularly international law, at the Foreign Office, the Ministry of Foreign Affairs, and the Ministry of Defence. The capacity for improvement of the AJ&K government in international law and the use of lawfare options through improved human resources and finance is mandatory. A public sector Center of Excellence/Think Tank, preferably in a university, should be developed to create a pool of international law experts.

Conclusion

After witnessing genocide and ethnic cleansing across borders in Rwanda and the Balkans, the international community established a fail-safe mechanism that can be used as a model for Kashmir. Kofi Annan, the then Secretary General of the United Nations General Assembly, urged for the world community to find a way to stop human suffering. As a response, in September 2000, the Canadian government established the International Commission on Intervention and State Sovereignty. In 2001, it published a paper titled “Responsibility to Protect.” The United Nations launched the R2P commitment in 2005, with widespread backing from member countries. In certain cases, the UN invoked R2P; but, in the case of Indian crimes in occupied Kashmir, it did not. The concept of the Right to Defend was developed by the United Nations in order to protect citizens from the persecution of state and non-state actors. The concept is based on three principles: states carry exclusive responsibility for protecting individuals, the international community aids states in establishing protection capability, and the international community should act immediately and decisively in cases of state-sponsored persecution. Because the Indian occupying forces are systematically and deliberately involved in the valley’s gross human rights violations, the Indian massacres in Jammu and Kashmir demand the international community’s attention, as well as a serious commitment beyond lip service from Pakistan (a party to the conflict). The crimes have been denounced to the UN Commission on Human Rights and other genuine human rights organizations, but the UN’s ability to take effective action is questionable. Domestic and systemic determinants have a considerable impact on the UN’s reluctance to use R2P, according to the analysis. The high politics of major powers’ economic and military interests in India, as well as their reliance on the UN, overshadowed concerns about human rights violations in Jammu and Kashmir at the system level. Similarly, in the new geopolitical

great game of big powers, the geography of Jammu and Kashmir is largely overlooked, and India's rise as a regional hegemon reinforces its position in regional political and security architecture. Pakistan, on the other hand, is unable to internationalize India's crimes because of its limited capacities, economic uncertainty, and domestic instability. The growing dominance of India in the international system, along with Pakistan's limited ability to portray Kashmir on the international stage, is paving the way for the United Nations to fail. Since 1947, there have been several incidents of genocide and ethnic cleansing in Kashmir. The disaster of November 1947, when Dogra forces, supported by Sikhs and RSS zealots, killed around 230,000 Muslims in the Jammu region alone, is most vividly remembered. The lengthy conflict resulted in the murder of around 100,000 innocent individuals in the second wave of genocide from 1989 to 2019. Since August 5, 2019, when India abolished Jammu and Kashmir's special status, the third wave of massacres has been in full swing. Abrogation of Article 370/35(A), torture, incarceration, intimidation, and deaths of civilians have all increased drastically over the previous decade. This new genocidal paradigm serves as a model for the Modi government's goal of changing Kashmir's demography and political narrative. The widespread assassination will reduce the Muslim majority to a minority, clearing the way for a larger India. Before it is too late, the international community and the United Nations must thoroughly assess the situation and take bold and prompt action to protect Kashmiris from large-scale genocide and ethnic cleansing.