

Kashmir

Beyond Imbrolios*

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Abstract

Kashmir is a picturesque region straddled by the boundaries of India, China, Pakistan, and Afghanistan. It has seen a lot of turmoil in the last 30 years. Moreover, Pakistan and India have engaged in multiple wars and skirmishes over the territory. The history of Kashmir can be traced back to the transfer of territory to the Hindu Maharaja in the Treaty of Amritsar in 1849. Local resistance was subdued through colonial-era autocratic mechanisms. The rule of Gulab Singh's successors was seen as one labeled as "post-autocratic fiscalty." Politico-legal instruments were thereafter leveraged to marginalize the majority Muslim community in Kashmir and resulted in an unfair system. In 1947, riots started after the 3 June Mountbatten Plan was announced. This led to the migration of population from one region to the other. There was no clear demarcation of boundaries by the colonial regime. This was delayed after the announcement of independence of the two nation-states of Pakistan and India. The postponed Radcliffe Award and the unclear nature of the Instrument of Accession of Princely States caused a horrid situation that resulted in turmoil.

Moreover, contrary to what Dalbir Ahlawat and Satish Malik have stated, the colonial regime coined the term *Kashmiriyat*, which is an empty signifier that disregards the ground realities. In violation of international law, India's unilateral abrogation of Article 370 and 35-A show that New Delhi is taking steps that are detrimental to regional peace and stability. Furthermore, India has made Kashmir one of the most militarized zones in the world, with a ratio of security personnel to local population of 1:8. Due to the imminent threat of a conflict between nuclear-armed neighbors, the oppression and subjugation of the Kashmiris makes regional stability and peace precarious. The obduracy of India's successive governments over the years to resolve the dispute is causing concern for policy makers around the world. The issue should be resolved through pacific settlement of disputes as enunciated in Article 33 of the UN Charter. The *International Religious*

*The authors wish to thank ACM Kaleem Saadat, president at the Centre for Aerospace and Security Studies (CASS), for his comments on the draft of this article.

Freedom Report has categorically stated that India's use of intimidation tactics against its minorities is akin to state terrorism.

Conclusively, this article argues that the right to self-determination, which is an integral part of any international covenant, including but not restricted to the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); and most importantly United Nations Declaration on Human Rights (UNDHR), should be upheld and the conditions of Kashmiris ought to be bettered as a fundamental human right.

Introduction

The picturesque Himalayan region of Kashmir sits at the juncture of Pakistan, India, Afghanistan, and China,¹ and represents the primary bone of contention between the two dominant South Asian rivals: India and Pakistan. The dispute over Kashmir has embroiled India and Pakistan in two major wars, a limited battle at Kargil, and numerous border conflicts since 1947. It was the *casus belli* for the wars of 1947–48 and 1965 and saw heavy fighting in the 1971 war as well.² The dispute has consumed precious resources in blood and treasure from both countries, which have been diverted away from the pressing concerns of poverty, disease, malnutrition, and climate change. The two countries have become nuclear powers since 1998, and the perennial contest over Kashmir on diplomatic, information, legal, military, intelligence, and political grounds continues—albeit this time under an ominous nuclear umbrella.

In this regard, it is necessary that a more nuanced and comprehensive viewpoint be presented to a global audience, which can foster both wider international engagement as well as a richer understanding of the salient features and undercurrents that permeate Jammu & Kashmir (J&K) and the South Asian region at large. In the end, such engagement is a necessary step in ushering a more stable and prosperous South Asia, which still reels from the aftershocks of colonialism and welters under the specter of a localized, but no less brutal, neocolonialism now being imposed by the Indian police state in the Kashmir Valley.

The prominence of the Kashmir conflict has indeed enthused many attempts to grapple with the subject, and many parties have offered differing terms as means for a rational settlement.³ Yet few have managed to pierce the veil of partisanship with sufficient levels of immersion, in the particular sense that Kashmiris' experiences have not been given their due weight. A recent instance of this can be found in the work of authors Dalbir Ahlawat and Satish Malik, titled "Kashmir Imbroglio" and published in this *Journal of Indo-Pacific Affairs (JIPA)*. An objective of our article is to present a valuable counterperspective to the claims presented by

these authors, in light of much violence and state repression that India has perpetrated in the short period since, particularly after its abrogation of Article 370 on 5 August 2019, which represents an act that violates both international law and the Indian legal corpus. Moreover, this article stresses a more sober historical perspective of the Kashmir region, substantiated by more neutral accounts of historians, anthropologists, and other social scientists.

Many nuances have been lost in reductionist narratives that are most vociferously pressed today, and what this article aims to do above all is inform an enquiry that ties more profoundly with both the historical memory and the lived experiences of Kashmiris as they navigate a tortuous tide of postcolonial subjugation and Hindu irredentism that rises by the day.⁴ The approach of this article arguably offers far more explanatory power regarding the plight of the Kashmiris; the imposition of a “living hell” police state in Kashmir since 5 August 2019;⁵ and the risk of an escalation between India and Pakistan at the behest of an ethnonationalist government in New Delhi that has done away with the pretenses around the myth of “Indian secularism” and which has in more ways than one come to prove Pakistan’s genesis, rooted in the Two Nation Theory, correct in reflection.⁶

Above all, this account is corroborated and vindicated by the immediate retrospect that other authors have not had. In the brief period since Ahlawat and Malik presented their arguments to this journal, the Indian government has abrogated articles 35A and 370, cut off the region from any connection to the outside world, led a crackdown on leaders across the Kashmiri political spectrum (including Indian sympathizers, who are today more hamstrung as apologists),⁷ and undertaken the mass deportation of young men to prisons across the Indian mainland. These events have occurred without any democratic or journalistic access to the epicenter of New Delhi’s excesses. Children as young as nine have been subject to what is constitutionally known as *preventive detention*, in a sort of moral gymnastic routine that shocks even seasoned scholars on Kashmir.⁸ A pronounced assertion can be made thus: scholars with a tolerant bent toward Indian occupation in Kashmir, including Ahlawat and Malik, would have a much harder time pressing the case they did as recently as mid-2019 by the fall of the same year. This is in large part because of the mendaciousness that accompanies an apologist stance toward postcolonial occupation forces that themselves hold deep-seated venality toward the local populations that they annex and dominate.

It is required, in turn, to revisit a justified and grounded perspective that can shed actual light on the “Kashmir imbroglio” in a manner that more fully informs the logic of terror and fascism that now constitute the lived experiences of Kashmiris. The region has been suffering since Gulab Singh acquired Kashmir in March 1846 under the Treaty of Amritsar. What Frantz Fanon described as *Les*

Damnés de la Terre (The Wretched of the Earth)⁹ could not be found any more starkly subsisting in anguish as the Kashmiris who have lived under the occupation forces of New Delhi and the Dogra regime before them. This element of colonial and postcolonial subjugation forms the basis of the fullest inquiry into the plight of Kashmiris.

The Despondence of Kashmiri Muslims under Autocratic Colonial Rule

Kashmir was a region that fell to an autocratic princely state arrangement much more recently than other regions of South Asia did.¹⁰ Only at the apogee of European colonialism was Kashmir converted into a Princely State, when the British recognized Gulab Singh as a tributary and vassal maharaja through the Treaty of Amritsar (1846). This followed the First Anglo–Sikh War (1845–46) and was contingent on payment of 75 thousand Nanakshahee Rupees for the war indemnity. The payment was justified on account of Gulab Singh legally being one of the chiefs of the Kingdom of Lahore and thus responsible for its treaty obligations. Gulab Singh had sided with the British in the Anglo–Sikh war and was thus conveniently confirmed as the ruler of Kashmir by the colonial regime. The vassal Gulab Singh, in turn, imposed exorbitant taxes on the Kashmiris in an attempt to recoup the money he had paid to buy Kashmir.¹¹ This reflected his instrumental approach toward treating Kashmir as a territory rather than as a collective polity and followed a pattern long observed by anthropologists of debt as one of post-occupation autocratic fiscalty.¹²

By the time that the autocrat Gulab Singh had refashioned the economy of the territory he had purchased from Britain to his whims, the Hindus had multiplied their economic domination over the majority Muslim population. The largest beneficiaries of this system were the social agents known as Pandits, the upper-caste Brahmin Hindus who were residents in Kashmir. The Pandits and the Dogra royal family controlled most of the agricultural land, while the majority Muslim population largely toiled in economic subservience to the Pandits and the Dogras. Despite Muslims representing 53 percent of the population in the southern Jammu Province and a full 93 percent in the heavily populated northern Kashmir Province, they were a community in serfdom.¹³ Lt Col Ian Torrens, who was part owner of the *Globe* newspaper and an influential political economist of his time, visited Kashmir (1859–60) during the reign of Ranbir Singh. He painted a grim political picture of the region, stating, “the Hindu rule was run by Hindu faqueers, detested by people that they prey upon, but supported and encouraged by the Government.”¹⁴ He added that “apart from the Pandits, the Kashmiris are all

Mahomedans, and the differences between them and their Dogra rulers does not serve to lessen the unpopularity of the dominant race.”¹⁵

Other avenues where minority power was exhibited included the public administration: Hindus and Sikhs held 78 percent of gazette appointments in the government, while the Muslim representation was only 22 percent, despite their majority of more than three-fourths. The Kashmiri Pandits, thus, used their overrepresentation in the state machinery to reinforce their economic control and political power across the totality of the state.¹⁶ Similarly, the public finances of the state reflected this tyranny in various forms, as when the taxes on Muslims for crop yields that were an eye-gouging 75 percent of their produce, thereby eliminating the possibility of their economic emancipation through surplus production. The Kashmiris had been kept in this subjugated condition throughout history, first by the Mughals, then the Afghans, and lately, before Partition by the Dogras. In fact, the Dogras also reintroduced the forced labor system under which the state could employ workers for little to no payment. In times of economic adversity, Muslims would be squeezed first such that, even at the time of a severe famine in the state during the Dogra rule, the Muslims were allowed to perish rather than slaughtering their cattle, so as not to offend Brahmin sensibilities.¹⁷ We see echoes of this in contemporary India where lynchings against Muslims for perceived slaughtering of cows has gained increasing currency as a vigilante practice.

Additionally, Hindus had monopolies over 83 percent of the access (seats) in state-sponsored (public) education.¹⁸ The tax net was in fact so deep that Kashmiri Muslims had to pay a tax to get married as well.¹⁹ Worse still, the Dogra autocrat is reported to have presented a plan for the forced conversion (in his eyes, “reconversion”) of Muslims to Hinduism—but it is of some ironic quality that the plan was rejected by Benares high priests because they believed that the Muslims would then “contaminate” the purity of Hinduism.²⁰ The forced “reconversion” of India’s Muslims, in addition to those in Kashmir, is a vividly discussed subject by today’s ruling party in New Delhi.²¹

Although most historical–anthropological accounts of Kashmir under Hindu Dogra rule mention incidents and impressions of total class violence as a fairly frequent affair, it appears that July 1931 was seminal to revolutionary action.²² In the aftermath of the 1931 agitations, the British-appointed B.J. Glancy Commission was deputed to examine an extensive array of economic and political grievances believed to have caused the disturbances. Its report of 1932 included a criticism of the Kashmir state’s partisan functioning in favor of its Hindu subjects to the neglect of Muslims.²³

In the 1941 British census of India, Kashmir registered a Muslim-majority population of 77 percent, a Hindu population of 20 percent, and a sparse popula-

tion of Buddhists and Sikhs comprising the remaining 3 percent out of a total population of 4.02 million.²⁴ That same year, Prem Nath Bazaz, a Kashmiri Pandit journalist wrote, “The poverty of the Muslim masses is appalling. . . . Most are landless labourers, working as serfs for absentee [Hindu] landlords . . . Almost the whole brunt of official corruption is borne by the Muslim masses.”²⁵

This was the desperate backdrop of the lived experience within which Kashmiris, contrary to the claims of Ahlawat and Malik for *Kashmiriyat*, recognized their identity as disenfranchised Muslims tyrannized by upper-caste Hindus, who were themselves collaborators and vassals to the British. The class violence was superimposed on the religious identity of the Kashmiris as a distinct people who would stand in class allegiance against the landowning Brahmins who profited in their serfdom.

Thus, the Kashmiris were a clear case of Fanon’s colonial depiction of the *Wretched of the Earth*,²⁶ but the class violence is reinforced in the analysis of Indian scholars as well, as when Bazaz observes that “speaking generally and from the bourgeois point of view, the Dogra rule has been a Hindu Raj. Muslims have not been treated fairly, by which I mean as fairly as the Hindus. Firstly, because, contrary to all professions of treating all classes equally, it must be candidly admitted that Muslims were dealt with harshly in certain respects only because they were Muslims.”²⁷ This helps to explain the widespread appeal of the Pakistan Movement to the majority of Kashmiris living under oppressive conditions, their desire to stand up for the cause of Pakistan and the deliverance it promised—even as their Dogra autocrats sought to suppress them and work out an arrangement with India that would perpetuate their privileges of exploitation.

Riots, Partition, and the Princely State of Kashmir

The era of the British colonial Raj came to an end following World War II and the ensuing inability of the colonial regime to continue financing British foreign depredations. It is stated by one of prominent Pakistani lawyers that, “Centuries of British colonial rule on the Indian subcontinent ended in August 1947, as Winston Churchill puts it, in a ‘premature hurried scuttle.’ The ill-conceived flight of the British left certain far-reaching elements of the decolonization process unfinished, including the political fate of the princely state of J&K in accordance with the wishes of its people and consistent with Partition’s underlying principles.”²⁸

The longstanding repression of Kashmir came to the fore as one of a litany of princely autocratic arrangements that had to choose their postcolonial political status. There were 584 Princely States, along with Kashmir, which had to make this choice per the British arrangements for their exit. The Princely States had maintained a “special relationship” as vassals of the crown, but the “lapse of para-

mountncy” resulted in the transformation of their status and a choice to accede to either the dominion of India or Pakistan or to become independent.²⁹ Out of 584 Princely States during 1947, 13 major Princely States decided to join Pakistan.

In addition, the states of Hyderabad, Junagadh, and Manavadar also decided to accede to Pakistan. However, given that they were surrounded by Indian territory, the Indian state exerted brute force to prevent these accessions from occurring, forcing instead their mergers with the Indian Union under threat of total violence.³⁰ Operation Polo, the Indian military operation to take over Hyderabad state, resulted in massive communal violence and deaths, ranging from official sources of around 35,000 to scholarly estimates of over 200,000.³¹ Kashmir’s maharaja, Hari Singh, who was one of the descendants of the tyrannical vassal Gulab Singh, played a gambit to sign a standstill agreement with Pakistan due to the cultural, linguistic, and religious affinity of the Kashmiri people with the people of Pakistan, besides the land linkage of the state with Pakistan, since the only all-weather road at the time passed through Rawalpindi into Kashmir.

According to Ahlawat and Malik, Hari Singh sought time to persuade the Muslim population, against their wishes, to join India. However, their democratic will had already been expressed, and the decision had long been made by the Kashmiri Muslims, as can be seen in that Ghulam Abbas had broken off from Sheikh Abdullah’s Congress-affiliated National Conference and had revived the Muslim Conference to represent the prevalent Muslim aspirations of Kashmiri Muslims to join Pakistan.³² It was the vassal’s betrayal of the democratic aspirations of the Kashmiri people, which he as well as his forefathers had long exploited and detested,³³ that would erupt in what is known as the Kashmir dispute.

Yet, the faulty and chaotic “Brexite” of 1947 and the poorly executed and partisan partition of subcontinent based on the Radcliffe Award also fueled the flames of the Kashmir dispute. The Muslim-majority Gurdaspur district was given to India, providing New Delhi with a land route to Kashmir. Muhammad Zufrulla Khan, who represented the Muslim League at the Boundary Commission, writes, “If Batala and Gurdaspur had gone to Pakistan, Pathankot tehsil would have been isolated and blocked. Even though it would have been possible for India to get access to Pathankot through the Hoshiarpur district, it would have taken quite a long time to construct the roads, bridges, and communications that would have been necessary for military movements.”³⁴ According to Indian lawyer A. G. Noorani, were it not for the controversial Radcliffe Award, India would not have any access to Kashmir at all.³⁵ The geographical factor was clearly in favor of Pakistan, and so was the demography. Yet manipulation, political expediency, and hastiness led the Radcliffe ploy to disregard both geographical contiguity and demographic (not to mention democratic) logic.³⁶

The rebellion against Maharaja Hari Singh started before independence in Poonch in June–July 1947, where Muslim soldiers of World War II had been disarmed and heavy taxes imposed, creating widespread discontent. Sixty thousand Muslims from the Poonch and Mirpur district had served in the British Army during World War II. Similarly, in Gilgit, the British-led Gilgit Scouts rebelled (their separate decision from the rest of Kashmir to rebel earlier and accede to Pakistan is discussed in a later section).

The flailing Maharaja Hari Singh saw his fiefdom ablaze and decided to flee, but it was in flight from Srinagar that he signed the so-called “Instrument of Accession” with India, something that partisans claim he supposedly signed in October 1947. The authenticity of this document remains in doubt and is likely to be a forgery.³⁷ Assuming, for a moment, that it was not a forgery, then the so-called instrument would have been an abject violation of the standstill agreement already signed with Pakistan. In his letter to the maharaja, bearing the date 27 October 1947, the Governor General of India, Lord Mountbatten, declared that “consistently with their policy in the case of any State where the issue of accession has been the subject of dispute, the question of accession should be decided in accordance to the wishes of the people of the State, it is my Government’s wish that as soon as law and order have been restored in Kashmir . . . the question of the State’s accession should be settled by a reference to the people.”³⁸

Moreover, the UNSC Resolution 47 passed on 21 April 1948 expanded the mandate of the United Nations Commission on India and Pakistan to conduct a plebiscite in Kashmir.³⁹ The resolution explicitly called on the Government of India to ensure the safety of all subjects and their freedom of expression in the vote for accession and ensuring freedom of the press, speech, and assembly and freedom of travel in the state, including freedom of lawful entry and exit. The Indian state continues to violate all the stipulations of the resolution in the current scenario.⁴⁰ In the aftermath of the elections of 1951, in which Sheikh Abdullah’s National Conference claimed a victory in every single one of the 75 seats (73 without contest), there were objections about massive rigging by New Delhi. The manipulated results prompted Josef Korbel, chair for the UN Commission on India and Pakistan, to remark, “No dictator could do better.”⁴¹

UNSC Resolution 91 highlighted this by resolving that any action that the Constituent Assembly (formed through rigging) in Indian Occupied J&K would take or would have taken will hold no value.⁴² Thus, the council decimated the claim of the unlawfully elected Constituent Assembly that Kashmir was an “integral part of India.” Its precise wording is that “the convening of a constituent assembly as recommended by the General Council of the ‘All Jammu and Kashmir National Conference’ and any action that the assembly might attempt to take to

determine the future shape and affiliation of the entire State or any part thereof would not constitute a disposition of the State in accordance with the above principle [impartial plebiscite].”⁴³

Contrary to allowing a plebiscite in Kashmir as mandated by the United Nations, India instead conducted a plebiscite in Junagadh to determine the wishes of that populace. This was due to the fact that Junagadh was a Hindu-majority region, whereas Kashmir was a Muslim-majority region. It was a categorically inconsistent (read: hypocritical) move and one that caused widespread consternation in the subcontinent, setting the tone for constant mistrust between the two nations. Ahlawat and Malik have erred abjectly in their counterfactual guess that a plebiscite in Kashmir might somehow have favored India, based on the notion that Sheikh Abdullah was a Congress ally.⁴⁴ This assumes that New Delhi’s vassal, Sheikh Abdullah, commanded the will of a disenfranchised people and that the Kashmiri people were oblivious to his status as a puppet. Instead, the far greater likelihood, to which Ahlawat and Malik act oblivious, is that the dynamics of the Kashmir region would have led to a plebiscite favoring accession to Pakistan.⁴⁵ Even to this day, the likelihood remains that, if a free and fair plebiscite is conducted in Kashmir Valley, it will most likely go in favor of Pakistan. However, India, which touts itself as the “world’s largest democracy,” has now brazenly abrogated Article 370 and imposed a police state and is loath to accept the democratic wishes of the Kashmiri people (this will be discussed in a later section).

The National Conference that Sheikh Abdullah’s apologist cabal led at the time of Partition worked in close affiliation with the centrist Congress leader Jawaharlal Nehru in New Delhi. However, the National Conference itself had split into the Muslim Conference and the National Conference in 1941 after the passing of Pakistan Resolution. Thereafter, the National Conference could not have represented the aspirations of the people of Kashmir Valley as it was not the sole voice of the Kashmiris anymore. This was similar to the situation in the North-West Frontier Province (now known as Khyber Pakhtunkhwa) where the Khidmatgar party was a Congress ally and was ruling the province. Yet, the people of the province voted in favor of joining Pakistan through a referendum held there at the time of Partition. As has been written by lawyer Yasser Latif Hamdani “the referendum, to decide between Pakistan and Hindustan, held under an impartial governor who enjoyed the confidence of the Congress, with a Congress government in the province, still resulted in a landslide victory for the Muslim League on the Pakistan question.”⁴⁶ Moreover, Sheikh Abdullah’s National Conference government in Kashmir was dismissed in 1953 by the New Delhi central government; thus, the Indian notion that he would have helped India in a plebiscite faded away

with this rift. According to Sheikh Abdullah, his dismissal and arrest were engineered by the central government headed by Prime Minister Nehru.⁴⁷

Indians later bribed the Sheikh through positions of power and money to win back his support, making him the puppet Chief Minister for Kashmir. He traded-off the Kashmiris' right to self-determination, which hinged on a neutral plebiscite and was granted by multiple United Nations Security Council Resolutions, to instead negotiate the 1974 Indira–Sheikh accords.⁴⁸ It was a paltry price to damn his own people, and according to Kashmiri historian Muhammad Ishaq Khan, the move led Abdullah to be dubbed a traitor by even his most ardent supporters.⁴⁹

Indigenous Kashmiri Freedom Movement Starting in 1989

The act of pelting Indian occupation troops with stones has been seen for at least three decades in television reporting that bothers to cover Kashmir (or is even allowed to do so), beginning with the movement that is now remembered as the Kashmiri Intifada of 1989. That said, the stone-pelting intifada was one of several populist uprisings by the Kashmiris emerging with the 1963 Hazratbal riots. Yet, the act of mass uprising made itself fully manifest when a new generation of Kashmiris mobilized en masse in 1989.⁵⁰

In 1987, the state elections in Kashmir were rigged so badly that political scientists often refer to it as a pseudodemocratic “debacle.”⁵¹ Malik and Ahlawat have tried to blame Indira Gandhi and the Indian National Congress for this mockery of democracy.⁵² However, this would be a facile masking of the Indian establishment's longstanding policy to cripple the Kashmiris and their freedom struggle. That said, Malik and Ahlawat are correct to the extent that the Congress and Indira Gandhi were indeed major actors in the crushing of Kashmiri lives, but it would be inaccurate to lay the blame singularly on them when they were merely following a government tradition: the perpetuation of structural violence that had long fomented a rage and disenfranchisement in Kashmir.⁵³

The rigging and subsequent feeling of disenfranchisement among the Kashmiri populace prompted different armed resistance groups to spring up after 1989. Pakistan's support to these groups has come in various forms, but the most significant is in the moral dimension, far outweighing any material extension of help.⁵⁴ Pakistan's policy has remained quite consistent in arguing for the Kashmiris to decide their fate on their own terms, and groups that took up arms to resist that struggle did not pose any intellectual dilemma for Pakistanis who understood this to be the right, if not the only, way to contest hegemony.

Although Indian intelligence agencies tried to incite infighting among the liberation groups, their tactics proved largely futile due to the deep pools of disenfranchisement to which they spoke, and for whom they fought.⁵⁵ This has become

all the more evident as formerly pro-Indian leaders such as Omar Abdullah and Mehbooba Mufti have also started giving profreedom statements and warnings of sinister Indian designs to change the demographics of the region.⁵⁶

According to the Pakistani government, its support for the groups went as far as moral, diplomatic, and political, and the intelligence agencies of Pakistan were not informed or prepared when the armed struggle broke out in Kashmir in 1989. This is corroborated by confessions from Lt Gen (Retd) Asad Durrani, former director general of Pakistan's premier intelligence agency, the Inter-Services Intelligence, in his book *Pakistan Adrift: Navigating Troubled Waters*.⁵⁷ The Indians reacted brutally to the movement, starting by deploying hundreds of thousands of military personnel and Central Police Reserve Force (CPRF) personnel to the region. They then suffocated the region by enacting the Armed Forces Special Protection Act (AFSPA). To put it mildly, the AFSPA violates international humanitarian law and fundamental human rights granted under the UN Charter and ICCPR, of which India is a signatory. Indeed, the United Nations High Commission for Human Rights (UNHCHR) report has criticized the practices created by India's AFSPA as impeding the delivery of justice in the region.⁵⁸ To put it more plainly, if there has ever been a piece of legislation on Earth that should send shivers down one's spine, it is the abomination against the human spirit as encapsulated in the AFSPA.

Since the intifada of 1989, more than 100,000 people have died in the valley, including about 20,000 armed fighters and thousands of civilians.⁵⁹ The UNHCHR report from June 2016 to April 2018 has further said that AFSPA (since 1990) and Jammu & Kashmir Public Safety Act (since 1978) "have created structures that obstruct the normal course of law, impede accountability and jeopardize the right to remedy for victims of human rights violations."⁶⁰ Besides the extrajudicial killings, Indian forces have involved themselves in wide-scale torture, illegal detentions, and rapes (including the infamous Kunan-Poshpora mass rape incident occurring on 23 February, 1991, and the Shopian rape and murder incident of May 2009), among many other draconian acts.

In a 1993 report, Human Rights Watch stated that Indian security forces "assaulted civilians during search operations, tortured and summarily executed detainees in custody and murdered civilians in reprisal attacks," and rape was regularly used as a means to "punish and humiliate" communities.⁶¹ Scholar Seema Kazi says it is used as a weapon of war by the Indian state against the local population. Moreover, mass graves numbering in thousands have been found in Kashmir. Human rights activists say India is hesitant to open the Kashmiri mass graves because it will also expose a hidden secret: years of purported abuses involving torture, gun battles conducted by the police, and the forced abductions of thousands of civilians.

These actions were carried out under the monstrous AFSPA, which bestows immunity to the Indian military from a trial for rights abuses in Kashmir.⁶²

As the COVID-19 pandemic forces entire states into lockdown, it is likely to open the eyes of the world to the lockdown in Kashmir, which is nearing its one-year anniversary. The state-imposed curfew by Indian authorities is already impeding efforts to peace in the region, and if the situation continues, it is likely to result in further aggravating the precarious situation between the two nuclear-armed neighbors.

Three Myths: Kashmiriyat, Sufism, and Gilgit-Baltistan

This section aims to redress three myths propagated widely in literature on Kashmir that is partisan and equivocal and reflected starkly in the scholarship of Malik and Ahlawat. They are three separate categories of misperception, but they are best considered here before the concluding sections apprise the reader of the recent catastrophes created by India (notably Article 370's abrogation) and a final message for reconciliation and peace is articulated.

One: On Kashmiriyat

Ahlawat and Malik's assertion of a supposedly unified and secular *Kashmiriyat* offers a frighteningly reductionist view for two reasons. First, it is a politically engineered term constructed and inserted by an occupation force, akin to the Hutus and Tutsis in Rwanda by Belgians, but with no such staying power. Second, Kashmiris were keenly attuned to world events such as the dissolution of pan-Islamic polities (like the Ottoman Empire) and to the class violence that clearly had religious undertones (a Hindu bourgeoisie over a Muslim proletariat).

On the first point, the Japanese anthropologist Toru Takahashi keenly observes that "the main component of the meanings of Kashmiriyat today was given primarily during the post-1947 days, although the term Kashmiriyat was then yet to be coined. It was the product of India's need to define itself as a secular nation, as well as to justify its military deployment in Kashmir."⁶³ Similarly, the pioneering Indian anthropologist T. N. Madan, who was a Kashmiri Pandit himself no less, wrote on the advent of the term *Kashmiriyat*: "the first thing to emphasize is that Kashmiriyat is not a Kashmiri word. It may not, therefore, be claimed to be a native category of perception. It is an artificially produced clone of Punjabiya and a recent coinage of not earlier than the 1980s."⁶⁴ Unlike the Hutu and Tutsi constructs imposed by the Belgians, Kashmiriyat was meant to pacify rather than stir up communal tensions; yet, like the Belgian construct, it does not have staying power. Kashmiriyat must be identified as a concocted racializing term.⁶⁵

As historical anthropologists have observed, the “propagandist” element of the centrist Congress party that ruled early post-Partition India sought to preach that “Kashmir was the symbol of communal amity not only for itself (between the Muslim majority and Hindu minority) but also for India (between Hindu majority and Muslim minority).”⁶⁶ This tactic was appropriated by the opportunist politician Abdullah, who was later seated as New Delhi’s vassal in Srinagar, in his election campaign in the mid-1970s, and was echoed in sympathetic portions of the Srinagar press for a few decades thereafter. The myth propagated in flimsy and partisan scholarship on Kashmiriyat is effectively demolished by critical anthropologists who trace the history of the term in a more robust manner. The conclusions of their findings are best encapsulated thus: “After the eruption of Kashmiri militancy in 1989, India needed to stress the affinities between India and Kashmir, and Kashmiriyat, now taken as Kashmir’s indigenous secularism that proves Kashmir’s bond with secular India, began to be seen frequently on the mouth of Indian intellectuals. This form of Kashmiriyat may be called India’s (Hindu-majoritarian) version of the idea of secular Kashmir; it was basically the recurrence of Nehru’s definition of Kashmir.”⁶⁷ As such, the term Kashmiriyat came to be known outside the Kashmir Valley only in the early 1990s and should be recognized as a facile concoction for postcolonial state machinery.⁶⁸

On the second point, it is important to note that, as with Muslims across the subcontinent before, during, and after European colonial rule, Muslims in Kashmir were keenly attuned to the tragedies befalling the wider pan-Islamic community, the *Ummat*, and felt a deep sorrow at seeing empires and edifices of their civilization crumble under the juggernaut of both Western as well as non-Western hegemony and violence. In South Asia, the Hindu–Muslim divide was aggravated by elements on both sides of the civilizational divide after the Partition of Bengal in 1905.⁶⁹ The uproar accompanying the Partition as well as the emergence of an “extremist faction” in the Congress party planted the roots for Muslim separatism across the subcontinent’s politics.⁷⁰

The Reunification of Bengal in 1911 brought back the haunting reality to Muslims that, without a separate homeland rooted in *Two Nation Theory*, they would be subject to the *tyranny of the majority*, in enlightenment philosopher John Stuart Mill’s phrasing,⁷¹ because the Muslims would be too dispersed and too few in number across the subcontinent to present their positions in a megastate that would swallow them as minorities.

The divide further deepened in the decade of 1940s, preceding Partition, and was informed by a Muslim awakening that gained increased momentum during the Hindu-dominated Congress rule from 1937–39. It has been argued, including by India’s current government, that Congress’ centrist and supposedly accommo-

dational claims were perceived as hollow rhetoric, by many Hindus movements as well as by the Muslims.⁷² The reality of strife on the streets (as evidenced by the Direct Action Day of 1946 in Calcutta) and the urge for the reassertion of a separate identity and collective consciousness galvanized the Muslims and set them in accord with the Muslim League and its rallying cry for a separate homeland.⁷³ The supposed supremacy of Kashmiriyat as an institution, which purportedly promoted culmination of Kashmir's unique heritage, does not cohere with the realities of the colonial and neocolonial era in the region, and as one Indian scholar aptly describes this so-called *Kashmiriyat*: "it is an empty signifier."⁷⁴

Two: On Sufism

Ahlawat and Malik mischaracterize Pakistan as being an allegedly Deobandi-Salafi-dominated country, contrasting this with Kashmiri Muslims, who adhere to a Sufi brand of Islam.⁷⁵ This misunderstanding is erroneous on two fronts: first, because Sufism enjoys a widespread and mainstream appeal across Pakistan, as reflected in the religious praxis, cultural production, and public discourse articulated by ordinary Pakistanis,⁷⁶ and second, because Salafist political Islam is a much more recent and very marginal movement that represents the aftershocks of the Saudi–Iran rivalry and a counterreaction to the Iranian Revolution of 1979,⁷⁷ and which has begun to recede as quickly as it came.

Despite the fact that Pakistan, during and after the 1980s, faced an extremely challenging situation in which the influx of extremism and the exogenously promoted sectarian divide tried to vandalize Sufi ideology, the latter has in recent times started to reclaim its space effectively. In contemporary Pakistan, Sufism has been transformed into a full-fledged social movement that is represented in the arts, in the press, and the praxis of religious life, including the visitation and veneration of Sufi saints in all Pakistan's provinces.⁷⁸ By contrast, the electoral results of Pakistan's democratic practice evidence the general disdain for extremist or ultraorthodox interpretations of Islam, and this is why parties such as Jammat-e-Ulema Islam (JUI) and Tehreek-e-Labaik (TLP) rarely if ever manage to gain even 5 percent of seats in any national election.⁷⁹ On the other hand, local politicians regularly seek the support of the *Gaddi Nashin* (descendants of the Sufi Saint).⁸⁰ Sufism is thus not a Kashmir-centric phenomenon, nor does it differentiate Kashmiris from their brethren in Pakistan. Are authors really to claim that the Rishi Sufism of Kashmir is more entrenched than Sufism in the Pakistani regions of Bahawalpur, Sukkur, Lahore, or Multan?

Three: On Gilgit-Baltistan

The territory of Gilgit-Baltistan (GB) has a separate history from that of Kashmir, and this requires unequivocal stress at this juncture, given the increasingly irredentist claims of the present government in New Delhi. According to Yaqoob Bangash, GB had historically been an autonomously governed territory, and only under a limited suzerainty of the Maharaja of Jammu & Kashmir. It was leased to the British during the colonial period until 1947.⁸¹ However, the British betrayed their promise to the people of Gilgit, and as per the 3 January 1947 plan, the whole Gilgit agency was handed over to the maharaja. On 1 August 1947, Brig Ghansara Singh assumed the responsibility of Governor of Gilgit.

However, the people of Gilgit agency never accepted the authority of Ghansara Singh.⁸² Sensing their discontent, Major William Brown, the Maharaja's commander of the Gilgit Scouts, mutinied on 1 November 1947 and overthrew Governor Singh. The people of the agency declared Gilgit as part of Pakistan and hoisted the Pakistani flag. The Pakistani political agent, Khan Muhammad Alam Khan, arrived in Gilgit on 16 November to assume the responsibility of the region. Baltistan also formed part of Gilgit agency.⁸³ This is corroborated by various scholars who, in detailing the postcolonial transition of the region, note unequivocally that the people of Gilgit, as well as those of Chilas, Koh, Ghizr, Ishkoman, Yasin, Punial, Hunza and Nagar, joined Pakistan by choice.⁸⁴

Therefore, GB has a separate history and political dynamics from the rest of erstwhile J&K state, and revisionist and irredentist attempts to conflate its history with that of the state only serve to blur historical context. In the Dixon Plan negotiations as well, it was envisaged by Nehru that no plebiscite would be needed in GB (erstwhile Northern Areas), as its people had already decided in favor of Pakistan.

In the negotiations during the Dixon Plan according to Indian commentator Srinath Raghavan, it was first Nehru who proposed a partition-cum-plebiscite plan: Jammu and Ladakh would go to India, Azad Kashmir and Northern Areas to Pakistan, and a plebiscite would be held in the Kashmir Valley. The UN representative, Australian High Court Judge Sir Owen Dixon, favored the plan, which bears his name till this day.⁸⁵ Thus, the current Indian statements of China-Pakistan Economic Corridor (CPEC) passing through a disputed territory—specifically, GB—is contrary to their previous admissions that people of the territory had already decided in favor of Pakistan. Moreover, the Gilgit-Baltistan Order 2018, promulgated by Pakistan, articulates that the federal government intends to grant GB the status of a provisional province, “subject to the decision of the

plebiscite to be conducted under the UN resolutions,” with all privileges provided by the constitution.

Epilogue as Prologue: Abrogation of Article 370 and the Future

At the time of their writing, authors Ahlwat and Malik could not see what the ultranationalist Hindu regime in India would do in betraying its promise to Kashmiris of autonomy under the so-called Instrument of Accession, supposedly signed in October 1947.⁸⁶ Article 370 of the Indian Constitution is purportedly the article on which the Princely State of Jammu & Kashmir is reported to have acceded to India.⁸⁷ While many provisions of Article 370 that granted special status to J&K had been diluted by extending 94 of the 97 subjects in the Union list to the region and 260 of the 395 Articles of the Constitution of India to the state,⁸⁸ Indian-administered J&K still retained certain provisions for those that it defined as permanent residents, effectively denying outsiders from buying property, holding government jobs, or enrolling in government colleges in the state.⁸⁹

The 5 August measures in Kashmir were a watershed event in the region’s history. The special status of the region granted through Article 370 was abrogated through a Presidential Order, which also went on to bifurcate the J&K state into two union territories. This maneuver by the Modi government, besides infringing on international law, is also in direct contravention of Indian Constitution itself and has thereafter been challenged in the Indian Supreme Court. Specifically, the order was in contravention of international law vis-à-vis the definition of an occupying power under Article 42 of Hague regulations 1907 to India in Kashmir,⁹⁰ whereby it is prohibited for an occupying power to annex a territory under its unlawful control. Article 42 states that “territory is considered occupied when it is 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.”⁹¹ While neither Pakistan nor India are party to the Fourth Hague Convention of 1907 to which the Hague Regulations are annexed, it is widely accepted as being customary international law applicable to all states.⁹² Pakistan’s position of J&K being a disputed territory and India’s consequent lack of legal title to it has been recognized by numerous UN Security Council resolutions on the matter.⁹³

Moreover, the Indian Constitution required the consent of the Kashmiri Constituent Assembly before Article 370 of the Constitution could be abrogated. However, the Constituent Assembly was dissolved in 1957. The Indian Supreme Court observed on 3 April 2018 that Article 370 had acquired a permanent status because of the dissolution of the Kashmiri Constituent Assembly, citing the Supreme Court’s 2017 judgment in the *State Bank of India vs Santosh Gupta* case.⁹⁴ However, the BJP government still decided to make the Article 370 inoperative

by interpreting the Constituent Assembly to mean “legislative assembly.” To circumvent the legal issue of the nonexistent state constituent assembly, the president used the Clause (I) of Article 370, which conferred him with the power to modify the Indian Constitution on subjects related to J&K.

Thus, the central government first added a new clause to Article 367, which deals with interpretation of the constitution, and then replaced the phrase “Constituent Assembly of the State” with “Legislative Assembly of the State.” However, since in November 2018 the Legislative Assembly was also dissolved, the order says that any reference to the legislative assembly will be construed as a reference to the Governor of Jammu and Kashmir. The governor is an appointee of the central government. Therefore, the Indian government interpreted this as meaning that the Indian Parliament could substitute for the J&K Legislative Assembly.⁹⁵ The sullen leaders of the BJP could not reconcile to their actions being labeled as “ultra-vires” of the constitution by the opposition leaders. They banned opposition leaders from visiting the region, as shown by Rahul Gandhi being asked to return to New Delhi after landing in Kashmir.

According to a retired Pakistani air marshal, the abrogation of Article 370 was the most significant event in the history of South Asia after 1971.⁹⁶ The course of history looks likely to be changed by these unilateral Indian actions, and it is undoubtedly going to lead to increased instability in the South Asian region. From a legal standpoint, the famed and yet never-seen Instrument of Accession, on which India rests its claim of legal title, also denies India the option to take unilateral action in Kashmir. Therefore, by unilaterally abrogating Article 370, India has automatically materially breached the Instrument of Accession (if a document such as that exists).

The reasons for the hurried abrogation of Article 370 may be twofold. Firstly, by hastening the abrogation of Article 370, India was reaffirming its autonomy and independent decision making, irrespective of its relationship with any other country. This should be a cause of concern among the proponents of Indo–US strategic partnership, since New Delhi is unlikely to play an auxiliary role when it comes to India’s own interests. Secondly, the continuing Afghan peace process and India being sidelined in it despite investment outlays of \$2 billion USD in the country may be another reason for the rushed decision.⁹⁷ India is certainly unhappy with Pakistan’s central role in the process and may have liked to shift Pakistan’s attention to sabotage the Afghan peace process.⁹⁸ However, as time has shown, this tactic has proven to be futile, with the signing of the US–Taliban peace accord, which looks to American troops returning home after almost 19 years in Afghanistan and to ensure that the Afghan soil is not used by transnational terror outfits.⁹⁹

At the same time, India's right-wing Hindu nationalist government has pressed into policy its ideology that every step must be taken to ensure that the only Muslim-majority state in the union should have its identity eviscerated and its territory subjugated to their union. Also, by its 5 August steps, the Modi government has shown that in much the same vein as the Dogra tyranny, territory is a resource far more important than the welfare of the indigenous Kashmiri people. An oppressed population facing subjugation in the face of a ratio of 1:8 in security personnel to civilians cannot be lured in through promises of economic opportunities and jobs—certainly not so when the dividends of deploying economic capital will be reaped by the Hindus who will possess the means of production, harkening back to the class violence of Dogra rule.

In a joint session of parliament, PM Imran Khan of Pakistan cautioned that the situation could escalate to a military confrontation due to India's actions, which would not only portend doom for the region but the world as well. He said that Pakistan would fight till the last man and last bullet.¹⁰⁰ Earlier on, the Pakistani leadership was of the view that the BJP had adopted a belligerent attitude toward Pakistan and was coming down tough on Kashmir to appease their right-wing Hindutva voter base before the national elections and that mature negotiations could be conducted thereafter.¹⁰¹ However, soon after gaining reelection by selling to the public India's abject defeat to the Pakistan Air Force's Operation Swift Retort as a farcical victory, the ruling BJP revoked the special status of Kashmir in the constitution through a hurriedly passed bill on 5 August 2019.

Currently, there are more than 800,000 Indian security forces in J&K for less than 500 armed fighters. According to a J&K police report this latter number actually hovers around 200.¹⁰² This demonstrates the ludicrous pretense of such a massive deployment for "security and order" against an armed struggle, indicating that such measures are instead aimed at keeping the entire Kashmiri population in a state of subjugation. This heavy presence of military personnel is also an indication that India is geared up for any cross-border military action. In the past as well, India has repeatedly tried to divert attention away from popular uprisings in the region by heating up the Line of Control (LOC) or mobilizing forces against Pakistan as shown by Operation Parakaram, Operation Brasstacks, and the latest increase of 1,400% in ceasefire violation incidents along the LOC over the past decade. Moreover, India is acquiring the latest weapon systems, such as the S-400 from Russia and Rafale jet fighters from France. This indicates a growing aggressive posture. Moreover, the ultranationalist leadership will look to climb further up the escalatory ladder in any future scenario, as it will be emboldened by the acquisition of these platforms.

Many proposed solutions for the Kashmir dispute have been articulated over the years, including the Chenab Formula and Manmohan–Musharraf four-point formula, among others. However, it should be noted that little by way of advancement can be attained without giving Kashmiris a say and access to the right to self-determination. Any meaningful path forward will comprise the involvement of all three parties to the dispute: Kashmiris, Pakistan, and India. The Musharraf–Manmohan four-point formula incorporated the following elements as the basis for any future solution on Kashmir:

1. Joint supervision mechanism involving all three parties;
2. Self-governance and autonomy but without independence;
3. No change of borders; however, free movement for people across LOC; and
4. Phased withdrawal of forces (demilitarization).¹⁰³

This formula is the closest that the two nations have come to a joint settlement of the Kashmir dispute. However, as the events of the succeeding decade indicate, the two nations look likely to drift further from any meaningful settlement, and this can only worsen the disquiet of the Himalayan region.

UNSC resolutions form the overarching structure through which the Kashmir dispute must be resolved. A plebiscite must be conducted that gives Kashmiris their universally ordained right to self-determination as envisioned under common Article 1 (1) of the ICCPR and ICESCR, as well as the UN Charter. Additionally, the International Court of Justice (ICJ) has resoundingly affirmed such rights in Namibia, Israel, and Chagos Archipelago advisory opinions, as well as the East Timor case, in which the court confirmed its universal *jus cogens* and *erga omnes* character.¹⁰⁴

Furthermore, on 25 November 1947, Nehru informed the Indian parliament: “We have suggested that when people of Kashmir are given a chance to decide their future, this should be done under the supervision of an impartial tribunal such as the United Nations.” Under international law, such unilateral declarations made by heads of government in pristine terms, and demonstrating the will to be bound, have the effect of creating legal obligations. The ICJ has recognized this longstanding rule in nuclear test cases, as has the International Law Commission in its Guiding Principles adopted in 2006, as well as the UN General Assembly in its Resolution 61/34 of 2006.¹⁰⁵ Therefore, international law makes a strong case for the Kashmiris’ right to self-determination, which has been subverted by India for more than 70 years.

Moreover, contrary to what Ahlawat and Malik have stated, much religious-based terrorism is flourishing in India under the guise of extreme nationalist/

terrorist groups, now sanctioned by an irredentist regime that targets minorities with an iron fist. The supposed secular identity which India's forefathers sought to propagate has been jettisoned by the right-wing hardline BJP government. Hindu extremist groups such as the Rashtriya Swayamsevak Sangh (RSS) and Sangh Parivar were sidelined from the mainstream politics,¹⁰⁶ but over time, these extremist Hindu groups have reared their head once again in the political enterprise and have gained ascendancy in the parliament under Prime Minister Modi.¹⁰⁷ The smoke screen behind which Indian secularism existed has been eradicated. US *International Religious Freedom Report*, released in June 2019, said Hindu groups had used "violence, intimidation, and harassment" against Muslims and low-caste Dalits in 2017 to force a religious-based national identity. Furthermore, according to the report, mobile attacks by violent extremist Hindu groups against minority communities, especially Muslims, continued throughout the year amid rumors that victims had traded or killed cows for beef.¹⁰⁸ This extremism, driven by what Prime Minister Khan has termed the neo-Nazi inspired ideology of Hindutva, looks to fan the flames of bigotry across the border into Pakistan and threaten regional stability.¹⁰⁹

The Kashmir dispute necessitates being resolved through amicable means between the two nuclear-armed neighbors, and the historical grievances of the Kashmiri Muslims need to be taken into account. Kashmiris have suffered immensely due to the lingering dispute, and there appears to be no deliverance from the inequities they have suffered. Resources that might otherwise have been expended for the prosperity of the polities of Indian and Pakistan have been diverted to fighting over the territory of Kashmir. This has benefited, if anyone at all, the international arms industry at the expense of the common inhabitant of South Asia. Globally, Pakistan and India are among the top-10 largest importers of arms, with India growing its stash particularly voraciously.¹¹⁰ The mouth-watering profits of the global arms industry notwithstanding, a far greater socioeconomic architecture for development could be constructed following the peaceful resolution of the Kashmir dispute. Perversely, the military-industrial complex as listed on Wall Street and the S&P 500 has an unrelenting incentive to keep the two South Asian neighbors at daggers drawn. The slow, horrid descent into economic stagnation and prevention of economic prosperity of the two nations appear to be the ultimate futile end of this arms race.

The crux of the matter is that Kashmiri Muslims have lived as the *Wretched of the Earth*, as Fanon aptly put it: second-class citizens in their own land ever since Maharaja Gulab Singh acquired the territory after the First Anglo-Sikh War. Despite the best efforts of the imperialist forces to silence and subdue them, the Kashmiris have been fighting for self-determination for a seeming eternity. Today,

neoimperialist efforts to control the valley continue unchecked.¹¹¹ Kashmiri Muslims, as with any other community of the world, have demonstrated a will to stand against state oppression and terrorism. The political inventions of opportunists such as Kashmiriyat notwithstanding, a long historical affinity, a sense of civilization, and cultural-religious ties bind the Kashmiris with their brethren in Pakistan.

Now there is a need for the global community to come forth and listen to the pleas of the wailing Kashmiris and help resolve the imbroglio in accordance with the aspirations of the Kashmiri people and keeping in view international legislation on right to self-determination. The concept of self-determination is a powerful one, as founding director of the Liechtenstein Institute on Self-Determination at Princeton University has stated that “no other concept is as powerful, visceral, emotional, unruly, and steep in creating aspirations and hopes as self-determination.”¹¹² ❄

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