



RESEARCH PAPER

From Occupation to Accountability: International Legal Remedies for the Kashmir Crisis

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ABSTRACT

This study critically examines the legal status of the Kashmir conflict through the lens of international law, emphasizing the right to self-determination, the role of international legal instruments, and the failure of global institutions, particularly the United Nations, in addressing this prolonged dispute. The research adopts systematic doctrinal legal approach to critically analyze the legal standing of Kashmir dispute under international law. The study intends to develop a legal case in support of the right to self-determination of people of Kashmir and evaluate the degree to which international legal norms have been respected, disregarded or infringed in this context. The study after detailed deliberation concludes that the revocation of Article 370 and ongoing military occupation by India in Jammu and Kashmir violate *jus cogens* norms, including the Geneva Conventions, the UN Charter, and the Genocide Convention. It not only highlights systemic human rights abuses and alleged crimes against humanity, but also advocates for legal recourse through the International Criminal Court and other judicial bodies. The work underscores that the Kashmir issue should be re-framed as a humanitarian crisis rather than a bilateral or territorial dispute. A forward-looking legal strategy is recommended, urging international judicial intervention to ensure accountability, uphold human dignity, and support the Kashmiri people's inalienable right to self-determination.

KEYWORDS International Criminal Court, International Law, Kashmir Issue, Right to Self Determination, UN on Kashmir

Introduction

What is the status of the Kashmir dispute under International Law? This is a common question that has been asked since 1947 in general and after the recent uprising against Indian occupation in Jammu and Kashmir in particular. Some legal scholars argue that the International legal order has failed to resolve this issue because of the soft nature of International Law whereas others argue that it is unfair to say and link this dispute to the failure of international law because it has provided various proposals in one form or the others for the resolution of this issue in a peaceful manner (Human Rights Watch, 2019). However, it is also true that either party involved in this dispute has its points of justification in its favor and to prove its position before the international community. Even prominent scholars have written on this subject in such a way that their literature can be utilized in terms of conflicting situation, events in history, national politics, and law in the region far from the established norms of International Law. Furthermore, the competing interests of states at the international level concerning the existence of international law, either its binding or non-binding nature, has also failed to appreciate this issue before the international community. This division of the international community has established different points of view on the legal status of this issue.

It is no denying a fact that since 1947 the real party to this dispute i.e. the people of Jammu and Kashmir, have never been consulted in its true and a meaningful way or given an option to decide their future through plebiscite which could be one way to resolve this issue by letting and allowing people of Jammu and Kashmir being the first and foremost party because this dispute is about their state which is their homeland (Masood & Muzaffar, 2019). In this regard, a study of the following legal documents is essential for legal analysis of the Kashmir issue from an international law perspective. Starting from the Paris Agreement of 1928, which established the principle that no state can be acquired through occupation, and that sooner or later the occupying power has to evacuate the occupied territory, even if there is no resistance to the occupation, or is over. Further, Article 2(4) of the 1945 United Nations Charter outlaws not only the use of force but also its threat. Besides this, The Indian Independence Act of 1947, which laid down the principles for the future of the various political units of the subcontinent after the withdrawal of the British. The Standstill Agreement of 1947, under which the Maharaja of Kashmir agreed with Pakistan that the situation would be maintained. Finally, the Accession Document of 1947, according to which the Maharaja allegedly annexed Kashmir; to be read with various 1948 resolutions adopted by the UN Security Council on the subject. After analyzing these legal documents and the relevant legal principles, it can be easily justified that the accession had no legal status, because by that time the Maharaja had lost his control over Kashmir and also the document i.e., impugned Accession, was written in a state of coercion and compulsion. Moreover, when India itself took the matter to the UN Security Council legally withdrew its accession claim and since then the accession document has lost its status. (Masood et. al., , 2020) The result is that legally the state of Jammu and Kashmir is a disputed territory that has been illegally and aggressively occupied by India and part of which has been liberated (Azad Jammu and Kashmir and Gilgit-Baltistan). This essentially entails that it is not an internal matter of India. India is an occupying power that does not have the power to change the demographics of the occupied territories and as such the people of the occupied territory cannot be sworn allegiance to the occupying power forcefully or otherwise. Consequently, the people of the occupied territories have the right under international law to fight for freedom against the occupying power. It is pertinent to mention here that the insurgency and fight for freedom from occupying power had been its lowest before 5 August 2019, because fatigued Kashmiri people started to want peace and normalcy to their lives and in the region and for their economic prosperity, but the Indian act of amending and abrogating the special status of Jammu and Kashmir (Article 370 of Indian Constitution and 35A) has given fresh life to this anti-India uprising.

Literature Review

The Kashmir conflict particularly its legal aspects have drawn extensive academic scrutiny. This paper builds its argument by drawing from a diverse collection of legal, political, and human rights discourse. Cassese's *Self-Determination of Peoples: A Legal Reappraisal*, explores how the principle of self-determination functions in modern international law, including its classification as a *jus cogens* norm. Similarly, Crawford's *The Creation of States in International Law*, offers a comprehensive legal framework to understand statehood and the criteria for self-determination, particularly in disputed regions such as Kashmir. These foundational texts are key to articulating the legal tension between the principles of territorial sovereignty and self-determination. The paper argues that self-determination takes precedence, particularly when linked to systematic human rights violations and extended military occupation. Moreover, a range of legal instruments and historical documents such as the 1948 UN Security Council Resolution # 47, the Geneva Conventions (ICRC, 1949), and the Genocide Convention (UN Treaty Collection, 1948) form the legal backbone of the study. These international agreements place binding obligations on India regarding humanitarian protections and prohibit demographic alterations in occupied territories. Scholars like M. Rai (2004) and Victoria Schofield (2003) are cited to challenge the legitimacy of the Instrument of Accession. Both suggest

that it may have been signed under duress and question its legal validity. These historical insights reinforce the claim that India's control over Kashmir lacks a legitimate foundation under international law. Besides, the paper sharply critiques the selective enforcement of international norms by the United Nations. It highlights the UN's failure to act on its own resolutions concerning Kashmir and contrasts this inaction with the organization's proactive roles in conflicts such as East Timor (ICJ, 1995) and Palestine (ICC, 2021). Reports by Human Rights Watch (2019) and the OHCHR (2018) are cited as evidence of state-sponsored human rights abuses in Indian illegally occupied Jammu and Kashmir. These sources are used to argue that international legal institutions not only have the jurisdiction but also the responsibility to act in such humanitarian crises, despite political complexities. Furthermore, the paper draws on the ICJ's decision in *Bosnia v. Serbia*, which holds that states must not only refrain from committing genocide but are also obligated to prevent and punish it. This is connected to Thomas Hobbes' principle that "No one can be a judge in his own cause," underscoring the argument that India's judiciary lacks the impartiality necessary to investigate or prosecute crimes committed by its own security forces.

Material and Methods

The research adopts systematic doctrinal legal approach to critically analyze the legal standing of Kashmir dispute under international law. The study intends to develop a legal case in support of the right to self-determination of people of Kashmir and evaluate the degree to which international legal norms have been respected, disregarded or infringed in this context. The critical legal method used in this study goes beyond a simple descriptive analysis of legal texts by discussing human rights abuses in Indian-occupied Kashmir and the legal consequences of India's unilateral acts (such as the revocation of Article 370) as possible violations of the preemptive standards of international law (*ius cogens*).

A Brief Understanding of Kashmir's Impugned Accession and the Shimla Agreement

The year 1947 was a turning point for the lives of Kashmiris when they lost their identities. It was and is not an internal matter of India and eventually appears to attract the entire International Law of Armed Conflict. After the (so-called) elections in Kashmir in 1957, the Assembly of Indian illegally occupied Jammu & Kashmir declared its accession to India. Nonetheless, these elections and the Assembly had no status under international law. To declare this, Resolution # 122 was passed which determined that this election was not a substitute for the referendum which was decided in 1948. So, the matter remained as it is. (Crawford, 2006)

Although the Shimla Agreement of 1972 turned Kashmir into a bilateral dispute yet it appears baseless. At the time of concluding the agreement in 1972, Pakistan's position was extremely weak. Nevertheless, it was clearly mentioned that the agreement would not affect the legal interpretation of the parties and that neither party would change anything unilaterally. (Schofield, 2003) There are many other important aspects of this agreement, such as the separate mention of international borders and the Line of Control. However, it is unfounded that this agreement made the UN resolutions irrelevant. This is the propaganda of India which some people at the international level have tried to promote either in ignorance or personal interests. Considering actions of a state like India that consistently commits such severe acts against its citizens residing within its own occupation not only attracts modern international law but also declares that Kashmir is not merely a domestic issue but is a matter of international concern.

Furthermore, over the past half-century, international human rights law has changed the old concept of state sovereignty and gave way to the doctrines like "responsibility to protect". It is also a matter of international law that if the internal affairs

of a state threaten international peace, it becomes an international issue. Article 2(7) and Article 39 of the UN Charter are evident on this.

The Kashmir Conflict and UN failure: A War of Legal Ideas

At the very beginning, the United Nations aimed to resolve this dispute in accordance with its objectives as enshrined in its Charter in line with the principles of equal rights and the right of self-determination of the people. But soon after Dixon's proposals of resolving this dispute (the Kashmir Issue), an increase in different thinking, politics, policies, priorities coupled with the desired course of actions at the international level dominated the UN and its decision-making process. The role of the United Nations in Korea in 1950 and the Persian Gulf in the 1990s are the major examples of influence of the UN on major powers of the world. The pre-and post-cold war tension between the United States and the Soviet Union, with the increase in volatile geopolitical circumstances in the world badly affected the UN functioning. (ICJ, 1995) Besides this, nationalism also played its role as a conflicting phenomenon along with the dominance of the US in any collective security that made the UN impotent in any other global issue. Despite this bitter reality that the UN Charter requires from all states member to it even makes it mandatory to live peacefully with one another yet the lack of any enforcement mechanism or force in terms of standing military or alike the same obligation has been violated by its members irrespective to the decisions of the UN either in form of soft resolutions/laws or hard ones. In this regard and even in the enforcement of human rights, the history of the UN witnesses the selective application of collective sanctions or use of force or pursuit to international judicial mechanisms by the major force using the umbrella of the UN but for the rest of the world it has become a forum of spectacular speeches and debates. Shifting alliances and change in the balance of powers from one actor to another in the international arena has made this forum no more than a circus of voices, especially for poor countries. The same was witnessed when the US undermined the UN by invading Iraq and attacking Afghanistan after 2001. The provisions of the UN Charter or legitimacy of its resolutions in relation to the Kashmir issue have no importance even though this issue is a boiling point between two nuclear powers. (UNSC, 1948) The rivalry among the alliances in the international arena and their competing interests with one another are the destabilizing factors that further add tensions.

Approximately 77 years have been passed since the United Nations Security Council adopted Resolution 47 which stipulated withdrawal of military forces of India and Pakistan from Jammu and Kashmir and arrangement for a People's Plebiscite through which people of Jammu and Kashmir could decide the future status of their state by their vote and in accordance with their wishes. This was an attempt to put into practice the right to self-determination by the United Nations (Cassese, 1995; Crawford, 2006) as enshrined in Article 1 of the UN Charter but on practical grounds and in contrast to the above-mentioned resolution, the UN uphold the norm of existing sovereign state's right as shown in Article 2 of its Charter by ignoring the fact that the impugned Instrument of Accession executed by Maharaja of the State with India was controversial and was not accepted even by his own people (Schofield, 2003; Rai, 2004). In case of Kashmir dispute, both the norms i.e., the norm of self-determination and norm of state's territorial integrity came in conflict with one another. The UN in practice had and still has a tilt in upholding the norm of state's territorial sovereignty yet formerly or in theory advocating for the right to self-determination as well. (Cassese, 1995; Crawford, 2006; Yaseen, et. al., 2019). Both norms of international law are a source of continuous tension at the international level in their understanding of theory and practice. The principle i.e., self-determination gives people the right to decide their destiny independently and plays its role in the foundation of a state where people attempt to establish their state or join another state but on the other hand, the principle of territorial sovereignty restrains all states to not to interfere in the internal matters of other states and confers an exclusive political authority to a state for its functioning within its specific territory. The later norm, i.e. principle of state sovereignty,

put forward two daughter principles in the shape of the principle of non-interference and the principle of territorial integrity by making boundaries of state inviolable except with the consent of the relevant party. This leads to this opinion that people cannot exercise their right to self-determination (Cassese, 1995; Crawford, 2006) or engage in an independent secession and international players are obliged not to interfere or compel the relevant state under the principle of non-intervention. Here, the role of the UN has remained evasive on many and majority issues of people's right to self-determination whenever its unanimous support was needed in the history by people of any nation or territory except in two instances of its support for decolonization in the shape of two General Assembly's resolutions i.e. Resolution 1514(XV) of December 1960 famously known as the Declaration Granting Independence to Colonial Territories, Countries and Peoples by declaring the forced domination, exploitation of people to alien subjugation contrary to the norms of the UN Charter and the Resolution 2625(XXV) of October 1970, famously known as the Declaration on Principles of International Law, Friendly Relations and Cooperation Among States in accordance with the Charter of the UN.

In addition to this, the UN quickly shifted soon after the end of colonization from the right of people to the state itself by upholding the principle of *uti possidetis* (the one continues to possess as such as was) which supports or facilitates belligerent state to keep and claim her right upon the territory which she acquires through war, aggression or otherwise (OHCHR, 2018), and no change of her borders takes place except her consent or through international agreement consented thereto. Interestingly, this principle was for new states that emerged after decolonization and any other effort unilateral or otherwise in the shape of freedom movements or identical to these were increasingly disowned by the UN and its organs practically. This unrealistic approach of the UN has created difficulty for the people and to settle disputes on its agenda when it favored the nation-state in contrast to other situations as happened in the case of Kashmir where people had been and are still deprived of their right to exercise their free will. Although many scholars have appreciated and supported this approach of the UN post-decolonization as a blessing for international peace. But the same has come on the sacrifice of the principle of a right to self-determination (Cassese, 1995; Crawford, 2006) in terms of its broad application. So, what for Kashmiri people when the UN and its organs by themselves had adopted the same principle *stricto sensu* i.e. in a strict sense, in its early years. Moreover, the number of flaws in the application of this principle in its true spirit can also be traced back to the functioning of the UN and its organs in showing its efforts for the resolution of the Kashmir dispute.

The UNCIP which was established to ensure the implementation of this principle for Kashmiri people neglected to consult various political Kashmiri actors of this dispute itself (ICC, 2021). Also, the UNSC and the UNCIP treated the Kashmir dispute simply as a territorial issue between two countries i.e. India and Pakistan. This is a bleakness on part of the United Nations. The UN, the UNSC, and the UNCIP instead of encouraging enforcement of the right to self-determination (Cassese, 1995; Crawford, 2006) in this dispute tacitly implemented the principle of *uti possidetis* and the holding of the plebiscite which was and is the center of the provisions of the UN resolutions on this issue remained unsuccessful and even no steps in the shape of imposing sanctions or any other measures were taken. Now, India has been lobbying to get the permanent seat of the UNSC to put an end to her dependence at veto power in her favor by her allies to end the Kashmir issue once and for all on her own. Here, the norms of the UN are clearly under question.

State-Sponsored Genocide and Crimes Against Humanity in terms of *Jus Cogens* under International Law

Several approaches have been adopted by international scholars to understand this issue. Out of those two are famous. The first is, Human Rights Approach. The International Commission of Jurists in 1971 opined that "Peoples in non-colonial situations

are entitled to remedial secession from a state if they suffer serious human rights violations, persistent oppression, targeted killings, domination, discrimination, marginalization, and other grave injustices. Because all these are included in such Human Rights violations.” The second is Bilateral Approach. In all self-determination quests through bilateral approach for grant of this right has assumed a successful model. It means that the will of people seeking the right to self-determination (Cassese, 1995; Crawford, 2006) must decide as to the type of self-determination they wish to obtain. Kosovo, South Sudan, and the issue of Palestinian statehood are examples in this regard. This approach was endorsed by the international community through their experience in Libya too. Also, the role of big powers and their support proved as necessary for the realization of this right as happened in the case of East Timor (ICJ, 1995), Kosovo, and South Sudan but in Kashmir Conflict, the same has been failed. Due to this attitude of the international community, the people of occupied Kashmir, and after seeing the failure of all peaceful means aimed at settling the Kashmir Conflict, started huge unrest in 1989 to secure their right to self-determination. This insurgency resulted in a humanitarian crisis emerging from this unresolved conflict in the shape of, huge migration from Indian Illegally Occupied Jammu & Kashmir to Azad Jammu & Kashmir, the plight of deceased and divided families, missing persons/mass graves, media gag, the plight of widows, half widows, orphans, besides, rehabilitation of a large number of victims from Indian Illegally Occupied Jammu & Kashmir along with the barbed wires across LOC that resulted in environmental issues like the blockade of wildlife movement, death of wildlife including endangered species, and miserable life for LOC residents and their livestock. There are more than seven lakh Indian troops in the valley which is one of the highest numbers of troops against civilian people to oppress a population of around thirteen million. These are rough figures because it is quite hard to collect exact figures of the presence of Indian Military and Paramilitary Forces in this region. India has been using these forces to intimidate the civilian population. As a result, the Indian army has been treated as the sole representative of the Indian government in this region not the people of Kashmir. Kashmiris even believe that the deployment of the Indian army at their doors is to execute Hindu Fundamentalist Missions in their lands to turn Muslim majority areas into Hindu majority.

The UN Charter endorsed the principle of Self-determination. The Declaration on Granting of Independence to Colonial Countries and Peoples dated 14th of December 1960 and Friendly Relations Declaration dated 24th of October 1970 (UNGA Resolution No. 2625 (XXV)) interpreted the principle as given in the Charter. Moreover, this principle has become *jus cogens* under International Law, and so according to the Vienna Convention of 1969, “A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm or *jus cogens* of general International law and no derogation is permitted and can be modified only by a subsequent norm of general international law having the same character and strength.” (Rai, 2004) Here, the international community must support this international conflict (Kashmir dispute) under two different obligations i.e., moral and legal. Under the first, it must acknowledge the Resolutions of the UN on Kashmir Conflict by treating Kashmir as an Internationally recognized disputed area and also supporting this opinion that people of J&K are entitled to self-determination as their inherent right. This suffices for moral obligation on their part. And as far as legal obligations are concerned, there is several international bills of human rights which support the people of Kashmir in their claim to the right to self-determination (Cassese, 1995; Crawford, 2006). They must affirm that the people of J&K are entitled to the Right to Self-determination under common Article 1 of ICCPR and ICESCR because the right to self-determination is the mother right of all other rights. The International Court of Justice clearly held in East Timor (ICJ, 1995) and Western Sahara cases that “all states are obliged to protect Human Rights and their violation is an offence against all members of the international community as *erga omnes* obligation.” Furthermore, the International Law Commission has even declared Human Rights including the Right to Self-determination (Cassese, 1995; Crawford, 2006) as a *jus cogens*.

As far as the case of Kashmir is concerned, it is clear that people of Kashmir have been suffering from brutalities by Indian forces and often face curfews that lasts for weeks in which the Indian forces are even allowed to shoot on sight especially as seen during anti-Indian uprisings of the 1990s, 2010 and 2019 against her illegal occupation on the territory of Jammu and Kashmir. (Cassese, 1995) They have been even deprived of their legal remedies from their criminal justice system and do not allow to seek anything for the actual harm caused by Indian forces because of the impunity granted to them against all kinds of torture, rape, human rights violations, custodial killings, and others just because of the Indian draconian laws enforced on innocent Kashmiris. More than seven lac Indian military and paramilitary forces have been deployed in Kashmir to suppress people's voices of independence and freedom from India but so far no single Indian armed personnel has been prosecuted or punished with clear and concrete evidence for any act violating human rights of Kashmiri people despite thousands of voices even at international level in the shape of reports, statements and others. It is a well-established principle of law and natural justice, that "No one can be a judge in his own cause", Thomas Hobbes: a famous English political philosopher, jotted down the same in his book "Leviathan" of 1651. The civilized nations of the world respect this established principle of law, but India rejects this in her practice in Kashmir despite this claim that she is one of the largest democracies in the world. How Indian forces can judge the actions of their personnel is a question on the face of these so-called democratic slogans and practices. People of Kashmir have been continuously deprived of fair trial and justice in the Indian illegally occupied Jammu and Kashmir.

The Genocide Convention (UN Treaty Collection, 1948) of 1948 and the ICC Statute also regulate these situations. Raphael Lemkin was very clear on this word by defining it in 1944. In relation to this, different modes are usually adopted to exterminate any nation, community or group either racial or religious. Torture on innocent people, destruction of their property, sexual violence, state-backed intentional killings, theft, loot, forced expulsions, establishing concentration camps, etc. all these lead towards the commission of genocide which India has been doing in Kashmir to make it ethnically homogeneous for Hindus and to bring at par with other parts of its Hindu majority territories against the Muslim population. Even the humanitarian aid has also been blocked by India so that she could attain its nefarious goal. A glimpse of all these miseries by India shows that *jus cogens* crimes have been committed with full support and under the umbrella of the Indian government. Commission of state-sponsored genocide and crimes against humanity (Human Rights Watch, 2019; OHCHR, 2018) requires judicial interference so that issues like Kashmir could be resolved under legal backing at the international level. Besides, one may argue that to invoke jurisdiction of international courts this region must have a region of either an international armed conflict or a non-international armed conflict (for and under Article 3 to all four Geneva Conventions of 1949 (ICRC, 1949) and Article 8 (c) of the ICC's Statute). For this the Executive Committee of International Law Association in the Hague Conference of 2010 set out at least two minimum characteristics for all types of armed conflict, i.e., in an armed conflict there should be the existence of armed groups duly organized and the same must be engaged in fighting which could determine its identity of existence. Although some state more, yet in 2010, 35 armed groups in which 17 were active and 18 were inactive in Kashmir. The same was banned by India in half a number. The presence of the largest number of Indian military troops is evidence of the state of an international armed conflict; and makes it the highly militarized zone in the world and region of human rights violations because of *jus cogens* crimes by Indian forces duly sponsored by India in the shape of Crimes Against Humanity and State-sponsored genocide against innocent Kashmiri people. This issue, therefore warrants involvement by the ICC or creation of any other International Criminal Tribunal by the international community not only for the redressal of Kashmiris but also for the alike issues if occur in future too.

International organizations like the UN, its organs and others are available at the international level to look after the application of the provisions of human rights charters and conventions, but their judicial enforcement and lacunae present in the international legal system should and needed to be removed. Even, concerning the need of this responsibility of states for example in the crime of genocide, the ICJ held its idea in the case of "Bosnia and Herzegovina v. Serbia and Montenegro" as "the Genocide Convention (UN Treaty Collection, 1948) requires dual responsibilities over international community in the shape of judicial cooperation by all states and performance of state responsibility in all spheres either national or international." (ICRC, 1949) Although, one may take this plea that the provisions as discussed in this case do not bind states from the commission of genocide and other ancillary crimes, yet this would be an absurd interpretation that goes in direct contradiction with the object and purpose of the provisions of the Convention because the same plea was taken by Serbia and Montenegro, but the ICJ rejected this argument. The ICJ in this regard held the opinion that Article 3 imposes obligations both on states and individuals in the same manner, as stated. This has left no doubt that states are legally responsible to prevent genocide and other crimes with their due diligence. Cooperation against these crimes among states is an international obligation under international law and wilful blindness policy is not allowed by third party states or the international community or to show acquiesces in these events because it always requires an international response.

Here, the study would further agree with the statements of Judge Tanaka, and Judge Ammoun of the ICJ that whole human rights are *jus cogens* and binding norms at the international level even the Charter of the UN contains this important concept in between the lines of its provisions related to human rights along with the UDHR so their protection is mandatory and falls on the shoulders of the international community and demands proper attention. India is a party to the Genocide Convention (UN Treaty Collection, 1948) of 1948 but it has also entered a reservation on the Article IX of the Convention related to the jurisdiction of the ICJ on the disputes fall in between the lines of the said Convention. This reservation is in fact against the true spirit of this Convention in terms of its enforcement and applicability. In reality, this double game of India has made the World Courts totally impotent. So, all propositions of resolving the Kashmir Issue are dependent on her consent if she grants in case of seeking legal or judicial resolution of this issue by any other party. Interestingly Pakistan is also a party to this Convention, but it has not imposed any reservation on the application of its provision. India actually nullifies jurisdiction of the Genocide Convention instead of accepting it. Approaches to resolving this dispute have been exhausted or outdated except a new approach which should be adopted based on the humanitarian model through judicial involvement internationally. The same is also supported by various human rights reports. The concerns on this issue have been shown from the platform of the UN recently and demanded by international human rights agencies too. ICC or Tribunal of a like nature should have and exercise universal jurisdiction to investigate the human rights situation and about international crimes that have been committed by India in Kashmir independently and impartially. After collecting all the facts if the same was proved after adjudication, then they could declare the culprit whosoever in this issue without dependence of any kind. Ultimately to enforce the decisions of the international court(s), the UN is obliged not only morally but also legally to implement the decision and also consider its past commitments and the actual reasons behind all the unrest among Kashmiri people against India and its human rights violations and brutalities. The legal backing in the shape of these judicial decisions would also support the voice of the Kashmiri people judicially. This path would ultimately lead to the resolution of this issue in line with the wishes of the Kashmiri people by putting pressure on India legally, morally, politically, socially, economically, and others. It appears that the international community is ignorant of all the realities and the true picture attached to the Kashmir issue because of the misconceptions, misrepresentations, and misunderstandings that have been floated by India internationally. The evolution of

human rights and fundamental concepts of international law has changed to the Rule of Law and Protection of humanity and ultimately the human beings.

International Courts and Prospective Legal Avenues

As for the legal avenues, the question is not of possibilities, but determination and planning. Not in the UN Security Council, but in the General Assembly the issue of Kashmir can be raised with its full strength where there is no obstacle to veto so far. This will once again help and increase international pressure. There is a lot in terms of human rights violations, crimes against humanity, and commission of systematic genocide by India (Human Rights Watch, 2019; OHCHR, 2018). These international crimes can be raised in several forums, including the International Criminal Court. If the prosecutor of this court receives a large number of complaints related to international crimes as enshrined in its Statute, then he must review them, and if he is satisfied then a lawsuit can be filed and he must proceed with the trial and ultimately the Court can take action. This work can be done by ordinary people and especially Kashmiris (diaspora) in different countries of the world who can play an important role in it. Here, it is worthwhile to mention that recently the ICC has decided that it has its jurisdiction to see the cases related to war crimes committed in occupied Palestinian territory by Israel and the same has been started. This legal question of Jurisdiction of ICC was requested by its Chief Prosecutor Fatou Bensouda who wanted to investigate the alleged war crimes in Palestinian territories by Israel. The ICC declared with the majority that it has jurisdiction over these areas since 1967 even if Israel is not a member of the Statute of the ICC and her objections on it whereas Palestine (ICC, 2021) became its member in 2015 by using its UN non-member Observer status (since 2012). The same use of the legal tool without any military intervention or threat of interference could also work for the Kashmir dispute and as per Jurisdiction Ratione Temporis of the ICC (from 01 July 2002). Although, there are some existing requirements under international law that need to be fulfilled to bring any matter for the purpose of legal adjudication. The first one is the commission of acts/crimes violating *jus cogens* and the second one that the same needed to be committed in armed conflict either international or non-international, and, interestingly all these requirements have been fulfilled.

The ICC and the Kashmir Issue

Furthermore, as far as the role of the ICC is concerned with this issue, it is worthwhile to mention that the common Article 3 to all the Geneva Conventions (ICRC, 1949) that prohibits murder, cruel treatment, torture, taking of hostages, outrages upon personal dignity, and the passing of sentences or the carrying out of executions without proper trial against protected persons in an internal armed conflict is a clear relevance of the ICC to these essential rules for the protection of fundamental and international human rights and values all the time. Also, it is important to note that genocide and crimes against humanity (Human Rights Watch, 2019; OHCHR, 2018) do not necessarily have to occur within the context of an armed conflict. These prohibited acts under the Rome Statute in a large part concern the most fundamental human rights and peremptory norms of international law i.e., the right to life and freedom from torture. Also, some offenses particularly affect women and children and have numerous other connections to specific human rights. For instance, the freedom from racial discrimination, the freedom of movement, and fair trial rights. The above-mentioned crimes not only violate these fundamental rights directly but also affect the gratification of almost any of the basic human rights and freedoms indirectly. In this regard, India has been violating this important part of the Geneva Conventions which is present in their common Article 3.

Although, the UNSC can refer this issue of humanitarian concern under Chapter VII of the UN Charter by reporting the crimes committed in Indian Occupied Kashmir which come under Article 5 but due to the influence of India and its international politics at the

platform of the UNSC; as has been witnessed in history too, the same may be vetoed by any permanent member playing in India's favour. Moreover, the Prosecutor may on his own initiative after getting information or seeking additional information by states, the UN, or any of its organs or through any IGO or NGO in accordance with Article 15 (2), initiate an investigation of the crimes that fall under the jurisdiction of the ICC under Article 5 against the culprits who have been and are involved in human atrocities in Indian illegally occupied Jammu and Kashmir. Nonetheless, a simple question of getting consent, otherwise, ICC's involvement will prove a daunting task.

Conclusion

The Kashmir dispute remains one of the most prolonged and complex international conflicts, rooted in historical grievances, geopolitical rivalry, and legal ambiguities. The study reveals that despite numerous UN resolutions and legal precedents emphasizing the right to self-determination, the Kashmiri people continue to be denied meaningful agency over their future. The Indian state's actions—including the revocation of Jammu and Kashmir's special status, the sustained military occupation, and widespread human rights abuses—constitute serious breaches of international law, including potential violations of *jus cogens* norms such as genocide and crimes against humanity. The failure of international institutions, particularly the United Nations and its affiliated organs, to enforce their own resolutions and uphold fundamental human rights underscores the selective application of international law and the influence of political power dynamics. Given the ineffectiveness of political negotiations and the consistent obstruction of justice through international legal loopholes, this paper advocates a shift toward a humanitarian model of legal resolution. The international community should consider the dignity and status of the people of Jammu and Kashmir in line with their history, reviewing, and understanding their demands, and counter political challenges on this path via comprehensive international cooperation. Countries involved in this dispute should promote peace through dialogues till the legal adjudication of this issue on humanitarian grounds which could pave way for its peaceful resolution. Consent of Kashmiris should remain a top priority of the international community and must be taken as a case for the right to self-determination (Cassese, 1995; Crawford, 2006). This issue should be delinked from all types of politics either at the national or international level and be treated as a humanitarian issue. Kashmiris like other peoples and nations of the world are human beings and want respect and honour for themselves among others in accordance with the Charter of the United Nations. Therefore, to ensure accountability and justice, it is imperative to explore and activate international judicial mechanisms, including the International Criminal Court, and to involve civil society, diaspora communities, and legal advocates in building a robust case for legal intervention. Ultimately, any sustainable resolution must prioritize the voices and rights of the Kashmiri people, recognizing their struggle not merely as a geopolitical issue, but as a fundamental question of human dignity and international justice.

Recommendations

The international community including the United Nations, Organization of Islamic Cooperation, European Union, and major human rights organizations must recognize that the Kashmir issue is no longer simply a bilateral or territorial dispute. It now constitutes a humanitarian emergency marked by widespread human rights abuses. This re-framing could pave the way for new diplomatic and legal strategies. Besides, in light of significant evidence indicating potential genocide and crimes against humanity, the situation in Indian Illegally occupied Jammu and Kashmir should be referred to the International Criminal Court (ICC) or a specially constituted international tribunal. The Kashmiri diaspora, civil society, and legal advocacy groups should collaborate to submit formal Article 15 communications under the Rome Statute to prompt preliminary investigations. In addition and given the limitations imposed by veto powers in the Security Council, the

Kashmir matter should be forcefully raised in the UN General Assembly. Under the 'Uniting for Peace' resolution, the Assembly can recommend judicial intervention and reaffirm the Kashmiri people's right to self-determination. Moreover, Kashmiri diaspora groups, in partnership with international NGOs, should lead a targeted advocacy campaign focused on filing petitions before international legal bodies, lobbying legislatures in democratic countries and raising global awareness through media and academic engagement. It is also imperative that the voices of indigenous people must reach the United Nations and be involved in any process aiming to resolve this long standing dispute pertaining to the right of self determination of millions of people and for stability of South Asia and beyond.

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