

United Nations Security Council Resolutions: Status of the People of Jammu and Kashmir

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Abstract

The issue of Jammu and Kashmir, particularly unrecognised status of the people of Jammu and Kashmir, is a bone of contention between Pakistan and India and a source of instability in the region. Ironically, in spite of several United Nations Security Council Resolutions (UNSCRs) in which it is clearly mentioned that the people of Jammu and Kashmir should be given the right to self determination, India has been denying the fundamental right of the people of Jammu and Kashmir. For the past six decades, the people of Jammu and Kashmir have been demanding their basic right to self-determination promised in various UNSCRs, but they are being denied this right. Pakistan has always supported the people of Jammu and Kashmir in these efforts through engaging India in a dialogue process. Despite these efforts, India not only failed to recognise the fundamental rights of the people of Jammu and Kashmir but also negated its commitments to resolve the Kashmir dispute. While investigating the reasons of failures, this study attempts to elaborate through documented facts that the people of Jammu and Kashmir are inherent stakeholders of Kashmir dispute and have every right to decide about their future. It is essential to recognise the status of the people of Jammu and Kashmir with respect to UNSCRs and acknowledge their importance in the bilateral dialogue. Indian rejection to implement the UNSCRs is not only prolonging the immense suffering of the people of Jammu and Kashmir by depriving them of sovereignty, liberty and a prosperous and peaceful life, but also affecting the economy and betterment of the state.

Keywords: People of Jammu and Kashmir, Self-determination, United Nations Security Council Resolutions (UNSCRs), India, Pakistan, Bilateral Dialogue, Plebiscite.

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Introduction

The issue of Jammu and Kashmir is a bone of contention between India and Pakistan since partition of the Indian subcontinent. It is also among the oldest disputes on the agenda of the United Nations Security Council (UNSC). The UNSC passed numerous resolutions that validated the right of self-determination to the people of Jammu and Kashmir through impartial plebiscite. Based on this right, the people of Jammu and Kashmir were permitted to decide their political status freely. However, India, despite its commitments to hold a plebiscite, always rejected these international obligations and relinquished the demand of having a plebiscite in Jammu and Kashmir. Furthermore, both Pakistan and India initiated a bilateral dialogue process to resolve the outstanding issues including the issue of Jammu and Kashmir. However, these efforts have always been disrupted owing to various reasons. Besides others, one of the reasons is that India always overlooked the status of the people of Jammu and Kashmir and considered them 'irrelevant' in any negotiation process vis-à-vis Jammu and Kashmir. Despite India's this stance, the presence of UNSCRs over Jammu and Kashmir and indigenous status of the people of Jammu and Kashmir has largely shaped the identity of Kashmiris in the Kashmir dispute.

A close review of literature on right to self-determination of the people of Jammu and Kashmir was conducted to explore the underlying facts. Literature included UN Charter, UNSCRs, Indian Commitments and scholarly work on self-determination. The historical work revealed that the UN, Pakistan and India also (from 1947-1950), supported the right of the people to self-determination. Much of the literature today, Christopher Snedden, Nil Kant Hak, also support this notion.¹ Shabir Choudhary and A.S. Dulat work shows that, with the passage of time India changed its stance on self-determination which not only impacted the people of Jammu and Kashmir and their cause of self-determination but also stressed Indo-pak bilateral dialogue.² Existing studies vis-a-vis

¹ Christopher Snedden, *Understanding Kashmir and Kashmiris* (London: Hurst and Co Ltd, 2015), 182.

Nil Kant Hak, *Kashmir Conspiracy Case*, (Legal Defence Committee, University of California, 2009), 61.

² Shabir Choudhary, *Different Perspectives on Kashmir* , India: s.n, 2005, 395;

Kashmir dispute not only address the right of people of Jammu and Kashmir to plebiscite but also endorse their rights and status in negotiation process. This paper aims to establish the status of the people of Jammu and Kashmir under UNSCRs and in the Indo-Pak bilateral dialogue process through documented facts and international treaties. This study will further explore the fact that despite existing treaties and commitment, India openly violates its obligations towards Kashmiris, suppresses the voices of the people of Jammu and Kashmir for self-determination and opposed their inclusion in the negotiation process of Jammu and Kashmir.

Genesis of the Issue

The issue of Jammu and Kashmir is a major cause of conflict between India and Pakistan for the past six decades. It has kept the hostility alive between the two countries. Historically, the people of Jammu and Kashmir, under the Independence Act of 1947, were free to accede, either to India or Pakistan, on the basis of their communal position.³ At the time of transfer of power, Muslims constituted about 87 per cent of the entire population and they had religious and cultural affiliation with Pakistan. Therefore, it had a natural affinity of allying with Pakistan.⁴ Shahid Amid and Som Nath Dar documented that Maharaja Hari Singh, under India's pressure, decided against the people's inclination the partition plan and chose to ally with India.⁵ However, signing of the Instrument of Accession, its terms and timings are still a controversy. According to the writings of British historian, Alastair Lamb and Sten Widmalm, the Instrument of Accession was never signed at all rather it was forged afterwards.⁶ India, in the name of the Instrument of Accession,

A.S. Dulat and Aditya Sinha, *Kashmir: The Vajpayee Years* (Harper Collins: India, 2015).

³ Alan Campbell Johnson, *Mission with Mountbatten* (London: Robert Hale, 1952), 357-358.

⁴ Azami Aqil Ahmed, *Kashmir: An Unparalleled Curfew* (Karachi: Zyza Publishing, 1990), 38.

⁵ SomNath Dar, *From Partition to Operation Blue Star* (India: Harper Collins, 2013), 236; Shahid Hamid, *Disastrous Twilight: A personal account of the partition of India* (Yokshire: Pen and Swords books, 1993), 420.

⁶ StenWidmalm, *Kashmir in Comparative Perspective: Democracy and Violent Separatism in India* (New York: Routledge, 2002), 232;

consolidated its troops in the Jammu and Kashmir territory before the people of Jammu and Kashmir could decide their fate. The people of Jammu and Kashmir rejected this ‘forced accession’ and fought against the forcible occupation by Indian military forces.⁷

Afterwards, when this situation intensified, the issue of Jammu and Kashmir was brought to the United Nations (UN) and a debate was started by the UN under the title "Kashmir Question" which was later changed to “The India-Pakistan Question.”

UNSCRs and Status of the People of Jammu and Kashmir

India brought the issue of Jammu and Kashmir to the UN in 1948. Under the debate of “Kashmir Question” and “The India-Pakistan Question”, the UNSC passed numerous resolutions. These resolutions endorsed the right of the people of Jammu and Kashmir to decide their future.

Table No.1

Details of the UN Resolutions Passed Over Jammu and Kashmir

UNSCR 47	Question of accession of Jammu and Kashmir should be decided through democratic methods of free and impartial plebiscite.
UNCIP resolution August 13, 1948	Part III: Pakistan and India reaffirm that future status of the state of Jammu and Kashmir shall be determined in accordance with will of the people.
UNCIP resolution January 5, 1949	Question of accession of Jammu and Kashmir should be decided through democratic methods of free and impartial plebiscite

Alastair Lamb, *Incomplete Partition: The Genesis of the Kashmir Dispute 1947-1948*(Roxford Books, 1997).

⁷ Christopher Snneden, *Understanding Kashmir and Kashmiris* (London: Oxford University Press, 2015), 288;

Tooba Khurshid, “The Jammu and Kashmir Dispute: Where Do People of Jammu and Kashmir Stand?,” Issue Brief, The Institute of Strategic Studeis Islamabad, January 7, 2016, http://issi.org.pk/wp-content/uploads/2016/01/Final_IB_Tooba_khurshid_dated_07-1-2016.pdf

UNSCR 80	To exercise all of the powers and responsibilities devolving upon UNCIP by reason of existing resolutions of UNSC and by reason of agreements of parties embodied in UNCIP resolutions of August 13, 1948 and January 5, 1949.
UNSCR 91	Reminding government and authorities concerned of the principle embodied in its resolutions of 47, 1948, 1949 and 80 that final disposition of the state...will be made in accordance with the people.
UNSCR 98	Recalling the provisions of UNCIP resolutions of August 13, 1948 and January 5, 1949 provided question of accession...would be decided through democratic method...conducted under the auspices of the UN.
UNSCR 122	Reaffirm the affirmation in its resolutions of 47, 1948, 1949, 91 and 98.

Source: <http://www.un.org/en/sc/documents/resolutions/>

These resolutions not only acknowledged the inalienable right of the people to self-determination, but also honoured their status in any decision making process of Jammu and Kashmir.

India also committed itself to these UNSCRs and assured that only the people of Jammu and Kashmir have right to decide for their future under the auspices of the UN.

Indians repeatedly pledged that only the people of Jammu and Kashmir can choose their future through plebiscite. Jawaharlal Nehru, the then Prime Minister of India, while addressing the Indian Parliament on June 26, 1952, stated that “we are not going to stay against the wishes of the people. We are not going to impose ourselves on them at the point of the bayonet.”⁸ In another statement on June 16, 1948, he assured that “if after a proper plebiscite, the people of Kashmir say we do not want to be with India, we are committed to accept it...we will not send any army

⁸ Christopher Snedden, *Kashmir The Unwritten History* (India: Harper Collins, 2013).

against them...”⁹ Table 2 presents a detailed account of Indian commitments to implement UNSCRs and hold a plebiscite.

Table No.2
Indian Commitments to Plebiscite

Date	Commitments
October 27, 1947	“In regard to accession also, it has been made clear that this is subject to reference to the people of State and their decision.”
October 28, 1947	“the people of Kashmir would decide the question of accession. It is open to them to accede to either Dominion then.”
November 21, 1947	<p>“We are anxious not to finalise anything in a moment of crisis and without the fullest opportunity to be given to the people of Kashmir to have their say. It is for them ultimately to decide.”</p> <p>“And let me make it clear that it has been our policy all along that where there is a dispute about the accession of a state to either Dominion, the accession must be made by the people of that state.”</p>
August 16,1950	“The most feasible method of ascertaining the wishes of the people was by fair and impartial plebiscite.”
February 12, 1951	“We have taken the issue to the United Nations and given our word of honour for a peaceful solution. As a great nation, we cannot go back on

⁹ Shabir Choudhary, “Legal and Constitutional Position of Kashmir,” *J&K Insights*, available at <http://www.jammukashmir.com/shabir/shabir4.html>

	it. We have left the question for final solution to the people of Kashmir and we are determined to abide by their decision.”
June, 26 1952	“I want to stress that it is only the people of Kashmir who can decide the future of Kashmir. It is not that we have merely said that to the United Nations and to the people of Kashmir; it is our conviction and one that is borne out by the policy that we have pursued, not only in Kashmir but everywhere. Though these five years have meant a lot of trouble and expense and in spite of all we have done, we would willingly leave Kashmir. It was made clear to us that the people of Kashmir wanted us to go. However sad we may feel about leaving, we are not going to stay against the wishes of the people. We are not going to impose ourselves on them at the point of the bayonet.”
August 20, 1953	“People seem to forget that Kashmir is not a commodity for sale or to be bartered. It has an individual existence and its people must be the final arbiters of their future.”
May 18, 1954	“But so far as the Government of India is concerned, every assurance and international commitment in regard to Kashmir stands.”
March 31, 1955	“We had given our pledge to the people of Kashmir, and subsequently to the United Nations; we stood by it and we stand by it today. Let the people of Kashmir decide.”

Source: <http://www.na.gov.pk/en/content.php?id=85>

These commitments, show the acknowledgements of the Indian leadership regarding the rights of self-determination of the people of Jammu and Kashmir. From 1949 to 1958, UNCIP made several attempts to hold a plebiscite, however, the creation of political entity, government of Jammu and Kashmir by India, in the presence of its troops changed the ground situation. The UNSC in its resolution 91 outrightly rejected the creation of Constituent Assembly and any of its future decisions vis-à-vis future of the People of Jammu and Kashmir.

**UNITED NATIONS SECURITY COUNCIL RESOLUTION 91
(MARCH 30, 1951)**

The Security Council,

Having received and noted the report of Sir Owen Dixon, the United Nations Representative for India and Pakistan on his mission initiated by the Security Council resolution 80 (1950) of 14 March, 1950;

Observing that the Governments of India and Pakistan have accepted the provisions of the United Nations Commission for India and Pakistan resolutions of 13 August, 1948 and 5 January, 1949, and have re-affirmed their desire that the future of the State of Jammu and Kashmir shall be decided through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations,

Observing that on 27 October, 1950 the General Council of the All Jammu and Kashmir National Conference adopted a resolution recommending the convening of a Constituent Assembly for the purpose of determining the future shape and affiliations of the State of Jammu and Kashmir, observing further from statements of responsible authorities that action is proposed to convene such a Constituent Assembly and that the area from which such a Constituent Assembly would be elected is only a part of the whole territory of Jammu and Kashmir,

Reminding the Governments and authorities concerned of the principle embodied in its resolutions 47 (1948) of 21 April 1948, 51 (1948) of 3 June 1948 and 80 (1950) of 14 March 1950 and the United Nations Commission for India and Pakistan resolutions of 13 August 1948 and 5 January 1949, that the final disposition of the State of Jammu and Kashmir will be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations,

Affirming 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 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,

Source: <http://www.un.org/en/sc/documents/resolutions/1951.shtml>

Indian Position on Plebiscite After 1950

Despite UNSCR 91, India considered the controversial accession of Jammu and Kashmir as final and declared Kashmir its 'integral part' by passing a resolution in Parliament, in 1957.¹⁰ With the emergence of pro-India political entity in Jammu and Kashmir, India changed its position on plebiscite and self-determination. Consequently, Ranabir writes, from 1960 to 1964, India rejected outside mediation offers by President of Egypt, Nasser US President Kennedy and others.¹¹ It was the Kashmir issue over which India and Pakistan fought two full-fledged wars, Indo-Pak war 1965 and the Kargil War 1991, which had consequences detrimental to the cause of Kashmir. Also, Indian stance of not holding a plebiscite in Kashmir hardened over this time. In March 1965, Indian Parliament passed a bill declaring Kashmir a province of India and claimed that India would appoint a governor in Jammu and Kashmir.¹² Ed.K.R. Gupta, S.P.Agrawal and S.R.Bakhshi documented the statements of M.C.Chagla and *Krishna* Menon in the UNSC that India under no circumstances would agree to hold a plebiscite in Kashmir.¹³ In 1980, a new Kashmir struggle began in Jammu and Kashmir against the Hindu communalism, religious discrimination and corruption of pro-India parties in Kashmir. In early 1990s, thousands of Kashmiris took to the streets and demanded a plebiscite in Jammu and Kashmir. Indian Occupational Forces (IOF) resorted to brutal repression of innocent Kashmiris and rendered the accession of Kashmir, final. Since 1990s to date, many human rights violations by IOF have been reported to curb the voices of Kashmiris who demand right to self-determination.

The historical facts demonstrated that early Indian leadership not only recognised the status of UNSCRs over Jammu and Kashmir but also accepted the rightful position of Kashmiris in decision making process of Jammu and Kashmir by acknowledging their right to self-determination.

¹⁰ Roby C. Barrett, *The Greater Middle East and the cold war: US Foreign Policy Under Eisenhower and Kennedy* (London: I.B.Tauris, 2007), 494.

¹¹ Ranabir Samaddar, *Peace Studies: A Introduction to the concept, Scope and themes*, (India: SAGE Publications, 2004), 440.

¹² Arundhati Roy, Pankaj Mishra and Hilal Bhatt, *Kashmir the Case for Freedom*, (New York: Verso Books, 2011), 160.

¹³ K.R.Gupta,ed., *India-Pakistan Relations With Special Reference to Kashmir* (India: Atlantic Publishers, 2006), 400.

These evidences also highlighted the fact that even Indians did not consider the partition ‘fair’ otherwise they would have never agreed to hold a plebiscite to determine the future of Jammu and Kashmir.

However, with time, Indian position vis-à-vis plebiscite over Kashmir changed. Despite all the pledges, India, since 1950s, has always been attempted to keep the Kashmiris out of any decision making process on Jammu and Kashmir and termed any call for a plebiscite ‘irrelevant’. Overall, Indian position on Jammu and Kashmir evolved over following lines:

- Kashmir is an integral part of India;
- India considered elections as a substitute of plebiscite;
- Human rights violations in Jammu and Kashmir is an internal matter of India;
- Any dialogue process between India and Pakistan over Kashmir will be conditional.

On the other hand, Pakistan’s position on Kashmir remained unchanged. Pakistan always considered Jammu and Kashmir as a ‘disputed territory’ and demanded the implementation of UNSCRs that urged that the People of Jammu and Kashmir have right determine their political future. Because of the tireless efforts of Pakistan, on November 23, 2016, the UN adopted Pakistan sponsored resolution reaffirming people’ self-determination right.¹⁴ Pakistan has been tabling the resolution since 1981 and it serves to focus the world attention on the struggle by the people of Jammu and Kashmir for their inalienable right to self-determination.

Right to Self-determination and People of Jammu and Kashmir

The people of Jammu and Kashmir, given the history of their region, are indigenous people. According to the UN concept of Indigenous people, “Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other

¹⁴ UN Adopts Pakistan Resoluition, *News*, November 23, 2016.

sectors of the societies now prevailing on those territories, or parts of them. They form, at present, non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.”¹⁵

What is most implied in terms of self-determination is the right of indigenous people to participate in democratic processes and decide for their political future. Article 3 of the UN Declaration on the Rights of Indigenous People states that indigenous people have the right to self-determination and, by virtue of this right, they can freely determine their political status and pursue their economic, cultural and social development.¹⁶

The issue of Jammu and Kashmir is not just a territorial dispute but is linked to the indispensable right of the people of Jammu and Kashmir to self-determination. This right to the self-determination is not a new right rather it is documented in a number of existing international treaties and charters. The right of self-determination is as important for the people of Jammu and Kashmir as anywhere else in the world. As per international standards of the right of self-determination, all people of a nation state have right to self-determination. Jammu and Kashmir justifies all the essentials of a nation state. Jammu and Kashmir has a history of self-governance, have its own culture and languages and is home to more than 14 million people. To justify further, the right of Kashmiris to self-determination, there are many comparative studies such as East Timor, Crimea and others where right to self-determination implemented successfully. The people of Jammu and Kashmir have the right to determine their future under International Law. It is a well-documented fact that self-determination is the main issue in the Kashmir dispute.

The United Nations Charter placed the ‘right of self-determination’ in the agenda of International Law. The charter clearly states that principle of the UN is “to develop friendly relations among nations based

¹⁵ The Concept of Indigenous people, United Nations, January 2004, available at www.un.org/esa/socdev/unpfii/documents/workshop_data_background.doc

¹⁶ UN Declaration on Rights of Indigenous People, Article 3, [http:// www .un .org/ esa/socdev/unpfii/documents/DRIPS_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

on respect for the principle of equal rights and self-determination of people.”¹⁷

The UN General Assembly also adopted a Universal Declaration on Human Rights (UDHR) in 1948. Article 2 of this declaration entitled the individual to all the rights and freedom without distinction.¹⁸ (See Table No.3)

According to the International Court of Justice (ICJ) and the International Human Rights Law, the right of self-determination is “a right held by people rather than governments”.¹⁹ Furthermore, UN adopted Declaration on the Rights of Indigenous People (UNDRIP) on September 13, 2007, specified the rights of indigenous people including individual, collective as well as ‘right to self-determination.’²⁰ The ‘right to self-determination’ is enshrined in Article 3 of UNDRIP which states that “people have right to self-determination. By virtue of this right they freely determine their political status.”²¹

Besides, there are many existing treaties on self-determination and indigenous rights of the people as described in Table 3.

¹⁷ UN Charter, <https://treaties.un.org/doc/Publication/CTC/uncharter.pdf>

¹⁸ Universal Declaration on Human Rights, <http://www.un.org/en/universal-declaration-human-rights/>

¹⁹ “Understanding the self-determination: The basics,” <http://www.guidetoaction.org/parker/selfdet.html>

²⁰ “United Nations Declaration on Indigenous People,” http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

²¹ Ibid.

Table No. 3
Existing Treaties on Self-determination

Treaties/ Charter	Affirmation
Atlantic Charter, 1941	They respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them. ²²
United Nations General Assembly Resolution 1514 (XV), 1960	Conscious of the need for the creation of conditions of stability and well-being and peaceful and friendly relations based on respect for the principles of equal rights and self-determination of all peoples, and of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. ²³
International Covenant on Civil and Political Rights (ICCPR), 1976	All peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development. ²⁴
International Covenant on Economic, Social and Cultural Rights	The States parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization

²² Text of the Atlantic Charter,
http://www.nato.int/cps/en/natohq/official_texts_16912.htm

²³ Text of UN General Assembly Resolution 1514,
<http://www.un.org/en/decolonization/declaration.shtml>

²⁴ Text of ICCPR,
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

(ICESCR), 1966	of the right of self-determination, and shall respect that right, in conformity with the provisions of the charter of the United Nations. ²⁵
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These treaties respect and endorse the right of people to choose their political status freely. No individual or group can be deprived of this fundamental right. These treaties do not just acknowledge the fact that the people of Jammu and Kashmir have all the right to ‘determine their future,’ but also affirm their ‘inherent character’ to the Kashmir dispute.

Furthermore, the people of Jammu and Kashmir are under continuous subjugation of Indian occupational forces; they have been denied of the ability to exercise their right of self-determination internally. This affirms, mediation, which is another mechanism by which self-determination is pronounced. The mediation on self-determination is also summarised by the Supreme Court of Canada that ‘right of self-determination best generates where people are oppressed or are under foreign military occupation or where a group is denied access to the political, economic or socio-cultural development. In such a situation, people are entitled to the right to external self-determination since they have been denied to exercise the right internally’²⁶

UN resolutions, Indian commitments and treaties of self-determination, altogether, make the fact amply clear that Kashmiris, being the indigenous people of territory of Jammu and Kashmir, have all the rights to freely decide their political status. Above stated details also validate their stipulation for a plebiscite.

Today, we find that the disposition of Kashmir has still not been legally decided. It is not an integral part of any country. Rather, it is a victim of an imperfect de-colonisation that, to date, has not led to the

²⁵ Preamble of ICESCR,

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

²⁶ Reference re Secession of Quebec, 2(1998), 217, 138; also in International Legal Materials, 1998, 1340 & 1373, available at , <http://www.casebriefs.com/blog/law/international-law/international-law-keyed-to-damrosche/chapter-5/reference-re-secession-of-quebec/2/>

realization of the expression of self-determination of the people of Jammu and Kashmir. For all this time, Kashmiris of the Indian occupied Kashmir (IOK) are under forced occupation. While the word on plebiscite (with only two options: joining India or Pakistan) was once accepted by Prime Minister Jawaharlal Nehru, an Indian Prime Minister of great international stature, more recent governments and people in the country have somehow managed to produce a discourse that prohibits even the mention of it. The popular discourse that Kashmir is an integral part of India, a prized trophy that needs to be protected has become so deeply entrenched in the Indian mindset that any discussion to the contrary shunned.

Today, in India, prevalent discourse i.e., both official and non-official, vis-a-vis Kashmir dispute is no longer committed to right of the people to self-determination it has been shifted to territorial integrity and sovereignty. This shift is obvious in case of applying this right to the people of Jammu and Kashmir. Indian stance is confined to bilateralism and ignores all the legal aspects applicable to the conflict zone of Jammu and Kashmir.

Bilateral Dialogue Between India and Pakistan

To resolve the issue of Jammu and Kashmir, India and Pakistan have had several rounds of negotiation over the last six decades. Both reached several agreements and bilateral accords to resolve all the outstanding issues including the issue of Jammu and Kashmir. Some of these agreements include Tashkent Declaration, Lahore Declaration and Simla Agreement.

Tashkent Declaration: The declaration was signed on January 10, 1966 in which both the states agreed to create good neighbourly relations in accordance with the UN Charter. With respect to Jammu and Kashmir, both the sides agreed to withdraw their troops.²⁷

²⁷ Tashkent Agreement,
http://www.claudearpi.net/maintenance/uploaded_pics/TashkentDeclaration.pdf

Simla Agreement: India and Pakistan signed the Simla Agreement on July 2, 1972, under which both agreed that the principles and purposes of the UN shall govern the relations between the two countries.²⁸

Lahore Declaration: The declaration was issued on February 21, 1999, in which both Pakistan and India committed to the principles and purposes of the UN Charter and reiterated the determination to implement the Simla Agreement in both letter and spirit. They also recalled the agreement of 23 September 1998²⁹ resolution of all disputes including Jammu and Kashmir is the essential purpose of Indo-Pak talks.³⁰

Despite these agreements, issue of Jammu and Kashmir has remained unresolved. Both India and Pakistan have been advocating a dialogue process to settle their differences over Kashmir. However, the history of negotiation process shows that several negotiations gained some short term success but failed to achieve a lasting solution. Both the countries launched several Confidence Building Measures (CBMs) to institutionalise the peace process on Jammu and Kashmir. Despite all the efforts to improve the relations, bilateral dialogue between India and Pakistan remained infrequent and halted several times due to political and security situations.

The change of government in both the countries in 2013 and 2014 raised hopes for new prospects of peace between India and Pakistan. However the dialogue process did not move forward. India, for consecutive past three years, cancelled the scheduled Foreign Secretary and high level talks and meetings with Pakistan. The current impasse started in 2014 when the Pakistani High Commissioner Abdul Basit met

²⁸ Simla Agreement, <http://people.unica.it/annamariabaldussi/files/2015/04/Simla-Agreement-July-2-1972.pdf>

²⁹ On September 23, 1998 Prime Minister of Pakistan Nawaz Sharif and Prime Minister of India Atal Bihari Vajpayee issues a joined statement on the sideline of UN General Assembly in New York in which they reaffirm their common belief that environment of peace and security is the prime interest of both the countries. available at <http://www.bits.de/public/pdf/rr99-2.pdf>, p.58

³⁰ Lahore Declaration, <http://www.nti.org/learn/treaties-and-regimes/lahore-declaration/>

the Hurriyat leaders in New Delhi, which India objected to and cancelled the talks.³¹

From then on, India created a sense of ambiguity over the assurances to reach a solution for the long standing issue of Jammu and Kashmir and stipulated to keep the people of Jammu and Kashmir out of any dialogue process over Jammu and Kashmir.

Furthermore, the people of Jammu and Kashmir have been overlooked as the major stakeholder in the dispute. There have been several attempts by India to exclude them from negotiation process. India called them ‘third party’³² and labelled the participation or consultation to Kashmiri leaders as the violation of agreements signed between India and Pakistan, especially the Simla Agreement. Whereas Pakistan has always considered Kashmiris as ‘inherent stakeholders’ in the Kashmir dispute and encourage their participation and representation in any negotiation process of Jammu and Kashmir.

Kashmiris as Stakeholders

Those who have the ‘right’ towards or ‘interest’ in some mechanism of a society, organisation or community are called stakeholders. Stakeholders can be any organisation, social group, communities or individuals. Stakeholders can be defined as interest groups as well as affected parties. Furthermore, there are two broader categories of stakeholders:

1. *Internal stakeholders*: Those people who live within the boundary of particular group, society or community.
2. *External Stakeholders*: Those with special interest to the particular community, society or group.³³

Consequently, the people of Jammu and Kashmir, being an affected party as well as being indigenous people of the territory of Jammu and Kashmir, are ‘internal or inherent stakeholders’ in the Kashmir dispute.

³¹ “India calls off foreign secretary level talks with Pakistan,” *Dawn*, August 18, 2014.

³² “Dialogue the only option, says Swaraj,” *Dawn*, August 23, 2015.

³³ “Stakeholders Power Analysis,” *International Institute for Environment and Development*, March 2005.

And therefore, Kashmiris have a right to be taken into confidence as part of the process.

Bilateral Agreements and Status of People of Jammu and Kashmir

Pakistan has always made an effort to maintain bilateral dialogue with India for peace, economic development and well-being of the people of South Asian region. Pakistan also firmly believes that final solution of Kashmir dispute will be in accordance with the aspirations of the people of Jammu and Kashmir. For such a final resolution, Pakistan always demanded the implementation of UNSCRs.

Conversely, India always tagged the Kashmir dispute as a ‘bilateral issue’ and frequently interpreted the Kashmiris involvement as a violation of the Simla Agreement signed between India and Pakistan in 1972.³⁴

The Para I of the Simla Agreement binds both the countries to accomplish in good faith the commitments assumed by them to resolve the conflict and confrontation that marred their relations (Jammu and Kashmir dispute) in accordance with the resolutions under Chapter VI.³⁵ Therefore, the Simla Agreement also compels India to respect and implement the UN resolutions on Jammu and Kashmir which seek to ascertain the wishes of the people of Jammu and Kashmir. These facts debunk the Indian myth of bilateralism tagged to the Simla Agreement and affirm that the people of Jammu and Kashmir have every right to voice their opinions in all dialogue processes regarding Jammu and Kashmir. Henceforth, this Indian interpretations that involvement of a ‘third party’ is a violation of the Simla Agreement is illogical, since the

³⁴ “No role for any third party in Indo-Pak talks: BJP,” *Economic Times*, September 2, 2015.

³⁵ Tooba Khurshid, “The Jammu and Kashmir Dispute: Where Do People of Jammu and Kashmir Stand?,” Issue Brief, The Institute of Strategic Studies Islamabad, January 7, 2016, http://issi.org.pk/wp-content/uploads/2016/01/Final_IB_Tooba_khurshid_dated_07-1-2016.pdf “Text of Simla Agreement,” <http://people.unica.it/annamariabaldussi/files/2015/04/Simla-Agreement-July-2-1972.pdf>

Kashmiris are the central party and cannot in any sense be considered a third party.

Furthermore, India also questioned and opposed the meeting between Pakistani delegations and the Kashmiri Hurriyat leaders and also called off talks as stated earlier. Since long, Kashmiri leaders have been engaged in informal consultation by India and Pakistan. Many Kashmiri leaders have also visited Pakistan and met with Pakistani politicians. Pakistan has always recognised the All Parties Hurriyat Conference (APHC) as a representative of the people of Jammu and Kashmir and their aspirations.

India needs to recall that, since its formation, leaders of APHC and other Kashmiri leaders have been involved in promoting the dialogue between Pakistan and India for a peaceful resolution of the Kashmir dispute at numerous (international forums). Up till now, they welcomed all the dialogues between the two countries. Furthermore, establishment of APHC office in New Delhi was marked as an opportunity to further the dialogue between New Delhi and Srinagar.³⁶ In 1995, The APHC office was inaugurated by I.K. Gujral who was at that time a member of Parliamentary Committee on External Affairs and later became Prime Minister. Prime Minister Atal Bihari Vajpayee was also committed, to resolve the Kashmir dispute, and acknowledged the role of Kashmiris in the dialogue process.³⁷

Furthermore, India also offered APHC to hold a dialogue first in May 2000 and later in 2003. With this offer India made it a public declaration to have a dialogue with APHC.³⁸ Afterwards, Kashmiri leaders were engaged in a dialogue process with India and Pakistan.

On November 4, 2015, the Indian government offered that “New Delhi is ready to talk to anybody including the separatist leaders who

³⁶ A.S. Dulat and Aditya Sinha, *Kashmir: The Vajpayee Years*, Harper Collins: India, 2015.

³⁷ Vajpayee bets his last shirt on Kashmir, *Asia Times*, May 31, 2003.

³⁸ Tooba Khurshid, “The Jammu and Kashmir Dispute: Where Do People of Jammu and Kashmir Stand?”, Issue Brief, The Institute of Strategic Studies Islamabad, January 7, 2016, http://issi.org.pk/wp-content/uploads/2016/01/Final_IB_Tooba_khurshid_dated_07-1-2016.pdf

want to function within the framework of Indian Constitution and sovereignty. These are two issues with which there can be no compromise.”³⁹ This offer has been spurned by the Kashmiri leaders.

Right of the People of Jammu and Kashmir in Decision Making Process

A major concern of the people of Jammu and Kashmir has been that any decision on the political status of Jammu and Kashmir without their involvement would affect them. The international standard of the right of indigenous people in any decision making process has also been clarified by the UN declaration on the rights of indigenous people. Article 18 of this declaration states that “indigenous people have right to participate in the decision making matters which would affect their rights.”⁴⁰ Furthermore, UN declaration also recognises their right to maintain their political identity; it states that “indigenous people have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions while retaining their right to participate fully, if they so choose,”⁴¹

Consequently, the indigenous people can participate not only in the dialogue or negotiation process but also in the decision making of intrastate affairs of Jammu and Kashmir. Henceforth, the historical, political and legal facts as established above show that the people of Jammu and Kashmir are inherent stakeholders to the dispute. The core objective of the negotiations between India and Pakistan is to ascertain their wishes about their political future. Their involvement, consultation or participation in any dialogue related to Jammu and Kashmir, cannot be invalidated, neither in terms of the bilateral agreements signed between India and Pakistan nor per international standards of right of the people.

³⁹ “GoI ready to engage separatist leaders under Indian constitution,” *Kashmir Monitor*, November 3, 2015.

⁴⁰ “United Nations Declaration on Indigenous People,”
http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

⁴¹ Ibid.

Conclusion

India endeavoured to put all the possible conditions to establish the insignificance of Kashmiris in the Kashmir dispute. India refused to hold talks with Pakistan while setting the preconditions that Pakistani delegation would not be allowed to meet the Kashmiri leaders in New Delhi and also called them 'irrelevant' to the Kashmir dispute. Such efforts cannot confiscate the right of the people of Jammu and Kashmir to self-determination. The right of self-determination has gained prominence in recent times. Dissolution of Czechoslovakia and settlement of the issue of Eritrea and Ethiopia are significant examples, where these communities demanded, greater control of their political, social and economic lives through self-determination.

International treaties, obligations and track of India-Pakistan engagements have clearly shown that the people of Jammu and Kashmir have every right to decide their future. They also have all the right to participate in any negotiation process over Jammu and Kashmir. The facts also authenticate that non-implementation of UN resolutions by India can neither invalidate the 'relevance' of the people of Jammu and Kashmir in the Kashmir dispute nor deprive them of their basic right to self-determination for too long. This needs to be understood by India. By addressing these aspects, trust of the people of Jammu and Kashmir could be restored. Unfortunately, in IOK, India has deployed more than 700,000 military (comprising Indian army, paramilitary forces and armed police etc) against the people whose number is 14 million. It is undisputed that gross injustice has been done to the Kashmiri people and they have been monitored by hostile Indian Occupational Forces (IOF). By all standards, Kashmir is an occupied territory. The rising death toll and gross human rights abuses by IOF pose a challenge that cannot be ignored. Resolution of Kashmir dispute is a must for the peace and stability of this region. The dialogue between Pakistan and India must also consider the changing ground realities. India, in particular, needs to consider that, no progress can be made until and unless the people of Jammu and Kashmir are involved in the negotiation process. To ensure that all parties involved will accept whichever the result might be is a must.

Recommendations

In resolving the Kashmir dispute, dignity of the people of Jammu and Kashmir is of paramount significance. The process of involving the people of Jammu and Kashmir and implementation of UNSCRs should be carried out around the following features;

1. Resolution should be sought in a more peaceful and honourable manner.
2. There is a need to recognize status of the people of Jammu and Kashmir.

The situation and status of the people of Jammu and Kashmir should be assessed by;

- Studying the history of indigenous people
 - Reviewing the claims and demands of the people of Jammu and Kashmir
 - Identifying the political challenges in acknowledging their rights
3. For the promotion and protection of rights of the people, implementation of UNSCRs is essential.
 4. To address the longstanding issues like Jammu and Kashmir and to implement UNSCRs, international cooperation is required. International community must help the people of Jammu and Kashmir to formulate a regional committee where the representatives of Jammu and Kashmir would have the opportunity to discuss issues of concern and facilitate cooperation.
 5. Pakistan must enhance its alliance network to promote its stance on Jammu and Kashmir as well as to promote the respect for the right of the people of Jammu and Kashmir.
 6. India needs to stop overlooking of the UNSCRs and consider the people of Jammu and Kashmir as basic stake holders
 7. At this point strengthening and institutionalization of the dialogue process is essential. CBMs should not be made hostages to the inconsistency in bilateral dialogue process. The negotiation process should be transparent and Kashmiris should be made an integral part of the negotiation process. All parties should show their political will and flexibility to resolve the issue of Jammu and Kashmir.

8. All the parties involved must formulate an applicable formula to resolve the issue.
9. Both India and Pakistan have failed to move ahead due to unbalanced policies in the past. Therefore, both should work to devise culturally appropriate policies to avoid future imbalances.
10. It is the responsibility of both India and Pakistan to get an independent, prior and informed consent of Kashmiris for any negotiations on Jammu and Kashmir. It must be free of any intimidation or manipulation. This consultation must also involve the peaceful and non-violent voices of civil society. This will help in undertaking more objective solutions for the issue of Jammu and Kashmir.