

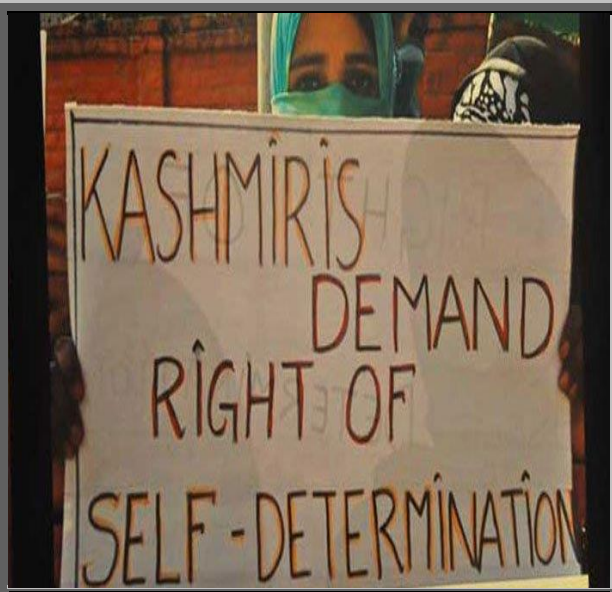
5TH JANUARY 1949 - A MILESTONE IN THE STRUGGLE FOR THE RIGHT TO SELF DETERMINATION

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(Views expressed in the brief are those of the author, and do not represent those of ISSI)



The right to self-determination is an integral part of the charter of the United Nations which came into force on October 24, 1945. The Article 1(2) states “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;”¹

Having right to self-determination as its core value, it is no surprise that while accepting the disputed nature of the state of Jammu and Kashmir between India and Pakistan, the United Nations Commission for India and Pakistan (UNCIP) on January 5th, 1949 guaranteed the right of the Kashmiri people to determine their future by stating “The question of the accession of the State of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of a free and impartial plebiscite;”² Thus, January 5, 1949 marks a high point in the struggle of the Kashmiri people for their inalienable right to self-determination.

Subsequently, Kashmiri people's right to self-determination was again reiterated by the UN in its resolution of 14 March, 1950³, 30 March 1951⁴, 24th January 1957⁵ and December 2, 1957⁶. Initially,

¹ United Nations Charter (full text), United Nations, <https://www.un.org/en/about-us/un-charter/full-text>

² Text of Resolution adopted at the meeting of the United Nations Commission for India and Pakistan on 5 January, 1949, Ministry of Foreign Affairs, Pakistan, <https://mofa.gov.pk/wp-content/uploads/2020/01/Resolution-adopted-at-the-meeting-of-the-United-Nations-Commission-for-India-and-Pakistan-on-5-January-1949.pdf>

³ “Resolution 80 (1950) / [adopted by the Security Council at its 470th meeting], of 14 March 1950,” United Nations Digital Library, <https://digitallibrary.un.org/record/112024?ln=en>

Both India and Pakistan had agreed to hold a free and fair plebiscite to ascertain the wishes of the Kashmiri people as was envisioned by the UN. But as the time would prove, India was never sincere in its commitments to the International body and had been making pledges of holding a plebiscite only to deceive the world community.

While on one hand, India hoodwinked the world and on the other, it steadily strengthened its grip on the part of the state of Jammu and Kashmir that was under its occupation. By late 1980s, the non-committal attitude of India had become evident to the people of Kashmir. When met with resistance, India used most inhuman tactics to break the will of the Kashmiri people.

Since 1989, the people of Indian occupied Jammu and Kashmir have been witnessing the worst forms of human rights abuses at the hands of Indian forces. Having the umbrella cover of draconian laws like Armed Forces Special Act (AFSPA) and Public Safety Act (PSA), the Indian forces have been found guilty of all sorts of crimes against humanity with complete impunity. Be it killing innocent civilians and presenting their dead bodies as terrorists for monetary benefits or promotions or the predicament of half widows, the brutality against the hapless Kashmiri people knows no bounds. Since January 1989, a total of 95,948 people have lost their lives, 164,078 people are spending their days in Indian custody whereas, 11,246 women have been raped or molested.⁷

As if this was not enough, the year 2019 further deteriorated the situation for the people of Indian occupied Jammu and Kashmir. It was the fateful day of August 5, 2019 when RSS-BJP led Modi Government once again, going against all norms and international laws, decided to re-annex Kashmir by force by abrogating Article 370. It also divided the part of state under its occupation into two Union Territories – Jammu and Kashmir and Ladakh. Not only that, along with abrogation of Article 370, India also announced the repeal of Article 35 A which ensured that the non-permanent residents of the state (non Kashmiri) were not entitled to permanent settlement, acquiring land or immovable property, avail state government job, scholarships or aid. By repealing Article 35A India has paved the way to bring about a demographic change in Indian occupied Kashmir. So far 4.2

4 “Resolutions Adopted and Decisions Taken By the Security Council in 1951,” United Nations Military Observer Group in India and Pakistan,

file:///C:/Users/SSI/Downloads/security_council_resolution_91_1951.pdf

5 “Resolution 122 (1957) / [adopted by the Security Council at its 765th meeting], of 24 January” United Nations Digital Library, <https://digitallibrary.un.org/record/112095?ln=en>

6 “Resolution 126 (1957) / [adopted by the Security Council at its 808th meeting], of 2 December 1957” United Nations Digital Library, <https://digitallibrary.un.org/record/112085?ln=en>

7 Human rights Violations, Kashmir Media Service, <https://www.kmsnews.org/kms/>

million illegal domicile certificates have been issued to non-Kashmiri people⁸ that also include Ghurkha soldiers from Nepal who had served in Indian Army.⁹ By changing the demography of IIOJK, India believes that it would be able to put to rest the demand for a free and fair plebiscite. Needless to say that nothing could be more ironic and self-delusional. Last more than seven decades have proved beyond any doubt that Kashmiris are determined to free their land from illegal Indian occupation. To achieve this goal, people of Kashmir have not shied away from offering supreme sacrifices and braved worst forms of brutality. Even 900,000 troops stationed in IIOJK have not been able to contain the spirit of “Azadi” (freedom) in Kashmiri people.

While Kashmiris are fighting the battle for the liberation of their land, it is also the duty of the international community, particularly countries who consider themselves as champions of human rights to play their due role in bringing an end to the miseries of the Kashmiri people. It is also the duty of the United Nations to ensure its promises made to the Kashmiri people are fulfilled and Kashmiri people are given a chance to determine their future through a free and fair plebiscite.

⁸ Statement by Counsellor, Ms. Saima Saleem During the Interactive Dialogue with Special Rapporteur on Minority Issues (21 October 2021), Pakistan Mission to United Nations, https://pakun.org/statements/Third_Committee/2021/10212021-01.php

⁹ “Kashmir Domicile Law raises fears of losing land, culture,” Reuters, July 28, 2020, <https://www.reuters.com/article/us-india-property-lawmaking-trfn-idUSKCN24T008>