



---

# KASHMIR: RESETTING THE NARRATIVE

---



MARCH 1, 2023  
KASHMIR GLOBAL COUNCIL  
New York, USA | Toronto, Canada  
[www.KashmirGlobalCouncil.com](http://www.KashmirGlobalCouncil.com)  
Tel 647 300 6354

## Table of Contents

<b>KASHMIR: NOT A BILATERAL TERRITORIAL ISSUE.....</b>	<b>2</b>
<b>STANDSTILL AGREEMENT WITH INDIA AND PAKISTAN.....</b>	<b>4</b>
<b>INSTRUMENT OF ACCESSION.....</b>	<b>5</b>
<b>ISSUE OF KASHMIR AT UNITED NATIONS.....</b>	<b>6</b>
<b>ENTRY OF CHINA IN KASHMIR.....</b>	<b>8</b>
<b>WAR OF LIBERATION BY PRO-INDEPENDENCE GROUP.....</b>	<b>9</b>
<b>HUMAN RIGHTS VIOLATIONS.....</b>	<b>10</b>
<b>OBSTACLES TO PEACE.....</b>	<b>13</b>
<b>IDEAS FOR PEACE.....</b>	<b>16</b>

## KASHMIR: NOT A BILATERAL TERRITORIAL ISSUE

The contention that India and Pakistan are making regarding Kashmir to the international community, including pursuing it diplomatically as a bilateral conflict, is wrought with misinterpretation of legal, historical, and political facts. The assertion of these two countries that the erstwhile Princely State of Jammu & Kashmir was to accede to either of the two dominions after the British left India is misrepresentation of legal framework that preceded prior to declaration by British parliaments **Indian Independence Act of 1947** that created India and Pakistan as two (self-governing) dominions.

The Secretary of State for India, **Lord Pethick Lawrence**, on 19th February 1946 announced the decision of the British government to send a delegation of three Cabinet ministers to India to find a solution for the problem of India. The delegation, popularly known as the "**Cabinet Mission**", arrived in India on 23 March 1946.

On 25 May 1946, it circulated a memorandum dated 12 May 1946. In its memorandum, the Mission affirmed that on the withdrawal of the British government from **British India**, it would no longer be possible for the rights of the states which flowed from their relationship with the Crown to exist and the rights surrendered by the states to the paramount Power would revert to the **rulers of those states** when the two new dominions of **India and Pakistan** were created.<sup>1</sup>

On 20 February 1947, the British government announced that independence would be granted to **British India**, and this was followed by another statement on 3rd June 1947 setting out its plan for the transfer of power. The position of Princely states (*Kashmir being one of them*) was dealt in the following manner.

*"His Majesty's Government wish to make it clear that the decisions announced above (about partition) relate only to British India and that their policy towards Indian States contained in the Cabinet Mission Memorandum of 12-5-1946, (Cmd. 6835) remains unchanged."*<sup>2</sup>

It is worth noting here that the British Parliaments **Indian Independence Act** was passed to create two dominions of India & Pakistan within the British administered India known as **British India**, while the states that had direct **Suzerainty** with **British Crown** were at liberty to choose the future of their states, including **independence**. This was also reflected in a clarification letter of **Lord Attlee**, the then Prime Minister of England, to **Lord Mountbatten** the Governor General of India.

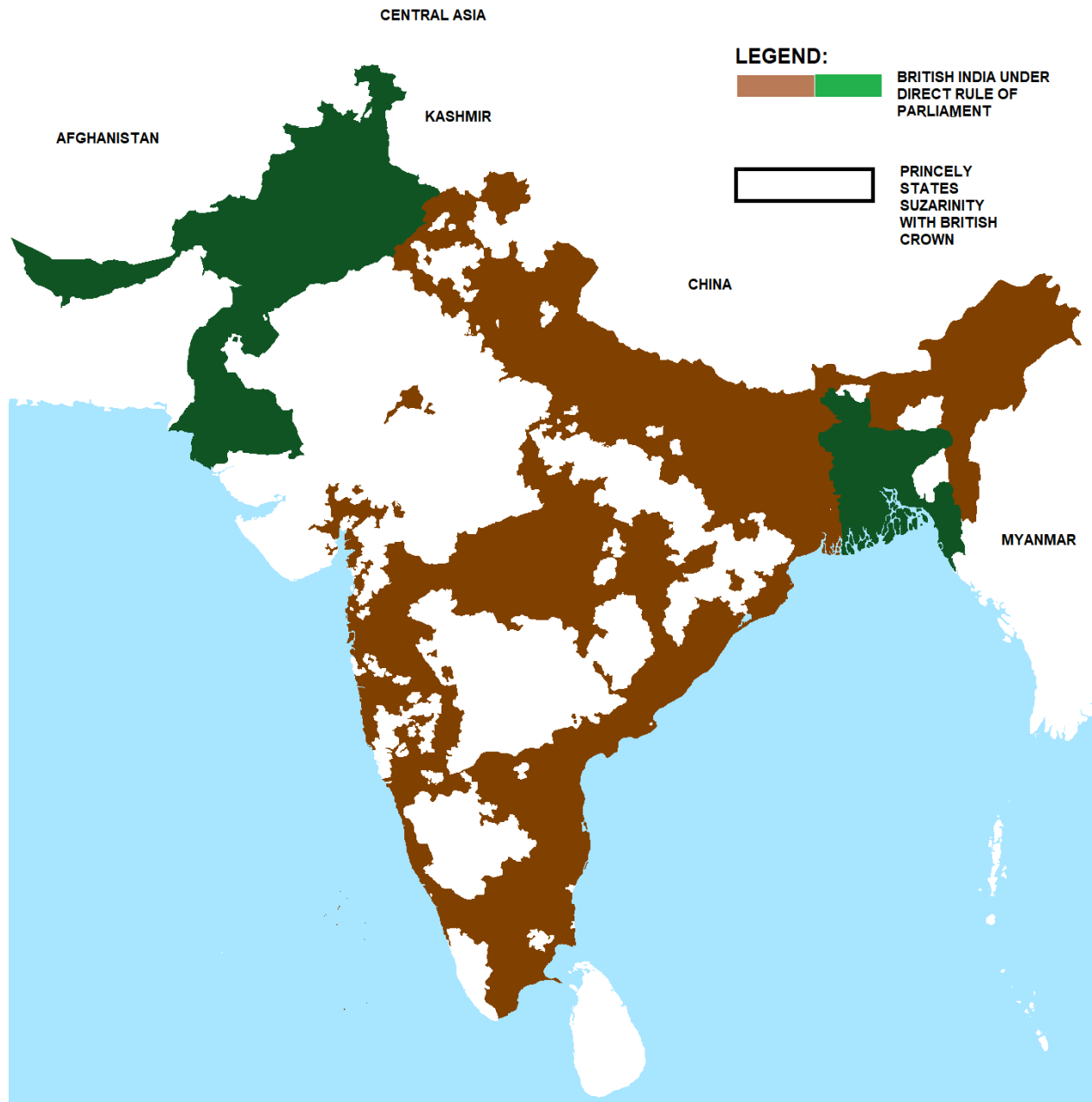
In **British India**, partition of India and Pakistan came about because of communal division in 1947 as patronaged by Mr. Jinnah (Muslim League Party) of Pakistan and Pandit Nehru (Congress Party) of India. The implications of this communal based partition were averse to the

---

<sup>1</sup><https://www.parliament.uk/about/living-heritage/evolutionofparliament/legislativescrutiny/parliament-and-empire/collections1/collections2/1947-indian-independence-act/>

<sup>2</sup> <https://api.parliament.uk/historic-hansard/commons/1947/aug/04/indian-states-consultation>

people and the state of Kashmir that had played no role in division of **British India** on communal lines. Neither Muslim League nor Congress party had any base in Kashmir during India`s struggle of Independence led by Mahatma Gandhi.

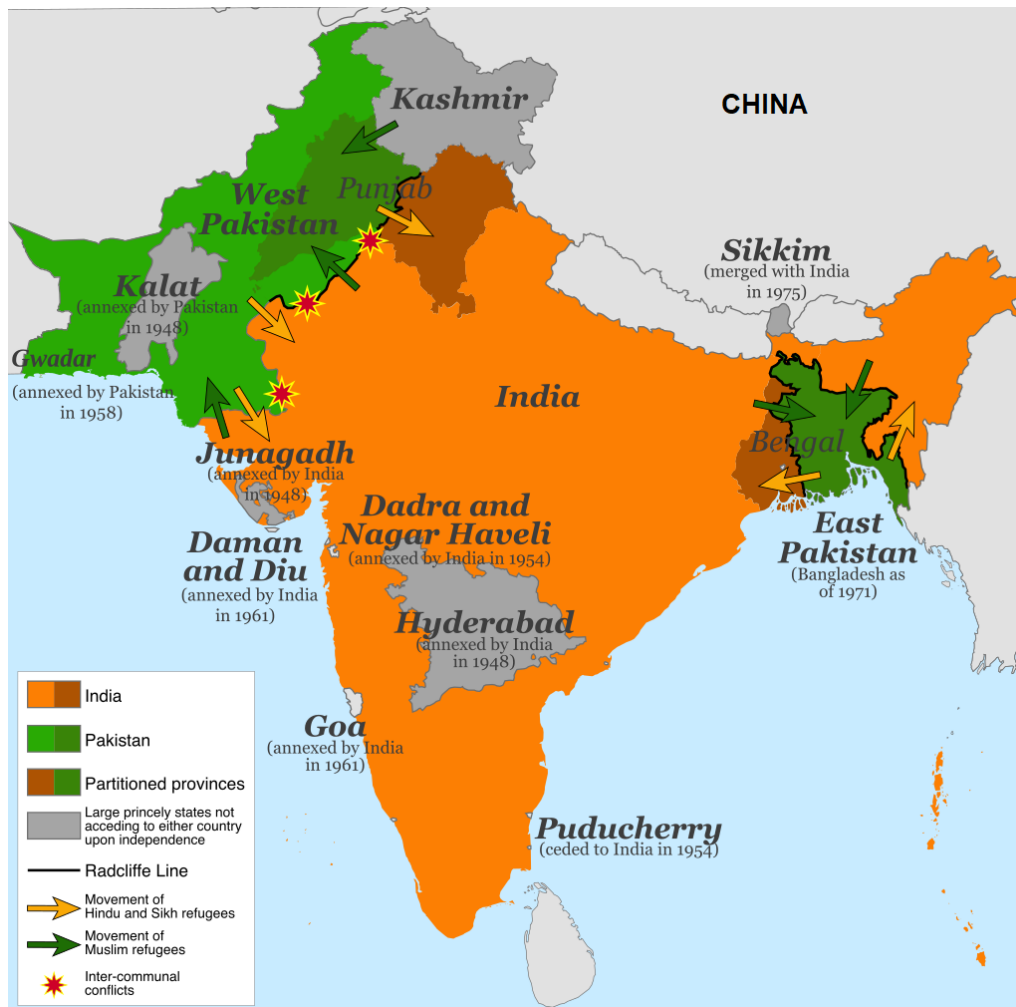


*Map 1: British India in 1947 showing India (brown), Pakistan (green), Princely States (white).*

On 14/15<sup>th</sup> August 1947, India and Pakistan emerge as two Dominion countries out of British India. Thus, the withdrawal of paramountcy from the **princely state of Kashmir** which had *Suzerainty* to **British crown** made it to become **independent**.<sup>3</sup> The communal basis of division of British India was not to apply to the state of Kashmir.

<sup>3</sup> <https://www.ebc-india.com/lawyer/articles/96v4a2.htm>

Therefore, on 15 August 1947, State of Kashmir which had British Paramountcy withdrawn became a **Sovereign State** since it was not part of **British India**.



Map 2: Result of partition of British India, and annexation by India and Pakistan

## STANDSTILL AGREEMENT WITH INDIA AND PAKISTAN

Identical telegrams were sent by the Prime Minister of Kashmir to Dominions of India and Pakistan on **August 12, 1947**. The text is as follows:

“Jammu and Kashmir Government would welcome Standstill Agreements with India (Pakistan) on all matters on which these exist at present moment with outgoing British India Government. It is suggested that existing arrangements should continue pending settlement of details.”<sup>4</sup>

<sup>4</sup> [https://ciaotest.cc.columbia.edu/olj/sa/sa\\_oct01app01.html](https://ciaotest.cc.columbia.edu/olj/sa/sa_oct01app01.html)

## REPLY BY PAKISTAN SENT ON 15<sup>TH</sup> AUGUST 1947

"Your telegram of the 12th. The Government of Pakistan agree to have a Standstill Agreement with the Government of Jammu and Kashmir for the continuance of the existing arrangements pending settlement of details and formal execution."

## REPLY BY GOVERNMENT OF INDIA

"Government of India would be glad if you or some other Minister duly authorised in this behalf could fly to Delhi for negotiating Standstill Agreement between Kashmir Government and India Dominion. Early action desirable to maintain intact existing agreements and administrative arrangements."

The representative of Kashmir did not visit Delhi and no Standstill Agreement was concluded between the State and the Dominion of India.

## KASHMIR AS AN INDEPENDENT STATE INVADED

Kashmir remained an independent state from August 15, 1947, to October 22, 1947, until the time the tribal raid backed by Pakistan army invaded Kashmir's western borders forcing the Maharaja of Kashmir to hurriedly sign the **Instrument of Accession** with India as a precondition to sending the Indian army to fight Pakistan backed tribal militia.

## INSTRUMENT OF ACCESSION

Refer to footnote to read the full text of the Instrument of Accession (October 27, 1947).<sup>5</sup>

It is important to note that Paras 6, 7, and 8 of Instrument of Accession that India accepted are explicitly maintaining the sovereignty of Maharaja and thereby the State. Those paras are reproduced below:

***"6. Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorising the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purpose of a Dominion law which applies in this State deem it necessary to acquire any land, I will at their request acquire the land at their expense, or, if the land belongs to me transfer it to them on such terms as may be agreed or, in default of agreement, determined by an arbitrator to be appointed by the Chief justice of India.***

***7. Nothing in this Instrument shall be deemed to commit in any way to acceptance of any future Constitution of India or to fetter my discretion to enter arrangement with the Government of India under any such future Constitution.***

***8. Nothing in this Instrument affects the continuance of my Sovereignty in and over this State, or save as provided by or under this Instrument, the exercise of any powers, authority and***

---

<sup>5</sup> [https://ciaotest.cc.columbia.edu/olj/sa/sa\\_oct01app01.html](https://ciaotest.cc.columbia.edu/olj/sa/sa_oct01app01.html)

***rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State.”***

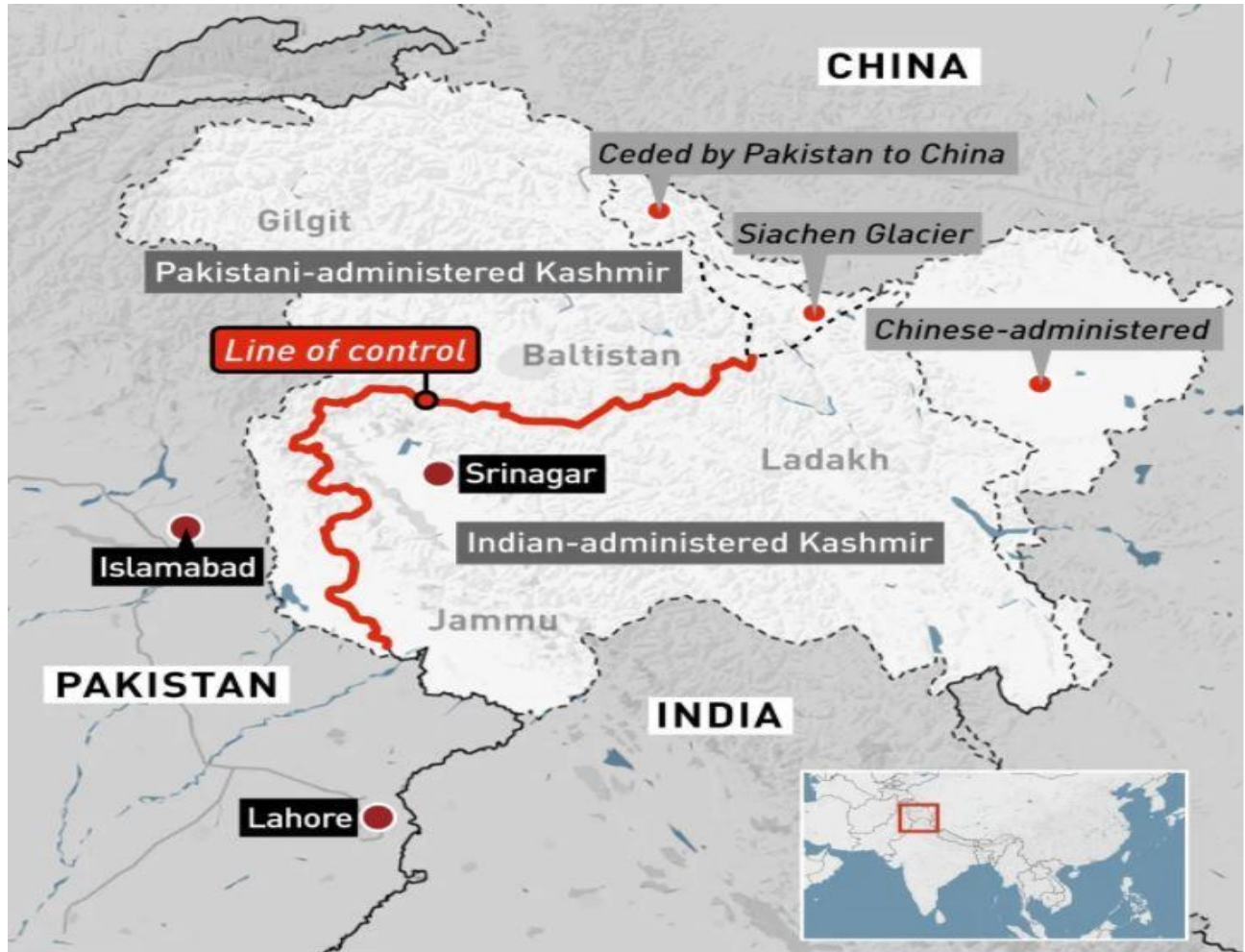
Since India did not have any constitution till 1950, the terms of Instrument of Accession were later incorporated in Article 370 of Indian Constitution. Further in Article 35, the terms of State subject (Citizenship of Kashmir) were incorporated in Indian constitution.

This sovereignty of state was eroded by India through their Parliamentary laws particularly the one passed on 5<sup>th</sup> August 2019, in contravention to the terms of Instrument of Accession that India claimed as a legal document in its plea in the United Nation asking for withdrawal of forces from Pakistan who had gained those areas through their invasion of Kashmir.

It is ironic that the very terms and conditions of document (cited above) sanctified by India in its plea to United Nations in January 1948 was disregarded on 5<sup>th</sup> August 2019 in the merger of Kashmir with India by passing a bill in Indian Parliament when the conditions of accession were clearly spelled out in sections 6, 7, 8.

## ISSUE OF KASHMIR AT UNITED NATIONS

While defending its action to invade Kashmir based on the Instrument of Accession signed by Maharaja, India makes its plea to United Nations in January 1948 asking for withdrawal of forces of Pakistan from territory that Pakistan had annexed since 22<sup>nd</sup> October 1947.



*Map 3: Current-day division of Kashmir between India, Pakistan, and China*

While British India is decolonised in 1947 with two independent countries of India and Pakistan emerging out of decolonisation, an independent country of Kashmir is invaded, divided, and colonised in the very same year by these two countries.

### **SECURITY COUNCIL PASSES ITS FIRST RESOLUTION ON KASHMIR 1948**

*“The United Nations Security Council Resolution 47, adopted on 21 April 1948, concerns the resolution of the Kashmir Issue. After hearing arguments from both India and Pakistan, the Council increased the size of the UN Commission created by the former United Nations Security Council Resolution 39 to five members, instructed the Commission to go to the Indian*



*subcontinent and help the governments of India and Pakistan restore peace and order to the region and prepare for a plebiscite to decide the fate of Kashmir".<sup>6 7</sup>*

The Resolution recommended a three-step process for the resolution of the issue. In the first step, Pakistan was asked to withdraw all its nationals that entered Kashmir to fight. In the second step, India was asked to progressively reduce its forces to the minimum level required for law and order. In the third step, India was asked to appoint a plebiscite administrator nominated by the United Nations who would conduct a **free and impartial plebiscite**.

At the UN meeting on 23 Feb 1948, Indian representative Gopal Swami Ayyanger said: *"As the Security Council is aware, the Government of India is fully committed to the view that after peace is restored and all people to the State have returned there, a free plebiscite should be taken and the people should decide whether they wish to remain with India, go over to Pakistan or to remain Independent if they choose to do so."*

Both India and Pakistan raised objections to the resolution. However, they welcomed mediation by the UN Commission. Through its mediation, the Commission adopted two resolutions of its own, which were accepted by both India and Pakistan. Subsequently, a cease-fire was achieved by the Commission in early 1949. However, a truce was not achieved due to disagreements over the process of demilitarisation. After considerable efforts, the Commission declared its failure.

In the year 1948, the Government of India issued a White Paper on Kashmir in which the Nehru's promise of plebiscite was repeated, *"The question of accession is to be decided, finally throughout a plebiscite, on this there is no dispute. There will be no victimization of any native of the State, whatever, his political views may be, and no Kashmiri will be deprived of his right to vote."*

Eventually, both India and Pakistan objected to the option of free and impartial plebiscite. Subsequent UN Security Council resolutions restricted the choices to India and Pakistan.

## **SECURITY COUNCIL PASSES ITS SECOND RESOLUTION ON KASHMIR 1949**

The difference in the resolution was significant for people of Kashmir as it stated that *"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;"* The referendum was restricted to option of choosing between India and Pakistan which overrode the definition of self-determination and was not in conformity with what later became *UN International Covenant on Civil and Political Rights*.

## **ENTRY OF CHINA IN KASHMIR**

### **CHINA INVADES KASHMIR**

---

<sup>6</sup> [https://en.wikipedia.org/wiki/United\\_Nations\\_Security\\_Council\\_Resolution\\_39](https://en.wikipedia.org/wiki/United_Nations_Security_Council_Resolution_39)

<sup>7</sup> [https://en.wikipedia.org/wiki/United\\_Nations\\_Security\\_Council\\_Resolution\\_47](https://en.wikipedia.org/wiki/United_Nations_Security_Council_Resolution_47)

A war took place between China and India from October to November 1962, as a major flare-up of the Sino-Indian border dispute. Chinese troops pushed back Indian forces in two theatres, capturing all their claimed territory in the western theatre and the Tawang Tract in the eastern theatre. The conflict ended when China unilaterally declared a ceasefire, and simultaneously announced its withdrawal to pre-war position, also known as the "Line of Actual Control" which marks the de-facto border between Indian and Chinese positions in Kashmir.



Map 4: De-facto borders and territorial claims of India, Pakistan, and China

Pakistan maintains a territorial claim on the region of Ladakh, which shares a border with China. The political map used by the Pakistani government annotates Ladakh's boundary with China as "frontier undefined", whose status would be formalised by "the sovereign authorities concerned after the settlement of the Jammu and Kashmir dispute.

#### PAKISTAN CEDES PART OF KASHMIR TO CHINA

Conversely, the China–Pakistan border is not recognised by India, which claims Kashmir in its entirety, a claim which negates any Sino-Pakistani border and indeed would give India a

common border with Afghanistan. India refuses to recognise the legality of the 1963 Sino-Pakistan treaty or the cession of the Trans-Karakorum Tract (Shaksgam Valley) to China, a position further complicated by the fact that large sections of the rest of the China-India boundary are also disputed. In 1984 India began moving troops to the hitherto unsettled Siachen Glacier in Kashmir, thereby altering the de facto China-India-Pakistan tripoint.

Article 6 of the 1963 Sino-Pakistan treaty provides for a renegotiation of the China-Pakistan boundary if the sovereignty of Kashmir changes.

### **INDIA PAKISTAN AGREE TO RESOLVE KASHMIR ISSUE**

In 1972, following the Indo-Pakistani War of 1971, India and Pakistan signed the Shimla Agreement, agreeing to resolve all their differences through bilateral negotiations. The United States, United Kingdom and most Western governments have since supported this approach.

In 2003, the then Pakistan President Pervez Musharraf announced that Pakistan was willing to "leave aside" the demand for UN resolutions and explore alternative bilateral options for resolving the dispute.

### **WAR OF LIBERATION BY PRO-INDEPENDENCE GROUP**

In 1989, people of Kashmir started an armed insurgency for the independence of Kashmir. The armed group JKLF (Jammu Kashmir Liberation Front) pioneered the insurgency with the help of Pakistan who provided the arms. The people aspiration of independence came to fore and was so overwhelming that Pakistan stopped providing arms to JKLF fearing that the insurgency movement may spill to its part of Kashmir that it controls.

Consequently, it started arming Hizbul Mujahideen, an Islamic organisation, to curtail the growing demand for independence of whole Kashmir to which both India and Pakistan were averse and for which both nations worked together at times to subdue the **predominant aspiration** of people of Kashmir. Caught between two armies and their intelligence agencies, JKLF eventually declared a unilateral ceasefire and started working for independence of Kashmir through non-violent means.

In 2010, UK based international pollster Chatham House conducted a comprehensive poll and found majority of Kashmiris in favour of complete Independence from both India and Pakistan. <sup>8</sup>

---

<sup>8</sup> [https://www.chathamhouse.org/sites/default/files/public/Research/Asia/0510pp\\_kashmir.pdf](https://www.chathamhouse.org/sites/default/files/public/Research/Asia/0510pp_kashmir.pdf)

## HUMAN RIGHTS VIOLATIONS

Below statements are reproduced from a UN press release<sup>9</sup> after the first ever report<sup>10</sup> issued by the UN on the human rights situation in Indian-Administered and Pakistan-Administered Kashmir – detailing human rights violations and abuses on both sides of the Line of Control and highlights a situation of chronic impunity for violations committed by security forces.

“There is an urgent need to address past and ongoing human rights violations and abuses and deliver justice for all people in Kashmir, who for seven decades have suffered a conflict that has claimed or ruined numerous lives”.

“The political dimensions of the dispute between India and Pakistan have long been centre-stage, but this is not a conflict frozen in time. It is a conflict that has robbed millions of their basic human rights, and continues to this day to inflict untold suffering,” said UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein.

“This is why any resolution of the political situation in Kashmir must entail a commitment to end the cycles of violence and ensure accountability for past and current violations and abuses by all parties, and provide redress for victims,” he said.

“It is also why I will be urging the UN Human Rights Council to consider establishing a commission of inquiry to conduct a comprehensive independent international investigation into allegations of human rights violations in Kashmir,” said Zeid.

“The UN Human Rights Office – which, despite repeated requests to both India and Pakistan over the past two years, has not been given unconditional access to either side of the Line of Control – undertook remote monitoring to produce the report, which covers both Indian-Administered Kashmir and Pakistan-Administered Kashmir.”

“Indian security forces used excessive force that led to unlawful killings and a very high number of injuries, the report says, citing civil society estimates that up to 145 civilians were killed by the security forces between mid-July 2016 and the end of March 2018, with up to 20 other civilians killed by armed groups in the same period.”

“Impunity for human rights violations and lack of access to justice are key human rights challenges in the state of Jammu and Kashmir,” the report says, noting that the Armed Forces (Jammu and Kashmir) Special Powers Act 1990 (AFSPA) and the Jammu and Kashmir Public Safety Act 1978 (PSA) have “created structures that obstruct the normal course of law, impede accountability and jeopardize the right to remedy for victims of human rights violations.”

“The AFSPA prohibits prosecution of security forces personnel unless the Indian Government grants prior permission to prosecute. “This gives security forces virtual immunity against

---

9

<https://www.ohchr.org/en/2018/06/first-ever-un-human-rights-report-kashmir-calls-international-inquiry-multiple-violations>

<sup>10</sup><https://www.ohchr.org/sites/default/files/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>

prosecution for any human rights violation. In the nearly 28 years that the law has been in force in Jammu and Kashmir there has not been a single prosecution of armed forces personnel granted by the central government,” the report says.

“There is also almost total impunity for enforced or involuntary disappearances, with little movement towards credibly investigating complaints, including into alleged sites of mass graves in the Kashmir Valley and Jammu region.”

“Chronic impunity for sexual violence also remains a key concern in Kashmir. An emblematic case is the Kunan-Poshpora mass rape 27 years ago when, according to survivors, soldiers’ gang-raped 23 women. “Attempts to seek justice have been denied and blocked over the years at different levels,” the report says.

“The report also points to evidence that the armed groups that have operated in Jammu and Kashmir since the late 1980s have committed a wide range of human rights abuses, including kidnappings and killings of civilians and sexual violence. Despite the Government of Pakistan’s denial of any support for these groups, the report notes that a number of experts have concluded that Pakistan’s military continues to support their operations across the Line of Control.”

“The report also examines a range of human rights violations in Pakistan-Administered Kashmir which, according to the report, are of a different calibre or magnitude and of a more structural nature. In addition, the report says, restrictions on freedoms of expression, peaceful assembly and association in Azad Jammu and Kashmir (AJK) and in Gilgit-Baltistan have limited the ability to obtain information about the situation.”

“The impact of Pakistani counter-terrorism operations on human rights is detailed in the report, which notes the concerns of the UN Human Rights Committee at the “very broad definition of terrorism laid down in the Anti-Terrorism Act.” The report quotes a respected national NGO that found hundreds of people had been imprisoned under the Act in Gilgit-Baltistan, and that it was being used to target locals who were raising issues related to people’s human rights.”

## **NO STEPS TAKEN BY INDIA AND PAKISTAN TO IMPROVE HUMAN RIGHTS: UN**

A subsequent UN press release<sup>11</sup> and human rights report<sup>12</sup> on the situation in Kashmir from May 2018 to April 2019, says the number of civilian casualties reported over the 12-month period may be the highest in over a decade, and noted that neither India nor Pakistan have taken any concrete steps to address the numerous concerns raised in an earlier UN report.

According to data gathered by local civil society, the report says, “around 160 civilians were killed in 2018, which is believed to be the highest number in over a decade. Last year also

---

<sup>11</sup>

<https://www.ohchr.org/en/press-releases/2019/07/no-steps-taken-india-or-pakistan-improve-human-rights-situation-kashmir-un>

<sup>12</sup> [https://www.ohchr.org/sites/default/files/Documents/Countries/IN/KashmirUpdateReport\\_8July2019.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/IN/KashmirUpdateReport_8July2019.pdf)

registered the highest number of conflict-related casualties since 2008 with 586 people killed, including 267 members of armed groups and 159 security forces personnel.”

Of the 160 civilian deaths reported by local organizations, 71 were allegedly killed by Indian security forces, 43 by alleged members of armed groups or by unidentified gunmen, and 29 were reportedly killed due to shelling and firing by Pakistani troops in areas along the Line of Control. According to the Government of Pakistan, a further 35 civilians were killed and 135 injured on the Pakistan side of the Line of Control due to shelling and firing by Indian forces during 2018.

Arbitrary detention and so-called “cordon and search operations” leading to a range of human rights violations, continue to be deeply problematic, as do the special legal regimes applying to Indian-Administered Kashmir.

In addition, the report notes, “no security forces personnel accused of torture or other forms of degrading and inhuman treatment have been prosecuted in a civilian court since these allegations started emerging in the early 1990s.”

The report also examines human rights violations in Pakistan-Administered Kashmir. While different in nature to the violations taking place on the other side of the Line of Control, people living in Azad Jammu and Kashmir, as well as in Gilgit-Baltistan are also deprived of a number of fundamental human rights, particularly in relation to freedoms of expression and opinion, peaceful assembly and association. The report notes no steps have been taken to resolve the main issues, including a number of highly problematic legal restrictions, outlined in the previous UN Human Rights Office report.

“Anti-terrorism laws continue to be misused to target political opposition as well as civil society activists,” the report says, adding that nationalist and pro-independence political parties “claim that they regularly face threats, intimidation and even arrests for their political activities from local authorities or intelligence agencies.” Threats are also often “directed at their family members including children.”

Citing specific cases, the report also notes how journalists in Pakistan-Administered Kashmir “continue to face threats and harassment in the course of carrying out their professional duties.”

The report also says the UN Human Rights Office has received “credible information of enforced disappearances of people from Pakistan-Administered Kashmir including those who were held in secret detention and those whose fate and whereabouts continue to remain unknown.”

“In almost all cases,” it adds, “victim groups allege that Pakistani intelligence agencies were responsible for the disappearances. There are fears that people subjected to enforced disappearances from Pakistan-Administered Kashmir may have been detained in military-run internment centres in Pakistan.”

The report stresses that “neither the Governments of India nor of Pakistan have taken clear steps to address and implement the recommendations” made in the UN Human Rights Office’s previous report, published in June 2018. It therefore restates those recommendations along

with additional ones. It also calls on the 47-Member-State UN Human Rights Council to “consider... the possible establishment of a commission of inquiry to conduct a comprehensive independent international investigation into allegations of human rights violations in Kashmir.”

## OBSTACLES TO PEACE

The partition of British India in 1947 came about because of communal division in which Kashmir was not involved. The implications of this partition were averse to the people and the state of Jammu and Kashmir. The immediate impact of the partition turned Kashmiris into an occupied land through the emergence of two domains of India and Pakistan. In addition, Kashmiris became the victims of communal discord between Indian Hindus and Pakistani Muslims.

Over seven decades, India and Pakistan reached several agreements, but they were never translated into practice. In the prevailing political conditions, there is no hope of bringing them out to be implemented on the ground. On the contrary, there is an increased hostility. Unfortunately, the people of India or Pakistan indirectly pay the price of their state’s policy of mutual hostilities (with tens of millions of Indian and Pakistani citizens living below poverty lines).

In 2018, the situation took a severe turn when the Indian government brought Kashmir under its direct rule after the dissolution of the local regime. Massive arrests of political leaders, journalists, and civil society members followed. Finally, in August 2019, the Indian parliament took legislative measures to revoke the statehood of Kashmir and dismember it into two territories by carving out China-bordering Ladakh region and repealing an article of the Indian constitution that granted Kashmir a symbolically significant semi-autonomous status.

These measures led to intensified coverage of Kashmir within International media, protests, and advocacy campaigns by the Kashmiri diaspora, and hearings in the United States Congress. During this time, the Paris-based group "Genocide Watch" alerted the international community that the Indian government may ensue mass massacres in Indian-administered Kashmir.

On the eastern front of Kashmir in the Ladakh area, a new theatre opened in May 2020 when Indian and Chinese armies engaged in skirmishes along the Line of Control (LAC), resulting in fatalities on both sides. Moreover, the escalating situation resulted in the reinforcement of troops by both countries, fortification of existing command posts and infrastructure, and even skirmishes along other border points between India and China.

The fundamental weakness in the approach of resolving Kashmir has been in viewing the issue through a bilateral prism of India-Pakistan conflict. This has affected their political progress as contributing nations to a peaceful world. The psychological baggage of partition on communal line that gave them the birth prevents them from abandoning it after three quarters of a century.

For any serious peace process to begin, there would need to be favorable environment in Kashmir that is void of human rights violations. Arrests and detentions of journalists, political

leaders, and other civil society members, often under draconian and colonial-era measures, would undermine any efforts towards a dialogue there must be a serious.

Curtailed human rights abuses in Kashmir for the dialogue to succeed. In previous attempts to initiate a dialogue process, the issue of a “conducive atmosphere”, in which the repressive conditions faced by the Kashmiri population would be improved, has been one of the pre-conditions put forward by Kashmiri groups for talks with India. Any process that may be initiated now would otherwise be rendered extremely vulnerable with the looming possibility of hostile events emanating from any side.

### **LEGAL STATUS OF KASHMIR**

It must be understood first that the legal status of the State of Jammu and Kashmir at the time of the creation of India and Pakistan in August 1947 was that of an independent state. While the State couldn't maintain its independence beyond few months, the question over its sovereignty was never settled in the eyes of international governments.

This is intrinsically reflected in the nature of the dialogue over Kashmir at the UN for the subsequent three decades. India and Pakistan were only to administer the regions of Kashmir that they came to control following the First Kashmir War of 1947-48 which resulted in a UN mediated ceasefire.

The changes over the last seven decades to the legal status of Kashmir within the respective constitutions of India and Pakistan are more a reflection of domestic desires than a permanent settlement of Kashmir's status. The several bilateral agreements between India and Pakistan over Kashmir also do not invalidate the status of Kashmir under international law. Therefore, the status of Kashmir within Indian and Pakistani constitutions must not be held sacred nor seen as an impediment to the resumption of any dialogue process as they do not reflect the lasting and acceptable settlement of Kashmir issue.

### **LACK OF A ROADMAP**

A factor that is likely to be a major obstacle in any dialogue process is that all stakeholders lack a commonly shared road map or agreed upon set of principles. Given the trust-deficit between all parties and the lack of any shared point of view, neither India, nor Pakistan, nor Kashmiri leadership is likely to take any major risks unless there are some agreed upon principles for addressing the core issue in the first place.

While the next steps in any process are perhaps a long list of confidence-building measures (CBM's) that need to be put in place; the settlement of the Kashmir issue is one for which some groundwork needs to be set immediately. For Kashmiri stakeholders, the criterion for assessing a process is whether it is likely to be in accordance with the wishes, aspirations, needs, and concerns of the people of Kashmir on both sides.

India and Pakistan may instead use the prisms of national security, territorial integrity, and geo-political or strategic advantages. But if India and Pakistan ignore to set some basic groundwork for the eventual settlement of the Kashmir issue, the subsequent steps in the



process would remain exposed to the same vulnerabilities that proved fatal to the Lahore and Agra initiatives and ultimately lead to all CBM's getting rescinded.

While India and Pakistan may not show willingness to work within the framework of international institutions (such as UN, or ICJ, or OIC), Kashmiri stakeholders will similarly, not show an inclination to work within the constitutional frameworks of India and Pakistan (where political allegiance or electoral participation is a precondition for Kashmiris unlike rest of Western democracies). Therefore, a common ground will need to be found such that all three stakeholders will engage in a fruitful manner.

### **LACK OF INTERNATIONAL FACILITATION**

What has made Kashmir intractable over the years has been the bilateralism of India and Pakistan in dealing with the question. Apart from the Indus Water Treaty which was mediated by the World Bank, India and Pakistan have been unsuccessful to translate their initial willingness to start a process into a robust mechanism that yields lasting results. And this is precisely why international facilitation needs to be considered in the issue of Kashmir. Many countries have successfully benefited from external mediation or facilitation to resolve their issues.

As the people of Kashmir are direct victims of their hostile policies, therefore, the international community must encourage the direct engagement of the people of Kashmir. This approach will help India and Pakistan disengage from the adversary process to a positive engagement. As such international community could be of great help to both India and Pakistan to strike some degree of rationality. Both India and Pakistan need to be displaced from the current stated stands on Kashmir to serve their people better.

### **LACK OF KASHMIRI PARTICIPATION**

It must be agreed by both India and Pakistan that the question of Kashmir cannot be addressed without involving the people of Kashmir. The sticking point has typically been how to do so. The previous demand of the Kashmiri leadership, including those that may align with India and Pakistan, has been that Kashmir should be solved through a meaningful tripartite dialogue between India, Pakistan, and the representatives of the people of Kashmir. India and Pakistan must show willingness to work outside the bilateral framework that they signed on in 1972.

While India and Pakistan may argue that the representatives of Kashmir are those that succeed in the electoral process put in place in Kashmir by India and Pakistan, it is well understood amongst all international observers of this issue that the two do not have a correlation. Indian and Pakistani mandated electoral mechanisms in Kashmir, if at all they are a reliant indicator of anything, are at best a means to address local questions of governance and development.

While bilateralism makes sense when it comes to outstanding issues that apply to India and Pakistan (such as trade, economic and cultural exchange), the issue of Kashmir does not fit within bilateral domain given that the future of nearly 20 million inhabitants of Kashmir on both sides is at stake. It is therefore not a coincidence that every dialogue and agreement on Kashmir

since 1947 share two things in common – they all failed to bring peace and they all excluded Kashmiris. The zero-sum approach by India and Pakistan over Kashmir has much to do with their perceptions of each other and each other’s differing historical narratives. Kashmir will always end up being a zero-sum game between India and Pakistan if Kashmir is seen as a territorial or ideological prize.

By involving the people of Kashmir, and thereby “re-humanizing” Kashmir, India and Pakistan will inevitably dilute the "staring contest" since both countries will have to eventually turn their eyes towards the central party of this issue. There will certainly be face-saving and more maneuverability for India and Pakistan to accept a creative solution that falls short of their respective long-held stands. No Indian Prime Minister can be seen as giving concessions to Pakistan on Kashmir, or vice versa. Many of the vital political compromises India and Pakistan will need to offer on the question of Kashmir will have to be given through Kashmiris.

Lastly, a successful peace process must include a direct, effective, and Kashmir-centric representation of the people of Kashmir. The important question of who represents the people of Kashmir can be addressed by allowing for the development of a Kashmir-centric representative character. Since Kashmiris lack a national assembly and do not have unified self-governance over all regions of Kashmir, India and Pakistan should support the formation of an interim representative body, such as a senate or council or ‘jirga’, that would allow the various Kashmir-centric political groups within Kashmir and abroad to come together and join the peace process. It is not impossible to find an alternative framework like encouraging the formation of the Senate for mutual good. By embracing this approach, the region will be unlocked to a new positive way to stride. Consequently, Kashmir’s will also benefit from the peace dividend of India and Pakistan.

## **THE QUESTION OF KASHMIR**

The question of Kashmir, simply put, is a desire by the people of Kashmir to determine and control their land, lives, and future. It is the reality of loss and injustice faced by the people and the very deep and real aspiration for independence, yet to be satisfied, that form the major substantive component of the political questions on Kashmir which India and Pakistan will have to address. It will necessarily lead to a readjustment of Kashmir’s future political dispensation. Unless the governments of India and Pakistan, from the start, do not reconcile to this reality, the question of Kashmir, with or without a road map, will not be seriously addressed.

## **IDEAS FOR PEACE**

### **PEACE ARCHITECTURE**

Three Axes, One Convergence

- Axis 1: Delhi-Srinagar
- Axis 2: Muzaffarabad-Islamabad
- Axis 3: Srinagar-Muzaffarabad
- Axis 4: Delhi-Islamabad
- One convergence: Continuous exchange of ideas between axes of dialogue

For some time, one thing which has become clear is that there are many points in the Kashmir question that needs to get involved – Srinagar, New Delhi, Muzaffarabad, Islamabad. It is assumed from their pattern of past peace initiatives that New Delhi and Islamabad accept this notion in theory but going forward they would need to muster the necessary political will to implement it. Previously, Indian PM Vajpayee had offered to start a process of dialogue with Pakistan and simultaneously offered a dialogue with people of Kashmir.

While it can be assumed that he could have been willing to allow a process that eventually touched all points, nonetheless he only engaged along two distinct axes – a Srinagar-Delhi and a Delhi-Islamabad. This seems to be guided by the Indian notion that there are “internal and external issues” in the Kashmir question, but such a notion erodes the conducive atmosphere needed to work outside the framework of “internal” or “domestic” issues.

If Kashmir were an internal issue, then the mechanisms within Indian and Pakistani constitutions alone could deal with the complexity and legality of the Kashmir issue. Without some adjustment, the approach of dialogue along one or two axes cannot possibly succeed as there is no mechanism for bringing together the other axes of dialogue which are likely to contradict. The previous approaches ignored key political reality that Kashmir is not a single entity today and it stands divided along the ceasefire line where different regions have undergone different political development over the last seven decades. This necessitates an axis of an inter-Kashmir dialogue and would give confidence in the overall process architecture to be followed.

Another approach that needs to be explored is whether the inter-Kashmir dialogue axis could allow for an effective framework that would bring both India and Pakistan to a common convergence. In other words, instead of having the Delhi-Islamabad axis perform the major work of resolving issues, the process could allow the inter-Kashmir dialogue axis to mutually come up with solutions that would be acceptable to all. In this, the proposal for **Kashmir Senate** proposed by **Kashmir Global Council** as a representative body having a representative character from whole of Jammu and Kashmir is probably the best option for beginning of peace in region.

Farooq Siddiqi P.Eng  
President  
Kashmir Global Council  
Tel ; 647 300 6354