

Raja Sajjad Khan*

INDIAN BELLIGERENT OCCUPATION ON KASHMIR TO ANNEXATION: INTERNATIONAL LAW PERSPECTIVE

ABSTRACT

International law is the only tool that defines the legal status of states, as well as set principles for peace, stability, and humanity in the world. The centuries-old concept of might is right and the use of military power has been changed in new concepts of nation-states. The concept of absolute sovereignty is now replaced by sovereignty with responsibility. The disputed nature of Kashmir has been recognized by United Nations (UN) and international Law. India had forcefully occupied the areas of this state against scheme of partition and wishes of the people. Indian occupation and complete denial from the right to self-determination to the people of Kashmir is not only a violation of international law but it is also a threat to peace in the region.

KEYWORDS

Belligerent occupation, IOJK, International law, annexation, constitutional scrap, humanitarian law, resistance, INTRODUCTION

In 1947 Jammu and Kashmir was a princely state having 78 percent Muslim population¹ and the ruler was Hindu Dogra. Like other princely states, this state was also under the suzerainty of British Govt. Although the history of Kashmir is centuries old, the modern state was established in through the 'Treaty of Amritsar of 1846'² between the British Govt. and Gulab Singh. The Maharaja was not the only ruler but also owns lands of Kashmir through this treaty. The taxes imposed on the people of Kashmir are three times that were in neighboring Punjab.³ Laws were different for Muslims and Non- Muslim, capital punishment was on the slaughter of the cow. Only Hindus can get arms licenses.⁴ The political movement for the rights of Kashmir Muslims was started in 1932.⁵ An organized anti-Maharaja civil disobedience movement was started from Poonch, in February 1947⁶, and later on, it was spread in the whole state. The partition plan of the subcontinent was announced on 3rd June 1947.⁷ The majority of the people of Kashmir were pro- Pakistan but the *Maharaja* was inclined towards India due to his religious affinity. This had sparked the movement which was already in Kashmir against the ruler and was converted into armed struggle. India had landed her forces in Kashmir on 26th October 1947 and on 1st January 1949 ceasefire was implemented on the intervention of the United Nations(UN).⁸ The people of Jammu and Kashmir was succeeded to liberate Azad (Free) Jammu and Kashmir (AJK) and *Gilgit Baltistan*(GB). AJK Govt was established on October 24, 1947, and GB got liberation on November 01, 1947.⁹ That was the beginning of the belligerent occupation on Jammu and Kashmir by India. The people of Kashmir were against the Indian occupation and initially, India was giving assurance to people as well as the international community that as law and order will be maintained the future of the Kashmir will be decided by the people through a fair and free plebiscite. The people of Indian Occupied Jammu and Kashmir (IOJ&K) had started a resistance movement against India in 1989. On August 5, 2019, the Indian President through a presidential order revoked the article 370 and 35-A of the Indian constitution. Due to these unconstitutional actions of India besides many other implications, the status of Kashmir state was changed into a union territory, divided Kashmir into two union territories and the residence certificates law was abrogated. This illegal annexation is a violation of international law, UN resolutions, and bilateral agreements. The primary aim of this paper is to analyze the status of Kashmir from an international law perspective especially the law of occupation and International Humantrain Law(IHL). The paper also identifies the legal implications of this occupation in light of the jurisprudence of international courts. The paper is divided into four parts, 2nd part is

* Raja Saajjad Khan, Phd scholar, International Islamic University Islamabad.

¹ Census of India 1941.

² Josef Korbel, *Dangers in Kashmir* (Oxford: Oxford Univesrity Press, 2005), 13.

³ Lord Birdwood, *Two Nations and Kashmir* (London: Robert Hales Ltd.1956), 31.

⁴ Richard Symonds, *In the Margin of Independence : A Relief Worker in India and Pakistan* (1941-1949(Karachi: Ocford University Press, 2001), 78-9.

⁵ Prem Nath Bazaz, *Inside Kashmir* (Mirpur: Verinag Publishers, 1987),183.

⁶ Christopher Sneedeen, *Understading Kashmir and Kashmiris* (U.K: C.Hurst and Co., 2015) 115.

⁷ Alastair Lamb, *Incomplete Patition: The Genesis of the Kashmir Dispute 1947-48* (Oxford: Oxford University Press,1997),43.

⁸ Ibid, 207.

⁹ Ibid, 195.

about the concept of belligerent occupation and the occupation on Kashmir, 3rd part is about the illegal annexation of Indian Occupied Jammu and Kashmir (IOJK) and the violations of international law, UNSC resolutions, and bilateral agreement, 5th part is the conclusion.

BELLIGERENT OCCUPATION

International law provides comprehensive rules and regulations about occupation both in customary international law (CIL) and International Humanitarian Law(IHL). Initially, the Hague regulations had defined the belligerent occupation as “The territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.”¹⁰ Geneva Convention further elaborates on the concept of occupation and provides that if in an international armed conflict any territory completely or its any part comes under the control of the foreign power it is occupation¹¹, even if there is not any armed resistance against this. Under international law the acquisition of territory by annexation or invasion is illegal.¹² The analysis of international law with the legal status of the J&K shows that the part of the state under the control of India is under belligerent occupation. Before the partition of the subcontinent, the Kashmir was a princely state having a Muslim majority, the only road, economic, social, and cultural links with areas constituted Pakistan. According to the Indian Independence Act, 1947 Pakistan and India became new states based on religion, Muslim majority areas constituted Pakistan and non- Muslim areas had constituted India. Article 07 of the Act, provides that suzerainty of British Govt. on the princely states will lapse on 15th August 1947.¹³ The British had a clear policy about the states that their government will not recognize any state as an independent dominion, so the state has to accede with Pakistan or India. The Maharaja had requested for standstill agreement with Pakistan on August 12, which was accepted by Pakistan on August 15, 1947.¹⁴ Indian National Congress was trying to achieve Kashmir at every cost, the Boundary Commission, Mountbatten, and Maharaja had provided the support to congress. Before the creation of Pakistan and even the announcement of the partition plan, the people of Kashmir were struggling against the regressive, unpopular, and autocratic ruler Maharaja of Kashmir. From February 1947 onward Maharaja forces had started to disarm Muslims and distributing weapons to Non-Muslims. At that time the “All Jammu and Kashmir Muslim Conference”¹⁵ was the only political party representing the Muslims of the state and having majority seats in the state’s legislature had passed the accession to Pakistan Resolution in the meeting in Srinagar on July 19, 1947.¹⁶ Maharaja was inclined towards India and made many administrative changes and took strict measures against Muslims. On 14th August 1947 people of Kashmir had celebrated Pakistan Day, the Dogra forces used baton force on these public gatherings.¹⁷ The people had started an armed struggle against the Dogra ruler from August 1947. Only in two areas of state Mirpur and Poonch, there were at least 50,000 trained people who had fought World War II.¹⁸ The Maharaja had issued orders of the shoot on sight to his army on September 02, 1947.¹⁹ Maharaja had imposed restrictions and censorship on newspapers and journalists that were reporting in favor of Pakistan.²⁰ By 7 October 1947, all daily newspapers from west Punjab were banned to enter in Kashmir.²¹ The ruler of Patiala was Sikh and acceded with India, the Patiala forces were the part of the Indian army and stationed at Srinagar and other areas before October 17, 1947.²² India was supplying arms to Maharaja and it was a systematic ethnic cleansing plan

Maharaja had ordered the ethnic cleansing of Muslims from Kashmir. During September and October 1947, the Maharaja’s Dogra-led troops carried out a campaign of sustained harassment, arson, physical violence, and genocide against in at least

¹⁰ Hague Regulations, 32 Stat. 1803, II Malloy 2042, 1 Bevans 247 (1907) , article XLII.

¹¹ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907, Article 42.

¹² United Nations Security Council Resolution 242, 22 November 1967.

¹³ A.G. Noorani, ‘C.P. and Independent Travancore’, *Frontline*, Volume20, Issue 13, 21 June-4July 2003.

¹⁴ Alastair Lamb, *Incomplete Partition: The Genesis of Kashmir Dispute 1947-1948*(Oxford:Oxford University Press, 1997),112.

¹⁵ The first political party of Kashmir established in 1932.

¹⁶ Saraf, Kashmiris Fight for Freedom , Vol. II,712.

¹⁷ Christofer Snedden, *The Untold Story of the People of Azad Jammu and Kashmir*(Oxford: Oxford University Press, 2012),42.

¹⁸ Christopher Snedden, *The Untold Story of the People of Azad Kashmi r*(Oxford: Oxford University Press, 2012),31.

¹⁹ Muhammad Yusuf Saraf, *Kashmir Fight For Freedom* Volum II(1947-1978) (Lahore: Ferozsons,1979), 848.

²⁰ Civil and Military Gazatte, October 08,1947.

²¹ Ibid, October 18, 1947.

²² Alaister Lamb, *Kashmir a Disputed Legacy1846-1990* (Oxford: Oxford University Press,1991) ,131.

two areas Punch, right on the border with Pakistan and pockets of southern Jammu... the Maharaja meant to create a buffer zone of uninhabited land, approximately three miles wide, between Kashmir and Pakistan. Muslims were pushed into Pakistan or killed. Hindus were sent another way, deeper into Kashmir. India would deny that any Holocaust had taken place, perhaps because it had secretly provided arms to the Dogra side.²³

A Kashmiri Pundit and political leader in '40s narrated the situation of Kashmir as "people were shot in Poonch like dogs and whole villages burnt. This happened during August, September, and October. The Maharaja was repeatedly warned but to no purpose. If then the tribesmen came in Kashmir to help their Muslim brethren on October 23, 1947, in their sad plight, how can we call it aggression?"²⁴ Most of the writers are convinced with Indian claim and complaint in the UN that due to the intervention of tribal people in Kashmir on October 22, 1947, India entered her forces and Maharaja had signed an instrument of accession, which is baseless and neutral researched did not authenticate this.

It is evident from the reliable historical account that India is the aggressor in Kashmir. Indian claim on Kashmir is based on an instrument of accession, whose authenticity was questioned by many researchers like Alastair Lamb.²⁵ Stanley Wolpert's research revealed that instrument of accession was signed on 27th October at that time Indian forces were landing in Srinagar airport.²⁶ If we accept the authenticity of the Instrument of Accession, it was provisional and conditional. Lord Mountbatten accepted that, "it is my Government's wish that as soon as law and order have been restored in Jammu and Kashmir and her soil cleared of the invader the question of the State's accession should be settled by a reference to the people."²⁷ The people of Kashmir were fighting against Dogra forces and their allies and liberated a considerable part up to October 24, 1947, and established a revolutionary Govt. After entering Indian forces in Kashmir the war was continued. India herself knocked the doors of the UN and a ceasefire agreement was signed between Pakistan and India and the ceasefire line was demarcated. UN had rejected the Indian claim that Kashmir is her part under the instrument of accession. UNSC had passed 17 resolutions about this conflict and it was admitted that Kashmir is a disputed territory whose future has yet to be determined. The resolution of 21st April 1948 states,

Both India and Pakistan desire that the question of the accession of Jammu and Kashmir to India and Pakistan should be decided through the democratic method of free and impartial plebiscite. Considering that the continuation of this dispute is likely to endanger international peace and security.²⁸

The two resolutions of 13th August 1948²⁹ and 5th January 1949 passed by the United Nations Commission for India and Pakistan (UNCIP) were agreed by both Pakistan and India. The resolution of 5th January 1949 provides, "The question of the accession of the state of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of free and impartial plebiscite."³⁰

The historical and legal facts prove that India had occupied the Jammu and Kashmir and India has no legal right to claim sovereignty on Kashmir. Except for India, all international community and the UN consider Kashmir as a disputed area.

ILLEGAL ANNEXATION

Indian leadership had made promises publicly and officially that the accession of Kashmir with India is temporary and to protect the Kashmir from invaders. There are many commitments by India in the UN and also with their nation and people of Kashmir. The Indian Prime Minister Jawaharlal Nehru in an address to All India Congress Committee said, "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."³¹ The time had proved that all the promises of India were just a time gaining tactics to change the Muslim majority into minority in the state. In the

²³Alex Von Tunzeleemann, *Indian Summer: The Secret History of the End of an Empire* (UK: Simon & Schuster Ltd, 2008), 286-287.

²⁴Prem Nath Bazaz, *Azad Kashmir*(Mirpur: Verinag Publishers,1992), 33.

²⁵Alastair Lamb, *Incomplete Partition*, (Oxford:Oxford University Press 1997).139-178.

²⁶Stenely Wolpert, *Nehru: a Tryst with Destiny* (Oxford: Oxford University Press, 1996), 416-417.

²⁷ K.Sarwar Hassan (ed.), *Documents on the Foreign Relations of Pakistan: The Kashmir Question* (Karachi: Institute of Internatinal Affairs, 1966),57.

²⁸UNSC Res.47(1948) , document No.5/726 dated April 21, 1948.

²⁹UNCIP Res of 13th August 1948 , document No 1100.

³⁰UNCIP Res of 5th Janaury 1949 , document no 5/1196.

³¹Daily Statesman, New Delhi July 09, 1951.

Indian Constitution of 1950 Article 370 was added a temporary provision about the Kashmir. Article 35-A was inserted in the constitution to provide the special permanent residence law for Kashmir.

During the drafting of the Indian Constitution in 1949, the constituent assembly has representation from IOJK and the instrument of accession was included as Article 306 A of the Indian Constitution. This article became operative from November 17, 1952, as Article 370³² in the Indian Constitution and it was ‘Temporary, Transitional and Special Provision.’³³ Article 370 (3) empowers the President to abrogate this article on the recommendations of the Constituent Assembly of IOJK. Article 35-A was added in the constitution through ‘The Constitution (Application to Jammu and Kashmir) Order, 1954’, which allows the Govt. of IOJK to define the ‘Permanent residents’ with their privileges and rights. The constituent assembly of IOJK defined the ‘ permanent residents’ in 1957.³⁴ The state subject law was initially introduced by the Maharaja Hari Singh vide Notification No. 1-L/84 dated April 20, 1927, read with State Notification No. 13/L dated June 27, 1932.³⁵

On August 5, 2019, the president of India issued an order ‘The Constitution (Application to Jammu and Kashmir) Order, 2019’³⁶ and amended the constitution without fulfilling the constitutional procedure. on next day August 6, 2019, the president issued another order and revoked Jammu and Kashmir’s special status, which states that, “all clauses of the said article 370 shall cease to be operative, and that all provisions of this Constitution, as amended from time to time, without any modifications or exceptions, shall apply to the State of Jammu and Kashmir.”³⁷

On August 06, 2019, the Indian Parliament passed the ‘Jammu and Kashmir Reorganization Bill, 2019’ besides many other amendments article 370 was also amended as,

All provisions of this Constitution, as amended from time to time, without any modifications or exceptions, shall apply to the State of Jammu and Kashmir notwithstanding anything contrary contained in article 152 or article 308 or any other article of this Constitution or any other provision of the Constitution of Jammu and Kashmir or any law, document, judgments, ordinance, order, by-law, rule, regulation, notification, custom or usage having the force of law in the territory of India, or any other instrument, treaty or agreement as envisaged under article 363 or otherwise.³⁸

On August 05, 2019, IOJK was under the presidential rule since December 2019, the constituent assembly was dissolved in 1957, and legislative assembly was dissolved in June 2018. Article 370 also provides the procedure for amendment in this article which shows that the prior approval from the Govt. of IOJK is required before the amendment but on 5th August the Kashmir was under the presidential rule. The Governor was the nominee of the president and does not represent the people of Kashmir. Constitutional expert AG Noorani’s opinion is very much clear about the intention of the Indian Govt. and unconstitutionality, according to him,

The Hindu nationalist government was not aiming at unifying Kashmir with India, but removing the identity of Kashmiri people. The Indian parliament was not empowered to either amend or delete the provision. For this, the approval of the [J&K] State’s Constituent Assembly was necessary. Any concurrence of the state government is always subject to the elected assembly’s final approval. When the state is under the governor’s rule or president’s rule, neither can accord that concurrence, the central government cannot acquire concurrence from its handpicked appointee. Currently, Jammu and Kashmir is under central rule. There is no elected government now, the Indian constitution has itself defined that the state government means a council of ministers in the state, There was no such council of ministers headed by a chief minister right now.³⁹

This constitutional scrap of August 05, is also contradictory to the various decisions of the Supreme Court of India (SCI). In the case titled ‘*Prem Nath Kaul Vs. The state of Jammu and Kashmir*’ the SCI held, “the Constitution-makers attached great importance to the final decision of the Constituent Assembly, President’s powers under

³² Constitution of India, art 370.

³³ Ibid. Part XXI of the Indian Constitution.

³⁴ The Constitution of Jammu and Kashmir, 1957, art.06.

³⁵ A.S.Anand, *The Development of the Constitution of Jammu and Kashmir* (Mirpur: Verinag Publishers,1991),30-34.

³⁶ The Constitution (Application to Jammu and Kashmir) Order, 2019, C.O. 272.

³⁷ Presidential Order C.O. 273.

³⁸ The Jammu and Kashmir Reorganization Act, 2019.

³⁹ Iftikhar Gilani, “India’s Move Sans Kashmir Assembly’s say Illegal: Experts,” AA, *Ankara*, August 09 2019, accessed August 25, 2020, <https://www.aa.com.tr/en/asia-pacific/india-s-move-sans-kashmir-assembly-s-say-illegal-expert/1553228>.

Article 370 could only be continued if the Constituent Assembly of J&K gave its final approval for him to do so.”⁴⁰ In another case *‘State Bank of India Vs. Santosh Gupta’* in 2016 the SCI ruled, that “revocation of Article 370 is possible only with the recommendation of the constituent assembly of the state. Given its absence, the provision seems to have assumed permanence.”⁴¹ Article 3 of the Indian Constitution provides a legal mechanism to change the name or state boundaries as,

Parliament may by law: (a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State; (b) increase the area of any State; (c) diminish the area of any State; (d) alter the boundaries of any State; (e) alter the name of any State. Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.⁴²

The Jammu and Kashmir Reorganization Act, 2019, and presidential orders had changed the status of IOJK from state to union territory. The state has been divided into two union territories Jammu and Kashmir and Ladakh without consulting the legislative assembly of the state. Moreover, article 370(1)(d) empowers the Govt. of IOJK with constituent powers, not the governor.⁴³ The Indian parliament or the president has no powers to amend or abrogate the article without the consent of legislature/ Govt. of IOJK. The IOJK had its separate constitution ‘the constitution of Jammu and Kashmir, 1957’⁴⁴ which was approved by the constituent assembly of IOJK. The constituent assembly was elected by the people and had a mandate to draft a constitution. This separate constitution could not be repealed or abrogated by the amendments in the Indian constitution. The relationship of India with the state of J&K was established through the instrument of accession and this instrument was incorporated in article 370 of the Indian constitution and the abrogation of this article is also the withdrawal of India from the instrument of accession, Article 08 of Instrument of Accession Provides,

Nothing in this Instrument affects the continuance of my sovereignty in and over this state, or save as provided by or under the instrument, the exercise of any power, authority and right now enjoyed by me as a ruler of this state or the validity of any law at present in force in this state.⁴⁵

This instrument was accepted by India and article 8 provides the sovereignty to Maharaja on Kashmir. In the case *Gurdwara Shaib Vs. Piyara Singh*⁴⁶ his lordship held, “that simply by executing the Instrument of Accession and by ceding certain powers with regard to external affairs a state does not lose its sovereignty.”⁴⁷ The SCI in another case held,

We must therefore reject the argument that the execution of the instrument of accession, affected in any manner the legislative, executive and judicial power in regard to the Government of State, which then vested in the ruler of the state.⁴⁸

Another important provision of this instrument is article 07 which provides,

Nothing in this Instrument should be deemed to be a commitment in any way as to acceptance of any future Constitution of India or to fetter my discretion to enter into arrangements with the government of India under any such future constitution.⁴⁹

The analysis of these two provisions of IoA shows that Maharaja had not surrendered his sovereignty to India. ‘The Constitution of India of 1950’ and ‘The Constitution of Jammu and Kashmir of 1957’ are clear violations of this

⁴⁰ AIR 1959 SC 749.

⁴¹ *State Bank of India v. Santosh Gupta*, judis.nic.in/supremecourt/imgs1.aspx?filename=44411.

⁴² Constitution of India, art.3.

⁴³ *Ibdi*, art.370(3).

⁴⁴ Constitution of Jammu and Kashmir, 1957.

⁴⁵ Instrument of Accession, art. 8.

⁴⁶ A.I.R.(1913) pepsu,1.

⁴⁷ A.S.Anand, *The Development of the Constitution of Jammu and Kashmir*, 116.

⁴⁸ Prem Nath Kaul Vs. The State of Jammu and Kashmir, AIR(1959)S.C. 749.

⁴⁹ A.S.Anand, *The Development of the Constitution of Jammu and Kashmir*, 121.

IOA. The 5th August 2019 constitutional scrap is the annexation of the state which is also a violation of international law. The ruling party Bahrtia Janta Party(BJP) is an orthodox Hindu party promoting the Hindutva ideology. The nexus between BJP and Rashtriya Swayam Sevak Sangh (RSS) was very rightly exposed by Keith Jones as,

In reality, the BJP is, even from the standpoint of current-day capitalist politics, a party of the extreme right. It espouses Hindu chauvinism, militarism and anticommunism while exalting entrepreneurial initiative. At its core stands a mass, fascistic organization associated over many decades with communal violence--the Rashtriya Swayamsevak Sangh (RSS).⁵⁰

The website of RSS shows their evil designs about Muslims and Kashmir, “Jammu and Kashmir, with its oppressive Muslim-majority character as a headache for our country and a thorn in the flesh of India.”⁵¹

The abrogation of Article 370 was always in the election manifesto of BJP from 1996 to 2019.⁵² The basic objective of the constitutional amendment is to change the demography of IOJK, which has an overwhelming Muslim majority. After August 5, 2019, the steps were taken by Indian Govt. prove these evil designs of India. Article 35-A of the Indian constitution was empowering the Govt. of IOJK to define the permanent residents of the state, and in 1957 it was defined by the legislature that only those persons who are state subjects could purchase the property or get Govt. jobs and scholarships in Kashmir.⁵³ This article did not allow non-Kashmiris to get a permanent residence certificate in Kashmir. After the abrogation of this article, the Govt. of India had redefined the domicile law through ‘Jammu and Kashmir Reorganization (Adaption of state laws) order, 2020’⁵⁴ on April 1, 2020, and subsequently rules were issued through ‘The Jammu and Kashmir Grant of Domicile Certificate (Procedure) Rules 2020’⁵⁵ in May 2020. According to these rules following classes of persons are eligible for domicile:

Applicants should have resided in J&K for 15 years, or studied in the state for seven years and appeared in either the Class 10 or the Class 12 examination there. Children of central government officers, and employees of public sector undertakings and banks, central universities etc who have served in Jammu & Kashmir for 10 years will also be eligible to apply for a domicile certificate. Migrants registered by the Relief and Rehabilitation Commissioner need not fulfil the aforementioned requirements and will automatically be eligible for a domicile certificate. The domicile status also applies to children of such residents of J&K who reside outside J&K in connection with their employment or business or other professional or vocational reasons but their parents should fulfill any of the conditions provided.⁵⁶

As per the census in IOJK 1.7 million migrants are living for more than five years which are not Kashmiri.⁵⁷ The process of getting domiciles for Indian is a very easy and online facility is also available. Indian Govt. had issued 400,000 domiciles just in three months, up to the last week of July 2020.⁵⁸ The permanent residents of IOJK who are living there from generations have to apply for new domicile otherwise they will not be eligible for Govt. Jobs.⁵⁹ This is another oppressive act to discourage Kashmiris for a job in Kashmir. People from India are getting domicile of states one such case of Naveen Chaudry an officer of Indian administrative service born and grown up in Bihar

⁵⁰ Keith Jones, “India: the BJP-RSS nexus Fascistic movement plays critical role in India's ruling coalition”, *World Socialist Website*, June 20, 1998, accessed August 25, 2020, https://www.wsws.org/en/articles/1998/06/bj_pz-j20.html.

⁵¹ Rashtriya Swayamsevak Sangh, Vision and Mission, accessed on August 26, 2020, www.rss.org.

⁵² Karan Thapar, “How the BJP wavers on Articles 370 and 35A: The commitment to abrogate them has provoked anger in the Valley. That, perhaps, is what the BJP wanted”, *Hindustan Times*, May 04, 2019, accessed August 25, 2020, <https://www.hindustantimes.com/columns/how-the-bjp-wavers-on-articles-370-and-35a/story-NXIXhqe8m06m46AhnPwacL.html>.

⁵³ The Jammu and Kashmir Constitution, 1957, art.6.

⁵⁴ Jammu and Kashmir Reorganization (Adaption of state laws) order, 2020, https://www.thehinducentre.com/resources/article31224756_ece/binary/PIB1609804.pdf.

⁵⁵ The Jammu and Kashmir Grant of Domicile Certificate (Procedure) Rules 2020, Law Department J&K SO 175, <http://www.jklaw.nic.in/pdf/S.O%20175%20OF%202020.pdf>.

⁵⁶ Ibid.

⁵⁷ Ajaz Ashraf and Vignesh Karthik K.R., “Why J&K’s demography will change beyond belief”, *NewsClick*, May 31, 2020, accessed on August 26, 2020, <https://www.newsclick.in/articles/J&K%20Delimitation>.

⁵⁸ Ateev Sharma, “Officers asked to grant J-K domicile certificates within two days: revenue secy”, *The Tribune*, July 31, 2020, accessed on August 26, 2020, <https://www.tribuneindia.com/news/j-k/officers-asked-to-grant-j-k-domicile-certificates-within-two-days-revenue-secy-120349>.

⁵⁹ “PRC holders too need domicile certificate for J&K jobs”, *The Times of India*, August 24, 2020, accessed on August 28, 2020, http://timesofindia.indiatimes.com/articleshow/77710573.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

had got the domicile was gone viral.⁶⁰ The Govt. of IOJK on July 17, 2020, had amended the ‘Control of Building Operations Act, 1988’, and the ‘J&K Development Act, 1970’ to allow notifying any areas in the territory as “strategic areas” to allow the Indian army for construction of infrastructure.⁶¹ On July 24, 2020 the Govt. issued an order by which the Indian army and paramilitary forces could acquire any property without any permission/approval.⁶²

The Indian occupation, illegal annexation, and actions are blatant violations of IHRL and IHL. The disputed nature of the erstwhile state of Jammu and Kashmir has been recognized in international law as well as UNSC resolutions. India could not change the status of J&K as it is mentioned in two UNSC resolutions, resolution No 91 states,

....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.....⁶³

Resolution No 122 of 1957 states,

.....any action that Assembly may have taken or might attempt to take to determine the future shape and affiliation of the entire State or any part thereof, or action by the parties concerned in support of any such action by the Assembly, would not constitute a disposition of the State in accordance with the above principle; Decides to continue its consideration of the dispute.⁶⁴

India had annexed IOJK and divided it into two union territories which is the violation of both the resolutions. Kashmir is an international armed conflict and humanitarian law is applicable in the situation of Kashmir. The issuing of domicile to non-Kashmiris is the shifting of the Indian population in Kashmir which is the violation of the fourth Geneva Convention and besides the ICL, India is also a state party in this convention. Article 49 of GC-IV provides, “The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.”⁶⁵ It is also a violation of AP-I of GC,

In addition to the grave breaches defined in the preceding paragraphs and in the Conventions, the following shall be regarded as grave breaches of this Protocol, when committed wilfully and in violation of the conventions or the Protocol:
a) the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Convention.⁶⁶

According to the Statute of the International Criminal Court India is committing war crimes by transferring its population in IOJK, “the transfer, directly or indirectly, by the occupying Power of parts of its own civilian population into the territory it occupies constitutes a war crime in international armed conflicts.”⁶⁷ The International Court of Justice in an advisory opinion in The Wall Case opined, that “Article 49(6) prohibits not only forced transfers but also any measures taken by an occupying Power in order to organize or encourage transfers of parts of its own population into the occupied territory.”⁶⁸

⁶⁰ Khalid Shah, “Decoding the new domicile law of Jammu and Kashmir” , *Observer Research Foundation*, June 30, 2020, accessed on August 28, 2020, <https://www.orfonline.org/expert-speak/decoding-new-domicile-law-jammu-kashmir-68777/>

⁶¹ Ekip, “Timeline – Kashmir: A Year after Annexation” , *Andolu Agency*, August 04, 2020, accessed on August 28, 2020, <https://www.aa.com.tr/en/asia-pacific/timeline-kashmir-a-year-after-annexation/1931170>.

⁶² Ibid.

⁶³ UN Security Council, Security Council resolution 91(1951) of 30 March 1951, S/RES/91 (1951).

⁶⁴ UN Security Council Resolution 122 (1957) of 24 January 1957, S/RES/122(1957).

⁶⁵ GC IV, Art. 49(6); CIHL, Rule 130.

⁶⁶ Protocol Additional to The Geneva Conventions of 12 August 1949, and Relating to The Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977, art. 85(4)(a).

⁶⁷ Statute of International Criminal Court, art. 8(2)(b)(viii) <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>

The unilateral change of the status of IOJK and its annexation is also a violation of the Simla agreement, which provides

That the two countries are resolved to settle their differences by peaceful means through bilateral negotiations or by any other peaceful means mutually agreed upon between them. Pending the final settlement of any of the problems between the two countries, neither side shall unilaterally alter the situation and both shall prevent the organization, assistance or encouragement of any acts detrimental to the maintenance of peaceful and harmonious relations.”⁶⁹

According to constitutional expert A.G. Noorani, “After Art 370 scrapping, the Simla pact is virtually dead.”⁷⁰ The breach of the Simla agreement by India also provides the legal right to Pakistan to terminate this treaty. ‘Vienna Convention on the Law of Treaties’ provides, “material breach of a bilateral treaty by either party entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part”.⁷¹ The annexation and occupation is also the violation of common article 1 of two international covenants, which provides, “All peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.”⁷²

CONCLUSION

The erstwhile State of Jammu and Kashmir is a disputed area according to international law and UNSC resolutions. India had occupied this area since 1947 against the will and wishes of the people. The disputed IoA is provisional and India had also violated the terms of this instrument. Moreover, UNSC had not accepted the Indian claim of accession, hence this IoA has no *locus standi*. The belligerent occupation by India on Kashmir is a clear violation of international law. The constitutional amendment by India on 5th August 2019 is the violation of international law, UNSC resolutions especially resolution No.91(1951) and resolution No. 122 (1957), Simla agreement, and also the procedure of constitutional amendment in the Indian constitution. The prime objective of this constitutional scrap is to change the demography of IOJK and since August 5, 2019, many actions have been taken in this regard. The struggle of the people of IOJK is not for the restoration of special status but it is the struggle of right to self-determination and against the Indian occupation. India’s unilateral actions are also a threat to peace and stability in the world and war crimes.

⁶⁸ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, I.C.J. Advisory Opinion, 2004 I.C.J. 136, para 120.

⁶⁹ Simla Agreement of 1972, Para 1(ii).

⁷⁰ A.G. Noorani, “After Art 370 scrapping, the Shimla pact is virtually ‘dead’”, *Deccan Chronicle*, August 26, 2019, accessed on August 28, 2020, <https://www.deccanchronicle.com/opinion/columnists/260819/after-art-370-scrapping-the-shimla-pact-is-virtually-dead.html>.

⁷¹ Vienna Convention on the Law of Treaties Done at Vienna on 23 May 1969, art.60.

⁷² International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, art. 1, International Covenant on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976.