
Struggle for Legitimacy and Escalating Human Rights Violations in Indian-held Kashmir: A Study of Modi Years

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The special status of Indian Occupied Kashmir has been abolished after the Bhartiya Janta Party's (BJP) government revoked Article 370 of the Constitution in 2019. The bilateral relations between India and Pakistan are marred by the Kashmir issue. Since independence, Kashmiris have been denied basic human rights including the right to choose and the right to life. India has pursued hard-lined policies to suppress Kashmiris' right to self-determination. The central argument of this paper is that Indian government has been trying to legitimize its occupation of Kashmir. In pursuit of this, it has been suppressing the voices of Kashmiris and committing human rights violations. The research investigates how Indian actions following the abrogation of Article 370 have led to grave human rights abuses in Kashmir. The study has adopted qualitative approach and used various reports and published literature on the matter. The issue has been analyzed from the lens of realism, constructivism, and balance of power theory. India has been using excessive military might and tactics like changing the demographics of the region to stabilize and legitimize its rule. It is the time when the international community should take notice of Indian belligerence and abuse of the internationally accepted Convention of 1990, the Covenant of 1966, and the Universal Declaration of Human Rights of 1948. The United Nations must intervene to stop the ill-treatment of the Kashmiri people, who have been the victims of Indian defiance for decades.

Key Words: India, Pakistan, Legitimacy, Article 370, Human Rights, Kashmir Conflict

Introduction

In 2019, the BJP government revoked Article 370 of the Constitution which abolished the special status of Indian Occupied Kashmir (IOK). In 2020, the Indian government passed a domicile law that led to significant changes in the demographics of Kashmir.¹ These legislations have a blatant disregard for the Indian Constitution and the rights of Kashmiris, who will become the minority in their land. These developments have further deteriorated relations between India and Pakistan. Pakistan gave a “new political map” under which IOK is shown as part of Pakistan territory.² Both countries achieved independence seventy-five years ago from British colonialism, but could not coexist peacefully since then. The bilateral relationship between both countries is marred by the Kashmir issue. Since independence, Kashmiris have been denied basic human rights including the right to choose and the right to life. India has pursued hard-lined policies to suppress the right to self-determination of the Kashmiri people. The right to self-determination is regarded as a fundamental right in the United Nations Charter. This right is also protected by the International Covenant on Civil and Political Rights (ICCPR). The UNSC has passed several resolutions on the Kashmir issue, none of which could be implemented due to India’s false promises and obstinate approach. India has been suppressing the freedom struggle in Kashmir using various methods. It has committed killings, brutalities, rapes, and forced detention under the veil of draconian Acts and Laws. IOK is one of the world’s highly militarized zones. India has always refused to negotiate a peaceful resolution to the Kashmir issue due to which peace between both countries has become a far-off reality. In this paper, the researcher enquires about India’s illegitimate occupation of Kashmir and gross human rights violations in recent years.

A. Theoretical Framework

To develop a thorough understanding of the Kashmir dispute and the violation of human rights by India, numerous theoretical concepts has been used.

In contrast to the realities on the ground, the Indian lobby's propaganda plays a key role in how the Kashmir dispute is portrayed in global political discourse. According to this hypothesis, security is a social phenomenon that is built on norms, beliefs, and ideology. To construct anything, according to Karin Fierke, is to create a topic or entity that wouldn't otherwise exist. This concept of security can be seen plainly in the way that

India intervened in Kashmir.³ Indian security forces perceived Muslims in Kashmir as a danger, thereby they subjected them to various forms of brutality.⁴ Constructivism emphasizes a blend of philosophical and critical methods, as articulated from a realist viewpoint, which holds that the constructivism theory places more emphasis on norms than on security-related power politics. Furthermore, they originate from the premise that security is a social phenomenon.⁵

The realist view of IR, which holds that governments are rational players with an insatiable thirst for authority and supremacy, can provide another rationale for the Kashmir dispute. Hence, when considering the Kashmir issue while bearing in mind the neo-realist notion, the matter can be regarded as a contest for dominance and control between Pakistan and India, regardless of the worry about the welfare of the Kashmiris. This idea was first established by the scholar Thucydides in 430–406 BC as part of his examination of the depiction of power struggles as an accepted norm of human behavior.⁶ This widely held view of realism holds that 'dominance' is the primary factor that is linked to existence and self-interest. Over the years, realism has been divided into three primary sub-categories: classical, structural, and neo-realism. Regardless of the numerous divides within realism, the main elements—statism, survival, and self-help—remain consistent. Neo-realism is thought of as a contemporary kind of realism, emphasizing the domestic political landscape and its determining factors in terms of power dynamics and foreign policy development. Neorealists believe that governments can use their unique capabilities to transform distinct aspects of national power into state power.⁷

Balance of Power theory proposes that both of these countries are locked in a perpetual cycle of war and attempt to maximize each other's actions through balancing, offers another rationale for the conflict and the role of India-Pakistan. Using the theory, it is possible to discuss several instances of LOC infringements, border assassinations of military personnel, and the installation of the most modern and efficient weaponry by both sides. One of the key aspects of realism is the balance of power. This occurrence suggests that the global framework is chaotic and that every country must strengthen its military capabilities if it is to remain afloat. This power balance is thought to boost the country's capability while reducing potential threats.⁸

John Rawls claimed that justice is the fundamental attribute of social systems.⁹ The core nature of society, or more specifically, how the main institutions of society allocate basic liberties and responsibilities and decide the distribution of benefits from mutual cooperation, is the "primary subject" of justice. Finding the core values for judging society's fundamental structures is the main challenge for any model of justice.¹⁰ Rawls seeks to address the inequality issue by imagining that the rules of justice were established by people in an "original position" of absolute equality where a "veil of ignorance" prevents people from maximizing personal future positions by bending the conditions of the agreement to their own benefit. In the original place, what social organizing values would people pick? Two essential components of justice, according to Rawls, would be integrated into the social agreement. The universal tenets of maximal freedom and equivalent/fair opportunities are as follows¹¹:

- (1) Every person is entitled to the greatest overall system of fundamental liberties that is consistent with a similar system of freedom/liberty for everyone.
- (2) Financial and social equality must be set up so that it is:
 - (a) To the maximum extent possible beneficial for the least privileged, in line with the just-savings concept, and
 - (b) Connected to the posts and offices available to everyone under reasonable equality in opportunity.

In terms of lexical superiority, Rawls believes that the 1st rule of maximal liberty is preferable to the 2nd and that within the 2nd rule, premise 2b, the equal chance rule, is preferable to rule 2a, the difference rule. According to him, the acceptance of these principles by people in their original position follows logically from their discussions aimed at creating a society that is committed to shared prosperity.¹²

B. Kashmir Issue through the Theoretical Lens

This section presents a broader picture of the topic by highlighting the relevance of the above-mentioned theories to the Kashmir cause.

The state behavior can be examined via the constructivist lens of IR theory. According to this conceptualization, we may say that each nation is different and has a certain set of distinctive socioeconomic, political,

cultural, or religious features that affect its diplomatic strategy. Nations each have unique identities that influence how they behave within the global system. Pakistan is an Islamist country. Having particular ties to Muslim nations is one of Pakistan's top diplomatic and foreign policy priorities. No matter if there are Muslims in Kashmir, Palestine, Afghanistan, or Myanmar, Islamabad has consistently tried to be an advocate for the Muslim community. For decades, Islamabad has been effective in making the Kashmir dispute relevant on the global stage. Kashmir is crucial for Islamabad due to Kashmiris, notwithstanding the strategic importance of the region. Islam is the common philosophy between them. Living by the same moral code is a sign of ideological affinity. Living beside those who share similar ideologies gives greater freedom for worship, festivities, and a way of life. India, on the contrary, makes its assertion to be *secular*, yet the Hindutva creed predominates there. Hindutva ideology is strictly endorsed by the ruling party of India-BJP. Even political groups that purport to be secular, notably the Indian National Congress, are influenced by the Hindutva movement and the BJP, which supports it.¹³ According to constructivist analysis, nearly all of Kashmiri Muslims are philosophically and culturally similar to Pakistanis, and their religious and personal liberties are better there. Secular India denies Muslims of Kashmir their right to practice their religion. On September 29, 2017, during Muharram, authorities used smoke shells, tear gas, and cane charges to thwart Shia Muslim marchers' efforts to disrupt the traditional Muharram march in Srinagar's civil lines.¹⁴ Moreover, in 2016, on the auspicious day of Eid, a curfew was enforced in all ten districts of the IOK.¹⁵ In July 2016, a renowned Kashmiri independence fighter named Burhan Wani was brutally assassinated after being ambushed. Following this, 110 Muslims were killed and Pellet guns were used by Indian soldiers to attack the protestors, blinding the victims. Pakistan raised its voice in opposition to these heinous Indian acts. While Indians refer to Wani as a terrorist, Pakistanis view him as a martyr and an icon.¹⁶

It is necessary to analyze the Kashmir dispute from a realist perspective so as to emphasize the point. Sovereignty, institutional survival, and self-reliance are the three main tenets of realism. According to it, there is chaos at the global level and nations can only survive by acquiring untold amounts of authority. The dispute over Kashmir has been approached realistically by both Pakistan as well as India. Both countries are seen as two poles bringing their own solutions to the bilateral issue while taking into account realism and neo-realist tendencies. Their respective foreign strategies show a range

of soft power and hard power projection to defend their national objectives, with the Kashmir problem having a significant role. The situation has gotten worse as a result of the neighboring states' antagonistic stances on the matter. India has changed its focus from hard to soft power and the goal is to establish a benign hegemony in the region. However, it is important to remember that India is making the best use of its soft power in order to bolster its hard might. As per Realist perspective states seek for growth, military might, and authority, which is what the two neighboring nations are doing. New Delhi is not only worried about holding Kashmir; one of its top aims is to dominate the region. Islamabad's goal is to defend Kashmir's Muslim people from Indian brutality. Additionally, to more effectively secure its border by reclaiming Kashmir from India.¹⁷ The realist philosophy encourages not just state growth but also state existence and self-help. In the case of Kashmir, Pakistan's foreign policy against India is wholly focused on ensuring the survival of the state. On paper, Pakistan is unprepared to compete with India. When considering Pakistan's nuclear capability, it is evident that Pakistan could easily launch a conflict with India. However, the realist perspective would forbid Pakistan from doing so since doing this would be detrimental to Islamabad's national interests. The economy of Pakistan will suffer, and it is well aware that New Delhi has the potential for a second strike. It is certainly feasible for India to attack Pakistan to undermine its military, but New Delhi is also constrained in other ways. India would be subject to international condemnation in the event of a conflict.

The Kashmir dispute has been a source of friction between India and Pakistan since its creation in 1947. Kashmir is located in a crucial geo-strategic region of Asia. It greatly affects India and causes acrimony between the two nations. Due to Kashmir's significance in every way, numerous nations, including the USSR and the United Kingdom, emerged as opponents along with India. The balance of power theory describes the condition of stable positions among nations when a threat-like scenario arises. In order to prevail, every nation strives for stability by optimizing its military capabilities and adopting strong choices and strategies that allow a good and balanced treatment for its own nation. It is frequently the only reliable tactics in a world of hegemonic nations. Every nation plays a game to gain control of the nuclear arsenals, the military, and the global economy. Hard and soft power as seen through the prism of the Kashmir conflict should be a significant addition to the Balance of Power theory. The idea of using economic and military might to sway or regulate the actions of other

nations is known as "hard power." By forging close relations with the United States, China, and several of its neighbors, India is essentially seeking to make itself both militarily and economically tough. On the other hand, Pakistan is constantly being terrorized and threatened by its neighbors, and Kashmir is becoming the focus of using hard power in retaliation against India. Islamabad joined numerous coalitions, including SEATO and CENTO, and has strengthened its alliance with China. 9/11 and the USSR's invasion of Afghanistan were two events that prompted Islamabad to contribute to the rise of hard power. To put a stop to the warnings and concerns that New Delhi is attempting to sow through military attacks and violating the LOC, Islamabad is expanding its defense and economy.

The Kashmir issue offers an intriguing example of the practical use of Rawlsian theory due to several factors. The initial point is the importance of justice as an underlying concern of the matter. According to Sumantra Bose, "the refusal of democratization by the Indians to the Kashmiri residents in the post-colonial era has been the source of the struggle for autonomy in IOK. Kashmiris rebelled because they believed there was no hope of justice within the legal structure of India for the offensive ongoing, and methodical practice of abuse of their basic human rights, not because Muslims are naturally devoid of devotion to a secular government...For Kashmiris, the Indian democratic system and its institutions represent the God who utterly and tragically failed. The belief conceived on their encounters that their shared desire for free, accountable, and accountable administration is not in line with their current coerced-contrasted with independent and unrestrained-status as a vital component of India-is the contributing factor to Kashmiri Muslims 'insistence on freedom (liberty from Indian rule).'¹⁸

The pinnacle of Kashmiri's outrage against decades of unfair treatment, brutality, and rejection of their Constitutional liberties by the government of India was the outbreak of the armed rebellion in IOK in 1989. Therefore, any viable resolution to the Kashmir conflict has to deal with the profound hurt that Kashmiris feel as a result of ongoing state repression. All prior efforts to resolve the conflict have utterly collapsed, largely because they either neglected to include the Kashmiris as significant stakeholders in the negotiations (the Simla Accord of 1972 serves as a prominent example) or they planned agreements that Kashmiris viewed as being unfair. This holds for both the United Nations resolutions on Kashmir and the numerous other ideas that have been made to settle the conflict. Although the Conventions

acknowledged Kashmiris' right to self-determination, they unfairly restricted it to picking either Pakistan or India. Unfortunately, the absence of the third alternative, which would have seen Kashmir become a sovereign nation, has allowed both Pakistan and India to portray the Kashmir dispute as an "entitlement issue"¹⁹ in front of the international community. The dispute between India and Pakistan has skewed its fundamental nature as a normative problem concerning the fundamental right of self-determination. Second, Kashmiris' rights in a future India-Pakistan peace agreement can only be protected if they are viewed from 'the difference rule' of Rawls' concept because they are the highly affected party in the conflict. According to the rule, the less benefited must benefit at least as much as the more benefited. The most fortunate certainly cannot take from the least benefited in order for this to occur because then the latter would lose instead of gain. This suggests that in order for a resolution to the conflict that benefits all parties involved, there must be an appreciation for both their own and others' needs.

It is in the best interests of all three parties to work together to find a solution that benefits everyone. It could be maintained that the issue of Kashmir is fundamentally an asymmetric triangular clash in which there is asymmetry of power among Kashmiris, the underdogs, and New Delhi, the top dog, and, Islamabad, the middle dog. So, no "win-win" results are probable because settling the issue is not in the interests of India.²⁰ Such logic misses the fact that even though they are more difficult to resolve, unbalanced disputes do have major repercussions for all the stakeholders. Hugh Miall noted that being a victim is oppressive, even if not as terrible as being oppressed. The top dogs pay a price for maintaining their dominance and suppressing the underdogs. The expense of the connection becomes intolerable for both parties in highly asymmetrical situations. Changing the current arrangement of ties to each other creates the option for dispute resolution. Considering the consequences of the struggle in the IOK to India it is said that IOK has poorer autonomy than the rest of the Indian states. However, it is not clear how denying Kashmiris of political authority assisted the other parts of the nation: It has caused an expensive occupation that has imprisoned tens of thousands of soldiers, converted countless Kashmiris into prospective spies, and degraded India's image for political integrity. India must provide Kashmir with the freedoms that Jawaharlal Nehru, had decades ago pledged; if it wants to win back the support of its people and the trust of other nations.²¹

C. India's Kashmir Strategy

India has pursued belligerent policies and sheer abuse of human rights in Kashmir. Modi-led BJP rule has been catastrophic for the basic human rights of Kashmiris. In the following section, Modi's Kashmir strategy has been discussed briefly.

Article 370 was a part of the Indian Constitution which gave Jammu and Kashmir a special status and allowed it to have autonomy in matters of defense and foreign affairs. This autonomy gradually eroded over time. After coming to power, Modi revoked Article 370 on 5 August 2019. After this, the state of Jammu and Kashmir was split into two unions (Jammu and Kashmir and Ladakh) which will be ruled by the federal government. Abrogation of Article 370 also repealed Article 35A, under which permanent residents of the valley were given special privileges like the right to own property and have government jobs. It was meant to protect the Muslim majority demographics of the region. BJP viewed this as discrimination against non-Muslims and a hurdle in development.²²

On several instances, Prime Minister Modi has openly confessed that Indian forces are instructed to forcefully respond to dissident Kashmiris. International Human Rights Watch stated that since 2016, Indian forces are brutally killing, blinding, raping, and injuring innocent Kashmiri civilians. The BJP government uses the Central Reserve Police Force (CRPF) to tackle protests and dissidence in the valley.²³ The power and authority of Indian forces have been augmented through the various Acts. Under Public Safety Act anyone could be kept in police custody for 7 days before presenting the individual before court. Police could even re-arrest the person if the court orders the release. These draconian laws are used to detain innocent Kashmiris.²⁴ Armed Forces Special Power Act allows Indian forces to arrest anyone after presenting an arrest warrant, shoot anyone based on suspicion, and demolish property without prior notice. Actions under this act could not be challenged in any court.²⁵ Under Disturbed Area Act any police officer or magistrate can use a maximum amount of force (which may cause death) to restore public order.²⁶

Before the partition, both Kashmiri Pundits and the Muslims coexisted peacefully in the valley. After partition, when the Indian government occupied the valley they started moving Pundits from Kashmir valley to Muslim majority area of Jammu. The purpose of this move was to influence the demographics of the region. The Indian government has been using

Kashmiri Pundits as a tool to delay the plebiscite. After the revocation of Article 370, the Modi government is actively pursuing re-settlement of Pundits in Kashmir, this will increase the Hindu population with Kashmiri domicile. This will also help BJP to win state elections in occupied Kashmir.²⁷ Re-annexation of occupied Kashmir and its division into union territories clearly shows India's intention of continuing its illegal rule. India has been brazenly flouting its international commitments and disregarding the sentiments and rights of Kashmiris.

Like Israel, India has been violating international law. Former Israeli Foreign Minister Shimon Peres advised Indian counterpart to "not be afraid or hesitate to populate Kashmir with people from all over India. Only a demographic change in Kashmir can help India to claim it"²⁸ The Indian government is establishing "Sainik colonies" in Kashmir for retired Indian soldiers. This will increase the Hindu majority and turn Kashmiris into a minority.

India is making biased laws and policies to destroy the identity of Kashmiris. It is taking away the idea of Kashmiriat by making domicile laws, and settling Kashmiri Pundits and Indian soldiers. Kashmiriat is the notion of Kashmiri identity which has persisted for centuries even when the region was governed by Sikh Maharajas and Dogra rulers. Though India claims to be a secular state, it has converted the Kashmir issue into a sectarian and religious issue. Thus, peace in Kashmir remains elusive.

D. Gross human rights violations in Indian-Occupied Kashmir

Kashmir Valley, which is known for its beauty, is among the most militarized regions in the world. The Kashmir independence movement intensified in 1989, after which more than eight lac Indian troops were deployed in the valley. Ironically, innocent Kashmiri civilians are treated as enemies by the Indian forces. Indian operations are termed as "classic dirty war", and human rights organizations have noted massive violations of human rights including the destruction of properties, terrorizing civilians, extrajudicial killings, using civilians as human shields and for forced labor, rapes, forced disappearance and creation of military camps and torture cells in the valley.²⁹ Violence in Kashmir hasn't been discontinued yet and has been sighted since August 2019. The arrestees of the night raids have also frequently mentioned the torture they suffer during confinement. Young people were more often the target of torture. Besides physical assault, victims also faced sexual assault. These acts are blunt violations of

international instruments like ICCPR and UNHR which strongly condemn the torture, degradation, and inhumane treatment of detainees. The fierce reaction of Indian forces towards Kashmiri's call for freedom and self-determination is a moment of truth for both Indian authorities and international human rights organizations. In June 2018 of UN Commission on Human Rights indicated that this barbarity hasn't been gone unnoticed. It mentioned that July 2016's invoking of the right of self-determination by the Kashmiris set in motion excessive military force by India which led to an awful number of killings and injuries to innocent individuals. Article 7 of the ICCPR does not allow such actions. An approximate of 150 civilians had died in this civil war from July 2016 to March 2018. The weapons used in the encounters were also not lawful according to the covenants. Metal bullets were fired by a 12-gauge shotgun. Invasion of privacy was done by the security forces during Cordon and Search Operations as well by conducting raids in private houses and businesses in Kashmir. During these operations, the security forces surrounded the area and searched each home for weapons or signs of insurgency.³⁰ Media personnel and human rights organizations have kept a check on these raids and pointed out the human rights violations but the repealing of Article 370 has made this monitoring difficult. After August 2019 only six of these operations were reported in live stream media which is far from the truth as hundreds of these operations have been conducted ever since. The residents of district Baramulla have testified to 400 operations since the crackdown. Apart from searching the place thoroughly, civilians were also beaten, electrocuted, and forced to eat dirt. They were also threatened with more torture and killing of the animals that were their source of income. Civilians were subject to arbitrary arrest and illegal confinement and women were harassed. After Article 370 was repealed access to education was also blocked by shutting down educational institutions and a state of lockdown was imposed. These are violations of basic human rights stated in clauses of UDHR. The autonomy of the state and statehood has been destroyed since then and a constant state of chaos and lawlessness has been imposed on the people of Kashmir. These circumstances have further increased the tensions in the Subcontinent. Every other day civilian and military encounter has been reported and several human rights are violated. Since August 2019, a curfew has been imposed in the state, illegal arrest and detention of civilians and political leaders have become frequent, and access to the outer world has been restricted by cutting down internet and phone services. This freedom of speech hasn't been restored since then.³¹

The UNHRC called this blockade a “form of collective punishment”.³²As a result of the lockdown, human rights organizations have been facing numerous challenges and hurdles while investigating and reporting allegations of human rights violations. Moreover, it has also been challenging to help people who are facing these brutal actions of the Indian government. It is mainly due to the lax judicial system, blockade of communication, and restriction on freedom of movement. Though, freedom of expression and press freedom have always been assaulted in IOK, after the abrogation of Article 370 freedom of expression and opinion have been severely violated. The suspension of the internet and limitation on movement have cut Kashmiri newspapers and journalists from the rest of the world. Journalists are unable to openly expose human rights abuses in the media because there has been a dramatic decrease in reports of human rights violations. In 2016, the United Nations Human Rights Council passed a resolution under which an internet blockade was considered a violation of human rights, and India had signed it. The resolution included the clause in which “it condemns unequivocally measures to intentionally prevent or disrupt access to or dissemination of information online”.³³Restriction on phone services and the internet as opposed to internationally accepted fundamental human rights like the right to peaceful assembly, right to freedom of speech, and right to access information. In addition to this, after August 5 strict curfew was imposed in the valley. People were not allowed to go to work, visit doctors, or attend schools. The Supreme Court of India also ordered a ban on public gatherings under Section 44 of the Code of Criminal Procedures. Still, the region is strictly controlled and activities of political parties are restricted.

The abrogation of Article 370 had grave implications for judicial processes. There has been a delay in court proceedings, legal assistance is missing and people are not presented before courts. These facts demonstrate India’s failure to abide by the international human rights declaration. Besides these violations India also illegally detained political leaders including Farooq Abdullah, Omar Abdulla, and Mehbooba Mufti. Moreover, more than 4000 people including political representatives, elected leaders, lawyers, activists, businessmen, and students were detained after 5 August 2019 under Jammu and Kashmir Public Safety Act. Under this act, the government could detain anyone without charge or trial for two years. This is a violation of Article 9 of the International Covenant on Civil and Political Rights (ICCPR) and Article 9 of the Universal Declaration of Human Rights (UDHR). Ironically, International organizations and actors remain silent as always.

Conclusion

International actors are reluctant to pay attention to the sufferings of Kashmiris, which led to grave repercussions for fundamental human rights in the region. After the abolishment of the special status of Jammu and Kashmir suffering of the Kashmiri people has increased more than ever. They are restricted to their homes and their political, economic, and social rights are being crushed viciously. BJP-led Indian government is bent on proving its legitimacy in Indian Occupied Kashmir. They are taking desperate steps like changing the demographics of the region to stabilize their authority. It is the time when the international community should take notice of Indian belligerence and abuse of the internationally accepted Convention of 1990, the Covenant of 1966, and the Declaration of 1948. The United Nations must intervene to stop the ill-treatment of Kashmiri people, who have been victims of Indian defiance for decades. The human rights crisis in IOK should be minimized by taking steps like the release of political leader activists and civilians, lifting of curfew, and ending restrictions on communication. History is a testament that human rights violations, indefinite curfews, and crackdowns have done no good. It has only aggravated Kashmiris to take arms and revolt against the Indian regime.

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