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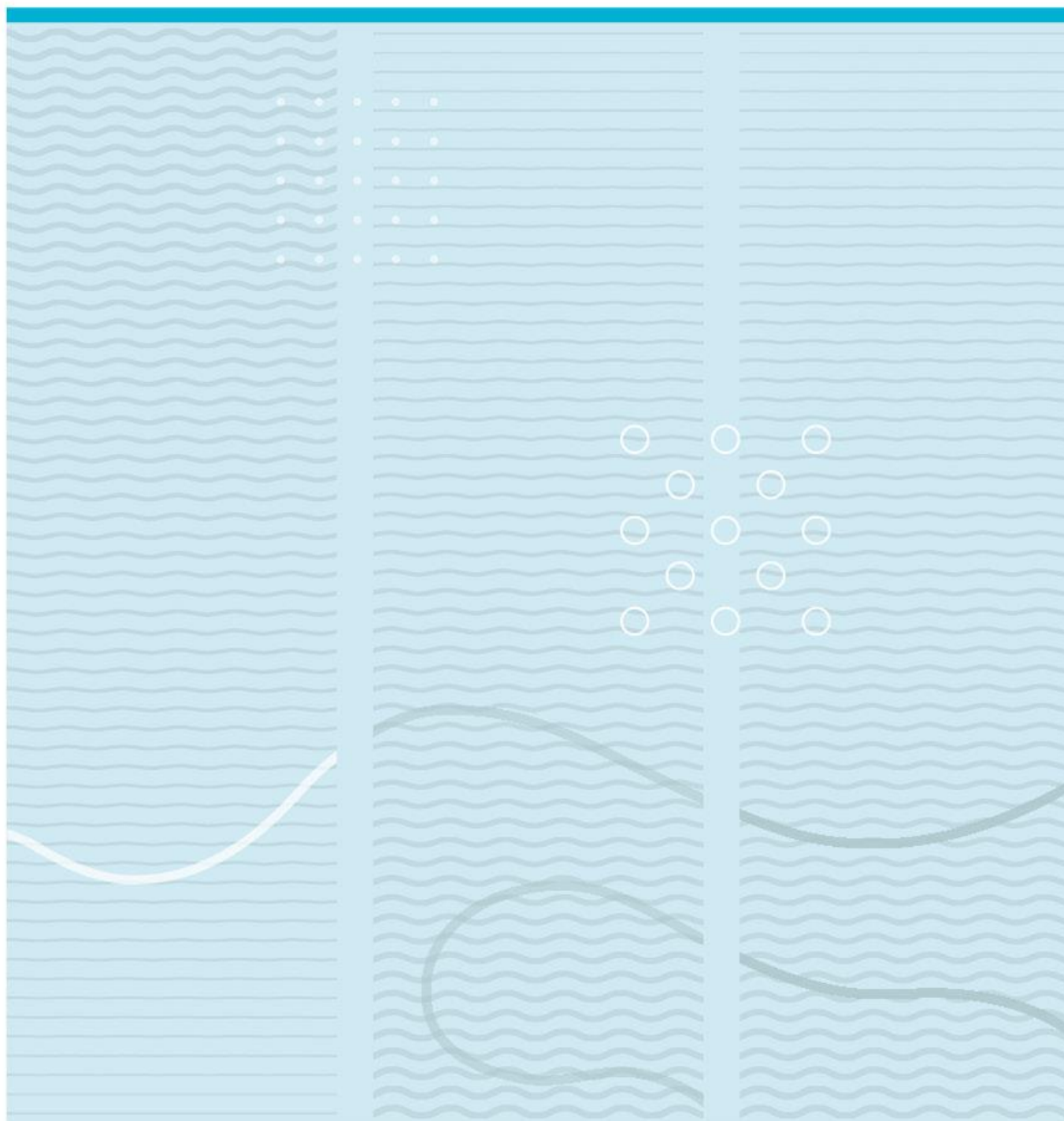
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Master's Thesis

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Adil Hussain

**How the Indian Government are using “The Constitution (Application to Jammu and Kashmir) Order, 2019” to suppress the right to self-determination of the citizens of Kashmir?**



University of South-Eastern Norway  
Faculty of Humanities, Sports and Educational sciences  
PO Box 235  
NO-3603 Kongsberg, Norway

<http://www.usn.no>

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## Preface

While writing this master thesis, I came across many difficulties, and there was a certain time when I was quite unsure about the completion of my master's thesis. I was also encountered with many family unfortunates' tragedies during this time tenure, where I had to travel back to Pakistan. But many thanks are given to all the people who have been supporting and encouraging me. I am very thankful to my supervisor Oddvar Hollup, who has been patiently answering my childish queries via emails and on meetings. A huge thanks are given to one of my closest friend Nysa Aly who persistently guided and advised me in researching and writing the overall thesis. But the most credit goes to my parents. Besides my mother's medical condition: she never let her medical issues burdened me with stress and always strengthen me in life. In this all project, I missed motivational words from her and always pray that she will recover soon, and her words will be blessing for me. My father who loves me the most and knows that how hard is writing a master thesis keeps forwarding me motivational videos and quotes continuously till today. This acknowledgment will never be completed without thanking million times to my most sweet friends who kept me motivated to focus on my thesis during this all time. Overall, there is a long list of people who deserve thanks for finishing this project. I am very thankful to indeed every one of you.

## Abstract

The principle of self-determination is one of the significant principles in international law and order that is recognized in various treaties and agreements. It is noted that all individuals are entitled to this right whether they belong to colonial rule or are independent, the right to self-determination is for all. Since 1947, the people of Kashmir have been victimized and deprived of their basic rights as both India and Pakistan laid claim to the territory of Jammu and Kashmir. With the introduction of The Constitution (applicable to Jammu and Kashmir) Order 2019, a Lockdown situation has been created in the territory and the people are divested of their basic rights to choose political participation and identity. The Government of India revoked articles 370 and 35A which withdrew the special status of Jammu and Kashmir. The human rights violations and the denial of the right to self-determination are some of the major concerns of the Kashmiris. The focus of the international community is the conflict between India and Pakistan and the avoidance of war between the two rather than the interests and rights of the people of Kashmir which are of utmost significance as they are one of the most prominent actors in the conflict that are largely ignored. This research aims to highlight the impact of recent legal developments by the Indian government with respect to the right to self-determination of the people of Kashmir.

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## Chapter 1

### Introduction

Self-determination has been arguably one of the most important principle and legal right in International Law during the 20<sup>th</sup> Century and is yet continuous as a concept with a vital justification and powerful slogan in societies with unparalleled misery and prominently in societies evolving and gaining independence from colonialism. The colonial concept of Self-Determination is what which is uncontested and gained tremendous significance in sphere of political and International legal discourse. It's linkage with important fundamental principles of International Human Rights Law and Public International Law e.g., Article 1 of both the International Covenant on Civil and Political Rights (ICCPR) and the international Covenant on Economic, Social and Cultural Rights (ICESCR) incarnates a vital concept of people's right to decide their identity and destiny without any outside subjugation or interference on the principle of equality. The first of paragraph of both covenants' states, "*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.*" (International Covenant on Civil and Political Rights, 1966). The term of self-determination was used by the 28<sup>th</sup> President of United States "Woodrow Wilson" for the very first time in the history and evolved through time after World War II and the great milestone in this regard was its incorporation in United Nations Charter. In 1993 Vienna Declaration of United Nations "the right had arguably expanded to be assertable against a government that is unrepresentative of people who are defined by characteristics not limited to race, creed or colour." (Kirgis, 1994, p. 306).

Concept of Self-determination has been widely claimed in different ethnic conflicts around the globe and various movements and independence groups utilize the self-determination principle to secede from oppression regime or gain cultural and political autonomy from the state, such as (Kosovo, Scotland, Quebec, and East Timor) and been accompanied in various instances of violence and despondency. However, the debate to distinguish the viability and legitimacy of the concept of Self-Determination in various ethnic conflicts is still ongoing, as in viewpoint of some scholars it is considered as a confusing as well as difficult legal norm in understanding the interpretation and limitation of the concept on the ground that in some political situations the

concept has been respected (e.g., Kosovo Albanians) while in other scenarios it has been rejected, (in Somaliland, Biafra Catalonia etc.) notion has not proven very reliable (Lazarevic, 2020).

There are two sorts of self-determination. One is inside, the other is exterior. Internal self-determination implies to the right of the local people to self-govern and be free of outside interference. It is also known as the right to self-government. However, external self-determination assures that locals can select their political status and position. It can also lead to the development of an autonomous state free of foreign dominance. When the subcontinent was divided in 1947, princely states including Kashmir was given the option of choosing between India and Pakistan for its international jurisdiction status. (Idowu, Revisiting the right to self-determination in modern international law: Implications for African States, 2008).

Despite being one of the most beautiful areas on Earth, often referred to as 'Paradise on Earth', Kashmir has been suffering one of the most protracted conflicts in which both the parties, India and Pakistan lay claims to the territory but have been unable to reach a conclusion to the issue and the violence that had started a long time ago continues to happen. The hatred and mistrust that has emerged due to the Kashmir conflict threatens the security of the neighboring nations and also the entire South Asian region. Despite the attempts made by the international community, the issue remains unsolved.

The territory of state of Jammu and Kashmir situated in the North of India lies between 32.17" and 36.58" North altitude and while East to West, the State lies between 73.26" and 80.30" longitude. It faces China and Russian Turkistan on its and north and east lies the Chinese Tibet. States of Punjab and Himachal Pardesh of India lie on South and South-West part of the Jammu and Kashmir. While Khyber Pakhtunkhwa province of Pakistan, China Russia are on the west of the state. This close contact with the boundaries of other countries increases the significance of the Jammu and Kashmir. The total area of Jammu and Kashmir is 2,22,236 sq. kms of which Pakistan has control over 79,788 Sq. Kms (Raina, 2002). The population of Kashmir is expected to be 14 million during the year 2022 with a majority of around 68 percent of Muslims with the 28.4 percent Hindu as the biggest minority in the state and around 3 percent people belongs to other religions e.g., Christian, Buddhist, Sikh etc. and belongs to nine different ethnic groups (Jammu and Kashmir Population, 2022).





Map 1. Figure 1A map of the disputed Kashmir region created by the US Central Intelligence Agency and hosted by the University of Texas-Austin Perry-Castaneda Library Map Collection; altered to show new jurisdictions by Fowler&fowler. Retrieved from: <https://www.worldatlas.com/regions/kashmir.html>

The people of Kashmir speak a language that is different from the languages spoken in India and Pakistan. Along with Urdu and Hindi being most common languages in two countries, people of



Kashmir also speak Kashmiri and Pahari language. There are also cultural differences between the Kashmiri people and both countries i.e., India and Pakistan. Having a distinct culture means recognizing and owning their own culture and not being forced to follow another culture that does not belong to them. Other than this, there are several differences in terms of the traditions, cuisines, music, festivals, and the dresses that are worn by the Kashmiri people. The cuisines of people are based on meat dishes and the traditional green tea blended with almonds is famous around the globe with its unique taste and flavor. The traditional dress of Kashmiri people is called Pheran which is famous for its decoration with colorful patches and embroidery work. The state has a unicameral legislative assembly and Jammu and Kashmir High court is the apex court in the state (Jammu and Kashmir Travel Guide, 2022).

Despite of the controversial accession process of state of Jammu and Kashmir with India, on 14th May 1954, The Constitution Order was passed by Indian state which was applicable to Jammu and Kashmir. This was primarily because it was a disputed territory and was given at most significance as compared to the other states in India. On the strength of this Constitution Order, the state of India had given a special status to the state of Kashmir and the legislative assembly had the power to decide about the territory and residents of the Kashmir by the virtue of Article 35 and 370 of Constitution of India and Indian government or parliament couldn't interfere into the matters of Kashmir as long as it wasn't allowed by the parliament of Kashmir (THE CONSTITUTION (APPLICATION TO JAMMU AND KASHMIR) ORDER, 1954). In June 2018, the coalition government that was operating in the state had split up and in November 2018, the legislative body operating in this state had also been dissolved. Since then, the state has been managed by the national Government of India who had appointed a governor for the state. The residents of Jammu and Kashmir were given special rights and privileges because of article 370 and 35A which empowers the people living in the state permanently. This article also extends to the female residents and does not allow them property rights if they marry someone from outside the state. For the elections that were held in 2019, the BJP party included this manifesto in their election campaign that they would promise to revoke article 370 so that Jammu & Kashmir can become a part of India just like all the other States. Then After 65 years of the Constitution order 1954, on 5th August 2019, the President of India passed The Presidential Resolution that took away some of the significant rights that were previously being enjoyed by the people of the state with respect to Article 35 and 370 (BusinessToday.In, 2019).

For this analysis, it is crucial to discuss the issue of Kashmir from the perspective of self-determination of the people of the area. With major emphasis on The Constitution (application to Jammu and Kashmir) order 2019 that suppressed the rights of the people and the atrocities that have been committed by the Indian forces to deprive the people from their basic human rights. The goal is to view the historical context of the topic to analyze how the events have occurred chronologically and how they have contributed to a change of situations. While analyzing all other perspectives such as social and political viewpoints, the major emphasis lies on the right of self-determination of the people of Kashmir and how it has contributed to their struggle for freedom and independence.

### 1.1 Rationale of the research

- Rationale of the research discusses the need for conducting the research and justifies the purpose and explains the uniqueness of the study that is being conducted to solve a problem and to fill-in the gaps in the literature.
- For this research, the literature that has been collected mainly focuses on the issue of self-determination of people of Kashmir with specific focus on recent legal developments by Indian Government in this regard.

### 1.2 Objectives of the research

The primary objective is to improve the understanding of the conflict over the status of Kashmir. The research aims to investigate the struggle of the people of Kashmir for self-determination, role played by Pakistan, India, and the international community. In order to do so, the research would shed light on the historical background of the issue with a view of major developments since 2019.

### 1.3 Research Questions

There are a number of research questions that are to be analyzed in this project. The research aims to address the topic from that perspective that does the order affect the right to self-determination of the people of Kashmir or not.

Some of the sub questions that are to be analyzed along include:

- What does the right to self-determination mean in international law? And which social units or groups of people are being considered legitimate and are entitled to claim the right to self-determination?
- How the struggle of people of Kashmir shaped under the norm of self-determination?
- What is the role of the Indian state regarding the right to self-determination of Kashmiri people and how recent amendments in the Indian Constitution dealt with the right to self-determination of the people of Kashmir?

#### 1.4 Scope of the study

Scope of a research intends to focus on the areas that are to be discussed in the research and the parameters that will be explored in the project. Special reference is to be made towards the right to self-determination and the effect of the laws that are made by the government of India on the people of Kashmir. This research aims to view the issue of Kashmir from the perspective of the Kashmiri people and to find out how the rights and will of the people are affected by the roles played by India, Pakistan, and the international community.

The study is theoretical and based on secondary sources but will integrate a few theories upon which the discussion will be based.

#### 1.5 Purpose of research

- The research aims to explain the solution to the problem that is being investigated.
- There are different types of research that elaborates the purpose of the research.
- One type of research or purpose is to increase knowledge upon existing issues or topics.
- The steps that are involved in this process consist of describing, explaining, and validating the results.

#### 1.6 Problem statement

Problem statement in research is a statement that discusses the area or field that must be research. It can be troubled question or a problem that requires further explanation. The dispute of the state of Jammu and Kashmir dates back to the time of partition in 1947 when the subcontinent was divided into India and Pakistan. The major problem arose in 2019 when the government of India enacted The Constitution (Applicable to Jammu & Kashmir) Order 2019. The research aims to

discuss the events prior to the introduction of The Constitution (Applicable to Jammu and Kashmir) Order 2019 and the consequences of the new legal developments that were introduced and how it impacted the rights of the people of Kashmir especially the right to self-determination.

### 1.7 Significance of the study

Significance of this study is a statement that describes how important the research is and what contribution it makes to the field that the research falls under. The research focuses on the right to self-determination which is a core principle of human rights with a concentration on cultural, ethnic, linguistic, and religious diversity in Kashmir. This research aims to shed light on the people of Kashmir and their right to self-determination. There are several researches that have been conducted on the Kashmir issue that highlight the different causes that lead to the area being a disputed territory. This research brings the attention towards the actions of the Government of India that have taken place in the state of Jammu and Kashmir and how these actions have impacted the social and political will of the people of Kashmir and their voices for the fundamental right of self-determination.

### 1.8 Outline of the thesis

The author begins by presenting an introduction of the thesis with a brief overview of its significance, scope, research questions, and objectives. In second chapter writer is examining the historical background of Kashmir, its significance, how it has been divided since 1947 with an overview of the parties involved in conflict since its beginning. The next chapter focuses on the theoretical framework of the thesis. The research is focused on the basic right of self-determination and the theory of realism has been used as core idea to present the different perspective on self-determination along with a concentration on the historical legal developments in the subject in international sphere. The next chapter discusses the research methodology that is to be used in the research. Since the research is a qualitative one, scholarly articles will be analyzed in order to find accurate data. The light has been shed on ethical considerations, positionality of the author and the research consists of some of the limitations that have been faced throughout the research such as the geographical limitation due to which primary data could not be collected. Chapter five presents a review of research used in the thesis and a detailed discussion has been set forth in this chapter. The chapter presents the overall process of legal amendments and discusses the situation in the state after the amendments in the constitution along with responses from international community,

role of Muslim states, Hindu nationalism narrative throughout the country. In this chapter the issue has been discussed in detail with a perspective of self-determination to find out the future implications of these recent connotational changes in the state of Kashmir that impact the territorial integrity and jurisdiction of the state legislature. In the last chapter, a brief conclusion of the thesis has been presented by the author.

## Chapter 2

### Historical Background

The beginning of the Kashmir dispute dates back to the events that circle around the accession of the state of Jammu and Kashmir to India. It is important to understand the background to the conflict which explains that there were increasing conflicts among the groups of people that were residing in British India. This was also as a result of the ‘Divide and Rule’ policy of the British Crown who believed that the best way to rule such a large empire was if the people were divided because a united population could be dangerous and would become strong enough to overthrow them. British India was greatly divided into two groups based on a number of differences especially the sharp conflicts on religious lines and also the cultural differences that were prominent. It was upon these differences that the subcontinent was divided into India and Pakistan on the basis of the ‘Two Nation Theory’ that was brought forward. There were mass casualties from both sides and the migration that took place from India to Pakistan is considered as one of the biggest migrations in the history of the world.

Various problems emerged during the division of such a vast area into two countries and the mass migration that took place. One of these was the Kashmir conflict which dates back to the division of the subcontinent. It can also be seen as a start of a controversy because this was the time when both Pakistan and India laid claim to the area. The major reason of the controversy is that India lays its claim on Kashmir based on the accession of the Maharaja of Jammu and Kashmir on 26th October 1947. On the other hand, Pakistan refused to accept the accession as legal and provided a number of reasons for this. The accession controversy initiated when British divided the subcontinent in the dominions of India and Pakistan (Thorner, 1949).

A boundary was created in the subcontinent. One area declared its independence on 14th August 1947 and became Pakistan while the other declared its independence on 15th August 1947 and became India. The princely states were permitted to remain independent. This was not feasible for the states because they wanted to either accede to India or Pakistan because they were too small to manage themselves as a separate entity in the international world. The princely states were given independence to decide the dominion of their choice.

Kashmir itself could have chosen the option of independence. This is because it was a large princely state therefore, it could fend for itself as a separate state. Secondly, the area also had the geographical ability to be independent. This is because of the states that surrounded Kashmir. These included India, Pakistan, China and Afghanistan. Kashmir shared borders with all of these but none of them surrounded Kashmir which meant that none of them was the obvious choice where Kashmir would accede. Another problem that Kashmir had come across was that the leadership or monarchy of the state was Hindu, but the population was predominantly Muslim. This meant that the divisions that existed in the state made it difficult for the state to accede to one of the two dominions (Jammu and Kashmir Population, 2022).

Initially, the Maharaja of Jammu and Kashmir wanted Kashmir to be independent and not accede to any of the states. It is said that he wanted to make Kashmir ‘Switzerland of the East’ which is an independent country surrounded by powerful neighbors. Maharaja however signed a standstill agreement. The Indian Independence Act of 1947 had allowed the princely states to sign standstill agreements which meant that the dealings and the relationship that the princely state previously had with British India would continue with this standstill agreement. Maharaja signed this in order to receive resources such as for infrastructure like post routes, telegraph links, and also for trade and defense. The aim of the Maharaja was to avail these services and resources from British India and in the meanwhile, set the ground for Kashmir’s independence (Ahanger, 2019).

Once the standstill agreement was signed, Pakistan readily accepted it but India rejected it. They stated that there is a need for the representatives of Kashmir to come to Delhi in order to sign the agreement. At this time, the Muslims in Kashmir especially in the Poonch region started to rebel in order to accede to India. The claim of the Muslims had always been to accede to India and their bigger fear was that if Kashmir acceded to India, they would be under threat therefore, they

rebelled. The rebellion continued to increase and even the tribesmen from Pakistan were attracted to the rebellion in order to support their Kashmiri brothers. The Kashmiri forces were unable to meet the threat, and this resulted in Maharaja asking for the assistance of India. India was quick to lay a condition that they would only offer assistance to Kashmir if the latter would agree to accede to India. Maharaja had no other option but to sign the agreement. After the signing of the agreement, the Indian forces rushed to Kashmir to fight back the rebels. As a result, eighteen miles from the Pakistani border especially the western and northwestern region of Kashmir was under the control of the rebels. This area came to be known as Azad Kashmir while the north of the line became the northern areas, and the rest of the area came under India's control.

There was a total of 561 princely states and the idea of the Crown was that each of the princely states would either accede to India or Pakistan. Out of all of them, only Hyderabad refused to accede to either of the two dominions. Once all the princely states had acceded to each of the countries, the partition issue would be resolved which had started by Sir Radcliff. Considering the issue of Kashmir, Pakistan laid a claim that the accession should be guided. That in a way that the Muslim majority areas that geographically fell in West Punjab should join Pakistan. This meant that Kashmir should become a part of Pakistan because it fell in Pakistan's catchment region (Bose, 1999).

## 2.1 Significance of Kashmir and administrative differences

Since 1947, the circumstances of Kashmir have always been unique from all the other princely states and other states located in both India and Pakistan. Since Kashmir is divided into two parts, one is Indian administered Jammu and Kashmir, and the other is Azad Kashmir which is in the control of Pakistan. Both these areas have different administration systems and the situations in both of these areas are different from the conditions that are in the states of India and Pakistan. On one hand is Azad Kashmir which is protected as well as administered by Pakistan, but it is considered different and independent of Pakistan because it has a separate government of itself. With its own independent government, it is considered independent from the rest of the country. Secondly, the system of governance that is practiced inside Azad Kashmir is unique and different from the rest of the northern areas. Although there is minimal authority that is exercised by the



federal government and the Ministry of Kashmir affairs and Northern areas, the rest of it is managed by the government of Kashmir.

On the other hand, is the Indian Occupied Jammu and Kashmir. Although there is a local government of Kashmir there as well but the federal acts that are passed by the Indian government try to monitor the area carefully and bring it under close administration of the federal government. One of the major reasons for the interest of both India and Pakistan in Kashmir was the geographical significance of the state and it appears as one of the major reasons for the conflict to initiate as well. The factor that was important during the partition of the subcontinent was geographical significance of Kashmir and it still remains a significant factor today. Before partition, the princely state comprised of both the highlands as well as the lowlands. Jammu area was primarily agricultural while the Kashmir valley was surrounded by Himalayan Mountains and greatly relied on forestry because it was surrounded by forests in the mountains. The highlands consisted of Gilgit Baltistan and Ladakh. These areas were usually sparsely populated as mostly nomadic people resided here (Amin, A Re-evaluation of the Kashmir Dispute, 2003).

During the 1940's in the pre partition era, when it was being decided that whether Jammu and Kashmir should be aligned with India or Pakistan, it was pointed out that the geographical facts of the area provide the idea that it should be aligned with Pakistan as the geographical facts point out in that direction. One example of this is that the Kashmir valley has mountains around it on all sides except on one side where the river flows. That is River Jhelum and that flows toward Pakistan. That is the only pass around Kashmir. It is said that the division between Kashmir and India is via the Pir Panjal Mountains but the path between Kashmir and Pakistan is open which means that Kashmir is open mouthed towards Pakistan, but the path is closed toward India. These geographical facts of Kashmir show that the right decision was to align Kashmir with Pakistan because of the geographical location of the state.

Other than this, some of the other infrastructure facts pointed out towards the logic of Kashmir being aligned to Pakistan for example, in 1947, at the time of Pakistan, the location of the state was such that one railroad and two of the paved roads went towards Pakistan. These roads were under the control of Pakistan during 1940's which meant that the trade and tourism that was carried out on these roads provided greater advantages to Pakistan in terms of greater profits. However, in

the 1950s, India constructed an expensive Banihal tunnel road. The justifications for India to annex Kashmir were fewer and most of the justifications and arguments that are made are more political in nature rather than geographical because the geographical facts do not vote in favor of India. One example of this is that India constructed the Banihal road due to which the logs that previously flowed down the Jhelum River to Pakistan were not restricted and allowed to fall on the Banihal road towards India. Although it was more efficient to allow the timber to flow to Pakistan, India tried to turn the tide and to build a connection with Kashmir.

The justifications that were presented by India for annexing Kashmir were largely economical in nature. The only important part in Kashmir for India was Ladakh as India required that area in order to maintain a border with China. The rest of the area was not geographically aligned with India, but India repeatedly laid claim to the entire area of Jammu and Kashmir for the reasons to gain advantage economically (Srivastava, 2010).

## 2.2 Pakistan's jugular vein

Quaid e Azam, Muhammad Ali Jinnah claimed Kashmir to be the 'jugular vein of Pakistan'. This meant that it is as close to Pakistan as the jugular vein is in the human body. The population of Kashmir is a predominantly Muslim. Moreover, it is close to Pakistan geographically as it is very near to the country. Other than this, all the rivers that flow in Pakistan emerge from Kashmir while on the other hand, Kashmir and India are separated by mountains in between. According to the maps of South Asia, it seems as if Kashmir is an extension of Pakistan. In the summer of 1947, Kashmir became even closer to Pakistan because the only road towards the outside world was through Jhelum and Jhelum was located in Pakistan. Other than this, railway that went to Pakistan was through Sialkot and that was also through Pakistan. Moreover, all the postal services also went through Pakistan. This meant that all the communication that was carried out along with trade only went through Pakistan towards Kashmir at that time. The infrastructure that was developed by the British enhanced the closeness between Kashmir and Pakistan. All the geographical and cultural ties that existed between Kashmir and Pakistan had to be strengthened either by the standstill agreement or by an accession agreement.

A Standstill agreement was signed between Kashmir and Pakistan on 12th August 1947 which was accepted by Pakistan on 15th August 1947. A standstill agreement could not be signed between India and Kashmir because India wanted the representatives of Jammu and Kashmir to come to Delhi and discuss the matter and they also wanted an agreement of accession to be signed before a standstill agreement was made. A standstill agreement is a written agreement between states and is recognized by international law. This agreement between Kashmir and Pakistan first accepted Kashmir as a sovereign state. The agreement stated that the Jammu and Kashmir government would continue standstill agreements with Pakistan on all the existing matters. It also mentions some of the existing arrangements that would remain as they are. According to the Indian Independence Act of 1947, it was stated that the areas that would be included in the standstill agreements consist of communications, customs, telegraph, postal and other similar matters until a permanent deal or relationship has been developed.

It was crucial for Kashmir to develop a standstill agreement with Pakistan because all the communication and transport of Kashmir to the outside world was connected and linked through Pakistan therefore, an agreement with the latter had become necessary. Other than this, the military connections between the two countries also led to the initiation of a standstill agreement by the government of Jammu and Kashmir that too three days preceding to independence. This type of agreement was of utmost significance because it allowed the existing relationships to continue as they were and to prevent the loss of law and order at the time when power was being transferred from the British Crown to the local people. The agreement that was signed between Kashmir and Pakistan allowed the business to continue in the usual way as it was being done before. Even after signing such an agreement, Kashmir did not give up its rights such as the right to conduct foreign affairs and did not also accede to Pakistan (Pandit, 1996).

Although the standstill agreements are seen as a precursor or a prerequisite to accession. This meant that once the standstill agreement was signed between Pakistan and Kashmir, the next step would be the accession of Kashmir to Pakistan but that did not happen, and Pakistan also did not intend to claim rights over the territory and sovereignty of Kashmir. Kashmir was in such a state that it had equal right to establish standstill agreement with both India and Pakistan and an agreement with the latter did not mean that Kashmir could not establish a standstill agreement with India. An important event that took place was in October 1947 when Pakistan blockaded Kashmir.

This violated the standstill agreement that was signed between the two parties. Since most of the trade that was carried out in Kashmir was through Pakistan, the blockade that was imposed resulted in worst scenarios in Kashmir. Some of the important goods such as petrol, oil, salt and cloth became scarce in the region because they were transported to Kashmir through Pakistan via road or railways.

Pakistan was accused by the government of Jammu and Kashmir for the blockade, but Pakistan defended itself by claiming that it was due to the instability that occurred on the border between Pakistan and Kashmir. It was because of the instability that refugees were blocking the roads. It doesn't seem that with the record of Pakistan in the past that it would have made such an attempt in order to achieve the accession of Kashmir to Pakistan. Just like Kashmir depended on Pakistan for its trade, Pakistan depended on Kashmir for its water as the rivers initiated from Kashmir. This shows that a mutual relationship existed between both the parties.

The question arises whether Kashmir had to choose between accession and independence, but the reality was that the geographical position of the area was such that it did not get the opportunity to choose between the two. The only option that it was left with was to choose between India and Pakistan because both of the countries were eager to lay claims on the area making it a disputed one (Gass & Nemeth, 2010).

### 2.3 The instrument of accession

In October 1947, the strength of the government of Jammu and Kashmir was reducing because of the violence and differences that existed within the state and the invasion that was carried out from Pakistan because the Pashtuns joined the rebellion that was initiated by the Kashmiri Muslims. The northern part of Kashmir ruled in favor of accession to India. The Gilgit region of Kashmir consisted of a Muslim majority. They expressed their wish to accede to Pakistan because it was also a Muslim majority country. Gilgit had signed an instrument of accession to Pakistan. In 1949, UN ceasefire line was created, and it was due to the efforts of Gilgit that Azad Kashmir or the Pakistani administered Kashmir was created. In May 1948, the government of Pakistan gave instructions to its army to secure the new borders of the country because the Indian troops that existed in Kashmir posed a threat to Pakistan.

Indian forces arrived near Srinagar airport in order to strengthen their position. On 25th October, the rebels arrived at Srinagar and cut the power supply in the city. That was the time when the Maharaja fled the capital. The next day, Maharaja Hari Singh asked for assistance from India, but the condition of accession was put forward by India and in the hustle that was created, Maharaja signed the instrument of accession to India. On 27th October, Indian forces were deployed in Kashmir (Behera, Re-framing the Conflict, 2010).

Pakistan objected legally to the accession of the Maharaja to India. First claim that was laid down by Pakistan was that the accession is not valid because the people of Kashmir had rebelled against their monarch. This meant that the people who had rebelled against him are no longer in his control and the Maharaja had no authority to sign treaties on behalf of the lot. Another claim that was laid by Pakistan was that India had forced Kashmir to accede to India. If such accession was not carried out, then Kashmir was more likely to accede to Pakistan as the two parties already had established a standstill agreement. It is important to evaluate the ability of the Maharaja to accede to India from the legal point of view. If the ability of the Maharaja has to be analyzed under normal situations, he was the head of the state and had the authority to make any decision even if that was about the foreign affairs of the state. However, the issue arises that whether the Maharaja had the authority to make such a decision of accession in the light of international law while an armed struggle was going on in the state premises.

The government of Pakistan made a claim that since the rebellion was going on, the rebellion had enhanced to such a point that the government of Maharaja had no control over the people and thus, due to a lack of control over its people, it could not take a decision of accession for those people. At this time, significant changes were emerging in the leadership as well. This was because Maharaja Hari Singh's power was significantly reducing in his own state because he had signed the instrument of accession. Sheikh Abdullah became the new Prime Minister of Jammu and Kashmir in March 1949 and was strong enough to challenge the Dogra rule which was already on the verge of collapse (Bose, 1999).

## 2.4 Parties involved in the conflict

In order to analyze the situation, it is important to understand the parties that are deeply involved in the conflict. First of all, the people of Kashmir are considered that are the primary actors involved as they are the ones who have to face all the consequences. Secondly, India is involved that laid claim to the territory and the third party is Pakistan that also laid claim to the region. It is necessary to consider the position of each of the actors in order to find out the responsibility of each actor and to what degree are they involved in the issue.

Starting from India, it is one of the directly involved actors in the conflict. This is because a comment was made by Jawahar Lal Nehru. He claimed that Kashmir had always been a part of India. From the past thousands of years, he claimed that Kashmir belongs to India politically. This is not after the division of the subcontinent that India realized that Kashmir belonged to the latter but long before the British came, it was essentially a part of India. India believed that Kashmir is a significant part of it as the language that is spoken in Kashmir is also a dialect of Sanskrit which later developed into the modern Kashmiri language. Moreover, it is also claimed that the link between India and Kashmir is so old that some of the first books that were written in India were also on Kashmir. Considering the importance that Kashmir holds for India, it is said that India will not compromise on this matter and will ensure that it gains the control of the territory. Moreover, upon the issue of independence, India was not interested in Kashmir gaining independence. There was resistance upon the idea of Independence, and this was seen as a threat for the Indians (Indurthy & Haque, 2010).

On the other hand, Pakistan is also one of the important actors in the conflict. For Pakistan, the accession of Kashmir that was made to India was considered as fraudulent. They believed that it was by force and the Maharaja who made this decision did not have the authority to do so because the people had rebelled against him and this way, he was not in the position to make a decision concerning the people who no longer believed in him. Therefore, such an agreement is considered as illegal as well as fraudulent for the people of Kashmir. On one hand, India is only concerned with carrying out violence and to forcefully acquire the Kashmiri territory, but Pakistan's military and civil forces have continuously supported insurgency in Kashmir. Moreover, the government of Pakistan have repeatedly tried to raise the issue of Kashmir on the international platforms in

order to bring about the attention of the international community so that the issue can be resolved in time and the people of Kashmir who are suffering extensively at the hands of the tussle that is going on between two countries can be relieved.

The third active actor in the Kashmir conflict are the people of Kashmir themselves. The movement of self-determination that have been carried out by the Kashmiris themselves is an example of their active involvement in the matter. There were three groups developed inside the Kashmiri territory. One group wanted Independence so that the state governs itself and is free from any domination. This will give them the authority to rule themselves. Another group wanted to join Pakistan. This was primarily because Pakistan is a Muslim majority areas and Muslims are more comfortable to be united with a Muslim country so that they can practice their religion freely and there are no restrictions upon them regarding the religious matters. The third group wanted to join India. This could also be because of the religious reasons as the Hindu community wanted to join India, also the Maharaja acceded to India and all the supporters of Maharaja were keen to join him. Moreover, another view was that it is better to align themselves to one of the countries so that Kashmir is able to gather support from that particular country until it is able to manage itself independently (Bhat, *The Kashmir conflict and human rights*, 2019).

## 2.5 Aftermath of the partition

Even after the partition, the tussle between India and Pakistan did not end which affected Kashmir directly or indirectly. After the partition, three wars were fought between the two parties which included the 1965 war, the 1971 war and the Kargil war of 1999. Out of all the three wars, Kargil war of 1999 received most of the international attention and was the one that was relevant to Kashmir. It was a three-month long war from 3rd May to 26th July 1999. The war started when the Pakistani military forces and the Kashmiri rebels took their positions on the Indian side of Line of control. Line of control is a de facto border between the two countries. Penetrating the line of control became the major reason for the start of the war. The war ended with the Indian forces were successful in pushing back the Pakistani forces from the Line of control. Kargil was primarily chosen as the place to attack because it was a Muslim majority area, and it was also near Skardu which is a town in Pakistan. The geographical position of the town also was a benefit for Pakistan

as support could be provided to the Pakistani forces in terms of artillery. The war resulted in the death of approximately 500 Indian forces and nearly 400 Pakistani forces (Fareed, 2019).

A formal ceasefire was carried out on 25th September 2003 along the line of control. On 8th October 2005, a major earthquake took place of magnitude 7.6 in Kashmir and Muzaffarabad. There were mass casualties during the disastrous earthquake. It was one of the major events during which both India and Pakistan had the potential to cooperate with one another, but they were determined to maintain their respective positions and the stance that they had prior to the earthquake. Even at the end of 2005, the peace process was relatively slow. It seemed as if both the countries were deliberately stalling. They tried to portray the image that they were moving ahead towards peace such as they reduced the armed forces that were stationed on Siachen Glacier and also tried to find solution for the water issues that were among the two countries however, the process was slow and only seemed apparent rather than actually finding a solution to the problem. This shows the determination of both the countries towards achieving a peaceful solution to the problem. Both of them are less likely to compromise on the stance that they have on the Kashmir conflict (Kashmir: present situation and future prospects, 2007).



## Chapter 3

### Theoretical Framework

People's right to self-determination is a fundamental human right that allows them to shape their future. A key feature of the notion is that it gives people the freedom to choose their political status as well as their own path for economic, cultural, and social growth. As a result of exercising this privilege, one's status can range from political independence to complete incorporation into society. If a person's vote doesn't affect their freedom to make a choice, then that person's vote doesn't matter. In reality, however, governments' attitudes regarding a people's or nation's actual claim are typically determined by the likely outcome of a self-determination exercise. As a result, while states are more inclined to acknowledge claims to cultural autonomy, states are more likely to reject claims to independence. Nevertheless, international law recognizes the right to self-determination as a process right (and not an outcome right) that belongs to individuals, not nations or governments (Deci, E. L., & Ryan, R. M., 2000).

The right of a certain group of people to decide for themselves how and by whom they desire to be governed is what is meant by the term "self-determination (Deci E. L., 2017)." Small self-governing communities centered on religion or culture or kingdoms and empires that had no expectation that people could elect their leaders were the norm for most of human history. Countries or people's groups with a shared ethnicity, history, language, culture, or all of these were said to have the right to form their own government in the 18th and 19th centuries by political philosophers. "Nationalism" was coined as a term to describe this political philosophy, although it was never codified in international law as a standard (Ryan, 2000). "Sacred trust" was a term used in the League of Nations' Covenant to describe the obligation of states to encourage the advancement of colonial territories that had previously belonged to the countries vanquished in World War I. Although Woodrow Wilson requested that the League add a particular reference to self-determination in the Covenant, the League rejected the request and did not recognize a general right for all peoples, states, or colonies to be self-governing or independent. "The principle of equal rights and self-determination of peoples" was recognized in the United Nations Charter twenty years later and called for states to establish "free political institutions" in territories under their authority (Hannum H. , Rethinking self-determination. , 1993). During the 1960s, these general provisions gradually evolved into a new international law of self-determination, based not on

ethnic or national identity but on the non-self-governing status; as a result, colonial territories were considered to possess the right to self-determination and independence, but not the ethnic or cultural "nations" within them. Consistent with a conservative, statist perspective, international law has mainly maintained the idea that diverse "peoples" within existing states have any right to secession or self-government. Legal, diplomatic, and international relations scholars are currently debating whether there are any conditions under which groups can acquire a right to external self-determination (independence) against external interference and whether self-determination in its internal dimension could entail a right to autonomy or other devolution of power for distinct groups within an existing state (Chakrabarty, 2020).

### General Overview and International Theories regarding to Self determination

Self-determination is one of the most significant changes in international law since 1945, according to many academics, and is included in most general texts on public international law. According to Crawford 2007 and Cassese 1995; Hannum 1993; and Rai 2002; self-determination is defined in terms of the historical evolution and contemporary meaning of self-determination. Both Dahbour 2003 and Moltchanova 2009 present two different philosophical perspectives on self-determination outside of the colonial framework on a subject that Christakis (1999) tackles from a legal standpoint.

Excellent analysis of current self-determination, concluding that customary international law in right to self-determination only applies to colonial peoples, and racial groups denied equal access to government. Excellent. Emphasis is placed on the necessity of a more comprehensive approach to internal self-determination, as well as "welding together" the notions of peoples' self-determination and minority protection (Cassese, 1995).

There is no support for an international legal right to secession in the post-colonial context, but there is a trend toward recognizing the internal aspect of self-determination, which means that a right to democracy for the entire population of the state as a whole and perhaps a developing right to autonomy for indigenous peoples can be expected in the future (Christakis, 1998).

Statehood, self-determination, and secession are all addressed in this authoritative and frequently quoted book. Case examples and state practice are more important than theoretical considerations in this book (Crawford, 2006).

Rejection of "national" grounds for claims to self-determination, arguments for non-national political self-determination based on physical contiguity or remedial responses to unequal resource distribution or regional exploitation (Dahbour, 2003).

According to this interpretation, only in the context of decolonization does the international law of self-determination necessitate the creation of an independent state because of its ambiguous and imprecise definition, as stated by President Woodrow Wilson and others at Versailles (Hannum H. , Rethinking self-determination. , 1993). A human right-based approach that encourages state autonomy as a means of reconciling state sovereignty and group demands for self-governance is advocated.

Philosophy of self-determination that is grounded on national groupings with a common political culture but does not lead to full statehood is put forth in this paper. A state's minorities and majority should have equal rights to self-determination, which is defined as internal self-governance in this context (Moltchanova, 2009). Allegedly, only the rejection of "modified self-determination" could legitimize a unilateral breakaway.

The topic of self-determination is addressed in a variety of general literature. For researchers, Cassese 1995 is a good place to start, as it provides an in-depth look at the international instruments. However, it's from 1995, and since then, a number of significant events have transpired. Instruments and cases are also examined in Summers 2014. Quane 1998 offers a condensed version of the information found in these books for those who find it overwhelming. In addition to minority rights, both Musgrave and Wheatley (1997) and Wheatley (2005) are succinct and effective reads. Despite the volume's focus on states, there is a significant amount of discussion about the right to self-determination. Rigo-Sureda 1973 and Umozurike 1972 are two further works from the 1970s. Despite the fact that these are a few decades old, they are still very useful. In under 250 pages, this book manages to convey the importance of minority rights and self-determination in a manner that is both understandable and concise. Insufficient but adequate depth is given to crucial concerns such as peoples, independence, and historic title (Hannum H. M., 1999).

One of the most succinct explanations of self-determination I've ever seen. Self-determination instruments and separatist demands are covered in thirty-five pages by (Quane H. , 1998). It's a study of UN practice that reveals how the right to self-determination has evolved through time.

Self-determination is examined in depth here, with an emphasis on how the right might be put into practice. Several real-world examples illustrate the complexities of this application. Disorientation may arise from the book's format, which divides case studies into sections and revisits them from a variety of perspectives (Sureda, 1973). Nationalist and international law are intertwined, and the law of self-determination is examined extensively. Self-determination is examined in great detail in this work, which concludes that many facets of this right are enforceable (Summers J. , 2014). A Nigerian jurist has provided a clear and concise explanation of the law of self-determination. Colonial self-determination is the primary topic, but Umozurike also examines economic self-determination and studies of secessionist strife (Umozurike, 1972). When it comes to issues of minority rights, self-determination, and democracy, Wheatley's book is thorough. The piece is succinct and well-researched.

### [Theory of Realism and Self-determination](#)

#### **History and realism**

The Westphalian tradition spawned the idea that states should seek power solely for their own sake in the 1800s. Hobbes banned religious doctrine from the public space, reinterpreted sovereignty, insisted on complete national autonomy, and emphasized anarchy and competition as the natural state of people. According to Wolff's theory, "natural causes are formed from the state's goals, from which is to be assessed the right of the whole versus individuals" when it comes to national issues (Uzer, 2012).

### [Realism and Nationalism pride](#)

It is crucial to remember this background as we approach the current debate over realism, nationalism, and classical liberalism. Nationalism and realism go hand in hand, as John Mearsheimer convincingly shows in his magnum book *The Great Delusion*. A strong Westphalian conception of sovereignty was a guiding principle for early modern nationalists. They worked toward independence and nation-building because they imagined a world where nations competed for power and prestige on an equal footing; Westphalian sovereignty theorists believed that this was also true in their reality (Mearsheimer J. J., 2018).

According to John Mearsheimer, embracing nationalism is an essential component of being realistic. The emotional urge to be part of a huge group with a rich tradition and a bright future is satisfied by nationalism, whereas liberalism, emphasizing individualism, leaves us wanting more. Nationalism is considered as more synchronized with human nature rather than liberalism. For Mearsheimer, national identity and national loyalty are more important than commitment to values of human rights, limited government, or reciprocal tolerance in human existence and history (Mearsheimer, J., & Ozturk, 2021). John von Mearsheimer argues that the nation "fundamentally molds people's identities and behavior," going so far as to suggest that nations "help shape their essences and command their loyalty". As a realist, he believes that no matter how hard we try, we will never be able to reach a common understanding of what it means to live a good life across cultures and nations (Hasak-Lowy, 2008). "National" identity takes precedence over more specific identities, and official efforts to strengthen this identity are presumptively legal, according to one interpretation of realism. However, no one seems to be able to give a clear and consistent response to the question of what national identity is, which is a significantly greater difficulty for realism than is usually acknowledged.

To retain the peace at home, Mearsheimer is correct in arguing that a thin national culture may be the best way to go. However, there is a problem: even weak national identities exclude others who do not share them. According to Mearsheimer (Mearsheimer, J., & Ozturk, 2021): "The key to success is to abolish heterogeneity," by enforcing a single national language like that utilized by absolutists, autocrats, and nation-builders throughout history. Of course, removing heterogeneity can be accomplished in even less pleasant ways. As a result, many people are unwilling to accept the state's proposed national model as a viable option. There are few places for heresy in nationalism that is more like a religion. Though pragmatic, eliminating diversity is not liberal.

At its core, realism is the philosophy of the state. The state's defense, maintenance, and expansion are a self-justifying premise that serves as the benchmark of legitimacy for all other measures. For this program to succeed, the state must utilize its power to build a more homogeneous, governable nation that is easier to tax and conscript and pacify. Nationalism fits this bill well. In the case where realism and nationalism are intertwined, the latter draws its cues from a skewed reality rather than the empirical data. Human lives are not dependent on mutually distinct and internally coherent nations, and efforts to establish such countries are often violent and exclusionary. When

it comes to creating nations, the criticism realists frequently level at their opponents. The reality is that the attempt goes against the grain of reality, an effort to impose an artificial construct on human civilization.

This prominent theory of realism emphasizes the concept of the nation-state. The theory focuses on the assumption that nation-states are driven by national interests. The aspect of security plays a major role in the realist approach. It is this degree of security that allows the people to adopt the approach of self-determination and struggle for it (Koestner, 1996).

There are several principles of realism that must be included and considered important in terms of the topic being discussed. One of the principles is survival. This approach assumes that the international world order is characterized by anarchy. This means that it is likely for a conflict to take place anytime. Moreover, there is no guarantee of the survival of states in the anarchic world order. Therefore, the states must determine adequate mechanisms for their survival as it is necessary to survive in the world order. In the context of the Jammu and Kashmir issue, it is the doctrine of survival that encourages the indigenous people to advocate the right of self-determination to achieve the security that they desire. Indigenous people are usually the most vulnerable to calamities; therefore, a degree of security is required (Mishra A. , 2017).

Another principle of realism is self-help. It is similar to the principle of security that advocates that in the anarchic world order, short term interests are prioritized, and states are more likely to gain their interests without considering the interests of the other party. In such instances, groups of people have to consider the option of self-help. The similarity emerges between the theories of self-determination and realism as the principle of self-determination demands the national interest of the people to be able to determine for themselves by whom they wish to be governed. Moreover, the principles of realism align with the position as well as the interests of the indigenous people who demand self-determination (Koestner, 1996).

Since the theory of realism focuses on the principle of self-interest, similar is advocated in the theory of self-determination as the indigenous people raise their voices for their particular self-interest. Other than this, the debate also includes the theory of nationalism. The approach taken by the principle of self-determination is primarily driven by national consciousness. It can be viewed that the principle of self-determination evolved as a consequence and by-product of nationalism.

It is the desire of the people to achieve a government of their own which allows them to voice their concerns and advocate their rights (Anderson, 2015).

### Self Determination in International Law

The right to self-determination has utmost significance in international law as well as an international order. This is primarily because the right redefines the identity of the individuals living in that state. The sovereignty of the state can be further divided into two components. One of the components states that a state has complete authority to manage its internal affairs as it wishes to do so. The second primary component of the sovereignty of a state is territorial integrity (Falk, 2002).

Article 1 of the United Nations Charter places a strong emphasis on the right of peoples to self-determination. Before, it was accepted publicly by US President Woodrow Wilson, Lenin, and others as the guiding idea for Europe's post-World War I reconstruction. When the Atlantic Charter and Dumbarton Oaks proposals were merged into the United Nations Charter, they included this principle. Paragraph two of the Article 1 states that,

*“The Purposes of the United Nations are:*

- 1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;*
- 2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;”* (Charter of the United Nations, 1945).

As a result of its inclusion in the United Nations Charter, the notion has been widely accepted as essential to the preservation of cordial ties and peace between nations. There are two distinct meanings of the term 'Self Determination' provided by the United Nations Charter. One of the meanings is to have the right to choose the political, cultural, and social system of one's choice. The other meaning mentioned in the right of the people to integrate themselves into another state. Other than the United Nations Charter, the principle of self-determination is widely recognized in

a number of international treaties. First Article of International Covenant on Civil and Political Rights, which entered into force in 1976, and International Covenant on Economic, Social and Cultural Rights. In the article's first paragraph, it is stated that, “*1. 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*” (UN General Assembly, 1966). Self-determination is a fundamental human right. They have the freedom to choose their own political position and to pursue their own personal, social, and cultural goals because of this right (Castellino, 2021).

Numerous additional instruments at the global and regional levels recognize the right of peoples to self-determination, including the 1970 UN General Assembly Statement on the Principles of International Law Concerning Friendly Relations and Co-operation Among States; the 1975 Helsinki Final Act; the 1981 African Charter on Human and Peoples' Rights; and the 1999 United Nations Declaration on the Right of Indigenous Peoples to Self-Determination (Deci E. L., 1985). The International Court of Justice has verified its character in Namibia, Western Sahara, and East Timor cases, in which it was affirmed. A number of eminent international jurists, including those on the UN Human Rights Committee and the Committee on the Elimination of Racial Discrimination, have also provided extensive commentary on the scope and meaning of the right to self-determination. Hard law includes the right to self-determination, which was affirmed by the International Meeting of Experts for the Interpretation of Concepts of Rights of Peoples brought together by UNESCO from 1985 to 1991, 12 despite the fact that the list of such rights isn't very clear (Tesón, 2016).

Self-determination is regarded as a prerequisite for the exercise of all other human rights and freedoms, including the right to self-determination. A person's political standing and the direction of their economic, social, and cultural growth are entirely determined by exercising that right. International law is constantly redefining what a right is and who can assert it. It has generated a great deal of discussion and disagreement. All peoples rather than 'everyone' is used as a synonym for the right to self-determination, indicating that only a 'people' can exercise the right, rather than an individual (Tesón, 2016).



It was originally considered that the right to self-determination, or the right of a fixed territorial entity's population to decide for themselves, belonged to oppressed peoples. According to the International Court of Justice, people of colonized regions have a right to self-determination that is linked to the right to self-determination of colonized countries. Secession from a colonial authority to form a new state is an "external" way to exercise one's right to self-determination in this situation. International law recognizes the right of colonial peoples to external self-determination. The right to self-determination can also be exercised 'internally,' according to certain modern theories (Lâm, 2021).

Internal self-determination provides a people greater influence over their political, economic, social, and cultural development but does not necessitate secession. An indigenous community is defined as one that has a history of continuity with the pre-invasion and colonial societies that emerged on its territory. As non-dominant members of society in today's society, they are steadfast in their desire for the preservation and development of ancestral lands and their ethnic identity (Tesón, 2016).

There are several ambiguities regarding the indigenous people and whether they are entitled to this right or not. This is primarily done to invest the authority and rights in the people and not in the leaders of the states. Indigenous people are usually neglected in their respective lands and are not given the due respect and priority that they deserve; therefore, the leaders and the rulers of the country are less likely to neglect these people of their rights. Article 1 of the United Nations Charter also embodies the right to self-determination.

Some of the other important documents that embody the right to self-determination include the International Covenant on Human Rights and also the Vienna Declaration. The principle of self-determination is prioritized in these documents with respect to human rights. The significance of self-determination can be determined while considering its relationship with human rights. It is evident that if this particular right is available to the people, they will also be able to exercise any other rights and enjoy some of the political, social, and cultural rights.

Along with the inclusion of the principle in different treaties, it is also recognized by the International Court of Justice. It is repeatedly stated that the right has been entitled to the individuals and not the leaders of the states or the states themselves. The primary purpose is to

facilitate the individuals to recognize their own will and ability and to be governed by those by whom they wish to be governed rather than being dominated by others. The right to self-determination is an example of 'jus cogens', which means the right that cannot be violated at all. Moreover, it is also known as 'erga omnes', which means that this particular right applies to all. Everyone is entitled to this particular right, and no one can be discriminated against regardless of their caste, creed, or religion (Nawaz, 1965).

In international law, the right to self-determination is seen as the foundation of the state. It differs from the concept of sovereignty because that is attached to the states, while the principle of self-determination is associated with the individuals. Articles 73 and 74 of the United Nations also acknowledge the right of self-determination and its utmost significance for the individuals. It states,

*“Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained the full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount and except as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present charter, the well-being of the inhabitants of these territories”* (Charter of the United Nations, 1945).

## Chapter 4

### Research Methodology

Research methodology is defined as the different tips and tricks that are used in order to investigate a topic and collect relevant material related to it. It is a systematic inquiry that is carried out to describe and explain the entire topic from all the different perspectives to cover it fully. It is important to collect accurate and timely data so that the research is well curated. The process

identifies the problem, collects accurate and timely information, analyze the data and collect the findings. It encompasses all the ways through which is research is conducted and completed (Gowin & Millman, 1969).

Research methodology is of utmost importance as it helps a problem to be solved. It allows the researcher to decide which particular method is to be used for the particular research, how the data is to be collected for the topic that is being researched and in what ways the accuracy of the research can be enhanced. There are certain elements that have to be considered in order to ensure that the research that is being conducted is accurate and free of all errors.

#### 4.1 Types of research methods

There are two broad types of research methods. One is the quantitative research methods, and the other is the qualitative research method. Quantitative research method is a type of research that involves the use of numeric and symbols. It is a system that involves a mathematical relationship between variables. Through measurable forms, the relationships between variables are justified. Some of the methods that are included in quantitative research include questionnaires, surveys and also correlational research that investigates the relationship between different phenomena and variables primarily based on measures and numeric (Pierce, 1995).

Since this type of research mainly focuses on numbers and experiments, the amount or quantity plays a major role in quantitative research methods. The variables are measured and the relationship between variables is analyzed. This particular research method mainly focuses on the analysis of the relationship of these variables. Since this particular type of research does not mainly emphasize on description, the data that is collected is usually numeric, so it is expressed in the form of graphs and charts. This type of research is beneficial especially in those researches where the data is in large scale, and it has to be represented. For large amount of data, it is expressed in the form of graphs or tables so that it could be summarized and interpreted later as the description of such large amounts of data would not be possible.

Some of the advantages or strengths of quantitative research methodology are that the data that is collected is reliable because it can be replicated easily as it is in numeric and measurable forms. Since the information is close entered, it is easily generalized. Moreover, there is objectivity in

research because the data is straightforward and does not allow the bias of the researcher to affect the results of the research. As far as the weaknesses of quantitative research methodology are concerned, there is no human interaction involved in this type of research therefore no emotions, expressions or feelings are recorded through this research. Other than this, it is not very in depth because it focuses less on the description.

On the other hand, is qualitative research which primarily focuses on the question why and how rather than what. Since qualitative research is a more descriptive form of research that finds out the details of the topic, it emphasizes on the causes reasons and consequences that are involved. Unlike quantitative research, this tries to conduct in-depth research focusing on all the aspects and perspectives of the topic so that the problem that the topic aims to solve is well understood and all the information that is collected is well utilized. The responses that are collected from this particular research method are non-numerical. The research methods that are involved include one on one interviews, semi structured interviews, focus groups, case study, textual analysis, and also observations. Such research methods primarily rely on open-ended questions so that the respondents are allowed to talk about the topic as much as they want to. This is helpful for the researchers as it provides a great deal of information that is crucial for the topic. Another advantage of a qualitative research method is that it studies the behaviors of the people and also observe the dynamic situations that occur, this allows the researchers to evaluate the processes and the changes that take place overtime (Smith, 1983).

This type of research method is subjective in nature and greatly depends on the viewpoint of the actors that are involved in the research. Observation plays a major role in qualitative research as the researcher incorporates what has been observed. Moreover, description is also another key element of qualitative research methods because this research depends on details and in-depth information which can only be exhibited through description of events and facts. Instead of the quantity, qualitative research focuses on quality as the name suggests. This type of research is an interactive process because it allows interaction between the researcher and those who are being researched so that greater information is extracted from the respondents and is crucial for the research. Moreover, the aim of qualitative research is to understand the experience of the respondent so that the entire process is as natural as it could be made. The process is not predefined just like a quantitative research process.

This paper focuses on a qualitative research methodology as the topic involves in depth study and research. The topic discusses the dispute of the state of Kashmir and the right of self-determination of its people. There is a need to analyze the topic from all the different perspectives in order to understand the nature of the topic and to answer the problem that has been asked. Only with the help of a qualitative research methodology, the topic of the research can be answered effectively. Moreover, it is also beneficial to use a qualitative research methodology for this topic because it will focus on all the insights of the particular problem which will be ignored if a quantitative research method is involved as it mainly focuses on scientific measurements. Other than this, a social analysis is to be conducted so that the different facts, responses, and views of all the actors involved can be discussed. A qualitative analysis would be effective for analyzing the social aspect of the topic. Moreover, since the problem is involved in the research, a qualitative research methodology would evaluate the ‘why’ and ‘how’ aspect of the topic.

#### 4.2 Discourse and Document Analysis

The research method that has been adopted by the researcher is document analysis. This is a kind of method in which documents are viewed, interpreted, and analyzed in order to give voice and meaning to what is being encompassed in the documents. The evidence that has been mentioned in the documents is analyzed thoroughly and several questions are answered in order to enhance the understanding and knowledge (Bowen, 2009). Since the topic of the research is based on history and the events that have taken place in the past, there are several documents that are of primary importance and are to be analyzed for this matter. Some of these documents include the agreements and resolutions that have been passed by the United Nations and the United Nations Charter. Along with that, some of the other documents are also important like the Vienna Convention and other international agreements that have been signed which incorporate the elements and principles that have been mentioned in the research. Analyzing all of those documents and providing an effective and accurate interpretation of those is the ultimate aim of the research. Moreover, the topic of the research is the dispute of the state of Jammu and Kashmir and the right of self-determination of the people of Kashmir so the documents that are being analyzed are to be closely linked with the people of Kashmir and the topic that is being discussed. Some of the other documents that are of primary importance consist of the constitution of India

and other constitutional documents such as the new provisions that have been made by the Government of India.

Discourse analysis is the analysis that is carried out by analysing the written or spoken language with respect to its social context. It tries to examine the underlying meanings that exist in the language or speech that is being used. The primary focus of the discourse analysis is to explore thoroughly the language that is being used and the literal as well as the concealed meanings that emerge. Document analysis and discourse analysis are closely linked as it involves analysing the documents that have been collected for the research. It allows the research to be viewed from the perspective of communication (Hodges, Kuper, & Reeves, 2008).

#### 4.3 Scholarly articles

Scholarly articles also play a considerable role as these journals, books and reports provide background information and also enhance the understanding of these documents which may not be available otherwise. This research also involves a total reading of these scholarly articles so that greater information could be incorporated into the research and different viewpoints of the academics and researchers could be added into the literature of the research to provide an overview of what research has been already conducted and the gaps that exist in the field.

While collecting the sources, several factors have to be considered. Some of these factors include the subject matter, it is important to clarify the subject matter. Some of the sources are specific about the subject while some are multidisciplinary therefore, they must be sorted out. Other than this, it is important that the data must be reliable. To ensure this, only scholarly articles are chosen from reputable journals rather than website sources or blogs. Furthermore, it is ensured that the data is collected from diverse sources rather than a single one. Since the issue of Jammu and Kashmir is such that it is disputed between the two countries, it is important to ensure that the sources are diverse rather than collecting information only from a single perspective. Other criteria include objectivity which means that it must be ensured that the data that is collected is from an objective source so that it is not biased, and real facts can be stated (Bowen, 2009).

#### 4.4 Comparative Studies

This is one of the approaches to the paper in order to examine and then compare and contrast certain subjects or ideas. This allows to broaden the scope of the research as other subjects can also be brought into discussion for further clarification. Moreover, it also allows explanation about similar ideas or issues going on. Violations of human rights and the principle of self-determination are discussed with reference to Jammu and Kashmir. However, for better clarification of the matter, examples are provided from other countries as well. One of the examples provided is of West Papua suffering at the hands of Indonesia. It also suffers a similar situation as the people of West Papua demand for the right of self-determination which has been suppressed by Indonesia.

#### 4.5 Ethical Considerations

Ethical considerations in the research are a set of guidelines and policies that guide how the research is to be conducted and to avoid certain actions that may impact the effectiveness and efficiency of the research. There are certain guidelines that have to be followed that inform the researcher about the right and wrong and also provide information about which practices are to be carried out and which have to be avoided (Cacciattolo, 2015). There are four main areas that are focused upon.

First is that whether any harm was committed to the participants that were involved in the research. This research is free from any of such considerations because no research was conducted in field and does not involve any of the participants. If the research was carried out in the required place, this particular consideration would then have been valid. Secondly, there should be informed consent. This means that the respondents upon whom the research is being conducted should be well informed about the research and that they should give the consent for the research to be conducted. In case, they do not give the consent for the research, the research is not considered ethical. This research is also free from such ethical considerations because no data was directly collected by the researchers therefore, no respondents were involved and there was no need to ask for consent. In case, a questionnaire was conducted, or the survey was carried out and there were respondents involved in the research, then this consideration would have mattered, and consent was required of the respondents that weather they are interested to be a part of this research or not.

The third primary area of ethical considerations is the invasion of privacy that when an individual or a group of people are being studied or investigated their privacy should not be invaded (Arifin, 2018). This consideration also is not valid for this research because there are no respondents involved in this research and this particular study is primarily based on documents as it is focused upon document analysis therefore this ethical consideration is not also relevant to this research. The fourth main area of ethical consideration is deception that whether deception is involved in this research. Although, this research is a subjective and qualitative form of research, the researcher ensures that all the information that is provided is based on facts and is collected from reliable sources that are free from bias. All the information that has been collected is added without any exaggeration or falsifications therefore, the debtor that is incorporated into the research it's free from deception.

Since this research is theoretical based research and focuses on techniques such as document analysis, which is the interpretation and analysis of documents, some of the ethical concerns that arise with this type of research include plagiarism which means that someone else's work is presented as your own. This is a major crime and is particularly avoided for the research. Other than this, some of the ethical concerns that arise consists of copyrights, intellectual property rights and patents. This research ensures that all the ethical codes are met, and the research is based on honesty, integrity, openness, and confidentiality.

One of the other important ethical practices is to avoid adding the researcher bias into the research. It is ongoing research and there are different developments that keep on adding with the passage of time, it is important that the researcher solely focus on relevant and reliable sources of information and does not incorporate its own extremist feelings and emotions. Since the primary actors of the conflict are India and Pakistan as both of them lay claim to the state of Jammu and Kashmir and call each other aggressors, the international community mostly has taken sides with either India or Pakistan. The allies of India have supported the stance of India under revocation of the article 370 and 35A but the allies of Pakistan have supported the stance of the government of Pakistan and have criticized India on suppressing the rights of the people of Kashmir. It is important that the researcher objectively explains both the sides without any bias so that the research questions that have been selected could be answered effectively and efficiently based on facts and reliable sources. The research is based on biases and one side of the conflict is favored



upon the other, then the research would not be considered an accurate one and it will not be deemed as ethical because it would have violated the ethical considerations that are that the research must be safe from biases.

#### 4.6 Positionality

As a Pakistani, the researcher's point of view also holds utmost significance as it would reflect the viewpoint of one of the prominent actors in the conflict. The researcher believes that the tussle that exists between India and Pakistan regarding the issue of Kashmir should have ended long ago because the issue should be based upon the will of the people of Kashmir. Since the most prominent position is of the Kashmiris that whether they should belong to India, Pakistan or exist independently. Without acquiring the territory forcefully, there is a need to understand the perspective of the people of Kashmir and decide accordingly. This will award the right of self-determination to the people of Kashmir as well and will also avoid any human rights violations that are currently on its peak. Although the researcher belongs to Pakistan, but the idea is that both India and Pakistan should respect the will of the people of Kashmir and a fair and impartial plebiscite should be conducted that is free from any bias or influence of either of the two countries.

As far as The Constitution (Applicable to Jammu and Kashmir) Order 2019 is concerned, it is regarded unfair and illegal because the rights of the people of Kashmir are being suppressed. They are not given the freedom that they deserve, and on this view, the Indian government is to be blamed because primarily because of religious reasons, the Indian government is carrying out atrocities on the innocent civilians. The attention that this issue has received internationally is adequate, but no solid action has been taken which is considered a failure of the international community because not only Kashmir but there are several states such as Palestine and West Papua that have similar conditions and the international community has greatly failed to resolve the matters.

#### 4.7 Limitations

Limitations of the study are some of the weaknesses or the influences that impact the interpretation or analysis of the researcher. These limitations are not in control of the researchers therefore, they are mentioned as they might have impacted the research. It is important to minimize as much

limitations as possible, but it is impossible to eliminate all so they must be mentioned (Pierce, 1995).

One of the most prominently limitations that occurred during this research was the data collection method that was used. The researcher was unable to conduct in-field research because of the COVID-19 pandemic. The research had to be primarily relied upon document analysis which focused on analyzing and interpreting the documents that were available relevant to the topic. These documents consisted of the constitution of India, the resolutions it had been passed by the United Nations and also the other international agreements that incorporate the principle of self-determination. It was because of the limited opportunities that were available that quantitative research could not have been conducted and a questionnaire survey was not possible, so the research only focused upon documents. However, the researcher in showed that the documents that were incorporated into the research were very much relevant to the topic and provided in depth knowledge and information about the matter being discussed. Other than this, it was also ensured that the documents were well interpreted and analyzed from the social and political perspective.

Another limitation of the research is the time constraints. Since the topic regarding the dispute of this state of Jammu and Kashmir is a lengthy one and dates back to approximately more than 70 years, there is a lot of literature that is involved in the research and a lot of events have taken place. It is a lengthy process to collect all the events and all the relevant data that is crucial for the research in a limited period of time. Therefore, it can be stated that time was also one of the limitations of the research if there had been more time, the research could be more in depth and could enhance the understanding of the research for the readers providing greater information and understanding of even the minute details.

One of the prominent limitations of the research which is also of considerable importance is the availability of biased data and information available on the internet regarding the conflict of the state of Jammu and Kashmir. Since the conflict is an ongoing one, it is much likely to find information over the internet that is biased. The scholars and researchers from Pakistan believe that India is an aggressor who initiated the conflict, and the people of Kashmir are suffering at the hands of the Indian armed forces. On the other hand, the people of India are likely to treat Pakistan as the aggressor and that Pakistan is trying to acquire territory of the state of Jammu and Kashmir.

In this tussle, the accounts that are provided by both the countries are more likely to be biased and subjective to their own values therefore, one of the limitations of the research was to find objective data for the literature that was not biased.

## Chapter 5

### Research Review, Discussion and Analysis

On 20th January 1948, the United Nations created the UN Commission for India and Pakistan (UNCIP). The primary reason for this was to ensure that the issue of Kashmir could be discussed and debated upon so that an adequate solution could be reached. This was done in the light of Article 34 of the U.N. Charter which states that the Security Council must investigate any dispute, or situation which might lead to international friction or give rise to a dispute. Resolution 47 provided freedom and independence to all of the people of the state of Jammu and Kashmir to express their views and emotions on the matter (Khaled, 1997). The area was ruled by Maharaja Hari Singh. Although some of the powers were divided with the British paramountcy such as the communications department and defense. Also, they had the authority to interfere in some of the internal affairs as well. This freedom was given without any discrimination on the basis of race or creed and the purpose was to facilitate these individuals. The second part of the resolution consisted of instructions for the Government of India. It was stated that all unnecessary forces should be removed and only the minimum strength should be stationed in the state. Resolution 47 that was passed by the United Nations aimed to deescalate the conflict and head towards a peaceful solution of the Kashmir dispute. It also aimed to withdraw the troops of both the countries from the state of Jammu and Kashmir (Khaled, 1997).

The importance of Kashmir in the case of India and Pakistan increased also because of the sharing of border with China and increased proximity with the Soviet Union. Nehru had adopted a policy of non-alignment due to which India maintained a distance from the United States. Sheikh Abdullah, popularly known as 'lion of Kashmir, worked hard to ensure that the plebiscite promised

in resolution 47 of the United Nations is carried out in Indian-administered Kashmir (Ganguly Š., 1999).

He was imprisoned on the charges of treason which reduced the popularity of India in Kashmir. This is primarily because the popular opinion in India was that the state of Jammu and Kashmir should align with India. Various civil groups and organizations continued to work for this mission and their works remained popular during the 1970s. Their objective was to propagate the right of self-determination of the people of Kashmir (Lockwood D. E., 1970). Article 1 of the United Nations Charter acknowledges that people must have equal rights and also a right to self-determination.

This was the first time that it was embodied in a United Nations document. It was included by President Woodrow Wilson in the guiding principles for the reconstruction of Europe after World War 1. The inclusion of this particular right in the U.N. Charter makes it universally recognized in international law. The right to self-determination has been recognized by the International Court of Justice as an integral part of international law (Quane, H., 1998).

In 1960, the General Assembly resolution 1514 was passed which was about giving independence to the people and countries under colonial rule. The purpose is to allow individuals to recognize their will and to gain self-governance so that they do not have to be dominated by others. The right to self-determination has already been proclaimed by The United Nations in 1960 when the resolution 1514 was passed (Bleicher, 1969). The problem arises when individuals of a particular state try to separate themselves from the existing state in an attempt to create an independent one for them. This is primarily because the right redefines the identity of the individuals living in that state.

Self-determination has earned the status of a legal principle in the United Nations charter as well for example, Article 55 states, "for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples" (United Nations, Charter of the United Nations, 1945). Article 73 and 74 of the U.N charter also acknowledge the right to self-determination and the significance of individuals in this state. Since the beginning of the conflict, most the individuals who have been suffering the most and are victimized since the start are the people of Kashmir (Simpson, 1996). If an adequate plebiscite is conducted in the state could be translated and a peaceful solution could be reached. Even before the plebiscite was conducted, the Indian forces seized a part of the Kashmir territory with the excuse that they had come to save the

Hindu Maharajah of the state of Jammu and Kashmir who was being threatened by the rebel forces. The Government of India also stated that they are conducting elections in the Indian occupied Kashmir in order to exhibit the will of the people residing there that they wish to stay aligned with India. However, this argument was rejected by the United Nations because they said that only the plebiscite that is conducted by the U.N. itself would be considered valid. Self-determination has been arguably one of the most important principle and legal right in International Law during the 20th Century. The colonial concept of Self-Determination is what which is uncontested and gained tremendous significance in sphere of political and International legal discourse.

Kashmir was ceded to India in defiance of the aspirations of its people, who wanted to join Pakistan. Kashmir's dilemma cannot be resolved until there is international commitment to the right to self-determination. The subject of a plebiscite should be at the forefront of any discussions. On 14th May 1954, The Constitution Order was passed which was applicable to Jammu and Kashmir (Bleicher, 1969). After 65 years, on 5th August 2019 the President of India passed The Presidential Resolution that took away some of the significant rights that were previously being enjoyed by the people of the state (Bhat, The Kashmir conflict and human rights, 2019).

Since 1947, Kashmir has been divided into two parts, one is Indian administered Jammu and Kashmir, and the other is Azad Kashmir which is in the control of Pakistan. Before partition, the princely state comprised of both the highlands as well as the lowlands; Jammu area was primarily agricultural while the Kashmir valley was surrounded by Himalayan Mountains and relied on forestry. Kashmir was connected to the outside world through Pakistan so an agreement with the latter had become necessary. In October 1947, Pakistan blockaded Kashmir violating the standstill agreement that was signed between the two parties. The Gilgit region of Kashmir consisted of a Muslim majority and expressed their wish to accede to Pakistan.

Azad Kashmir or the Pakistani administered Kashmir was created in 1949 after UN ceasefire line was created. India's accession of Kashmir to India in 1947 was considered fraudulent by Pakistan who believed that the Maharaja had no control over the people and therefore could not take accession for those people. The war resulted in the death of approximately 500 Indian forces and nearly 400 Pakistani forces. A formal ceasefire was carried out on 25th September 2003 along the line of control. On 8th October 2005, a major earthquake took place in Kashmir and Muzaffarabad causing mass casualties.

In June 1952, the coalition government that was operating in the state had split up and in The Maharaja of Jammu and Kashmir signed the accession agreement but there are a lot of questions that come to existence regarding Kashmir that must be analyzed and evaluated. It is said that the princely states were given independence and the freedom to decide which dominion they wish to accede, but this was in theory. There were two agreements that were signed by the government of Jammu and Kashmir regarding the topic of accession. One was the standstill agreement that Kashmir had made with Pakistan and the other was the agreement of accession that the Maharaja had made to India. First of all, it is important to understand the position of Kashmir after the ending of the British rule in the subcontinent. November 1952, the legislative body operating in this state had also been dissolved. Since then, the state has been managed by the national Government of India who had appointed a governor for the state. The residents of Jammu and Kashmir were given special rights and privileges because of article 370 and 35A which empowers the people living in the state permanently. This article (Rather, 2020) also extends to the female residents and does not allow them property rights if they marry someone from outside the state. For the elections that were held in 2019, the BJP party included this manifesto in their election campaign that they would promise to revoke article 370 so that Jammu & Kashmir can become a part of India just like all the other States (Institute of Peace and Conflict Studies, 2019).

If a proper plebiscite is held in the state, a peaceful solution could be reached. An area in Kashmir had already been taken by India's soldiers prior to the plebiscite under the pretext of rescuing the Hindu Maharajah of Jammu and Kashmir from the rebels. Elections in Indian-occupied Kashmir have also been announced by the Indian government in order to show that the people of Kashmir want to remain a part of India. But the United Nations rejected this reasoning, saying that only plebiscites organized by the United Nations would count.

In Kashmir, there are cultural and linguistic differences between the people of Kashmir and those of India and Pakistan. Individuals who recognize and own their own culture do not have to follow another culture that they don't recognize as their own. Having a distinct culture Additionally, there are other cultural variations between Kashmiris and the rest of the population, including their rituals, cuisines, and clothing (Rather, 2020). They also want to be able and willing to reestablish self-governance, which is an important part of their right to self-determination. To begin with, it was a disputed region, which meant it was given far less importance than other Indian states. On August 5th, 2019, the President of India passed The Presidential Resolution, which removed some

of the state's most important privileges after 65 years (Institute of Peace and Conflict Studies, 2019). Legislation for the stated State can only be made on the Union List and Concurrent List if the President declares it to correspond to the items specified in the Instrument of Accession after consulting with government officials from the state. We will use the Maharaja of Jammu and Kashmir as the subject of this essay, acting as advised by the Council of Ministers at the time of the Maharajas Proclamation of March 5th, 1948. With Article 370, the legislative body of the state of Jammu and Kashmir is given a large deal of leeway in defining permanent residents of the region (Institute of Peace and Conflict Studies, 2019).

The state's coalition administration fell apart in June 2018 (Mishra, The Abrogation of article 370 International relations, 2020), and the state's legislative assembly was disbanded in November of the same year. It has been controlled since then by the Indian national government, which selected a governor to oversee the state's affairs. Article 370 and 35A, which offer permanent inhabitants of Jammu and Kashmir unique rights and advantages, were enacted to benefit the state's residents. It also applies to the women of the state, who are barred from having property rights if they marry outside the state. A vow to remove Article 370 was made by India's ruling BJP party in its election manifesto for the 2019 general elections, which were contested in Jammu and Kashmir (Mishra, The Abrogation of article 370 International relations, 2020).

According to the Montevideo Convention on Rights and Duties of States, it is stated that there are two factors that must be considered for the sovereignty of the state; Population, territory, government and an ability to enter into agreements with other states. In the case of Kashmir, the population was there. There is no limit that only a particular form of population should exist in the territory which means that people should be only of a single race or creed. Although the people in Kashmir were divided on the basis of religion, they were still considered the people of Pakistan. When the British rule collapsed, all these powers that were previously with the crown were now returned to the Maharaja as it was stated in the section 7 of the Indian Independence Act (Mazari, International perception of the Kashmir Dispute, 2006).

The last criterion is sovereignty or the ability of the state to ensure relations with other states. There are two types of capacities. One is the *de jure* capacity while the other is the *de facto* capacity. The idea is that it is not that the state should only have the ability to maintain relations with other states but it should in practice have the financial, technical and political abilities to do so. Under the

British control, the princely states were given full independence in terms of the freedom that they had to accede to the country of their choice. They also had the capacity to stay independent and the Crown will not influence the decision of the state.

When the principle of self-determination is to be applied to the territory of the state of Jammu and Kashmir, there are several elements that have to be considered. The question arises whether there is an adequate population upon which the principle has to be applied or is there a territory upon which the principle is to be applied. Both the territory and the population have to be considered in order to understand whether the right of self-determination is applicable to the state of Jammu and Kashmir or not. The princely state, Kashmir at the time of independence was only a single state however, it later got divided into two different countries. These countries had defined boundaries. Although, it is stated that the right to self-determination is entitled to individuals rather than states or governments, but it is also important to consider that individuals are defined by the boundaries that they reside in. As article 73 of the United Nations Charter states, “*administration of territories whos peoples have not yet attained a full measure of self government recognize the principle that the interest of the inhabitants of these territories are paramount*” (United Nations, 1945). To view the functioning of The United Nations Commission of India and Pakistan, It appeared as if the purpose of the Commission was to end the war between the two countries but the principle of self-determination was given minimal importance. Throughout the history of the actions that have been taken by the United Nations, it can be seen the focus of the organization has been on state sovereignty rather than the principle of self-determination. State sovereignty and self-determination has been seen clashing with one another when it comes to the functioning of United Nations. The Commission consisted of representatives from India and Pakistan and some representatives from other countries such as Belgium and Colombia but it failed to take into account the victims of the conflict. The people of Kashmir who were the major actors in the issue of the state of Jammu and Kashmir were largely ignored by the Commission (Idowu a. , 2008). It is reported that the members of the Commission stayed in Srinagar for a few days, but they only met Sheikh Abdullah only once during their stay although he was one of the prominent actors involved in the conflict that was representing the people of Kashmir. He was the one who was greatly propagating the right of self-determination of the people of Kashmir.



It is ironic to state that the authorities or the actors that have utmost significance in the issue were largely ignored by the members of the Commission. The people of Kashmir and the authorities were simply considered as local authorities and were deemed to be irrelevant from the matter. Although, the Commission had acknowledged Shaikh Abdullah as the Prime Minister of the state of Jammu and Kashmir, they avoided contacting him or consulting him on the matter. Their major aim was to ensure that they do not recognize the de jure or the de facto government of Azad Kashmir. There are several elements that have to be considered before the principle of self-determination can be applied to the state of Jammu and Kashmir (Fai, Resolution of the Kashmir dispute, 2012). The Commission consisted of representatives from India and Pakistan and some representatives from other countries such as Belgium and Colombia but it failed to take into account the victims of the conflict. It appeared as if the purpose of the Commission was to end the war between the two countries, but the people of Kashmir were largely ignored. The Commission had acknowledged Shaikh Abdullah as the Prime Minister of the state of Jammu and Kashmir, but they avoided contacting him or consulting him on the matter. Their major aim was to ensure that they do not recognize the de jure or the de facto government of Azad Kashmir. Maharaja Hari Singh Dogra who was also a prominent actor in the dispute was also ignored. It is evident from the actions of the Commission that their major focus was only to negotiate between India and Pakistan, and they did not prioritize the views and preferences of the people of Kashmir. Other than this, it can also be seen that the Commission was not interested in consulting Maharaja Hari Singh Dogra who was also a prominent actor in the dispute. It is evident from the actions of the Commission that their major focus was only to negotiate between the two states that were India and Pakistan, and they did not prioritize the views and preferences of the people of Kashmir. This also clearly depicts the stance of the United Nations that they prioritize state sovereignty over the principle of self-determination (Fai, Resolution of the Kashmir dispute, 2012).

Other than this, it can also be seen that the Commission was not interested in consulting Maharaja Hari Singh Dogra who was also a prominent actor in the dispute. It is evident from the actions of the Commission that their major focus was only to negotiate between the two states that were India and Pakistan and they did not prioritize the views and preferences of the people of Kashmir. This also clearly depicts the stance of the United Nations that they prioritize state sovereignty over the principle of self-determination (Fai, Resolution of the Kashmir dispute, 2012).

On 20th January 1948, the United Nations created the UN Commission for India and Pakistan (UNCIP). The primary reason for this was to ensure that the issue of Kashmir could be discussed and debated upon so that an adequate solution could be reached. Resolution 47 that was passed by the U.N. aimed to deescalate the conflict and head towards a peaceful solution. It also aimed to withdraw the troops of both the countries from the state of Jammu and Kashmir.

The right to self-determination has earned the status of a legal principle in the United Nations charter as well for example, Article 55 states, "for peaceful and friendly relations among nations based on respect for the principle of equal rights and self determination of peoples" (United Nations, Charter of the United Nations, 1945). Since the beginning of the conflict, most the individuals who have been suffering the most and are victimized since the start are the people of Kashmir. Kashmir was ceded to India in defiance of the aspirations of its people, who wanted to join Pakistan. The colonial concept of Self-Determination is what which is uncontested and gained tremendous significance in sphere of political and International legal discourse. Kashmir's dilemma cannot be resolved until there is international commitment to the right to self-determination.

After the end of British rule in the subcontinent, there were two agreements that were signed by the government of Jammu and Kashmir regarding the topic of accession. A formal ceasefire was carried out on 25th September 2003 along the line of control and a major earthquake occurred on 8th October 2005. Since then, the state has been managed by the national Government of India who had appointed a governor for the state. The local residents were given special rights and privileges because of article 370 and 35A which empowers the people living in the state permanently. This article (Rather, 2020) also extends to the female residents and does not allow them property rights if they marry someone from outside their state.

For the elections that were held in 2019, the BJP party included this manifesto in their election campaign that they would promise to revoke article 370 so that Jammu & Kashmir can become a part of India just like all the other States. In Kashmir, there are cultural and linguistic differences between the people of Kashmir and those of India and Pakistan. They also want to be able and willing to reestablish self-governance, which is an important part of their right to self-determination. On August 5th, 2019, the President of India passed The Presidential Resolution,

which removed some of the state's most important privileges after 65 years. There is no limit that only a particular form of population should exist in the territory which means that people should be only of a single race or creed.

The last criterion is the ability of the state to ensure relations with other states. Under the British control, the princely states were given full independence in terms of the freedom that they had to accede to the country of their choice. The Commission consisted of representatives from India and Pakistan and some representatives from other countries such as Belgium and Colombia. It appeared as if the purpose of the Commission was to end the war between the two countries but the principle of self-determination was given minimal importance. The people of Kashmir who were the major actors in the issue of the state of Jammu and Kashmir were largely ignored by the Commission.

There are several elements that have to be considered before the principle of self-determination can be applied to the state of Jammu and Kashmir. The Commission consisted of representatives from India and Pakistan and some representatives from other countries such as Belgium and Colombia but it failed to take into account the victims of the conflict in Kashmir. It appeared as if the purpose of the Commission was to end the war between the two countries but the people of Kashmir were largely ignored. The Commission consisted of representatives from India and Pakistan and some representatives from other countries such as Belgium and Colombia but it failed to take into account the victims of the conflict. It appeared as if the purpose of the Commission was to end the war between the two countries but the people of Kashmir were largely ignored.

Their major aim was to ensure that they do not recognize the de jure or the de facto government of Azad Kashmir. The Commission was not interested in consulting Maharaja Hari Singh Dogra who was also a prominent actor in the dispute. It is evident from the actions of the Commission that their major focus was only to negotiate between India and Pakistan. This also clearly depicts the stance of the United Nations that they prioritize state sovereignty over the principle of self-determination (Fai, Resolution of the Kashmir dispute, 2012). The United Nations' involvement in the Kashmir dispute can be seen as a failure primarily because they tried to create a legal obligation for both the states to achieve a peaceful solution.

There are two aspects that appeared problematic. One was the demilitarization ordered by the United Nations and the second was the conduction of the plebiscite. Kashmir has been the subject of three conflicts between India and Pakistan since 1947. The people of Kashmir will be able to vote on whether or not they want to be a part of India, Pakistan, or an independent state, thanks to a referendum. Since 1949, a UN peacekeeping mission has operated in the area to monitor the ceasefire between the two countries.

Since 1947, the territory of Jammu and Kashmir had become disputed. One part had become Azad Kashmir while the other part was the Indian occupied Kashmir. In 2019, thousands of Indian forces were deployed in the Kashmir territory. Several changes were made such as the schools were closed down, Phone and Internet services were suspended and some of the major political leaders were put under arrest. Kashmir was the only Muslim majority state that was aligned with India since partition and since it was given a special status, the political party wanted to revoke it.

One of the reasons for the BJP party to revoke article 370 and to integrate Kashmir into Indian Territory was that it wanted to disperse the Muslim majority and also allow Hindus to purchase land in the territory of Jammu and Kashmir. In the first few days of August 2019, when the Indian troops were stationed in the territory of Jammu and Kashmir, the basic rights of the freedom to people of Kashmir were taken away. Other than this, even if the actions that are made by the Government of India are legal, the principle of the right to self-determination still plays a significant role. The right to self-determination is well recognized by international law and international order which allows the people to exercise this right in order to acquire their political rights. The revocation of article 370 and article 35A has sparked a great deal of controversy and there are mixed views about the cause of such actions by the Government of India. It is stated that one of the primary reasons for the BJP party and Narendra Modi to carry out such actions is for the propagation of Hindutva ideology that traces its route from India.

Other than this, it should also be pointed out that the Kashmir dispute was primarily seen as a territorial dispute between India and Pakistan by the United Nations according to realism perspective or the principle of self-determination of the people of Kashmir was given minimal importance. The option of independence was not considered between for the people of Kashmir because considering the nature of the issue as it was seen by the United Nations, it only appeared

as a dispute between the two states that had to be dealt with the conduction of a plebiscite (United Nations, Charter of the United Nations, 1945). It is a point of worry that there have been a total of three reports presented by the United Nations Commission of India and Pakistan and in neither of these three reports there has been any mention of whether there should be another option other than voting between which state they wish to join. This also shows that the wishes of the people of Kashmir have been ignored throughout the journey of reaching a peaceful solution of the dispute and issue of the state of Jammu and Kashmir.

Sheikh Abdullah who was in favor of the right of self-determination of the people of Kashmir at some point favored India over Pakistan but instead of aligning with either of the two states, he wanted to achieve an independent territory that was autonomous and was governed by self-rule. Moreover, it is important that the third option was also included in the plebiscite because this option exhibits the right of self-determination of the people of Kashmir. Governing themselves and being free of any domination and exploitation is the primary purpose of the right or self-determination. Since all the international agreements and documents state that every human being is entitled to the right to self-determination, this means that they must have the ability or the capacity to make a political decision that is for the betterment of themselves in terms of economic, social, and cultural factors (Ahanger, 2019).

### Role of UN's arbitration

Involvement of the United Nations in the Kashmir dispute can be seen as a failure primarily because they tried to create a legal obligation for both the states to achieve a peaceful solution to the matter. There are two aspects that appeared problematic. One was the demilitarization ordered by the United Nations and the second was the conduction of the plebiscite. Viewing from the perspective of Pakistan, India had agreed that the accession of the Maharaja would be done by plebiscite, but it continued to refuse it. Pakistan believed that these actions of the Government of India were a breach of the agreement made by UNCIP. On the other hand, the Government of India had its own claims. The Government of India claimed that The United Nations Commission of India and Pakistan had ordered demilitarization which was the withdrawal of troops from the territory of the state of Jammu and Kashmir. India stated that a plebiscite could not be conducted until all the troops of Pakistan were removed from the disputed territory. The United Nations

Commission made efforts in order to negotiate a settlement between the two countries and to make them agree on a particular solution. There was a need to draw certain agreements regarding how the resolutions made by the Commission have to be implemented but no such agreements were made (Lockwood D. E., 1970).

There were certain steps that were carried out by the United Nations. Starting from the President of Security Council, A.G.L. McNaughton who became the first mediator from the United Nations side. He divided the Azad Kashmir forces and the Pakistani forces so that the demilitarization process could be completed effectively. Moreover, it stated that the matters of the state of Jammu and Kashmir would be handled by the local authorities until the plebiscite is conducted. Once these proposals were made, the Government of India rejected these proposals. In 1950, another attempt was made by Sir Owen Dixon who appeared as a representative of India. He divided the state of Jammu and Kashmir into four regions and suggested four different plebiscites for each region. The four regions included the northern areas, Jammu, the Ladakh, and the Vale of Kashmir. There was a lack of agreement between India and Pakistan on how the plebiscites must be conducted. The view of Pakistan was that the plebiscite must be administered by the United Nations because that is the only way a neutral plebiscite could be conducted as the influence of India over Kashmir was off a great degree. Moreover, Pakistan also believed that instead of regional plebiscites, a plebiscite must be conducted for the whole of Kashmir. India pointed out the same claim that it had made previously that a plebiscite could not be conducted in as add Kashmir until all the forces have been evacuated (Fai, Resolution of the Kashmir dispute, 2012). The people of Kashmir will be able to vote on whether or not they want to be a part of India, Pakistan, or an independent state, thanks to a referendum. However, the government may or may not be bound by the results of a referendum. Kashmir, which is claimed by both India and Pakistan, has been the subject of three conflicts between the two countries since 1947. Since independence, the two countries have also engaged in a number of conflicts for sovereignty of the Siachen glacier. It was advocated for by the United Nations Security Council (UNSC) in 1948, but it was never implemented. Since 1949, a UN peacekeeping mission has operated in the area to monitor the ceasefire between the two countries.

## Crucial to the dispute, different perceptions and par of discussion

In the 1970s, various debates were carried out in the United Nations and the General Assembly in order to discuss the issue of the state of Jammu and Kashmir. Since the United Nations focused on the state sovereignty over the principle of self-determination, and that the people who belong to colonies and were victims of colonized rule were subjected to the right to self-determination, the Government of India received its support from this statement. They believed that since Kashmir was not a colony and the people of Kashmir were not colonized therefore the arguments for the principle of self-determination of the people of Kashmir is no longer valid. That is when the United Nations distanced itself from the conflict and only monitored it from a distance. The organization now only monitored the actions of both the countries from the line of control and had minimal interference into the matter.

Since 1947, the territory of Jammu and Kashmir had become disputed. One part had become Azad Kashmir while the other part was the Indian occupied Kashmir. Significant changes were seen in 2019 by the Government of India who introduced clauses that created a great deal of controversy as well as worst Consequences for the people of Kashmir. In the month of August 2019, thousands of Indian forces were deployed in the Kashmir territory. Several changes were made such as the schools were closed down, Phone and Internet services were suspended, the tourists who had come on a visit to the beautiful valley were asked to leave and some of the major political leaders were put under arrest. All these special importance that the state of Jammu and Kashmir was given was because of Article 370 of the constitution of India that was applicable to Jammu and Kashmir. The article gave special status to this state as compared to the other states in India. There were speculations that article 370 was going to be revoked. It was primarily because of the BJP party of India who were completely against the article 370 and the special position of the state of Jammu and Kashmir. It had always believed that Kashmir should be made a part of India and should be entitled to the same constitution as the rest of the states. The special status that is given to the state should be withdrawn (Medha, *The Revocation of Kashmir's autonomy: High risk Hindutva Politics at play*, 2019).

Article 370 was of utmost significance for the independent status of Jammu and Kashmir because it allowed the state to have their own flag, their own constitution and a legislative body that was

free to make the decisions. The rest of the departments such as foreign affairs, trade and defense were managed by the central government.

### Discussion in light of changing relations of Pak-India, nationalism, religious international terrorism

In the Indian government, the BJP party headed by Narendra Modi had significantly different views. They wanted to revoke the article 370 long ago and in their election campaign in 2019, their primary manifesto was to integrate Kashmir into India. When the BJP party won the elections with a massive mandate, this was the first step that they took. In order to evaluate the actions that were taken by the BJP party and Narendra Modi, it can be stated that the actions of the party were mainly based on religious reasons. Kashmir was the only Muslim majority state that was aligned with India since partition and since it was given a special status, the political party wanted to revoke it. This also sheds light on the anti-Muslim views of the BJP party. It can also be considered that one of the reasons for the BJP party to revoke article 370 and to integrate Kashmir into Indian Territory was that it wanted to disperse the Muslim majority and also allow Hindus to purchase land in the territory of Jammu and Kashmir. This would break the unity of Muslims that was together in the state of Jammu and Kashmir. Other than this, it can also be seen as a show of power by the BJP and Narendra Modi that the political party has the authority as well as the power over Kashmir and indirectly, over Pakistan (Abbas, Strategizing Kashmiri Freedom Struggle Through Nonviolent Means, 2019).

By revoking the Article 370 and introduction of The Constitution Order (applicable to Jammu and Kashmir) 2019, the people of Kashmir no longer have a separate constitution and they will have to abide by the Indian constitution. People outside Kashmir which means people from the other states of India will now be allowed to purchase land in the territory of the state of Jammu and Kashmir. In order to justify their actions, the Government of India claimed that in the past there has been no development in the region and corruption is at its highest it is because of this development that has taken place the region will progress. The question primarily arises that whether the actions that have been taken by the Government of India are legal or not. Since the constitution stated that article 370 could only be modified by consultation with the government of the state but there was no state government for a long time in Jammu and Kashmir. This shows the



preplanned motives of the Government of India who tried to exert their authority by any means in order to ensure that the territory of the state of Jammu and Kashmir belongs to India. Other than this, even if the actions that are made by the Government of India are legal, the principle of the right to self-determination still plays a significant role.

Throughout the decisions that have been taken by the Government of India, the people of Kashmir or the representatives of Kashmir have no role in that. Just like it has been stated previously, in the first few days of August 2019, when the Indian troops were stationed in the territory of Jammu and Kashmir, the basic rights of the freedom to people of Kashmir were taken away. Suspending phone and Internet services takes away the right to communication from the people of Kashmir which is again a violation of human rights. Not allowing them to communicate with the outside world is a lack of right of expression. The people of Kashmir are not being allowed to express their views to the outside world and raise their voice against the injustice that has been committed against them. Arresting the political leaders of the state of Jammu and Kashmir is again an example of suppressing the right to self-determination. These political leaders have been vocal about the rights of the people of Kashmir and have served as a platform to represent the views of the local Kashmiris. By arresting these popular leaders, the Government of India has withdrawn the right to self-determination of the people of the state of Jammu and Kashmir (Bhat, The Kashmir conflict and human rights, 2019).

Even if revoking the article 370 is not illegal by means of the constitutional rules and procedure, suppressing the rights of the people of Kashmir is illegal in the eyes of international law and order. Not including the people of Kashmir and their voice in the major decisions that are being made with relevance to them, is an example that the people of Kashmir are being deprived of the ability to make political decisions for themselves. The movement for the right of self-determination by the people of Kashmir have always been at its peak for more than 70 years as the political parties along with armed struggle have tried to get their voice heard by all means however, distractions and obstacles that have been placed by the Government of India since 2019 has shrunk this political activity because of the numerous restrictions that have been placed. Increased interference of the Indian armed forces in the disputed territory combined with restrictions in the fields of economic social political and cultural spheres along with unnecessary killings, detentions of political leaders and numerous human rights violations put the Government of India at an illegal position.

The right to self-determination is well recognized by international law and international order which allows the people to exercise this right in order to acquire their political rights and to make their life decisions according to their own well. The revocation of article 370 and article 35A has sparked a great deal of controversy and there are mixed views about the cause of such actions by the Government of India. It is stated that one of the primary reasons for the BJP party and Narendra Modi to carry out such actions is for the propagation of Hindutva ideology that traces its route from India. The primary aim and purpose of such an ideology is to propagate the Hindu values and to strengthen the human community. The supporters of such an ideology are strong believers of Hinduism and they believe that none other religion should prevail other than Hinduism. The BJP party headed by Narendra Modi is a primarily right-wing party which is a strong believer of Hindu nationalist policies. Therefore, the revocation of primarily the article 35A appears to be due to religious reasons and the primary reason can be the Hindutva ideology (Medha, *The Revocation of Kashmir's autonomy: High risk Hindutva Politics at play*, 2019). When British crown rule was formally acknowledged in 1858, the British consolidated their supremacy across the subcontinent. Indian National Congress (INC) was created shortly after 1885, making it the country's largest political party. The outbreak of World War I appeared to be a watershed moment. Near-bankruptcy and more than 45,000 deaths resulted from India's generous contribution of more than 1.5 million troops. Political and ideological divisions were at an all-time high as both factions strove to acquire influence in government. For the next decade, Jinnah stayed away from politics, finally returning after the 1937 election. Jinnah's long-held notion that Muslims might be protected in a predominantly Hindu country was overthrown by this occurrence.

Other than this, he claimed and assertions that have been made by the Government of India regarding the right to self-determination that has been given to the people of Kashmir are primarily false. The Government of India claim that the right to self-determination is given to the people of Kashmir as elections were held for the constituent assembly in 1951. However, in reality the elections that were held in 1951, Sheikh Abdullah who was contesting had won 75 seats in total. On the other hand, 73 seats were not contested upon and were rigged by New Delhi. Another assertion that has been made by the Government of India is that the resolutions that have been passed by the United Nations Commission of India and Pakistan are nonbinding in nature. There have been several contradictions in the statements made by the Indian politicians for example, on

26th October 1947, Nehru made a public announcement at Lal chowk, Srinagar that the future of the people of Kashmir will be decided by a plebiscite or a referendum that will be conducted according to the will of the people of Kashmir. On the other hand, in a telegram that he sent to Liaquat Ali Khan, Nehru told that the matter of Kashmir was a domestic matter of India which required no involvement of Pakistan.

In the 1970s, the United Nations had distanced itself from the Kashmir issue but it returned much later in 2016 primarily because of the human rights issue and not because of the principle of self-determination. Since 1989, there have been several insurgency movements in the state of Jammu and Kashmir. Previously, they were because of the self-determination movements propagated by the people of Kashmir while some were also the secessionist movements that would also supported by the neighboring country, Pakistan. The response of the Indian forces have always been aggressive. One of the major events took place in 2016, when the Indian armed forces killed Burhan Wani who was a popular Kashmiri insurgent. There was a wave of unrest and people protested in groups. The Indian armed forces responded with crackdowns and restrictions. The Indian forces have always committed human rights violations at a large scale. That was when the United Nations responded because of the mass human rights violation that were taking place in the territory of Jammu and Kashmir. The United Nations Human Rights Committee published a report stating a different violation that have been committed by the Indian forces while suppressing the unrest that was caused in the territory. The United Nations Human Rights Committee also pointed out some of the human rights violations that were observed in the Pakistani administered Kashmir or the Azad Kashmir. These claims were immediately denied by the Government of India stating that these claims were fraudulent and fallacious. The report stated that thousands of innocent people of Kashmir had been killed by the Indian forces and there was an excessive use of force. The Indian forces also used pellet guns and also metal pellet shotguns which are considered as one of the most dangerous weapons. The use of these guns resulted in mass killings of civilians. Other than this, it was also seen that there were frequent communication barriers observed in the state of Jammu and Kashmir because Internet and phone services were frequently suspended by the Government of India. It was also mentioned that most of the Internet shutdown was reported from the Kashmir valley in India. The abuse that was committed by the Indian armed forces could not be ignored such as mass killings, kidnappings and also sexual violence. One

example of this was that 12 schools were burned down by the Indian forces, out of which most of them were girls' schools. Moreover, as far as the Pakistani administered part of Kashmir was concerned, there were multiple restrictions that were imposed by the Indian armed forces on the right off freedom of speech and expression. This was viewed that whenever a group of people protested or raised their voice, they were detained. For example, when Jammu Kashmir National Students Federation protested at the Press Club Rawalpindi, they were detained by the Indian armed forces for raising their voice and expressing their concern. Furthermore, the journalists who were performing their duties were given threats and were intimidated in order to restrict them for performing their duties ( United Nations, 2019).

Despite the actions that were committed by the Indian forces in Pakistani administered Kashmir, the United Nations only stated that they were disappointed with the actions of the Indian armed forces but no serious response was given. This also shows the failure of the United Nations to take adequate action of the violations that have been made by the member nations. The actions that were taken by the Government of India in August 2019, removed the last bits of the principle of self-determination that remained in the people of Kashmir. All the popular leaders of the state of Jammu and Kashmir who propagated the right to self-determination were put under house arrest. The articles of the constitution of India that had given special status to Kashmir were revoked. Previously, the process of centralization that was carried out by the Government of India had eliminated the principle of self-determination but now, with the addition of the new Constitution Order, Kashmir was divided into union territories which were brought under the direct control of New Delhi.

This action of the Government of India was greatly criticized by Pakistan who vowed to take this issue to the United Nations and also to the international court of Justice. In an attempt to force the United Nations to take an action, Pakistan urged its ally, China to call on the doors of the United Nations to take a strong step. However, no major action was taken by the United Nations. They only stated that both the countries should refrain from taking any unilateral action and should not aggravate the situation.

This also exhibits the efficiency of the United Nations in addressing the issues of the principle of state sovereignty. It has always prioritized the matters of state sovereignty and is unable to

pressurize states in order to fulfill their duties regarding the principle of self-determination this is evident from the issue of the state of Jammu and Kashmir as the United Nations has failed to enforce the principle of self-determination in this matter and is unable to direct the governments of India and Pakistan to safeguard the interests and rights of the people of Kashmir (Ali & Saeed, Kashmir Dispute and Challenges to the National Security of Pakistan: An Analysis, 2019).

In order to analyze and understand the scope of the right of self-determination under international law, several ideas have to be considered. Although, it is stated in the International documents such as in Article 45 of the United Nations Declaration on the Rights of Indigenous People that the indigenous people are entitled to all the essential rights as the other people in the world (United Nations, United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted by the General Assembly, 2007) but the ambiguity persists that whether the rights that are offered to the indigenous people for example, the right to self-determination, that whether they will be able to exercise this right separately from the rest of the population or not (Quane H. , The Rights of Indigenous People and the Development Process, 2005). The primary case study is the state of Jammu and Kashmir and its people who are deprived of the right as the will of the people is not taken into consideration. The people of Kashmir are not given the authority to decide the political framework of their state or carry out any decisions regarding the cultural or social development. This proves the lack of the right of self-determination for the people of Kashmir despite the mention in the international treaties.

### Comparison with other states

Other than this, the state of West Papua can be consulted. The Dutch government granted independence to Indonesia in 1949 and since then, the decision of West Papua was pending that whether it would be allowed to function as an independent state or a province of Indonesia. The government of Indonesia forcefully acquired control over the territory of West Papua without consulting the will of the people and suppressing their right to self-determination. With massive human rights violation in West Papua, the international treaties and law hold no significance as the government becomes the ultimate sovereign power. This also judges the scope of the right in international law. It appears as if the autonomy that is exercised by the indigenous people is a matter of concern of the national government and is not negotiated at the international level.

Moreover, it can also be added that this is a particular concept upon which international law is evolving and requires greater improvement because as far as the law is concerned, it only encompasses either the complete population of a state or a state that is a colony. The situation of indigenous people and their rights appears to be a recent one upon which there is a need for the international law to evolve further (Bovensiepen, Pursuits of Freedom and Sovereignty in West Papua, 2013).

### Fear of Succession by Nation States

Another major concept that cannot be ignored is the implications that the right to self-determination of indigenous people can have for the state. One of the bigger concerns is that if the indigenous people are entitled to the right to self-determination, they will also seek the authority over the natural resources and wealth of the nation state. This can provide greater damage to the state especially, if the state is one of those that is rich in natural resources. If the indigenous people make secessionist claims, it would be dangerous for the state in terms of its economic wellbeing. As far as the case of Kashmir is concerned, if the people of Kashmir are given the right to self-determination, there are greater chances that they would secede themselves from India and Pakistan and establish their own separate state. Since the state of Jammu and Kashmir is rich in natural resources, it would be a loss for both India and Pakistan. Neither India nor Pakistan would readily let Kashmir slip away as it is a gem for both the states. Therefore, this is one of the reasons that the indigenous people are not granted the right to self-determination but a limited right to autonomy and self-governance (Quane H. , The Rights of Indigenous People and the Development Process, 2005).

Owing the right to self-determination to the people of Kashmir is a moral obligation that is entitled to Pakistan, India and also the international community because the territory of Jammu and Kashmir belongs to its people and none other than the people of Kashmir have the right to make a decision about their own lives. Since there is very little support from the United Nations, it can only be said that until there is a drastic change from the side of the Government of India, it is very less likely that the people of Kashmir may be able to end this process of suffering because regardless of the efforts that have been made by the government of Pakistan and the international

community, the influence of the Government of India is great and the abuse is unlikely to be seen ending.

When article 370 was presented by the Government of India, it invited the response of several neighboring countries like China, India, Iran etc. First of all, the response of the government of Pakistan is to be considered. One day after the article was presented, the Prime Minister of Pakistan, Imran Khan stated that this move by the Government of India is highly unconstitutional. A meeting was chaired with the national security committee and relations with the neighboring country were discussed. Imran Khan immediately ordered that the bilateral trade with India must be stopped and diplomatic relations with the state should also be suspended (Ahangar, 2019).

The Indian High Commissioner who was stationed in Pakistan was immediately sent back and the Pakistan High Commissioner who was about to leave for India was halted. The government of Pakistan also vowed that all the human rights violations that are being conducted in the state of Jammu and Kashmir will be highlighted and the racist regime of India which is primarily focused on Hindutva ideology will also be brought in front of everyone as they are discriminating against the Muslims residing in the state of Jammu and Kashmir. Pakistan tried its level best to get the attention of the international community by repeatedly reaching out to the United Nations Security Council but failed to do so and that is when the government of Pakistan reached out to its ally, China so that The United Nations is fast to respond. Since China is one of the permanent members of the Security Council, it requested the United Nations to have a closed consultation on the matter of Kashmir. However, despite the efforts made by Pakistan and China, the attention could not be brought to the matter and India continued to abuse the people of Kashmir as it was doing before. India had forced the territory of Jammu and Kashmir into lockdown as all the means to come out and go in were suspended along with the communications that is why Pakistan labeled India as an aggressor (Ali & Saeed, Kashmir Dispute and Challenges to the National Security of Pakistan: An Analysis, 2019).

The other country to be involved in the conflict was China who responded after article 370 was presented by the Government of India. The new constitution ordered that was presented in 2019 also included a clause that Ladakh was to become an union territory and the concern of China was upon this clause. Since China shared a border with the territory of Jammu and Kashmir, it believed

that this move of the Government of India was unacceptable and it appears as if this would lead to a threat to the sovereignty of China. Although, the concern that China had it's quite a prominent one but it also feared that if it opposed India, the boundary issue that it has with the latter will be complicated and will lead to further controversies. Therefore, China tried to act diplomatically and stated that both the countries should peacefully find a solution to the issue so that the matter is not aggravated further. China also stated that the solution should be according to the United Nations Security Council and the United Nations charter. It was because of the persistence of Pakistan that China even discussed the issue with the United Nations Security Council personally.

Throughout the years, China hence always referred to Kashmir as Indian occupied Kashmir or a disputed territory. This statement favors the stance of Pakistan because it shows that the territory of Jammu and Kashmir is forcefully occupied by India (Institute of Peace and Conflict Studies, 2019).

At the time when the Government of India remove the article 370 from the constitution, Pakistan had decided to deploy troops on the eastern border as they believed that it was becoming a threat and their aim was that the deployment of troops could also put pressure on the United States. Afghanistan was already criticizing Pakistan for this action therefore they decided to support India on their stance and considered illogical. Some of the other countries also reacted to this action by the Government of India. One of these was Turkey which has always committed itself to this cause. When the Government of India announced the revocation of article 370 Turkey announced that they wished to solve this issue by dialogue this action by the Government of India would spark more tensions between the two states therefore, a solution must be sought from the resolutions presented by the United Nations (Das, 1950). This also showed that Turkey supported the stance of the government of Pakistan as Pakistan was in favor of the resolutions that were presented by the United Nations because they favored a plebiscite. The restrictions that were made by the Indian forces in the Kashmir valley were also criticized by the Turkish President. He also said that he was closely monitoring the developments that were taking place in the territory of Jammu and Kashmir.



## Solidarity among Muslims Countries

The president of Malaysia was also disappointed at the actions of the Government of India and stated that despite the role that the United Nations has been playing in the dispute of the state of Jammu and Kashmir, the territory has still been occupied and there is abuse going on by the Indian armed forces. He believed that immediate action should be taken place and a peaceful solution should be reached. He urged the Government of India to resolve the issue by negotiation rather than by invasion. Although they were high risks involved between Malaysia and India since India is the largest buyer of Malaysia's palm oil but the government of Malaysia refused to take its statement back because it believed that India had committed wrong (Mishra, *The Abrogation of article 370 International relations*, 2020).

Russia had always supported the stance of Indian government therefore, they believed that this action was also taken inside the domain of Indian constitution so it was completely legal. The government of Russia stated that since it is an internal matter of India because it is according to the constitution of the country, the two nations should not aggravate the issue as it will further complicate it. Israel is also a pro India country, it also stated that India is solving the matter in a democratic way and it will continue to do so.

The action of the greatest Western Power, United States was of significant importance. As soon as India passed the resolution that revoked article 370, there was no response from the United States. After a week, it stated that it was closely observing all the events that were taking place in that state of Jammu and Kashmir and hoped that there was peace and stability in the region. Although, the United States also kept the same stance that the actions that were taken place by the Government of India or with respect to its internal matter but it also stated that it is important that the individual rights are considered. The actions of the terrorists were criticized by the United States and supported the rights of the people of Kashmir. Up on the news, that the political leaders had been arrested, The United states stated that the country must keep a balance between human rights and security priorities (Behera, 2010). The policy of the United States has always been of non-interference therefore, the country has always maintained it distance from the internal matters of other countries.

Revocation of articles 370 and 35A has caused a lot of uproar among people. To spread Hindutva philosophy, which has its roots in India, the BJP and Narendra Modi go to great lengths, among other reasons. The Indian government claims that Kashmiris have a right to self-determination because elections were held there in 1951. The state of Jammu & Kashmir has had a number of insurgency movements since 1947. When the Indian military assassinated prominent Kashmiri militant Burhan Wani in 2016, it was one of the most significant incidents.

The Indian military's response has always been aggressive. At that point, the United Nations acted in response to widespread abuses of human rights occurring on the ground. Immediately, the Government of India rejected these assertions, deeming them to be false and dishonest. The investigation stated that Indian soldiers had killed thousands of innocent Kashmiris and used disproportionate force. It is regarded one of the most lethal weapons in the world, and Indian soldiers also utilized pellet guns and metal pellet shotguns.

The Indian government often cut off Internet and phone connectivity in Jammu and Kashmir, resulting in frequent communication breakdowns. Pakistan has reacted angrily to India's plan to divide Kashmir into Union Territories, vowing to take the matter to the United Nations and the International Court of Justice for resolution. There is no UN mandate for either country to take any unilateral action or to exacerbate the situation. Although it is stated in international documents that indigenous people have the same fundamental rights as all other people in the globe, this is not always the case (United Nations, United Nations Declaration on the Rights of Indigenous Peoples: resolution adopted by the General Assembly, 2007).

The people of Kashmir have no say in the political structure of their country or the ability to make decisions about its social or cultural advancement. A decision on West Papua's status as an independent state or province of Indonesia had been pending since the Netherlands granted independence to Indonesia in 1949. Indigenous people's autonomy appears to be a topic of concern to the national government and not a matter of international negotiation. A increased likelihood of a breakaway state for Kashmir if the people are given the right to self-determination is the result of this change. Secessionist claims made by indigenous people pose a serious threat to the economic well-being of the state.

Kashmir is a priceless resource for both India and Pakistan, and neither would be willing to risk losing it. Because the United Nations has provided so little assistance, it can only be concluded that the people's ability to end their misery will be greatly diminished until India's government undergoes a significant shift. In response, the Indian High Commissioner stationed in Pakistan was immediately returned to India, while the Pakistani High Commissioner's departure was put on hold. The Indian government had imposed a lockdown on the territory of Jammu and Kashmir, preventing all access to and from the area, as well as communications. The Pakistani government contacted its ally, China, in order to expedite the response of the United Nations. Pakistan and China tried to draw attention to the issue but were unsuccessful, and India continued to torture Kashmir's inhabitants. As long as India has claimed Kashmir as its own, the region has been considered a disputed one by the Chinese. This assertion supports Pakistan's position since it proves that India has occupied Jammu and Kashmir by force. Afghanistan had already voiced their displeasure with Pakistan over this decision, therefore they backed India's position and regarded it unreasonable. In response to this action by the Indian government, one of the other countries declared that they wanted to resolve this matter through negotiation.

As Malaysia saw it, India had done something wrong and refused to retract its comments (Mishra, *The Abrogation of article 370 International relations*, 2020). Since the issue is a domestic one for India, Russia urged the two countries to avoid escalating the situation. Israel has also emphasized that it supports India's democratic approach to resolving the conflict and expects it to do similarly in the future. The Labour Party of the United Kingdom supported international engagement in the Jammu and Kashmir dispute in September 2019. Reactions to the announcement of Article 370's revocation varied greatly among countries.

There were many news companies, such as Al Jazeera, that openly expressed their anti-Indian sentiments and took a stand. Media around the world slammed India's government for compromising on the state's democratic structure and for the plight of the victims. In the Pulwama attack, a young Kashmiri suicide bomber detonated his explosives in a vehicle transporting many Indian soldiers in February 2019. This action resulted in the deaths of approximately 40 Indian soldiers (Kirgis, 1994). That was followed by India's retaliatory attacks, which had already put Kashmir in the spotlight of the international community.

As far as the role of the United Kingdom was concerned, the country was quite divided. Some supported the move of the Indian government while the others criticized it greatly. It's in September 2019, the Labour Party of the United Kingdom was in favor of the international intervention into the dispute of Jammu and Kashmir it's supported the involvement of the United Nations and also call for a referendum led by the United Nations. This was primarily because the party believed that a humanitarian crisis was going on in the territory of Jammu and Kashmir and there was a need to solve the issue immediately (Bhat, The Kashmir conflict and human rights, 2019). When the announcement was made for the revocation of the article 370, different countries responded differently to this news. Government of India constantly mobilized its efforts in order to ensure and remind the countries that this was its internal matter and was allowed by its constitution (Chandhoke, When is secession justified? The context of Kashmir, 2010).

In order to view the impact that the Government of India has suffered since its statement about the revocation of the article 370, the overall reputation of the country has suffered as the Government of India was greatly criticized at the international media for compromising on the democratic framework of the state and for the sufferings of the victims of the state of Jammu and Kashmir. Publications such as BBC blame the Government of India for the human rights violations that were being carried out in the state of Jammu and Kashmir. These publications such as Daily Mail refer to the territory of Jammu and Kashmir as a disputed region. They gathered support for the victims of Kashmir and the Government of India was under fire. Many news organizations such as Al Jazeera openly took their stance against India and gave their anti-Indian remarks (Mishra, The Abrogation of article 370 International relations, 2020).

Other than this, the reputation and narrative of India also greatly changed after August 2019 this is because previously India had always portrayed Pakistan as an aggressor and a party that is deliberately trying to acquire the territory of Jammu and Kashmir. However, with the changes that the Government of India had brought in the constitution presented the idea that the fault was in India's management. Some of the major powers such as the United States were now favoring Pakistan on the dispute of the state of Jammu and Kashmir, the Government of India was under attack. The Pulwama attack was held in February 2019 which was his suicide attack in which a young Kashmiri blew up of a vehicle that was carrying a number of Indian soldiers. Approximately 40 Indian soldiers were killed in that attack (Kirgis, 1994). After that India had conducted some

of the retaliatory attacks due to which Kashmir was already under the eyes of the international community. People of all the states were following the developments that were being held in the state of Jammu and Kashmir. It was because of these attacks that had occurred in the past that the world feared and escalated war between the two countries. This was the time when Indian diplomacy was required at its highest but this step by the Indian government ruined its reputation in the international community. Furthermore, this incident was exploited by many other countries in order to gather their interests. One example of such a country is the United States which tried to favor Pakistan by its statements.

Another major question was considered that all the countries had supported India and it stands on the state of Jammu and Kashmir by stating that it was an internal matter of the country and it had the authority to do as it wished to do so but the problematic part was that the Government of India was inviting ambassadors from European countries to Kashmir. If Kashmir was an internal matter of the Government of India, then why did the need arise to invite third party into the disputed region for their approval.

### Conclusion

The conflict of the state of Jammu and Kashmir dates back to 1947 when the subcontinent was divided into India and Pakistan by the British. It was one of the largest migrations that had taken place in the world when individuals migrated from India to Pakistan and vice versa. Pakistan had primarily become a Muslim majority country therefore, all the individuals who wanted to align with a Muslim country migrated to Pakistan. British who were the leaders of the subcontinent at that time took all the decisions regarding how the boundaries were to be divided. These decisions also included the decisions of the princely states at the time of partition, the princely states had an autonomous status, and it was decided that the princely states were given the freedom to decide that whether they would like to align themselves with India or with Pakistan there were 570

princely states at the time of independence. One of the biggest princely states was the state of Jammu and Kashmir that was ruled by the monarch Maharaja Hari Singh Dogra. The state was a Muslim majority state, but the Maharaja was a Hindu. The Maharaja of the state of Jammu and Kashmir was determined to keep the state independent and not align with either of the two states. He tried its best to delay the process and, in the meanwhile, prepare itself to lead an independent state. However, the situation changed and there was a priest in the state of Jammu and Kashmir. It was a Muslim majority area and the population of Jammu and Kashmir wished to align themselves with Pakistan which was also Muslim country but since the Maharaja was a Hindu, he was not in favor of it. This led to unrest and rebellion in the region. The Maharaja had to flee for his life and ask India for help. India only agreed to help if the Maharaja signed the instrument of accession to India. Once the instrument of accession to India was signed, the Indian troops were stationed in the state of Jammu and Kashmir. Since then, the state of Jammu and Kashmir has become a disputed region because both India and Pakistan laid claim to the territory of Jammu and Kashmir. For more than 70 years, the territory is disputed, and the people of Kashmir are suffering because they are not entitled to the rights that they deserve and unable to achieve independence which is one of their basic rights.

One of the basic principles that is mentioned in the international law and order is the principle of self-determination which allows individuals to make the political decisions upon their will and to pave the way for their social and cultural development. in the documents of the United Nations, only the people who would have part of colonies and were under colonial rule we're entitled to this right but with the passage of time, The United Nations charter and other international agreements recognized the principle of self-determination as one of the important principles of international law and stated that every individual is entitled to this right. The principle of self-determination is concerned with individuals and not with states or governments therefore, it focuses upon the individuals only without complicating it with boundaries or territories of particular states. Considering the definitions and the international agreements and resolutions that have been presented, the people of the state of Jammu and Kashmir are entitled to the right to self-determination. It is the duty of the international community to ensure that people around the world who are entitled to this right receive it and in case, there is a violation of any of the rights, immediate and appropriate action is taken.

The movement of self-determination has been going on in the state of Jammu and Kashmir from a long time as the organizations and groups that operate in the state of Jammu and Kashmir have been raising their voice and concerns that their rights are being suppressed and they are not being given their rights. One of the recent events that have taken place in the state of Jammu and Kashmir was the introduction of the new constitution order that was given by the Government of India on 5th August 2019. It was known as The Constitution (applicable to Jammu and Kashmir) Order 2019 which revoked the article 370 and 35A of the constitution of India. By cutting out this step, the Government of India withdrew the special status that was granted to the state of Jammu and Kashmir. Moreover, with the introduction of this constitutional order, the Government of India imposed a lockdown like situation in the state suppressing the rights of the people of Kashmir. Some of the rights that the people of Kashmir are being denied include the right to communication as the phone and Internet services have been suspended, the right of association as people are not allowed to gather for public meetings, and also the right to freedom of expression as the people of Kashmir are not allowed to voice their concerns. Furthermore, there are hundreds and thousands of cases of abuse and violence that is carried out by the Indian armed forces in the state of Jammu and Kashmir which has resulted in the deaths of thousands of innocent civilians in an attempt to suppress the rebellion and unrest.

It is important to understand that severe human rights violations are being carried out in the state of Jammu and Kashmir along with the denial of the right to self-determination. The claims that have been made by the Government of India regarding the conduction of elections are false as the elections that were conducted in 1950s were primarily rigged. Since then, the territory of Jammu and Kashmir is under the control of the Government of India indirectly and with the introduction of this new constitutional order, the state is divided into union territories, and it's brought under New Delhi directly. The democratic rights of the people of Kashmir have also been suppressed. The articles 370 and 35 A of the constitution of India that provided the state of Jammu and Kashmir a special position as one of the clauses of the article 35A was that people outside the state of Jammu and Kashmir could not buy land inside the state. The BJP party of India had always been critical of these constitutional laws and were repeatedly trying to revoke them. In the recent election campaign that they conducted, their manifesto also included that they would revoke article 370

and 35A from the constitution of India. This was done in 2019 by the BJP party under Narendra Modi.

The anti-Muslim views of the BJP party are also considerably important when the policies of the party are viewed in the state of Jammu and Kashmir. Just like it was mentioned that article 35A of the constitution did not allow individuals from outside the state to buy land or property inside the state of Jammu and Kashmir, the population of the state remained a Muslim majority and this was not tolerable by the BJP party. They believed it was discriminatory towards people who resided outside the state of Jammu and Kashmir especially the Hindus therefore, they must be given equal opportunity to purchase land inside the state of Jammu and Kashmir so that the Muslim majority area could be divided.

A great degree of literature has been collected upon the issue which discusses the different aspects of the dispute of the state of Jammu and Kashmir. The literature includes the different resolutions and agreements that have been passed till date and how the international community responded to the events and developments that took place in the Kashmir conflict. The clauses of the agreements are mentioned, described and interpreted in order to analyze them thoroughly and to draw their connection with the conflict of the state of Jammu and Kashmir. The principle of self-determination of the people of Kashmir is of primary importance as that is the major topic of research that how the people of Kashmir are denied this particular right. It is also ironic that despite the efforts that have taken by the international community and the United Nations, none of them are for the principle of self-determination the primary issue of the international community and also of the United Nations is the conflict between the two prominent actors that are India and Pakistan and to avoid a war between these two countries. There is little consideration about the people of Kashmir who are the major victims in the conflict. They have been suffering since 1947 because they were denied self-rule. Since then, they have been ruled by different rulers who try to tame the population of Jammu and Kashmir in their own way and the rights that the people of Kashmir are entitled to are not given to them especially the right to self-determination.



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