

Right of Self Determination and Kashmiris: A Conceptual Understanding and Perspective

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Abstract

The 73 years old conflict in Kashmir is defined in various ways by India, Pakistan and international authors yet none of the definition is accepted as concrete and final. Pakistan sees Kashmir in terms of an indigenous struggle of Kashmiris for their right of self-determination. It also expresses concern over constant human rights violation in Kashmir. India views Kashmir as an internal conflict and defines the freedom movement of Kashmiris as an insurgency. Kashmiris, the main conflict actor, define their struggle as a freedom movement to gain freedom from Indian government to enjoy socio-political rights and consolidate their distinct identity of 'Kashmiriyat'. For the past 10 years, the violence in Kashmir has taken its most brutal form where the victims are as young as a 3 month old infant and as old as 80 + years. This study attempts to define Kashmir conflict through its technical interpretation under legal framework whether it is a struggle for the right of self-determination, or an insurgency as described by Indian government, if not then would the massive scale of human killings be termed as a genocide.

Key Words: Freedom Movement, Genocide, India and Pakistan, Insurgency, International Law, Kashmir, Right of Self-Determination, UN Resolutions, UNGA

Introduction

Contemporary discourses on Peace Studies, Conflict Resolution and International Relations unfold concepts and definitions of terminologies and conflicts in various ways. Not every issue is a conflict, not every ethnic movement culminates into an insurgency, and not every religious nationalism turns into a violent war or vice versa. One man's offence is another man's defence. One man's freedom fighter is another man's terrorist. Perspectives and concepts evolve from and revolve around the question of which side of the border or table one belongs to. From Syria to Yemen to Iraq, Afghanistan, Palestine-Israel, North Korea, Sri Lanka and so many other conflict zones, the definition of conflict is framed in different ways. The conflict in Kashmir is defined in various ways by contemporary authors. Some consider it as a territorial conflict between India and Pakistan; some refer to it as an ideological conflict; many define it as an insurgency or separatist movement and most of the scholars term it as a serious issue of human rights violation. Kashmir holds all these dimensions yet there are few perspectives that give Kashmir a conceptual leverage to be called a freedom movement rather than insurgency and also make relevance with the notion and practice of genocide taking place against Kashmiris.

This study intends to conceptualize and generate discussion on the following concerns:

- a. How and what makes or does not make Kashmir a freedom movement and/or insurgency?

- b. How right of self-determination is justified for Kashmiris?
- c. What are the criteria of violence in Kashmir to be called as genocide?

Kashmir Conflict

As an academic inquiry, the conflict in IJK is defined in several ways by social and political scientists, anthropologists, historians etc. Academic literature dwells upon a variety of perspectives on Kashmir. While it is still called as a historical territorial conflict in South Asia, it's a religious minority conflict within India too. It has a unique nature of both inter and intra-state dimensions with one of its former parts called as Azad Kashmir lying as a portion inside the borders of Pakistan and Aksai Chin as part of Xingjiang as claimed by China. Kamal Cheno defines it as a contention of India- Pakistan nationalisms (Cheno, 2006). He opines that Pakistan was ideologically born with the concept of Two Nation Theory which supported the idea of religious nationalism that Muslims in British India needed to have a separate Muslim country to enjoy their religious freedom. Based on this Theory, Kashmir, a predominantly Muslim state, is a partition legacy and should have acceded to Pakistan in 1947. Cheno also views India's nationalism is based on secular democracy and since Kashmir's Maharaja opted to join India and signed the Treaty of Accession in favour of India in 1947, there is no way Indian government would forego it. He also says that deciding Kashmir's fate in terms of independence or ceding is a direct challenge to Indian secular democracy which claims its foundations based on rights to every citizen and community regardless of their religious or ethnic affinity as both Hindus and Muslims have been living in India for past 11 centuries.

Defining and tracing its historical roots from 1846, Kashmiri struggle for freedom is more than the issue of hostilities between India and Pakistan. Mian Saifur Rehman contends that British East India Company signed the Treaty of Amritsar on 16 March 1846 and established the Hindu Dogra rule over Muslim majority in Kashmir (Rehman 2016). Treaty of Amritsar was the formalization of Treaty of Lahore as the result of first Anglo-Sikh war which was signed on 9 March 1846. The Treaty handed over the power to Gulaab Singh with mountainous region "all the hilly or mountainous country with its dependencies situated to the eastward of the River Indus and the westward of the River Ravi including Chamba and excluding Lahul, being part of the territories ceded to the British Government by the Lahore State according to the provisions of Article IV of the Treaty of Lahore, 1846." (Rehman 2016). Some of the Articles in the Treaty ensured powers to the Britain. Article 5 to 10 ensured British supremacy in many ways such as British government support to the Maharaja in case there is an attack from external enemies; Maharaja, his heirs and military forces would join the British troops whenever deployed in hilly or adjoining areas under his possessions etc (Rehman 2016).

Meredith Weiss refers Kashmir as a problem of religious nationalism of Kashmiri Muslims and ethnic identity of Kashmiris i.e. Kashmiriyat. He sees it as an issue of sovereignty in India's secular government which does not allow Kashmiris to struggle for their right of self-determination. (Weiss 2002). It is not only related to Kashmir as a Muslim majority princely state but also an issue of the identity crisis of

Kashmiris because they belong more to Kashmiriyat rather than assimilating with the mainland of India. Most of the authors define Kashmir as a conflict over human rights violation which includes massive physical and structural violence (Masood, et.al, 2020)

On 5th August 2019, the annexation of the Kashmir valley into Indian Union Territories changed the dynamics and definition of Kashmir conflict all at once. The situation in Indian Occupied Kashmir worsened due to continuous violence followed by intense health crisis amidst Covid-19 first wave in the valley Kashmir was placed under a rather inhumane security lock down after August 5th annexation, where not only internet access was suspended but also access to media and information was blocked. Fundamental rights of freedom to movement and religion were restricted and prolonged curfew was imposed. The Kashmiri Muslims were not allowed to go to mosques for the prayers on the eve of Eid-ul-Azha on 9th August 2019. Many prominent Kashmiri political leaders were house arrested such as Mehbooba Mufti, Umar Farooq, Syed Ali Gilani, Omar Abdullah, Farooq Abdullah, for months before being released. Indian army contingents were increased in number to tighten the security of the valley, deployed and stationed across the whole Kashmir. Time Magazine referred to it as the 'world's longest lockdown' where the world's second largest democracy has imposed the lockdown for more than 500 days in a row. The military lockdown was reinforced with another lockdown to prevent spread of COVID 19 infection. During the 4 months of 2019, the internet breakdowns were 55 but later a very slow 2G access to internet was restored which caused more stress because updated medical researches about Covid-19 could not be accessed, remote working wasn't possible due to slow internet access (Perrigo 2020). Given the inaccessibility to speedy internet services, Kashmiri public and medical doctors faced health crisis because they remained unaware of newer research on changing patterns and impacts of Covid-19.

Indian government viewed, that integrating Kashmir into Indian Union territory through abrogation of Article 370 and 35 (A) is a method of conflict management. In a joint analysis, published by United States Institute of Peace, Dr. Tara Kartha (a former member of India's National Security Council) opined that integration of Kashmir into India has been a long held agenda of Modi administration for which it successfully received majority votes (351 to 72 votes). According to Kartha, this move aimed at stabilizing Jammu and Kashmir, and check terrorism and to reviveturism industry in the Valley such as tourism in Sonamarg and Gulmarg. India took this step to strengthen Jammu and Kashmir through local integrated governance and to develop the under developed region (Jilani, 2019).

While Kashmir conflict is usually defined in terms of territorial, religious and historical dimensions, some authors also explore the geopolitical significance of the Indian Occupied Kashmir. Not only that it is important because the River Indus naturally flows through Kashmir needed by both India and Pakistan for irrigation and agriculture. Pranav Asoori establishes a link between geography of Kashmir and One Belt One Road Initiative (OBOR) and China Pakistan Economic Corridor (CPEC). He goes on to say that Kashmir is ideally located which helps both Pakistan and India to connect with Central Asia. CPEC takes the routes via Pakistan's side of

Kashmir whereas for India, Indian Occupied Kashmir is the only gateway to connect with Central Asia (Asoori, 2020).

Hence, it is easily deduced that Kashmir conflict is complexed with historical, territorial, religious, ethnic, economic and political dimensions. It is both intra-state as well as inter-state conflict between India and Pakistan. The next section of the article evolves discussions on the conceptual understanding of key concepts such as right of self-determination, insurgency and genocide.

Conceptual Understanding on Right of Self Determination

The IOK has been suffering from intense human rights violations for past two centuries. It has indigenous freedom struggle, referred as separatist movement by Indian government. Continuous direct and structural violence through discriminatory policies, and government imposed economic and political subjugation and religious and cultural suppression in IOK makes it pertinent to study the conflict in the lieu of legal framework. It is in this backdrop that the study has focused on the conceptual aspects right of self-determination, insurgency and genocide under the framework of international law.

Right of Self-Determination

The phenomena of right of self-determination emerged as third generation human right in the milieu of decolonization and developed with the formation of the United Nations. In simple words, right of self-determination provides the right to communities in a democratic country to determine their development and participation in economic, political and social affairs. Joan Barker (Barker 2015) quotes Franke Wilmer who defines it in these words:

“Self-determination is a core concept of international customary and treaty law that affirms Indigenous peoples’—“a collective non-state entity”— rights conventionally associated with statehood to the sovereignty of governance, territorial integrity, and cultural autonomy.”

The principle of self-determination characteristically involves contrasting debates on its features; providing a fundamental right to members of a community to exercise their right to have a separate statehood, to decide their political future and pursue their economic and social domains. Hence, former imperialists and colonialists may not agree to the weightage of the self-determination as a right since it challenges the jurisdiction and integration of a sovereign parent state. Rupert Emerson gives a detailed account on the difference of opinions on the legality of right of self-determination and how the principle was adopted by United Nations General Assembly in 1966 (Emerson Jul., 1971). He embedded his conceptualization of the notion in process of decolonization and the contemporary international law and UN Charter. Therefore developed ‘self-determination’ as a customary international law, Jus Cogens, derogation from which is not possible hence categorized as an inherent human right but debatably he contend that UNGA is a neutral forum with non-binding resolutions; consequently the legitimacy of self-determination as a right becomes questionable. Emerson quotes Rosalyn Higgins and Leo Gross who contradict each other on the legitimacy of the right of self determination (Higgins,

1963 and Gross, cited in (Emerson Jul., 1971). Higgins sees the principle of self-determination as an international legal right as provided by a General Assembly Resolution UNGA 28; A/RES/2160 (XXI) (30 November 1966) titled, Strict Observance of the Prohibition of the Threat or Use of Force in International Relations, and of the Right Peoples to Self-Determination [1966] but Gross refuses to take it as a legal right because he questions the non-binding nature of the Resolutions adopted by UNGA. The principle of right of self-determination is governed by international law and regional frameworks in different treaties and conventions. International Covenant on Economic, Social and Cultural Rights (ICESCR) -1966 (International Covenant on Economic, Social and Cultural Rights, United Nations Human Rights Office of the Commissioner n.d.) provides for the right of self-determination of self-governance of economic resources as a fundamental right in Article 1 (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.” (International Covenant on Economic, Social and Cultural Rights, United Nations Human Rights Office of the Commissioner n.d.)

While Article 2(2) lays down the principle of non-discrimination:

Articles 1 reads with 2 give rights to every individual to opt for right of self-determination if one's fundamental human rights are denied or subjugated, suppressed through structural and physical violence, discrimination on the basis of religion, caste, language, race, political beliefs etc. ICESCR, being a primary document which constitutes International Bill of Rights, therefore non-derogable, recognizes the right to determine political future as a basic human right but self-determination clashes with state sovereignty, another fundamental notion in international law presents a controversy in the discourses on human rights (International Covenant on Economic, Social and Cultural Rights, United Nations Human Rights Office of the Commissioner n.d.).

Daniele Archibugi (Archibugi 2003) terms it as a subjective connotation which has to be defined in three categories. The first is in the context of colonialism which Archibugi connects with the ICESCR approach towards peoples and communities living under colonial rule. Second is the phenomenon of separatist tendencies in minority groups within well-established sovereign states which emerged in the end of Cold War era and throughout post-cold war era. Third is the existence of ethnic and cultural groups which aim to obtain certain collective rights without seceding from the states territorially. While the second may be interpreted in the context of dictatorship and democracy both, the third strictly relates to democratic form of government. Archibugi, therefore, terms the principle of self-determination as subjective. Despite the different perspectives on the right of self-determination, it does offer legal remedy to groups as collective entities struggling with oppressive state policies.

Insurgency

Insurgency is a violent armed movement which challenges writ of government for obtaining particular political and territorial objectives. It is considered

as an asymmetric warfare where the combatants are either not willing or are unable to fight against a rather comparable force and possess completely opposing political and military objectives to their rivals (Bordas 2014). Insurgency is synonymously used as terrorism, because mostly but not always, insurgents incite violence through acts of terrorism such as suicide bombing, guerilla warfare tactics (hit and run), ambushes etc to obtain their objectives. Maria Bordas defines Insurgency in four ways (Bordas 2014):

- a. Organized movement which leads to prolonged violent conflict in a country.
- b. The movement or people involved in it have clear objectives to overthrow the government or challenge the writ of the state and its legitimate and well established institutions or to change the prevailing political and social system or to weaken the government through various violent tactics.
- c. Most of the means and ways of insurgent or separatist movements include terrorizing masses through sustained and sporadic violence, social disruptions as well as political actions, subversion, armed conflict.
- d. The primary objective of insurgency is winning independence or autonomous status from the state for a minority group; may be an ethnic group to give them a more democratic set up with equal political and economic rights.

Rashi Gupta defines insurgency as a rebellion or mutiny against a state which is instigated by a group of people within a country (Gupta 2014). Often people struggle to define insurgency and relate it to belligerence or terrorism which may be part of the tactics or stages of insurgency yet there is a difference among all these three terms. Insurgency survives on a goal to overthrow the government or to weaken the state so much that it collapses itself. Belligerence is part of the civil war in which two parties are trying to contest for power and are in actual state of war rather only in civil aspects of a conflict. Terrorism is an act of inflicting terror among masses through violence, suicide bombing, targeting public offices, civilians and law enforcement agencies etc. Gupta, disputably, sees insurgency as an internal issue of a country which is not discussed in the ambit of international law.

Genocide

Genocide colloquially refers to a massive killing of the people on the basis of culture, race or ethnicity. Raphael Lemkin, a Polish Lawyer was the first to coin the term of genocide in 1944, a combination of Greek prefix 'geno' (race or tribe) and Latin suffix 'cide' (killing) (Definitions n.d.). Human rights and humanitarian law has qualified genocide as a heinous and serious crime entailing UNGA recognition in 1946. With subsequent codification as a legal instrument, Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) came in 1948. The legal rulings of International Court of Justice (ICJ), the specialized military tribunals for former Yugoslavia and Rwanda and International Criminal Court (ICC) reiterated that prevention of genocide was a part of general customary international law therefore a non derogable obligation under Jus Cogens (Definitions n.d.). Article II of the Genocide Convention lays the conditions that Genocide is committed deliberately with an 'intent' to bring about the destruction of a (national, religious, ethnic or a racial) group of people completely or partially, by (Definitions n.d.):

- a. Killing members of the group;
- b. Causing serious bodily or mental harm to members of the group;
- c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d. Imposing measures intended to prevent births within the group;
- e. Forcibly transferring children of the group to another group.

Genocide is the systematic and organised policy to target a particular group of people within a state through state institutions with physical and psychological methods of harm which can climax into mass killing. It involves extreme measures such as torturer, humiliation, degradation and castration/forced infertility to prevent births inflicting inhumane conditions. It involves displacing the children of that community to divest them of their identity and next generation as another extreme measure.

Kashmir and Right of Self Determination

Kashmir conflict has largely been defined through three popular perspectives; all given by the respective conflict actors such as India, Pakistan and Kashmiris. Kashmiris, who are the main victim and sufferer of violence, pursue it as an indigenous freedom struggle against Indian subjugation and suppression. Indian government sees it as an internal matter, more of a separatist tendency with terrorist activities, supported by external elements. Pakistan terms it as a more serious conflict of human rights violation where not only the fundamental human right of self-determination is suppressed but other basic rights are denied by the Indian government. Against the backdrop of the political environment at the time of partition, this paper dares to contend that Kashmir as an autonomous princely state could accede to Pakistan for two apparent reasons; one the principle of Two Nation Theory shifted the balance in favor of Pakistan for the presence of Kashmiri Muslims majority; two the Redcliff Award, 1947 delimited the dominion territories on the base of geographical contiguity with Pakistan (M. S. Effendi 2017).

The IHK question can be weighed on the scale of the principle of the right of self-determination because the principle of self-determination seeks the contextualization of the political history and status of Kashmir governed under the Treaty of Amritsar 1846. Many jurists such as Daniele Archibugi (Archibugi 2003) believe that ICESCR (International Covenant on Economic, Social and Cultural Rights, United Nations Human Rights Office of the Commissioner n.d.) recognizes indigenous peoples right of self-determination under colonial rule who were discriminated and suppressed by the rulers. The struggle of indigenous Kashmiris ruled by Muslim rulers during Mughal era has two phases; (1846-1947) and (1947-present) where the first phase as a result of Anglo-Sikh war won by Britishers began in 1846, led to the East India Company selling the princely state of Kashmir along with its population to Maharaja Gulaab Singh in an unjust bid for 7.5 million rupees. British brokered deal lent influence and supremacy to them over the sold territory which included vacation access to the hills and the privilege to use Maharaja troops,

if required at any point of time(Rehman 2016). An important concern for human rights should be that selling out members of community is itself a human rights violation under Articles 2, 3 and 4 of ICESCR and Universal Declaration of Human Rights(Shiman n.d.).A significant import of this discussion is that if members of a group of people are clearly aggrieved, discriminated under an oppressive regime or a colonial rule is established, the group's struggle for its right of self-determination is legitimate.

The second phase began in 1947 when Britain designed the partition plan and deliberately left the fate of princely states to their own choices rather clearly deciding the new dominion state to be joined by each princely state. This work contends that ICESCR is applicable to indigenous peoples (under colonial rule) to determine their political and economic future, the indigenous Kashmiris' right was violated under the provision of ICESCR twice for the same reason that in 1846, they were sold out by the colonial British East India Company along with their state and in 1947 when colonial British were packing up to announce the independence of Pakistan and India, they did not decide for the princely state of Kashmir.

The second reason that legitimizes Kashmiri's freedom struggle or right of self-determination is the false promise by India in response to UN intervention and Resolutions at the time of first war between India and Pakistan that it will hold plebiscite in the disputed territory as soon as Pakistani forces will withdraw. Referendum or plebiscite was a promise by a democratic and newly established state to a disputed region and when that promise was not fulfilled by Indian government, the suppressed Kashmiri Muslims launched their struggle for freedom from India.

The concept of self-determination is enshrined under article 2 of UN Charter. The principle basically permits the people to choose freely their political status and to determine their own social, economic and cultural status. International law is very clear on this principle; the Article 1 of the UN charter pertains to the right of self-determination. The inclusion of this principle in the UN charter makes the recognition of this right universal in order to maintain peaceful and friendly relations among the member states. Right of Self-Determination has particular importance in ICCPR (International Covenant on Civil and Political Rights). According to article 1 "All peoples have the right of self-determination".

The inclusion of this principle in both above said covenants strengthen the legality of right of self-determination before the international community. The most important feature is that the covenants define the right of self-determination widely to all the peoples not only the colonized or oppressed people. The further interpretation of the common Article 1 of the covenants, it gives the right of free determination of political status to all the people along with free enjoyment and exploitation of their natural economic resources and wealth.

The paragraph 3 of the said article is very clear that the concept grew in the colonial context. Despite these covenants being a part of international bill of human rights, India has placed reservations on article 1 of the covenants by taking refuge behind this context of colonialism, however this article is not confined to the colonial situations rather holds universal applicability. India legitimately feared that this

article may become applicable in the case of Kashmir but this Indian reservation on article 1 has been strongly criticized by some countries on the ground that this defeats the *travauxprepartoires* of the covenants.

Kashmir a Freedom Movement, not an Insurgency

There is gloom for Kashmiri freedom struggle so far because India labels it as 'terrorism' and 'anti nationalism'. An important point is that India took the matter before UN Security Council (UNSC) under chapter VI of the UN charter, which is about Pacific Settlement of Disputes on 1st January 1948 (Kashmir - The History n.d.). This clearly suggests that India validly considered Pakistan a party to the territorial dispute of Kashmir, and not a state which had forcefully intervened in 'now so called internal matter of India'. If India had taken the matter under chapter VII of the UN Charter, it would have entailed the legal consequences for UNSC to declare Pakistan as an aggressor. Therefore, the Indian interpretation of the legal binding of Chapter VII and non-binding status of the chapters VI of the UN charter is erroneous and misleading which serves its vested purposes.

India waged legal warfare in Kashmir by abrogation of article 370 which established the link between India and autonomous state of Kashmir and 35 A which protected the political institutions of Kashmir. It further passed Reorganization Bill which bifurcated the historically unified territory into two union constituencies in Kashmir, now this shows a concerted plan to disturb the demography of indigenous Kashmiris by allowing Hindus to settle in the valley, buy land and get positions in government jobs. So what is new in this entire legal scheme? What has caused Pakistan or Kashmiris even the pro-Indian to be so restless? Kashmir was already occupied by Indian armed forces, there have been human rights violations for the last 73 years, but now the matter is even graver. Modi regime is blocking all means of a valid right of self-determination of Kashmiris, the consent of Kashmiris is missing, the dispute is no longer territorial, rather there is an urgency of humanitarian crisis to it. So much oppression and violation of human rights have been done by the Indian government and in its occupied Kashmir that the Kashmiri freedom struggle looks like a reaction and response against the violation of their basic rights. In March 2020, India introduced a new domicile law in Kashmir that any non-Kashmiri should be given Kashmir's domicile if he/she has lived in the state for minimum 15 years or has attended high school there. This will not only change the demography of Kashmir but also impact the political participation of indigenous Kashmiris in their own land (Effendi, 2020)

Genocide in Kashmir

This section tries to evolve the arguments upon the factual evidence of the presence of one million personnel of Indian armed and paramilitary forces that has made Kashmir as the most heavily militarized zone in the world. It has been suffering under the "Grand Curfew" with imminent threat of leading to a massive genocide such as the one the world has seen in Sarajevo, Bosnia. Systematic persecution is going on under the stricter lockdown since 5th August 2019. Brutal physical violence ranging from extrajudicial killings, illegal arrests of young men during the search operations, rapes, use of pellet guns and torture, humanitarian crisis of missing persons is a regular situation in IHK. Not only direct physical violence but various

examples of structural violence are also cited such as rigged elections, arrest of political leadership, clamp down on Kashmiri nationalists as 'terrorists' and inhuman treatment of prisoners. Indian armed forces during last three decades have carried out multiple massacres of civilians, and crackdown on indigenous freedom fighters struggling for the rights of self-determination of Kashmiri people. The blanket lockdown of the valley after 5th August 2019 of more than 8 million Kashmiris has resulted in extreme violation of human rights, death of sick people, and lack of access to life sustaining facilities. Indian Government is deliberately trying to create refugee crisis, so that the Kashmiri Muslims would attempt mass exodus into Pakistan Administered Kashmir, a strategy to rid India of Muslims (Fatima 2020).

Indian Government obscures its genocidal designs by persistently denying the massacres and the stricter lockdowns. It continuously terms 5th August's decision in the spirit of 'integrating Kashmir' rather seeing it as an annexation. It insists that it will bring prosperity and progress in the state and it will end terrorism and anti-nationalist elements. While India is in the state of denial of its own atrocities in IHK and blaming the victims by labelling them as anti-nationalists or insurgents, it is actually providing a substantial indicator of committing systematic genocide. A draconian law, Armed Forces (Special Powers) Act, 1990 which give special powers to armed forces 'to enforce law and order' in 'disturbed areas' protects the armed forces against any prosecution for charges of rape, murder and arrests. Pertinently the political discourse often tags the indigenous struggle for the rights of self-determination of Kashmiri people as 'terrorism', insurgents or separatists. The violence in IHK embodies Article II of Genocide Convention 1948. The first three clauses are very much applicable to the current state of IHK.

With the growing vulnerability due to the peak of Covid-19 pandemic and Indian government being non-responsive, the IHK is referred as the most understaffed and ill-prepared region to deal with the menace of the pandemic. According to an international newspaper, The Telegraph (Farmer 2020), the state is considered as a hotspot of the pandemic in India. Not only that there were insufficient medical staff and equipment and testing kits for the population in Kashmir, but due to strict military lock down; more medical and para medical staff as well as 5000 testing kits could not be sent to the Jammu and Kashmir. Kashmir has been a violent conflict zone for more than seven decades and therefore, it has poor medical infrastructure and health facilities. Only 3 staff members treat 96 Covid-19 patients with only 215 ventilators for urgent medical relief in a state of 13 million populace. Most of them have no luxury of protective gears or masks to treat their patients (D. M. Effendi 2020). It seems that Covid-19 is a blessing in disguise for Indian government to eliminate poor Kashmiri population and if India is not providing enough and much needed health facilities to Kashmiris, this situation may be referred as genocide under the Genocide Convention 1948.

Conclusion

After having the substantial discussions on the key concepts of right of self-determination, insurgency and genocide; this paper concludes that the indigenous Kashmiris freedom movement in IHK is legitimate based on the principle of the right of self-determination. The right of self-determination for Kashmiri population has

been dealt under UNSC Resolution No 39, 47, 51 and 122 which time and again demanded demilitarization, conduct of free and fair plebiscite and reaffirmation that political institutions were not to be tempered by Indian Government. One of the most well-established principles of international humanitarian law under Article 47 of IV Geneva Convention is that occupier do not gain a title to the occupied territory rather places a series of positive obligations on Occupying Power to administer the territory without changing its demographic status and respecting its political and other institution. Article 49 of IV Geneva Convention prohibits the Occupier to transfer civilians from the Occupying Power into the Occupied Territory, to prevent the Occupier from demographically transforming the territory in order to advance a claim of sovereignty and undermining the Occupied People's right to self-determination.

It is urgently required that the number of eligible indigenous Kashmiri voters including Kashmiri diaspora should be registered so that the right of self-determination through vote remains intact before the government of India disturbs the demographic weight of indigenous population. There is a strong need for establishment of a Referendum or Plebiscite commission by UN to oversee the preservation of indigenous population. UN needs to intervene in Kashmir conflict without further delay, because India is going to consolidate its powers and position in Kashmir. India has vehemently propelled the narrative of terrorism in UN, FATF and other international forums and world capitals; therefore Pakistan is hard pressed to outmaneuver India by strategizing the response through continuous reach to world parliaments. This paper suggests that it would be beneficial if Pakistan seeks a legal opinion from International Court of Justice on the question of right of self-determination for Kashmiri. Though it would not bind India but it would clarify the legal position of Kashmiris as a wronged community and Pakistan before the entire world. Furthermore, it is very important to reiterate the difference between terrorism/insurgency and liberation movement in Kashmir for the correct understanding of the conflict independent of overbearing influence of India. International humanitarian law recognizes the liberation movements under Additional Protocol II to Geneva Conventions and Common Article 3 therefore international law is clearly applicable to Kashmir conflict lending credibility to the Kashmiri struggle for self-determination.

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