

Legitimacy of Kashmir's Liberation Struggle: Right to Self-Determination Under International Law

M. Idrees Abbasi*

Abstract

This article discusses Kashmiris' right to self-determination under International Human Rights Law. It highlights Kashmiris' entitlement to self-determination while they reside in the disputed Indian occupied State of Jammu and Kashmir (J&K). In addition, this article analyses the rule of National Liberation War under International Humanitarian Law and its distinction with frequently associated terms i.e., "aggression" and "terrorism." At the end, legitimacy of Kashmir's liberation struggle as a National Liberation War under International Humanitarian Law is explained followed by the conclusion of the article.

Keywords: Self-Determination (SD), Right to Self-Determination (RSD), International Humanitarian Law (IHL), National Liberation Movement (NLM), Kashmir Liberation Struggle (KLS).

Introduction

For six decades, the people of the disputed territory of Jammu and Kashmir (J&K) under Indian occupation have looked up to the international community for a peaceful resolution through their external Right to Self-Determination (RSD). They even participated in the electoral process conducted under the Indian Constitution, to exercise their democratic right of choosing their own government i.e., Internal RSD election but that too was denied.¹ However, the armed struggle of people of J&K is frequently dubbed by India as terrorism and Pakistan has continuously been accused of infiltrating the militants across ceasefire line.²

* The author is Secretary Presidential Affairs, Govt. of Azad Jammu and Kashmir.

¹ Tariq Nizami, *The Undying Spirit, Kashmir Amidst The Nuclear Blasts* (Kashmir Liberation Cell, 1998, Rawalpindi): 85-96.

² Renamed as Line of Control, vide Simla Agreement executed between Pakistan and India on July 2, 1972, in the aftermath of 1971 Indo-Pak War.

On the other hand, India gradually started integrating J&K into its mainland by changing its demography leading to shocking development of August 05, 2019 whereby New Delhi revoked the special status³ of J&K. Now J&K has been divided into two union territories with stronger control by the Central Government of India. With this act, India has become an occupying power and left no choice to the people of the state except to restart an armed struggle against India to finally exercise their RSD.⁴

India does not recognise Kashmir's Liberation Struggle (KLS) as legitimate under International Law (IL). The people of J&K through All Parties Hurriyat⁵ Alliance, claims it to be a legitimate National Liberation Movement (NLM) which is aimed at exercising their RSD. Now it is to be examined whether Kashmiris are entitled to RSD and to what extent KLS is legitimate under IL. This paper addresses these questions besides exploring the nature of the integration of J&K into Indian Union territories and the KLS under IL.

Right to Self-Determination: Concept and Origin

For a coherent group of people, having a certain level of national consciousness to create their own state and decide their own form of government is described as RSD.⁶ The origins of contemporary notions of RSD are found in the Declaration of Independence of United States of America⁷ which announced to derive the powers to govern from the people. The peoples right to retain, amend or substitute the form of their government was recognised under the Declaration. This principle was further advanced and elaborated by the leaders of French Revolution who

³ Before August 5, 2019, unlike other states of India, J&K was having special status under Indian Constitution and as such only those laws of Union Parliament were extendable to J&K which correspond to so-called Instrument of Accession or specifically agreed by the J&K Assembly and Government.

⁴ The Constitution (Application to Jammu and Kashmir) Order, 2019 and The Jammu and Kashmir Reorganization Act, 2019.

⁵ An Urdu language word that means "freedom."

⁶ Encyclopedia Britannica, <https://www.britannica.com/topic/self-determination>

⁷ Declaration of Independence, July 04, 1776, "National Archives and Records Administration," Government of United States of America, http://www.archives.gov/exhibits/charters/declaration_transcript.htm, Please also see Arnulf Becker Lorca, "A 'Pre-History' of Self-Determination," *European Journal of International Law*, vol. 25, issue no. 2 (May 2014): 497-523, <https://doi.org/10.1093/ejil/chu033>

demanded the annulment of all the previous rules of conquest and annexation of territories by force. The annexation of a territory was made conditional to consent of the people of the territory by holding a plebiscite.⁸

a) *Development of RSD as a Norm of International Customary Law*

Customary Law has been conclusively accepted as one of the basic sources of IL.⁹ Customary Law develops from practice of states vis-à-vis their inter-state relations. The practices which states impliedly consider as binding among themselves are termed as international customs. In the North Sea Continental Shelf Case,¹⁰ in relation to development of Customary Law, it has been held that an international custom assumes the status of International Customary Law when the act amounts to a settled practice and that practice is rendered obligatory by the existence of a rule of law requiring it. Moreover, in the Continental Shelf Case between Libyan Arab Jamahiriya and Malta,¹¹ it has been held as well that it is the actual practice which is required to be followed compulsorily and this expected behaviour is termed as *opinion juris*, *necessitates (opinion juris)*.

Originating as a principle of Customary Law, the concept of RSD developed over time and transformed into various phases. Ironically, this principle was adopted during the Bolshevik Revolution to serve the class conflict in the name of social justice.¹²

⁸ Edward James Kolla, "The French Revolution, the Union of Avignon, and the Challenges of National SD," *Law and History Review* 31(4) (2013): 727, <http://www18.georgetown.edu/data/people/ejk55/publication-73669.pdf>

⁹ Article 38, the Statute of International Court of Justice.

¹⁰ North Sea Continental Shelf case between Federal Republic of Germany and Denmark; Federal Republic of Germany and The Netherlands, "50 years (1946-1996): Book of the International Court of Justice," 4th ed., The Netherlands: 114.

¹¹ *Ibid.*, 121-24, please also see "*Public IL: An Introduction to Public IL for Students*," <https://ruwanthikagunaratne.wordpress.com/>

¹² Yves Beigbeder, "*International Monitoring of Plebiscites, Referenda and National Elections: SD and Transition to Democracy*," *International Studies in Human Rights*, v.32. (MartinusNijhoff Publishers, 1994), 34.

b) Development of RSD as a Right under International Human Rights Law

Another development of SD was the adoption of the two notable Human Rights (HRs) Instruments i.e., ICCPR 1966 (International Covenant on Civil and Political Rights, 1966) and the ICESCR 1966 (International Covenant on Economic, Social and Cultural Rights, 1966). The common sub-Article (3) of Article 1 of both covenants restated RSD and required the States Parties to take measures for promotion and protection of this right for administration of the Non Self-Governing and Trust Territories. The same Article also provides that all the people may freely dispose of their natural wealth and resources without any prejudice to any obligations arising out of international economic cooperation, on the basis of principle of mutual benefit and IL, and that people shall, in no manner, be deprived and dispossessed of their means of sustenance.¹³

In 1989, the experts of United Nations Educational, Scientific and Cultural Organisation (UNESCO) first interpreted the 'people'¹⁴ entitled for RSD as under:

“A group of individual human beings who enjoy some or all of the following common features: (a) a common historical tradition; (b) a racial or ethnic identity; (c) cultural homogeneity; (d) linguistic unity; (e) religious or ideological affinity; (f) territorial connection; (g) common economic life.”

The UNESCO's experts further supplemented that group F must have a certain number of people who may not be necessarily huge, however, it should not also be a mere individuals association within a state; it must have the resolve as whole to be recognised as a people or conviction of being people; and it should have means and institutions for expressing and voicing its shared characteristics and will for its distinct identity.”¹⁵

¹³ Arts 1 (2) of both International Covenant on Civil and Political Rights, 1966 and International Covenant for Economic, Social and Cultural Rights, 1966, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/>

¹⁴ UNESCO, “International Meeting of Experts on Further Study of the Concept of the Rights of Peoples,” November 27-30, 1989, Final Report and Recommendations, Paris.

¹⁵ Ibid.

c) *Internal and External Classification*

RSD is categorised into external and internal dimensions above. On the other hand, Internal RSD is the right to self-governance, i.e., right of the people to elect their political and economic regime.¹⁶ It is also said that the internal dimension of SD concerns with the people right within a state, to decide their own political status.¹⁷ In other words, the internal aspect of SD is democracy,¹⁸ i.e., right of the people to have a representative and democratic government. Moreover, internal SD is also alternatively termed as democratic SD¹⁹ and it is an ongoing right.²⁰

Kashmiris Entitlement to RSD

a) *Emergence of Conflict*

J&K was the largest state out of 560 states of the Subcontinent internally independent but under British paramountcy externally. It was one of 560 princely independent states of Subcontinent and, at the time of partition of India, the British Government terminated its suzerainty over the princely states, which were given an option either to join India or to join Pakistan. Hari Singh, the then Maharaja of J&K, intended to remain independent and signed a stand-still agreement with Pakistan.²¹ A similar offer was made to India, but it declined to do so. Meanwhile, an uprising against the Maharaja broke out in Poonch against heavy taxation. The area's population, full of retired soldiers of the World War II, started an armed struggle against the Maharaja's Army.²² On October 21, 1947, several thousand tribesmen from tribal areas adjoining Pak-Afghan border poured into J&K in order to

¹⁶ Antonio Cassese, *SD of peoples: a Legal Reappraisal*, No. 12 (Cambridge University Press, 1995), 111.

¹⁷ Robert McCorquodale, "SD: A Human Rights Approach," *International and Comparative Law*, 43, no. 4 (1994): 864.

¹⁸ Hurst Hannum, *Legal Aspect of Self Determination*, <http://pesd-princeton.edu/>, 30.

¹⁹ James Crawford, *The Creation of States in IL* (Oxford University Press, 2006), 114.

²⁰ Gerry J. Simpson, *The Diffusion of Sovereignty: Self-determination in the Post-colonial Age*, *Stan. J. Int'l L.* 32 (1996): 257. Please also see Solon Solomon, "The Quest for Self-Determination: Defining IL's Inherent Interstate Limits," *Santa Clara J. Int'l L.* 11 (2012): 397, <http://digitalcommons.law.scu.edu/seujil.vol.11.issue.no.2/4>

²¹ Lamb, *Supra* N.6, 128.

²² Saraf, *Supra* N. 4, vol. II: 848-854.

liberate the state from Dogra rule. The tribesmen liberated Muzaffarabad and Baramula and reached the capital, Srinagar. On the other hand, most of the Poonch and Mirpur were also liberated by the freedom fighters. On October 24, 1947, the Maharaja requested military help from India in order to stop the tribesmen from occupying the entire state, but India, in response, conditioned the help to signing of Instrument of Accession.²³ Accordingly, the Instrument of Accession was signed and the Indian troops were airlifted to Srinagar. The Indian troops, backed by the Indian Air Force, not only stopped the tribal advancement but also pushed them back to Chakothi.²⁴

On the other side, Pakistan also sent its troops to stop advancement of the Indian Army, resulting into a war between both countries. In Gilgit-Baltistan (GB), the northwestern side of the frontier province of the state, the people with help of Gilgit Scouts stood in revolt and freed a big part of Kashmir territory. Subsequently, India took the matter to the United Nations Security Council (UNSC), which passed a number of resolutions acknowledging the peoples' right to decide whether they wished to be a part of Pakistan or India by holding the plebiscite for this purpose. The UNSC established the UN Commission for India and Pakistan²⁵ for conflict resolution and the UN Military Observer Group was placed to oversee violations of ceasefire line demarcated to put an end to the war.

b) *J&K's Disputed Accession to India*

The execution of Instrument of Accession by India on October 26, 1947 is contested by independent researchers on chronological basis as the said date is appended to justify the landing of Indian troops on the very next day i.e., October 27, 1947.²⁶ It has been concluded by the

²³ "Instrument of Accession signed by Late Maharaja Hari Singh of the State in favour of India on October 26, 1947," <http://jklaw.nic.in/historical.htm>

²⁴ Saraf, *Supra* N. 4, vol: 889-891.

²⁵ UN Commission on India and Pakistan was established by UNSC Resolution, No. 39, dated January 20, 1948, comprising three member, one nominated by India, another by Pakistan and third was designated by both the nominated members. The commission was mandated to effectuate ceasefire and reduce the tension prevailing between both countries and to normalise the situation for holding of the plebiscite in the area. The commission was also tasked to proceed to the area and monitor activities along the ceasefire line under supervision of the UNSC.

²⁶ Lamb, *Supra* N.6: 136-141 and Victoria Schofield, *Kashmir in Conflict*, (IB Tauris Publishers, London-New York: 2000), 49-60,; and Joseph Korbel, *Danger in Kashmir*, (Oxford University Press Karachi Pakistan, 2003), 78-87.

researchers that Maharaja's signature was ante dated in order to justify the landing of the Indian troops on October 27, 1947.²⁷ The Government of Pakistan was neither consulted nor was any notice to this effect was given in spite of the fact that Maharaja was bound to do so under the Stand Still Agreement with Pakistan.²⁸ Muhammad Ali Jinnah, the first Governor General of Pakistan, termed the so-called Instrument of Accession as fraudulent and impossible to accept.²⁹

Even for the sake of argument if it is accepted that the Instrument of Accession is true and genuine, it was not absolute or unconditional, rather it was limited to the extent of few subjects' i.e., external affairs, defence and communications. Besides, it was provisional and subject to plebiscite to be held under the UN resolutions.³⁰ It is due to this reason that a unique temporary constitutional status to the State of J&K was given under the Article 370 of the Constitution of India, compared with other Indian states.³¹ It was followed by a so-called resolution of Constituent Assembly of Indian Held Kashmir ratifying the accession in sheer violations of different UN resolutions and RSD of the people of J&K. The Constituent Assembly's resolution, altering the political status of the State unilaterally was categorically denounced by the UNSC³² through its resolution passed in 1957, while reaffirming the disputed nature of the State and resolution of the dispute through holding of plebiscite under the UN auspices.

c) *Nature of Kashmir Conflict and RSD*

In order to resolve the conflict, it is necessary to explore the nature of the conflict. J&K holds great significance not just because it is a disputed territory between India and Pakistan, but it has a more meaningful and deeper dimension which is humanitarian. It is a land inhabited by 18 million

²⁷ Ibid.

²⁸ Cunningham Diary, 1947-48, MSS.Eur.D670, London, 1854, 19-20.

²⁹ *Pakistan Times*, October 31, 1947, 1.

³⁰ White Paper on J&K, Government of India, New Delhi, 1948, 17-19, and letter of Lord Mountbatten to Maharaja Hari Singh, dated October 27, while accepting the Instrument of Accession. Please see as well Anand A.S., *The Development of Constitution of J&K*, (1991, Verinag Publisher Mirpur Azad J&K), 93 and Ibid., 43-45.

³¹ Disputed Instrument of Accessions executed on October 26-27, 1947, between Hari Singh, Ruler of State and Indian Government.

³² UNSC Resolution No. 122 passed in its 765th meeting dated January 24, 1957, <http://www.un.org/en/sc/documents/resolutions/1957.shtml>, *Appendix XIII*.

people and the resolution of this dispute means the determination of political fate and destiny of these much population. Kashmir-specific resolutions of the UN acknowledge the disputed nature of the territory and right of people of this territory to SD. Besides, IL as well as extensive jurisprudence on exercising RSD by the people of disputed territories under alien occupation makes a strong case for the indigenous freedom movement.³³ Therefore, J&K conflict is a pending case of SD of the people under IL rather than just a territorial dispute between India and Pakistan to be resolved by them exclusively through bilateral negotiations.

For exercising the RSD, the people must qualify the basic requirements as such under IL. In 1989, experts of the United Nations Education Scientific and Cultural Organisation (UNESCO) took a lead and interpreted the term 'people.'³⁴ To be called as the 'people,' Kashmir fulfills three common features: historical tradition, territorial connection and economic life. Thus, they are not only entitled to this right, but they have unique privilege of having specific UN resolution acknowledging their RSD.

National Liberation War

National Liberation War or liberation struggle means an armed conflict in which the people fight against the colonial power, alien occupation and racist regimes to exercise their RSD. Several communities fought against the colonial oppression and their struggle even turned violent. The colonial and occupying power were and, still are, in most of the cases, unwilling to acknowledge RSD for the subjugated people. The Liberation War of people of United States against the imperialist British; East Timor against Indonesia; South Sudan against Sudan and Kosovo against Serbia are frequently quoted examples.

International community, being cognizant of the fact, passed number of resolutions through the UN General Assembly on this issue. These resolutions not only acknowledged the fundamental nature of RSD for all the people, particularly for those who were under colonial or any form of

³³ Section 4.2 and Infra 58 for elaboration of status of India viz a viz J&K after August 05, 2019.

³⁴ UNESCO, "International Meeting of Experts on Further Study of the Concept of the Rights of Peoples," Paris, November 27-30, 1989, Final Report and Recommendations, <http://unesdoc.unesco.org/images/0008/000851/085152Eo.pdf>

foreign domination, but also declared that the use of force against people striving for the SD is absolutely illegal. As such, people having the first 'level' of RSD³⁵ cannot be deprived forcefully at all. This has been laid down in several General Assembly resolutions unequivocally.³⁶

a) *Legitimacy of National Liberation War*

The term "war of national liberation" is used in conjunction with the wars against foreign occupying powers to establish separate sovereign states for the rebelling nationality. There is an emerging trend to formally accommodate the non-states actors under the IHL framework because it is meant to protect both combatants and civilians. However, NLMs have encountered difficulties while applying IHL to their conflicts in the past, due to the nature of the legal framework.³⁷

Though the UN Charter recognises RSD, it is indeterminate about the method nor does it mention any particular mode by which other states can help the people as how to protect this right. It does, however, mention the principle of non-interference in the internal affairs of other states. It means that, according to the UN Charter, support to liberation struggle will be legitimate if it does not amount to interference in the internal affairs of other states and it has been acknowledged by the Friendly Relations Declaration which is as under:

"In their action against, and resistance to, such forcible action in pursuit of the exercise of their Right to Self-Determination, such people are entitled to seek and to receive support in accordance with the purposes and principles of the Chapter."³⁸

IHL is applicable whenever there is a situation of an armed conflict, which involves militant activities perpetuated by NLMs. The acts which

³⁵ Right to Self-determination at External Level.

³⁶ UN General Assembly Resolutions No. A/RES/44/29; No. A/RES/46/51; No. 1514[XV] dated December 14, 1960; No. 3314, December 14, 1974; No. 37/43, December 3, 1982; No. 3034 (xxvii), 1972; and No. A/RES/39/159 dated December 17, 1984.

³⁷ Noelle Higgins, "The Regulation of Armed Non-State Actors: Promoting the Application of the Laws of War to Conflicts Involving National Liberation Movements," *HR Brief* 17, no. 1 (2009): 2.

³⁸ Article 1, Friendly Relations Declaration, *Supra* N34.

must be admitted as terrorism under anti-terrorism laws are only exempted to the extent of justification provided under IHL.³⁹ Similarly, the Declaration acknowledges the legitimacy of the liberation struggle and external support as well but, simultaneously, it mentions the principle of non-interference which clearly states that all the principles mentioned in the Declaration are correlative and should be construed jointly.⁴⁰ Hence, legitimacy of the liberation struggle and the external support need to be explained. In this context, it may be interpreted that Kashmiri's liberation struggle and their entitlement to external aspect of RSD⁴¹ cannot be treated as an internal affair of the Indian state. Hence, supporting these people would not amount to interference in the internal affairs and, as such, it would neither be violation of the Declaration and principles of IL nor the UN Charter.

The 1963 Tokyo Convention on Offences⁴² was a remarkable progress to address the problem of freedom fighters and state terrorism by using principles of IHL as tools of distinction. Different resolutions of the UNGA on terrorism explicitly affirmed the SD principle. In 1972, while addressing the terrorism and reaffirming the Right and NLMs, the UNGA⁴³ urged all the member states to address the underlying causes leading to the violence. In 1984, it followed by another UNGA resolution on inadmissibility of the policy of state terrorism and any actions by states aimed at undermining the socio-political system in other sovereign states.⁴⁴

b) *National Liberation War and Terrorism*

The UN Charter specifically contains some constraints about unilateral use of force i.e. embargo on the use of force; pacific settlement of differences; interference free internal affairs; and unilateral force to be used only in

³⁹ 28th International Conference of the Red Cross and Red Crescent December 2-6, 2003, International Humanitarian Law and the Challenges of Contemporary Armed Conflicts.

⁴⁰ Article 2 and 3 of the Friendly Relations Declaration, Supra N34.

⁴¹ Those who want and make liberation struggle and to secede from a political community or state.

⁴² UN Office on Drugs and Crime, Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963, *UN Treaty Series*, vol. 704, No. 10106

⁴³ UNGA Resolution No, 3034(xxvii), 1972.

⁴⁴ UNGA Resolution No, A/RES/39/159 dated December 17, 1984.

exceptional circumstances of self-defence and within the parameters of necessity and proportion. It means that the law of resort to war is not violated in such cases. The NLMs must, however, accept and comply with the law of conduct of war.⁴⁵ The most important constraints of IHL are: inviolability of civilian and non-combatant population and property; the principle of proportionate use of force; protection of the wounded, sick ameliorated and captured combatants; and restrictions on the means and methods of warfare. It is the violation of any of these norms that turns liberation struggle into terrorism.⁴⁶

UNGA has made clear that it does not legitimise the use of terrorism by those seeking SD as declared in the “Resolution against State Terrorism 1984”⁴⁷ and “Resolution to Prevent International Terrorism 1989.”⁴⁸ In 1991, the UNGA passed a resolution as “Measures to Eliminate International Terrorism”⁴⁹ wherein; the relationship between terrorism, colonialism and liberation movements was elaborated in its 14 preambular paragraph. The UNSC in 1999 and 2004 also expressed in its resolutions 1269⁵⁰ and 1566⁵¹ that all acts of terrorism, regardless of their motivation, are unjustifiable.

c) *National Liberation War and Aggression*

Under Article 39 of the Charter, it is the responsibility of the UNSC to see whether an act of aggression has been committed by a state or not, and then to take appropriate measures. In 1974, the General Assembly passed a landmark resolution defining “aggression”⁵² that necessitates the legality of such support that it should not violate the UN Charter and

⁴⁵ Additional Protocol I to Geneva Conventions of August 12, 1949 Relating to Protection of Victims of International Armed Conflicts of June 8, 1977.

⁴⁶ Ibid.

⁴⁷ UNGA Resolution No, A/RES/39/159, <https://www.un.org/documents/ga/res/39/a39r159.htm>

⁴⁸ UNGA Resolution No. A/RES/44/29

⁴⁹ UNGA Resolution No, A/RES/46/51, 67th plenary meeting 9 December 1991, <http://www.un.org/documents/ga/res/46/a46r051.htm>

⁵⁰ Council on Foreign Affairs Relations, “UNSC Resolution 1269, Combating Terrorism,” adopted on October 19, 1999

⁵¹ Council on Foreign Affairs Relations, “UNSC Resolution 1566, Terrorism,” adopted on October 8, 2004.

⁵² UN Resolution No. GA/Res/3314 (XXIX) (1974).

be harmonious to the Declaration of Principles of International Law 1970.

However, it is pertinent to mention here that one of the reasons for the eagerness of the General Assembly to adopt a consensus definition of aggression was to prohibit states from the threat or use of power against those striving for their RSD. That is why the General Assembly reaffirmed the responsibility of states as not to deprive the people from RSD, freedom and independence, or to disrupt territorial Integrity through use of force.⁵³

In short, IL, in this regard, can be summarised as use of power for the RSD will be legal if the following three conditions are fulfilled: that those who resort to the use of force in this behalf must be under colonial, racist, or any other form of alien domination; that resort to the use of force can only be made when they are being forcibly denied of their RSD; that the use of force must be within the constraints of IL, particularly the UN Charter and the Declaration on Principles of International Law.

Legitimacy of Kashmir's Liberation Struggle

a) Struggle for RSD

Kashmiris' struggle is based on RSD under UN Resolution on Kashmir and Universal Declaration of Human Rights. Despite moral crisis in integrity of global powers, the UN still considers Kashmir as 'disputed territory' and Kashmiris have not been provided with RSD which is their inalienable and absolute right.⁵⁴ Especially after August 5, 2019, the Indian occupation of disputed territory of J&K has altogether become illegal. Therefore, any struggle against the illegal occupation is lawful and legitimate. International community is bound to support them morally and legally. Moreover, despite India's futile attempts of portraying the issue as internal constitutional problem, unprecedented sacrifices and continuous struggle by Kashmiris compelled the media to bring the conflict to the attention of international community In the wake of recent developments, the UN, UK and European

⁵³ Ibid.

⁵⁴ Ibid.

Union (EU) have started discussion on human rights violation in IOK and Kashmir conflict.⁵⁵

Origin of the recent uprising can be traced back to 1987 when an alliance of different political/religious parties, the Muslim United Front, was formed in J&K, for participation in the assembly elections to challenge India. The elections were rigged by the state and Indian-supported National Congress candidates were declared winners, but during and after the election, the situation exposed India's disreputable plans in Kashmir. 1980s was an era of political disruptions, troubles and trials resulting in enhancement of Kashmiris self-confidence. While in 1990s, the movement attained the characteristic of all-pervading popular *Intifada*. Moreover, the Indian brutality and inflexibility brought and converted the struggle into an armed movement, having general support of Pakistan, and Organisation of Islamic Cooperation. Subsequently, the religious groups began to emerge and NLM was popularly named as a sacred war, *Jihad*.⁵⁶

b) Forceful Denial of Right to Self-Determination

It is well-established in IL that opposition to the government or state functionaries through political means or use of violence for acquiring full independence from the state or changing the governmental authorities or policies is not an "internal" issue. The argument for this is threefold: Firstly, there are several international resolutions of different bodies, particularly the UNGA, which make liberation struggle an international, rather than an internal, issue. Therefore, for instance, the 1960 Declaration on Granting of Independence to Colonial Territories categorically condemns all forms of alien domination⁵⁷ including colonisation and denial of RSD: "The subjection of people to alien subjugation, domination and exploitation constitutes a denial of fundamental Human Rights, and is contrary to the

⁵⁵ *Pakistan Today*, August 9, 2019, www.pakistantoday.com.pk/2019/08/09/ and *Pakistan Today*, July 4, 2018, <http://www.pakistantoday.com.pk/2018/07/04/>

⁵⁶ Arabic word means "Struggle" and used for Holy War under Islamic Law.

⁵⁷ Though strictly speaking India is not colonial power, but it is now altogether established that it is an alien power especially after abolition of special status under Article 370 of the Indian Constitution in pursuance of so-called Instrument of Accession. Therefore the accession of J&K into mainland India on August 05, 2019 has become illegal beyond any doubt and India is now an alien in J&K.

Charter of the UN and is an impediment to the promotion of world peace and co-operation.”⁵⁸

Secondly, there are some classes of people for whom this right is specifically recognised by the international community. These are the people either living under colonial or alien domination or for whom the UNSC has recognised this right of the people of Kashmir,⁵⁹ Palestine and East Timor. SD for this class of people cannot be called as an internal affair of a state. Thirdly, it is also an accepted norm that liberation struggle is a conflict of international nature and not an internal dispute.⁶⁰

Consistent and forceful denial of RSD of Kashmiris and silence of international community left no other option for them except to resort to an armed struggle. Since 1989, armed guerrilla activities were formally organised by different groups besides political struggle. The resistance was brutally countered by matchless military campaign by Indian forces up to the extent of permanent low-intensity war against civilian population.

c) Human Rights Violations and Crimes Against Humanity

Indian Occupied Kashmir is a highly militarised zone with around seven hundred thousand troops and ratio of military personal to civilian is 1:7 which is highest in the world.⁶¹ Thousands have lost their lives and number of others maimed forever, subjected to inhuman torture and gone missing. Different laws were passed by India giving complete impunity to its armed forces for their action against so-called terrorists which include The Jammu and Kashmir Public Safety Act 1978, The Terrorist and Disruptive Activities (Prevention) Act 1985, The Armed Forces (Jammu and Kashmir) Special Power Act 1990, and The Prevention of Terrorism Act 2002.⁶² A young popular guerrilla leader, Burhan Wani mobilised the Kashmiri youth through social media for raising arms against tyrant regime and for their

⁵⁸ Section 1, Declaration on Granting Independence to Colonial Peoples and Territories (GA/Res/1514 (XV) (1960).

⁵⁹ The Security Council Resolution No. 47 (1948) April 21, 1948, [S/726].

⁶⁰ Article 1(4), of the Additional Protocol I to the Geneva Conventions.

⁶¹ International Association of Peoples' Lawyers, <http://www.iapl.net>

⁶² Office of the UN High Commissioner for HR Report on the Situation of Human Rights (HR) in Kashmir: Developments in the Indian State of J&K from June 2016 to April 2018 and General HR Concerns in AJ&K and Gilgit-Baltistan, June 16, 2018, <https://www.ohchr.org/.../IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>

liberation. He was very successful in his pursuit and thousands joined him. He was chased and killed extra-judicially on July 8, 2016 in an encounter.⁶³

In J&K, the Indian forces enjoys complete impunity and have never been tried for HR violations in a civilian court except a few cases, in which military court marshals were held. The security forces have massively used pellet-firing shotguns during unarmed protests and demonstrations resulting in thousands blinded and injured. From January 1989 to September 2019, it has been estimated that 95,454 people died, 144 lost their sight completely, 209 lost one eye,⁶⁴ 109,442 structures destroyed, 22910 women widowed, 107,780 children orphaned and 11144 women were molested or gang raped.⁶⁵ Number of enforced disappearances is reported to be between 8000 and 10000.⁶⁶ From 2016 to 2018, total 125 persons have been killed, 654 injured, and 187 houses damaged due to indiscriminate firing of Indian Army along Line of Control (LoC).⁶⁷ Internet services are frequently blocked to stop transmission of communications with outside world.⁶⁸ The mass killing and symptoms of genocide have also been reported when 2080 unidentified and unmarked mass graves were discovered in different places in the Indian Occupied Kashmir.⁶⁹ The state government accepted the presence of these graves, but investigations were not carried out in spite of repeated demands from families of missing persons. This state of affairs is due to the fact that possible investigation report could bring public hue and cry as well as impunity enjoyed by Indian security forces may be

⁶³ “Violence in Kashmir over Death of Rebel Social Media Star Leaves Eight,” *Independent*, July 9, 2016, <https://www.independent.co.uk/news/world/asia/violence-in-kashmir-over-rebel-social-media-star-shot-by-soldiers-leaves-at-least-eight-dead-and-60-a7128756.html>; Please also see, Ishfaq Ahmad Shah, “Kashmir is on the Edge After the Death of 22-Year-Old Militant Who Used Facebook as a Weapon,” *Quartz India*, July 9, 2016, <https://qz.com/india/727911/kashmir-is-on-the-edge-after-the-death-of-22-year-old-militant-who-used-facebook-as-a-weapon/>; “Kashmir’s Disturbing New Reality | the Young Militants of Kashmir,” *Hindustan Times*, <https://www.hindustantimes.com/static/the-young-militants-of-kashmir/>

⁶⁴ Kashmir Media Service, <https://www.kmsnews.org>

⁶⁵ *Ibid.*

⁶⁶ Association of Parents of Disappeared Persons (APDP), <http://apdpkashmir.com>

⁶⁷ Detail of losses/damages 2016-18 due to Indian Firing along LoC issued by State Disaster Management Authority, Govt. of J&K.

⁶⁸ Office of the UN High Commissioner, *Supra* N. 55; Please also see Amnesty International India, Human Rights Organization, www.amnesty.org.in

⁶⁹ *Ibid*; Annual Report 2017, *A Review of HR in J&K*, Jammu Kashmir Coalition of Civil Society, The Bund, Amira Kadal, Srinagar-190001, J&K, www.jkccs.net

threatened.⁷⁰ The situation has worsened since August 5, 2019 when the J&K was formally integrated into mainland India and the state of J&K was divided into two union territories.

Conclusion

SD is an internationally recognised principle and a basic and foundational right under HRs regime. All people have RSD, both internal and external, but the latter is only used once whereas the former is a right which the people exercise throughout their life. It is recognised internationally that the state of J&K is a disputed area and its people are entitled to RSD. They can legitimately use force and wage their National Liberation War in case of any forceful denial of their RSD. However, they are always subject to adherence to rules of IHL. NLM is distinguishable from the acts of terrorism or aggression since they are treated as International Armed Conflicts and bound to follow all the rules of IHL. Kashmir's Liberation Struggle is legitimate under IL since RSD of Kashmiris is denied by India forcefully, especially in wake of August 5, 2019 action. Thus, the Indian occupation of J&K has become unlawful thereby giving legitimacy to the Kashmiri struggle beyond any doubt. The atrocities are being committed against Kashmiris and indiscriminate and disproportionate force is frequently used against peaceful demonstrations which amount to state terrorism. Moreover, targeted killing of non-combatant civilian population along LoC is a war crime. International community is obligated not only to support this cause, but also ensure that the Kashmiris achieve their RSD.

⁷⁰ Ibid.