

Demographic Changes in Kashmir: A Perspective of International Law

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Abstract: *International disputes are always dealt with under the provisions of international law. Kashmir is an international issue, which needs to be resolved under the ambit of international law. The Fourth Geneva Convention-1949 provides a strong basis for addressing the legal basis of the Jammu and Kashmir dispute. As an international dispute, Kashmiri warrants the application of international law for its logical resolution. Unfortunately, notwithstanding UNSC resolutions, India unilaterally and illegally changed the status of occupied Jammu and Kashmir from a state to the union territories through Jammu and Kashmir Reorganization Act-2019. Later through a number of amendments, 'Adaptation of State Laws' in April 2020, India brought changes in dozens of local state laws, meant to bring changes in the existing demography of the state. This research focuses on the changes India has engineered in the new domicile laws of Indian Illegally Occupied Jammu and Kashmir (IIOJK) to change the demography of the state. The paper also focuses on the legal position of these changes in IIOJK from the perspective of International Law and the Fourth Geneva Convention.*

Key Words: International Law, Fourth Geneva Convention, Indian Illegally Occupied Jammu and Kashmir (IIOJK), India, Pakistan, United Nations, Kashmir and Demographic Changes

Introduction

From its genesis in 1947 to contemporary times, there always has been a legal perspective of the Kashmir dispute under the provisions of international law. It started from Indian military invasion of the state on October 27, 1947, extended through an Indian reference of the dispute to UNSC, caused wars and conflicts between India and Pakistan, confronted over three decades of Kashmiri revolt (1990-2021) and reached the current stage where India unilaterally and unlawfully annexed the state into Indian Union as its union territories in August 2019.

The Indian act of annexation of Indian Illegally Occupied Jammu and Kashmir (IIOJK) through Reorganization Act-2019 is a clear violation of UNSC resolutions and international law. Understanding the soul of international law is essential for its true application. Indeed, it is "enshrined in conventions, treaties and standards. Many of the treaties brought about by the United Nations form the basis of the law that governs relations among nations.

There is broad coverage of these treaties on all issues dealing between nations, subjects between nations and persons and those between persons. In its Preamble, the UN Charter has set to; "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained." Indeed, United Nations is an 'instrument of international law', and its member states are bound to follow it, being its signatory.

The sources of international law include; the treaty laws, international customary laws and general principles of laws accepted and endorsed by nation-states. After their ratification, nation-states are liable to follow them in their essence. There is no provision of selective implementation of international laws on international issues. Application of international law has to be on merit and entirely rather than partial and discriminatory.

As an immediate response to the Indian reference of the Kashmir dispute, UNSC adopted a series of Resolutions (38, 39, 47 and 51) calling for the cessation of hostilities in Jammu and Kashmir and finding a mechanism for the peaceful resolution of a dispute. UN Security Council established United Nations Commission for India and Pakistan (UNCIP) and asked for free and fair plebiscite in Jammu and Kashmir. Through its two main resolutions, August 13, 1948, and January 5, 1949, UNCIP demanded the right of self-determination for the people of Jammu and Kashmir. The right of self-determination has

to be determined by the Kashmiris under the sponsorship of the UN through a plebiscite. (Resolution adopted at the meeting of the United Nations Commission for India and Pakistan on January 5, 1949.

Unfortunately, despite appointments of plebiscite administrators, India kept on delaying the conduct of plebiscite while concocting alternative mechanisms to continue its occupation of the state. Initially, the Indian Government manipulated temporary linkage between India and illegally occupied parts of the state of Jammu and Kashmir through a constitutional provision, Article 370 of the Indian Constitution. It was a temporary, transitional and provisional arrangement until resolution of the dispute could be found. No integral Indian state had such a provision. Later, Article 35 A was incorporated in the Indian constitution to supplement Article 370 and secure the right of Kashmiris over their land.

The ultimate and extreme step of the Indian Government, revoking Article 370 and 35A of its Constitution, ending the special status of the state in August 2019, was unlawful. Nevertheless, from the perspective of international law, this illegal act of India has no legal standing, nor shall it affect the disputed nature of the Jammu and Kashmir State. As per UNSC resolutions and provisions of international law, it is the people of Jammu and Kashmir who will decide the future of the state through a free and fair plebiscite. Apart from UNCIP resolutions, two UNSC resolutions (Resolutions number 91 of March 30, 1951, and Resolution number 122 of January 24, 1957) neither legislative assemblies nor the occupying state (India) can change the status of the State of Jammu and Kashmir.

While anticipating the Indian Government's plan to change the status of Jammu and Kashmir, UNSC adopted the abovementioned resolutions at two different timings. The National Conference, the only political entity in IIOJK, was used as the main instrument for changing the status of the state as part of the Indian Union through a manipulated resolution of the Constitutional Assembly. UNSC put a limitation over the mandate of the IIOJK Constitutional Assembly to take any action to change the status of the state through its abovementioned resolutions.

The resolutions states, "The final disposition of the State of Jammu and Kashmir will be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations. The resolutions clearly directed India, the Constituent Assembly of Indian occupied Kashmir and the General Council of the All Jammu and Kashmir National Conference not to take any action for determining the future shape and affiliation of the state away from what was passed through UNCIP resolutions.

The Indian Government took the decision to repeal Article 370 of its Constitution without the consent of the elected Government of occupied Kashmir since the Presidential Rule was imposed in the state at that time. Moreover, it was the Constituent Assembly of Indian occupied Jammu and Kashmir that adopted Article 370 as a temporary and transitional provision; therefore, its abrogation was also the prerogative of the same Assembly.

In its historical verdict on October 16, 2015, the Indian occupied High Court clearly ruled that: one; Jammu and Kashmir is not part of India, two; abrogating Article 370 would not change the separate and special status of the state, three, Article 370 cannot be amended, repealed or abrogated except on the recommendations of Constituent Assembly of the State and four; India cannot merge the state of Jammu and Kashmir into its union. With such a clear mandate of the state's high court, the Indian act of August 5, 2019, can clearly be termed as a violation of its own constitution and the basic constitution of the occupied Kashmir hence stands illegitimate.

From the legal perspective, after revoking Article 370, Indian Illegally Occupied Kashmir stood independent on August 5, 2019, to take any legal course of action about its future status. Article 370 was the only linkage between India and IIOJK approved by the Constitutional Assembly of IIOJK. On August 5, 2019, it was a military reoccupation of the IIOJK through its massive military deployment of over 900,000 troops and clammed down with strict imposition of curfew. A senior advocate of the Indian Supreme Court Mr. Akhil Sibal, said on this occasion, "If there is president's rule, then how does that work? Does it fulfil the requirement? That to my mind would be the legal fault line."

This illegal act of India can best be interpreted as 'New Delhi is consulting New Delhi' for the reoccupation of IIOJK and trying to justify its illegal act through another illegal act, making a non-entity (IIOJK) an Indian entity. Kashmir is not part of India; Indian enjoys the status of an occupying power. Such an act is against international law, practiced nowhere worldwide. It is indeed a violation of its own (Indian) constitution. The shrewd and farsighted Indian Prime Minister Nehru could have taken such a step long ago had there been any legal provision either in UNSC resolutions, international law or else in the Indian constitution. This all was done illegally for multiple purposes; legalizing the illegal, making changes in the demography of IIOJK, converting the Muslim majority into a minority and converting the ceasefire line into a permanent border between India and Pakistan.

The relegation of State into Union Territories

Constitutionally, India had no right to alter the status of Indian Illegally Occupied Jammu and Kashmir (IIOJK) as it was not its legal part. By altering the status of IIOJK from the state to union territories of India, New Delhi wanted to achieve several goals. The first and foremost goal is, undoing the Kashmiri nationalism, the Kashmiriyat. There has been a steady rise of Kashmiri nationalism in the 20th century, primarily against autocratic Dogra rule and later against India, following its military invasion in 1947.

It was Nehru's Indian nationalism that clashed with Sheikh Abdullah's Kashmiri nationalism in 1953. As a result of this nationalistic clash, the Indian Prime Minister deposed Kashmir Prime Minister Sheikh Muhammad Abdullah and put him in jail for 11 years, despite their decades of close association and close friendship. While putting him in jail, Nehru accused Abdullah of conspiring against India and plotting to join Pakistan. In 1949, Nehru insisted Sheikh Abdullah accept a temporary connection between Kashmir and India, which became part of the Indian constitution in the form of Article 370. Through this trap, Nehru lured in Abdullah to maintain some sort of linkage between Kashmir and India.

Indeed, Abdullah was adamant about having the independence of the state, and it was the sole reason for his removal from the position of Kashmiri Prime Minister. The second goal of India is to present a divided character of the state by doing away with the entity as a state. For the last few years, India tried to present the Jammu and Ladakh provinces of the state different from the Vale of Kashmir. The third goal India aimed to attain from Jammu and Kashmir Reorganization Act-2019 is to implement the long-awaited agenda of making demographic changes in the state to lower the percentage of the Muslim population by inhabiting Hindus (non-Kashmiris) from several parts of India. In this regard, the Indian Government has introduced new domicile laws for the IIOJK.

Imposition of New Domicile Laws

Jammu and Kashmir Reorganization Act-2019, formally imposed on October 31 2019, enabled India to introduce a new set of amendments to the laws which the Constitution Assembly of the state formulated before it was dissolved in 1957. After Adaptation of State Laws Order-2020, the India Home Ministry revoked and replaced over twenty-five (25) laws in IIOJK. Changes in State Subject (domicile) laws was the worst part of amendments people of IIOJK are facing after August 5, 2019. The legal provisions and the shelter provided to state subjects under Article 370 and 35A of the Indian constitution was abolished. Under various pretexts, the new domicile laws have allowed the non-Kashmiri Hindus to get the Kashmiri domicile.

A new definition for Kashmiri nationality has been devised in the 'Adaptation of State Laws' Order-2020. As per new criteria, anyone "who has resided for a period of fifteen years in the Union territory of Jammu and Kashmir or has studied for a period of seven years and appeared in Class 10th /12th examination in an educational institution located in the Union territory of Jammu and Kashmir; or who is registered as a migrant by the Relief and Rehabilitation Commissioner (Migrants) in the Union territory of Jammu and Kashmir."

The Kashmiri identity (Kashmiriyat) and their statehood were done away with through Adaptation of State Laws Order-202, which itself is an extreme step and a great violation of the Geneva Convention and international law. Indeed, any occupation force or power cannot take such action on its own. This act was aimed to bring demographic changes in IIOJK, a long-awaited Indian agenda. It is absurd that any Indian citizen who had spent fifteen years in Indian Illegally Occupied Jammu and Kashmir can get the Kashmiri nationality as if the Kashmiri domicile is a gift pack, awarded to anyone who has served there as part of their job, business or else the people of Indian security forces, involved in the killing and brutalities of Kashmiri Muslims ever since 1990.

The other class considered for this provision (Kashmiri domicile) are those who have studied in IIOJK for a period of seven years and appeared in the secondary and higher secondary level schooling in the institution's situation in any part of IIOJK. This is the privileged class, including the children of; security forces personnel, bureaucrats and the Hindu business community. This class will have a huge representation of non-Kashmiri Hindus; 30% bureaucrats, over 70% military men and a vast majority of Hindu business community whose children stayed in IIOJK for decades.

Millions of people have been given Kashmiri domiciles in the last over a year with a right to purchase Kashmiri land. What an appalling Act, the outrageous Indian Parliament had passed in April 2020. The third types of the Indian nationals who can claim Kashmiri domicile are those who have registered themselves as refugees, and this decision has to be taken by the Relief and Rehabilitation

Commissioner. This is totally at the discretion of the Commissioner to declare anyone as a migrant since this position has always been held by Indian nationals, not any Kashmiri.

The legal perspective of the State subject laws of Jammu and Kashmir State was framed much before the partition of the subcontinent into India and Pakistan. In fact, the Maharaja of the state enacted the lawful provisions for the recognition of the status of Kashmiris from 1912 to 1932. There was a constant struggle and strong demand of the people of Kashmir for their rights over their land. Maharaja of Kashmir granted the Hereditary State Subject Order to the state subjects in 1927. It includes; the right to government officials and the right to land, and right to have ownership of the land, which were not given to non-state subjects.'

Sheikh Muhammad Abdullah forced Indian Prime Minister Nehru to protect the Kashmiris right to the land, which included these provisions through Article 370 and Article 35A of the Indian Constitution, the grant of special status. It is added that the state subject laws, Kashmiris right to land and the non-binding nature of the Indian constitution were even protected in the Instrument of Accession; if at all, it has some legality as India claims. Besides, the state of Jammu and Kashmir has a history spread over thousands of years as a state. Whether it existed as an independent state or occupied by any external power and rulers, Kashmir maintained its statehood throughout its history. Post-colonial India tried several times since the 1950s to change the status of IIOJK but deterred and stopped through UNSC resolutions number 91 and 122, which are valid to the present day.

Sequel to the imposition of the J&K Reorganization Act-2019, the Indian Government is making laws for the state and its subjects which do not belong to India. Indeed, it is an imprudent and criminal Indian act of violations of UNSC resolutions and the provisions of international law. The state of India had no legal and moral authority to occupy the state (IIOJK) in 1947, and it has no legal authority to keep the people and state under its subjugation even today. India had unlawfully relegated the statehood of Jammu and Kashmir into union territories in 2019. Likewise, it has no legitimate power to make laws as to who should be the state subjects and domicile holders of the IIOJK.

The Demographic Changes in Kashmir

Upon imposition of Adaptation of State Laws Order-2020, Mr Subramanian Swamy, a senior BJP Member of Indian Parliament, clearly stated future plans of BJP Government for Kashmir. He said that no state in India should have a Muslim population of more than 30%; thus, how can Kashmir be an exception. Mr Swamy has been working with Amit Shah, Indian Home Minister, to devise a mechanism to undo Article 370 and Article 35A at multiple levels. He justified the amendments and new domicile laws and clearly hinted at changing the demography of the state on a large scale. Indian is already following a comprehensive strategy to change the demography of the valley, where the Muslim population is over 95 percent.

There are four salient features of this strategy; first, the establishing Sanik Colonies in key areas of the valley where retired officers and men of Indian security forces will be gradually settled. This retired military personnel from several parts of India will get legitimacy under the new domicile laws, which allow domicile to anyone who has served in IIOJK for a period of 15 years. Second, a huge land (over 17000 kanals) has been allocated for making colonies for the Kashmiri Pandits. These Pandits were moved to various places in India by the Indian Army and Governor Jagmohan in the 1990s for their safety during Indian military operations against Kashmiris Muslims. Indian military undertook mass killings of Kashmiri Muslims with total impunity after Pandits were moved out of the valley.

Third, India has already started issuing domicile to Hindus, whose forefathers migrated from West Pakistan. Currently living in Jammu, these Hindus are being settled in various parts of the valley. Fourth: land allotment to various Hindu shrines all over IIOJK; 800 Kanal land was given to Shri Amarnathji Shrine Board in 2008, which caused massive Kashmiri uprising all over the state. This is forest land being used for the settlement of the Hindu population from various parts of India to make demographic changes in IIOJK. Indeed, the Indian ruling class is highly critical to Muslims all over India. Muslims in India are even not considered equal to other communities like Hindu, Sikhs and Christians. Mr Swamy said, "No, not all people are equal; Muslims do not fall into the equal category."

Fourth Geneva Convention Prohibits Demographic Changes

Under the provisions of the Fourth (4th) Geneva Convention-1949, the local civil population of any occupied territories is provided with sufficient protection. Through Article 49, the convention provides protection with respect to the right over their land and security against making any demographic changes in the configuration of the native population. Sub Article; Article (6) of the Fourth Geneva

Convention deal with the protection of the civil population of occupied territory in emergency and wartime. It is to be noted that Indian Illegally Occupied Jammu and Kashmir is a war zone with an overwhelming military presence.

Today, India has over 900,000 men of security forces deployed in the occupied state. In the last three decades, Indian security forces have massively killed innocent Kashmiris with total impunity under special laws. More than 100,000 Kashmiris have been killed since 1990, and over 12000 women have been raped by Indian security personnel in various parts of the state. Since August 2019, IIOJK has highest military concentration level in the world, with the status of an active war zone. Whereas the world is busy combating the deadly pandemic Covid-19, the Indian military is undertaking the genocide of the Kashmiri youth, who protest against the siege, axing their statehood and imposition of new domicile laws to make demographic changes in IIOJK.

A closer analysis of Article 49 (6) of the Fourth Geneva Convention clearly postulates that transfer by an occupying power of its own population in the area it occupies and colonizes is strictly outlawed and banned. This sub-Article stipulates that the "Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies" It is further augmented by the provisions of International Humanitarian Law (IHL). In its Rule 130, the IHL conditions that "States may not deport or transfer parts of their own civilian population into a territory they occupy".

It is worth mentioning that Indian Illegally Occupied Jammu and Kashmir became an 'occupied territory' on October 27, 1947, the day the Indian Army invaded Kashmir. This occupation was made by India in incongruity and violations to principles of Indian partition and the Indian Independence Act. Article 49 of the Geneva Convention disallows India to make any demographic change in IIOJK by transferring its own population there, violating the state's laws forcefully or otherwise. Moreover, India is one of the signatory states of the Geneva Convention-1949; thus, it has to observe and follow the convention in letter and spirit. Shifting Indian nationals into IIOJK clearly aims to change the demography of IIOJK, a violation of the Fourth Geneva Convention-1949.

Indian bid to legalize its demographic changes in IIOJK by imposing Jammu and Kashmir Reorganization Act-2019 and Adaptation of State Laws Order-2020 is challengeable being illegal. There arise three questions over this Indian act; first, how can India legalize an action which is illegal from its conception to implementation? This is against international practices. Towards the beginning of the 21st century, the US invaded Iraq and Afghanistan; still, it has its military presence there. However, the US neither changed the laws of land nor did it make demographic changes in both countries. Secondly, India cannot legalize an act as an occupying power that conflicts the International Law, internationally ratified conventions, covenants and agreements. Thirdly, India cannot make laws for a state which indeed does not belong to it.

Kashmir is not part of India, rather an international dispute, pending its resolution in United Nations for the last seven decades. There are dozens of UN resolutions, signifying its disputed nature and asking for its resolution through a free and fair plebiscite under the UN. India cannot devise its own strategies in occupied Jammu and Kashmir, which is not its part. In 'The Wall Case' of July 9, 2004, the International Court of Justice (ICJ) "resolved that Article 49(6) prohibits forced not only transfers but also any measures taken by an occupying Power in order to organize or encourage transfer parts of its own population into the occupied territory". ICJ, in its Paragraphs number 158-9 of the abovementioned verdict, clearly stated that Fourth Geneva Convention binds all the contracting parties (signatory to the Geneva Conventions) to ensure compliance with international humanitarian laws.

Fourth Geneva Convention (Article 49) forbids any measure meant to manipulate the demographic changes by any occupying power. Moreover, India cannot relegate the statehood of a state, which has a history of thousands of years. It had already made massive demographic changes in the Jammu Province of the state by inhabiting the Hindu population. By making new laws after the annulment of the special status of IIOJK, India is making massive demographic changes in almost all parts of the IIOJK, especially the Valley area, by transferring its own population. Had there been some regards and respects for the international legal bindings, there should have been an automatic reaction from United Nations and the international community immediately after the Indian unilateral and illegal act in IIOJK. Indeed, all India has done in IIOJK is a violation of international law, the Geneva Convention, the United Nations Charter and the UNSC resolutions over Kashmir. All these Indian violations and extreme acts are challengeable in the International Court of Justice (ICJ) and other forums which have precedence over dealing with such global issues.

The evolving situation in Indian Illegally Occupied Jammu and Kashmir reveals grave violations of the Fourth Geneva Convention by India. The occupying state has changed the domicile laws of the state

for legalizing the demographic changes it is making in the entire IIOJK. From its essence, any violation of the Fourth Geneva Convention comes under the class of heinous war crimes and grave human rights violations. The time has come that Indian war crimes and human rights violations should be referred to the International Court of Justice by Pakistan. Pakistan has already handed over the record of massive human rights violations in IIOJK to the UN and all other international forums. There is a dire need that UN and the international community must exert pressure on India through economic and military sanctions until it stops human rights violation in IIOJK, halt making demographic changes in IIOJK and finally pave the way for the resolution of Kashmir dispute as per UN resolutions.

Local Discontentment among Kashmiri Youth

According to an article published in 'the Washington Post (March 4, 2020), an overwhelming number of Kashmiri youth (91%) in occupied Kashmir have discontentment with the presence of Indian security forces, thus demand their pull-out from the state. Kashmiri youth realize that the Indian Army and its paramilitary forces are the real problems in their state. The survey report rejects what India claims that Kashmiris are ready to live under Indian rule and its constitution. Indian military still faces stiff resistance from Kashmiris youth against Indian rule and the dilution of the special status of IIOJK by abrogating Article 35A and revoking Article 370.

Another Indian narrative that this Indian act would enable it to develop the under-developed parts of IIOJK is indeed an attempt to mislead the world, the UN and above all, intellectuals within India. This Washington Post survey was conducted after India abrogated the special status of IIOJK and had imposed the Jammu and Kashmir Reorganization Act-2019 all over the occupied state. Through a sample size of only 600 college and university students, this neutral survey was conducted by a university in IIOJK and New York's Skidmore to ascertain the ground realities from the most affected class, the Kashmiri youth.

600 Kashmiri students from various universities and colleges of the state were taken as sample. Multiple questions were asked from them for their post-August 5, 2019, position. These over 90% dispersed youth from several educational institutions of the state gave a unified voice and integrated opinion that enough is enough; India must pull out its security forces from all parts of IIOJK. Besides, all were unanimous for their right of self-determination through an impartial plebiscite under UNO. "The same percentage backed the holding of a referendum to decide the future status of the Muslim-majority region."

This survey can be considered as a clear opinion or, else, a referendum of Kashmiri youth about their future course of action, a denunciation of Indian occupation. The opinion of the elder's class is the same as of the youth. This survey also rubbishes the Indian claim that its illegal act of August 5, 2019, was respected in IIOJK. In fact, had Kashmiris been willing to live as part of India and its constitution, the dispute would have been settled long ago. The survey also revealed that India and Pakistan could resolve the dispute if there is sincerity from both sides. Approximately 80% of Kashmir youth believe that the Kashmir dispute can be resolved if America and the West considered Kashmiris as the first and legitimate party to the dispute with a final say for a logical outcome.

From August 2019 till date, the Indian Illegally Occupied Jammu and Kashmir is practically the world's largest militarized zone with the highest ratio of troop's deployment versus the people of the state. Such a massive military positioning was not witnessed during WW-I and WW-II. All this military deployment is aimed at keeping the Kashmiris under siege while India is making the demographic changes in Muslim majority areas of the state. Even after the passage over 20 months, IIOJK is still under strict lock-down with severe shortages of; food, medicines and other basic necessities of life.

Covid-19 has further complicated the situation in the occupied state. As per Al-Jazeera, "Anxiety and fear are gripping residents of Indian-administered Kashmir after the Corona Virus cases were found in various parts of IIOJK especially Srinagar." Still, there is a restricted communication system allowing in IIOJK. Media is not allowed in the state and the limited information received is through secret reporters of international media reporters like Al-Jazeera. A medical student from Valley, Mr Zaffar Mohiudin, said, "How will you get informed about this pandemic which has struck globally when you do not have access to the information?" In IIOJK, the Indian Government is more alarmed over the reaction of Kashmiris even after almost two years of this illegal act. Indian security forces are unleashing state-sponsored terrorism over the innocent Kashmiri youth who only protest against the violation of their human rights.

This survey has exposed the Indian deceits, its manipulation and indeed the concealed strategy for making demographic changes in occupied state for converting the Muslim majority into a minority. Indian state believes that Jammu and Kashmir can only be stabilized if the Muslim population is reduced

to less than 30%. To achieve that level, the Indian state machinery is already operative. Jammu province has already been neutralized, and over the last seven decades, its Muslim population has been reduced to almost half (62% in 1941 and 32% in 2017).

India was facing a challenge in the Vale of Kashmir, which has now been manipulated through relegation of statehood into union territories and by devising new domicile laws for citizenship of the state. There is an immediate need that, UN and major powers must pay attention to the Indian atrocities in IIOJK. The civilized international community must influence India to give Kashmiris their long-awaited right to self-determination.

A Perspective of International Law over Indian Illegal Act

Part-III of the Fourth Geneva Convention-1949 is concerned about the troubling features of the territories under the occupation of other countries; in fact, the sufferance of Kashmiris at the hands of Indian security forces. Article 47 of this internationally ratified document asks for the facilitation and safety of masses in occupied territory. In the case of occupied Kashmir, the masses are totally insecure at the hands of Indian security forces. Despite the illegal annexation of the state, India has not been able to secure the lives of Kashmiris; rather, the people of the state are at risk with each passing day.

Article 49 of this Convention accentuates with a lot of precision that the occupation power should not expel or transfer the masses from areas of occupation to its own country or elsewhere regardless of the motives. Since its occupation in 1947, India has forced out millions of Kashmiri masses into neighbouring Pakistan and elsewhere in the world. 80% people of the state were moved out from the Jammu province of the state, and the remaining 20% were forced out from the Valley area during various time periods.

This also includes the brutal massacre of Kashmiri masses near Jammu, known in the history as Jammu massacre-1947. Over 250,000 Kashmiris were killed by the Indian Army, RSS and men of the former Maharaja Army. The entire exercise of deporting and killing Kashmiris was aimed to change the demography of the state through a systematic process. Since these masses were forced out by the Indian Government, therefore Fourth Geneva Convention demands their honourable return to their ancestral places with security provided to them upon their arrival.

The most significant part of the Fourth Geneva Convention is that the "Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." But, the ground realities are quite different. As mentioned above, India has rehabilitated millions of non-Kashmiris in the Jammu province of the state in the last few decades and now doing the same in the Vale of Kashmir after making amendments in the domicile laws of the IIOJK. This is a grave violation of international law and the Fourth Geneva Convention-1949.

Likewise, Article 50 of this Convention provides further safety to the children in the area under occupation. Regrettably, there has been continuous exploitation and now killings, blinding and paralyzing of Kashmiri children at the hands of Indian security forces with total impunity. This process started in the 1990s, upon the popular uprising of the people of IIOJK against Indian occupation and continuing till date with more cruelties against Kashmir youth and children. The Kashmiri youth are the main target of the Indian Army and its paramilitary forces. Since August 5, 2019, all educational institutions are closed, and there is a strict lock-down, making children more scared and unprotected.

There is neither food security nor the availability of medical facilities. Contrary to the provisions of this convention, the local populace has been used by the Indian Army for the forced labour and other menial jobs with humiliation to them. Article 51 of the Convention prohibits the forced labour and work without wages. The womenfolk of the IIOJK have been the worst sufferer in last during last three decades. There have been gang-raped apart from isolated events of rapes and sexual harassment of Kashmiri women.

Consequences and Penalties for the Violation of the Geneva Convention

As per Article 2 of the 4th Geneva Convention, its provisions will be applicable in both peace and war times or during an armed conflict which arise High Contracting Parties. Jammu and Kashmir conflict is an ideal conflict zone where there is a conflict between High Contracting parties and between the occupation power and the local people of IIOJK. There is an active nature of this conflict with a huge presence of the Indian military and constant war-like situation since 1990. After all, 900,000 Indian forces in occupied Kashmir are not on a merrymaking mission in the state. The convention also prohibits; violence against the lives of people, harsh conduct and torture, hostage-taking, crimes and humiliation

of people and degrading treatment. Whereas the Fourth Geneva Convention prohibits all this, India is continuing with all these practices under the protection of ferocious laws, which provide total impunity to its military and paramilitary forces.

As per international law and the Fourth Geneva Convention-1949, there are penalties and consequences for the state(s) which violates these. Indeed, all violations of this convention, especially its Article 49, comes under the war crimes India is committing in IIOJK. Besides, Article 8 (2) (b) (viii) of the 1998 Rome Statute of the International Criminal Court (ICC) also considers any direct or indirect shifting and transfer of its own civilian population into the parts under its occupation as a war crime. India has been doing so for decades in IIOJK, and after August 2019, it is doing so with total authority. Such an act is being dealt with under Article 146 and Article 147 as 'a grave breach of the Geneva Conventions and carries penal sanction.' It is further supplemented by Article 85 (4) (a) of the 1977 Protocol I Additional to the Geneva Conventions. Article 1 Common to the four Geneva Conventions and Art.86 of Protocol I Additional to the Geneva Conventions 1977; impose an obligation upon all High Contracting Parties to implement its provisions.

Conclusion

The provisions of the Fourth Geneva Convention offer the most applicable way forward for the smooth resolution of the Kashmir dispute. As per these provisions, the occupation state (India) is under obligation to act upon the binding nature of the Geneva Convention, which is part of International law. The research recommends the application of the Fourth Geneva Convention as a legal way-out for India and its occupation forces from Indian Illegally Occupied Jammu and Kashmir. In this regards, the High Contracting Parties to the dispute must respect the Fourth Geneva Convention. Since Pakistan has always been forthcoming for the resolution of this long-standing dispute, therefore as an occupation state, India must adhere to the global norms and provisions of international law.

However, this will not be done on its own; therefore, Pakistan must knock on the doors of the United Nations and the International Court of Justice (ICJ) for making a reference to the new developments which have taken place in IIOJK after August 5, 2019. Already there has been unwanted delay towards resolution of the dispute, which has seriously affected the masses of Jammu and Kashmir under Indian occupation. From the legal perspective, Pakistan stands at a higher pedestal over the Kashmir dispute. Pakistan must approach ICJ and the UN for providing justice to the people of Jammu and Kashmir; indeed, it should have done it immediately after India unilaterally changed the status of IIOJK on August 5, 2019.

In fact, the provisions of International Law and the Fourth Geneva Convention-1949, besides unimplemented UNSC resolutions, are all making the Kashmir case legally stronger and politically rational in favour of Kashmiris to attain their inalienable right of self-determination. The abovementioned provisions of the Fourth Geneva Convention-1949 and two UNSC resolutions (91 and 122) provides Pakistan with sufficient grounds, forcing India not to change the status of IIOJK and immediately stop the demographic changes India is making in IIOJK. Today, India can be tried in ICJ on the charges of war crimes, and international sanctions can be imposed on it for violating; the international law, the Fourth Geneva Convention, the UN resolutions and finally for not allowing Kashmiris their right to self-determination.

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