

A REVIEW OF KASHMIR'S RIGHT TO SELF-DETERMINATION FROM A HISTORICAL-ANALYTICAL-LEGAL STANDPOINT

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Abstract

The 1970 Statement of Standards of International Law on Friendly Relations and Cooperation between States recognized the rights of all people to freedom of thought, expression, association, and assembly, as well as the right to self-determination. It's based on the principle that every group of people should be allowed to determine its own form of government and pursue its own economic, social, and cultural development without external interference. In any case, this right now and then clashes with the obligation of larger states to maintain it, as outlined within the UN Charter. The complexities of bunch politics and global open supposition often make the proper of self-determination challenging, given that states are imperial and must regard each other's sovereignty. Despite these challenges, political leaders of unused states contend that the importance of self-determination has diminished since the decline of colonialism and apartheid. The thought of individual autonomy picked up a noticeable quality after World War II, driving to quick decolonization and the recognition of people's rights inside their conventional social structures.

Keywords

Self Determination, Historical Analytical, Legal Standpoint, Kashmir, States, Uncharter.

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Self-determination and state sovereignty often seem at odds with one another, especially when the former threatens the latter and hence the geographical integrity of a state. In its broadest definition, the term “self-determination” refers to the idea that individuals should be free to pursue their own social, political, economic, and cultural goals. In contrast, the legitimacy of a state’s political power within its borders is attested by its sovereignty, which must be acknowledged by all other states. The right to self-determination is typically the basis for the establishment of a modern state, but it can become a source of contention when a group seeks to separate from or join with another state. State sovereignty encompasses the principles of non-interference (where governments should be left alone to manage domestic matters) and territorial integrity (where borders cannot be changed without consent from the majority of the population).

The territorial integrity provision of the norm does not recognize the freedom of individuals to participate in unilateral secession, while the non-interference requirement ensures that no party can legally coerce a state to engage in unilateral secession. Because of this, the concept of self-determination usually conflicts with the idea of state sovereignty.

The decrease in interstate fighting that happened in the second half of the twentieth century over territory and the objective of “national reunification” is largely attributable to the freezing of territorial boundaries. It is difficult to argue for the continued existence of a colony based on a nation’s right to self-determination, as colonies are not recognized as “sovereign territories” under international law. This is so because freedom of choice is an inherent part of the human condition. The price of peace is the unwillingness of the United Nations (UN) to grant the right to self-determination to all peoples now subject to post-colonial regimes and who see no prospect for a better future within the borders they currently occupy. This openness was essential to cover the expenses associated with making peace a reality. There may have been times during the first five years of the United Nations’ existence when the General Assembly or the Security Council prioritized the interests of aspirational peoples in regions without self-governing territories over the interests of existing states and backed the concept of self-determination for those people. The war that broke out between India and Pakistan over Kashmir is a prime example.

After decolonization, the UN shifted its focus on self-determination from individuals to governments. It was made crystal clear that no actions could be approved that would compromise the territorial or political integrity of independent states that respected the right to self-determination and universal human rights. Until decolonization was complete, the General Assembly’s declaration guaranteed the

state's right to political autonomy and geographical integrity. The notion of *uti possidetis* laid the groundwork for postcolonial state sovereignty. Unless otherwise established by international conventions, the new state's borders should correspond with the former state's administrative borders under this principle. Unless the existing state recognizes the split, the United Nations will not recognize unilateral actions by separatist or irredentist movements to break away from the existing state.

Uti possidetis has been adopted as a solution to this dilemma due to the impracticality of constructing a territorial state that does not contain a minority population and the unwillingness of current governments to split up. However, some argue that the UN's preference for nation-states is intentional, serving the organization's unspoken goal of freezing the political and territorial map after decolonization. This preference has contributed to a decline in interstate warfare over territory and national reunification.

In summary, the UN has shown unity in prioritizing non-interference and the territorial integrity of states over self-determination. The principle of *uti possidetis* ensures postcolonial state sovereignty, while the UN's preference for nation-states has been attributed to the organization's desire to maintain stability after decolonization.

Kashmir and Self-Determination

The intrinsic right of the people of Kashmir to determine their own destiny must be at the center of any serious discussion of the Kashmir crisis. Pakistani and Indian politicians spoke with the British government and agreed to let the people of Kashmir decide for themselves whether they wanted to be a part of India or Pakistan. Kashmiris themselves would make this choice. India claims it fulfilled its pledge of a plebiscite made before the UN and with Pakistan by holding free elections for a constituent assembly in the Kashmir valley in 1951. India insists that the plebiscite pledge was kept by this action. Because of this, the people of Kashmir must remain watchful as they fight for the freedom to determine their own destiny. Historical evidence suggests that the constituent assembly was convened to ratify Kashmir's unification with India. This move, however, was also reported to the United Nations Security Council because it ran counter to UNSC policy on Kashmir. Despite this, the Council was unconvinced by the assurances given by the Indian government in regard to the vote. Pakistan's concerns were validated when India's constituent assembly declared in 1956 that the Kashmir valley was an integral part of India, which alarmed other countries, especially the United Kingdom.

In 2019, the Indian Constitution's "Article 370" and "Article 35A" were abolished, essentially changing Kashmir's long-standing special protection status.

Due to its “special protection status”, Kashmir previously observed a greater level of autonomy than other Indian states. But after it was abolished, Delhi had more influence over Kashmir. Article 3 of the Indian The Indian Parliament has the power to create new states, modify the boundaries of existing states, and rename states in accordance with the Indian Constitution. However, it is crucial to recall that the Indian constitution article pertaining to Jammu and Kashmir differs from the general provision.

With the 2019 constitutional change, India’s segregation from the rest of the nation and bubble of autonomy ruptured. People appear to possess it. Politicians appear incapable of changing with the times and more rooted in the past. The clear cause of New Delhi’s incapacity to alter the political climate in the valley connects to the incapacity. The state has been able to keep control over the security situation, but this is simply a necessary step before Jammu and Kashmir can return to normal. Without wise political choices, the security situation can quickly get worse.¹

It is important to acknowledge that there are many viewpoints on the situation. The Indian government claims that its activities in Jammu and Kashmir are necessary for both maintaining national security and thwarting cross-border terrorism. They assert that separatist forces and terrorists funded by foreign countries are to blame for the region’s instability, which necessitates a firm reaction². The intricacy of the Kashmir issue, which incorporates historical, political, and sociocultural facets, makes finding a resolution challenging. All parties must participate in efforts for peace and reconciliation, including the Indian government, the Kashmiri leadership, and outside actors, to meet the legitimate concerns and aspirations of the Kashmiri people while maintaining peace and stability in the region.

According to several United Countries resolutions, the issue of Kashmir’s accession can as it were be settled through a reasonable and impartial plebiscite conducted beneath a democratic system. However, the Indian government is currently in the process of considering the fulfillment of its commitment to hold such a plebiscite.

When negotiating this complex topic, it is crucial to carefully consider the historical context, legal systems, human rights concerns, and aspirations of the Kashmiri people. To achieve a durable, inclusive settlement that tackles the conflict’s root causes and ensures the welfare of the people of Jammu and Kashmir, it is essential to promote communication, enhance human rights and respect, and work towards a solution.

At present, there remains a possibility for a legal resolution with respect to the status of Kashmir, which varies from the rest of India. The actions taken by Indian strengths in Kashmir have been seen as heavy-handed by the neighborhood population, leading to a significant conflict between the two communities. The locale has seen a troubling number of disappearances, which may be a grave concern. In an endeavor to stifle the desires of Kashmiri citizens for self-determination, the Indian government has actualized different laws, disregarding a few articles of the Geneva Conventions and standard international law. Before colonization, Kashmir delighted in a significant degree of self-governance, and its particular identity is obvious in its dialect, culture, traditions, religion, conventions, and scholarly contributions. The locale is additionally home to a few prominent political parties with well-defined stages. However, the Indian military has captured numerous key Kashmiri officials who were seen as a risk to state sway. As a result, there's now a unified political front known as the All Parties Hurriyat Conference (APHC) in Kashmir.³

The right to self-determination is often actively contested by governments worldwide. Governments are employing strict laws to suppress individuals who prioritize their right to self-determination over the preservation of state sovereignty, disregarding fundamental principles of international law and obligations. Those advocating for this right face severe consequences, including accusations of terrorism and harsh treatment, particularly within educational institutions. The Indian government, for example, has implemented various legislations like TADA and AFSPA, granting extensive powers to the military forces for the unconventional treatment of the Kashmiri people. These measures aim to curb any perceived misuse of the concept of self-determination in the region.⁴

The Kashmir conflict raises multiple legal concerns, including issues of accession, aggression, and self-determination. However, India consistently refuses to bring the dispute before the International Court of Justice, which is troubling. In the past, similar disputes have been resolved through bilateral negotiations, as seen in the North Sea Continental Shelf case. I believe that India and Pakistan should follow this example and seek resolution through the World Court. It is crucial to highlight this issue to the global community and urge them to exert pressure on the relevant state, to ensure fairness and justice for the people of Kashmir. Furthermore, the international community and human rights activists worldwide should apply pressure on the Indian government to cease violating international law and treaties and to repeal oppressive laws that silence the voices of the Kashmiri people.⁵

Kashmir's Self-Determination in Light of Abrogation of Articles 370 and 35-A

The unilateral repeal of Articles 370 and 35-A by India marked a significant shift in the Kashmiri independence struggle, leading to increased Indian operations and control in the disputed territory. Human rights violations, such as extrajudicial murders, arbitrary detentions, and the Indian government's aggressive counterinsurgency campaign, increased in tandem with this trend. Kashmiris must reevaluate the strategic and non-strategic dimensions of their struggle for self-determination in light of these developments.

According to Pakistani scholars, a majority believe that indigenous Kashmiris should continue their armed resistance, although the feasibility of this approach from the Indian perspective is debatable. The Kashmiri diaspora can play a unique role in shaping global perspectives and raising awareness about the right to self-determination and armed struggle as a human right. To strengthen Kashmir's legal position, it is important to invoke relevant clauses from international agreements such as the Geneva Convention, the International Covenant on Civil and Political Rights, and international humanitarian law.

Concluding Notes

The right to self-determination may be a fundamental principle of international law, acknowledging people's freedom to decide their political status, seek after development, and oversee their undertakings without outside interference. The Kashmir debate, beginning from the segment of the Indian subcontinent in 1947, includes competing claims of India and Pakistan over the domain, taking off the Kashmiri individuals caught in the center and their right to self-determination exceedingly wrangled about. The Indian government's decision to repudiate Article 370, which granted special status to Jammu and Kashmir, can be seen as a positive step towards settling the debate. Critics argue almost its effect on the state's independence and human rights circumstances, but it has created opportunities for exchange and engagement, enabling the extension of Indian laws and constitution to the region. However, achieving peace and stability in Kashmir remains a complex and long preparation. Separated from addressing the abrogation of Article 370, other vital issues must be handled, including human rights concerns, the India-Pakistan conflict, and the aspirations of the Kashmiri people. All parties must engage in helpful discourse and work towards a quiet determination that regards self-determination while guaranteeing regional security and stability. Settling the Kashmir debate requires ongoing endeavors, commitment to dialogue, understanding, and compromise from all included parties.

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