

A comparative study of legal positions; a case study of Indian-occupied Kashmir and Pakistan-administered Kashmir.

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Abstract: This research paper undertakes a thorough examination of the legal positions in the Kashmir conflict, emphasizing a favorable perspective on Pakistan-administered Kashmir. The study employs a multidimensional approach, comparing joint secretary appointments, political stability, development indicators, reverse ideology, natural resources, and horticulture to underscore the strengths and stability of the Pakistani-administered region. By providing an in-depth analysis, this research contributes to a nuanced understanding of the Kashmir conflict from a Pakistani standpoint.

Keywords: Historical dimensions, Constitutional dimensions, Geopolitical dimensions, Legal frameworks, Autonomy, Political status, Kashmir conflict

1. Introduction

The Kashmir conflict stands as one of the most protracted and complex geopolitical disputes, with its roots deeply embedded in the historical narratives of British India's partition in 1947 (Schofield, 2003; Ganguly & Diamond, 2005). The contested region, divided between Indian-occupied Kashmir and Pakistan-administered Kashmir, has been a focal point of political tension and international concern for decades. This research embarks on a comprehensive examination of the legal positions in the Kashmir conflict. The necessity for this inclusive analysis arises from the recognition that the Kashmir conflict is not merely a territorial dispute; rather, it is a multifaceted

conundrum shaped by historical, political, socio-economic, and cultural dimensions (Chacko, 2017). By delving into a range of comparative elements, this research seeks to unravel the complexities inherent in the legal positions of both regions. It goes beyond a mere examination of legal frameworks and international agreements, aiming to paint a holistic picture that encompasses administrative efficiency, political stability, development indicators, resource management, and the thriving horticultural sector (Government of India, 1950; Government of Pakistan, 1974). The comparative elements outlined in this research have been carefully selected to offer a well-rounded understanding of the strengths and resilience of Pakistan-administered Kashmir. This approach is driven by the belief that a comprehensive analysis will not only contribute to the existing body of knowledge on the Kashmir conflict but will also foster a more nuanced and balanced discourse. In outlining the significance of this research, it becomes apparent that a narrow focus on legal frameworks alone does not capture the intricate layers of the Kashmir conflict. The inclusion of diverse dimensions allows for a more robust analysis, offering a platform for dialogue that extends beyond legal intricacies. By adopting a favorable perspective on Pakistan-administered Kashmir, the research aims to encourage a more empathetic and comprehensive understanding of the region's unique strengths and challenges. As the research

unfolds, it endeavors to navigate through the historical complexities, unravel the current dynamics, and present a holistic view that underscores the resilience and positive contributions of Pakistan-administered Kashmir. Through this endeavor, the research aspires to contribute not only to academic discourse but also to the ongoing dialogue aimed at fostering peace, stability, and cooperative engagement in the troubled region of Kashmir (Haq, 2020).

2. Legal Positions of India in Indian-Occupied Kashmir:

• Accession to India

India asserts its legal claim over the state of Jammu and Kashmir through the Instrument of Accession signed by the Maharaja of Jammu and Kashmir in 1947. This document legally binds the state to accede to the Dominion of India (Khan, 2015).

• Article 370

The incorporation of Article 370 in the Indian Constitution provides special autonomy to Jammu and Kashmir. This article grants the state a separate constitution, limiting the applicability of Indian laws to matters specified in the Instrument of Accession (Rather, 2020).

Legal Framework

India contends that the state of Jammu and Kashmir is an integral part of its territory and that the constitutional provisions, including Article 370, are following legal norms and historical agreements.

3. Legal Positions of Pakistan in Pakistan-Administered Kashmir:

• Azad Jammu and Kashmir (AJK)

Pakistan administers a part of the region it calls Azad Jammu and Kashmir. The legal

foundation for Pakistan's claim lies in the UN-mandated ceasefire line established in 1949.

• UN Resolutions

Pakistan emphasizes the relevance of United Nations Security Council (UNSC) resolutions on Kashmir, advocating for a plebiscite to determine the region's final status. These resolutions call for the withdrawal of forces by both India and Pakistan and the holding of a free and fair plebiscite (UN-Resolutions-on-Kashmir. Pdf, n.d.).

• Legal Framework

Pakistan argues that its administration of Azad Jammu and Kashmir is consistent with the UN resolutions and international law. The country calls for the implementation of the plebiscite as a just and legal resolution to the Kashmir conflict (Khan, 2015).

| Legal Positions | India in Indian-Occupied Kashmir | Pakistan in Pakistan-Administered Kashmir |
|-----------------------|----------------------------------------------------|-------------------------------------------------------------------------------------|
| 1. Basis of claim | Accession through Instrument of Accession in 1947 | Administered part known as Azad Jammu and Kashmir, based on the 1949 ceasefire line |
| 2. Key Legal Document | Instrument of Accession signed by Maharaja in 1947 | UN-mandated ceasefire line established in 1949 |

| | | |
|-------------------------------------|-------------------------------------------------------------------|-------------------------------------------------------------------------------|
| 3. Constitutional Provision | Article 370 in the Indian Constitution | Relies on UN Resolutions |
| 4. Special Autonomy | Granted by Article 370, providing a separate constitution | Administration consistent with UN resolutions and international law |
| 5. Applicability of Laws | Indian laws apply only to matters specified in the Instrument | Advocates plebiscite for final status, withdrawal of forces, and fair voting |
| 6. Legal Framework Assertion | An integral part of India, legal norms, and historical agreements | Questions raised about local representation in the absence of elected leaders |

4. Political Stability

Pakistan-administered Kashmir, also known as Azad Jammu and Kashmir (AJK), has a distinct political structure that has evolved over the years. Historically, AJK has maintained a relatively stable political environment with a President and a Prime Minister serving as the key figures in the governance hierarchy (Ganguly, 2020; Haq, 2019). The President is elected by the Azad

Jammu and Kashmir Council, and the Prime Minister is chosen through legislative processes, ensuring a system of checks and balances (Ganguly, 2020). The political landscape in AJK reflects a commitment to democratic principles, where elected representatives play crucial roles in decision-making processes (Haq, 2019). The historical context of AJK's political stability is marked by periods of local autonomy and active participation in regional affairs, fostering an environment conducive to sustainable development and peace (Schofield, 2018; United Nations, 2020).

Indian-occupied Kashmir:

In contrast, the political arrangement in Indian-occupied Kashmir has witnessed fluctuations, particularly in the context of the abrogation of Article 370 in 2019 (Ganguly & Devasher, 2019). The revocation of Article 370, which granted special autonomy to Jammu and Kashmir, altered the region's political dynamics significantly. The move led to the reorganization of the state into two separate union territories – Jammu & Kashmir and Ladakh (Ganguly & Devasher, 2019). The political landscape in Indian-occupied Kashmir has undergone substantial changes, with the absence of a free Prime Minister or President for the region. The centralized governance structure, along with the appointment of Lieutenant Governors, has raised questions about local representation and autonomy (International Crisis Group, 2020). The political shifts have, at times, been accompanied by periods of unrest, impacting the overall stability of the region.

The assessment of political stability in both regions considers the governance structures, political processes, and the sentiments of the local population. In Pakistan-administered Kashmir, the historical political stability is indicative of a

conducive environment for sustainable development and peace (Ahmed, 2018; Rai, 2019). The democratic principles embedded in the political system contribute to local representation and participatory governance (Choudhary, 2018).

| Political Stability | Pakistan-Administered Kashmir (AJK) | Indian-Occupied Kashmir |
|---------------------------------|-----------------------------------------------------------------------------|-----------------------------------------------------------------------------------|
| 1. Governance Structure | President elected by AJK Council; Prime Minister chosen legislatively | Centralized governance structure after the abrogation of Article 370 |
| 2. Key Political Figures | President and Prime Minister play crucial roles in the governance hierarchy | Absence of a free Prime Minister or President; Lieutenant Governors appointed |
| 3. Selection Process | President elected by AJK Council; Prime Minister chosen legislatively | Appointment of Lieutenant Governors, raising questions about local representation |
| 4. Checks and Balances | System of checks and balances in place through | Questions raised about local representation and autonomy |

| | | |
|-------------------------------|---------------------------------------------------------------------|-------------------------------------------------------------------------------|
| | legislative processes | |
| 5. Impact on Stability | Historical stability conducive to sustainable development and peace | Periods of unrest and political shifts impacting overall stability |
| 6. Impact on Stability | Elected representatives crucial in decision-making processes | Questions raised about local representation in the absence of elected leaders |

7. Development Indicators: A Holistic Examination

The examination of development indicators is crucial in discerning the socio-economic fabric of Pakistan-administered Kashmir and Indian-occupied Kashmir. This section delves into a comprehensive analysis, encompassing education, healthcare, infrastructure, and economic progress, to provide an extensive understanding of the developmental landscape in both regions.

- **Education**

In Pakistan-administered Kashmir, strides in education are marked by a commitment to improving literacy rates and educational infrastructure. The region has witnessed a notable expansion of schools, colleges, and universities, reflecting a dedication to providing accessible and quality education (Ahmed, S., 2018; Rai, M. M., 2019). Initiatives such as scholarship programs and vocational training contribute to a positive trend in educational development, signaling a commitment to

nurturing human capital (Choudhary, M. I., 2018).

Contrastingly, Indian-occupied Kashmir has faced challenges, particularly in moments of unrest, impacting educational institutions. While the region boasts historical educational achievements, such as the establishment of prestigious institutions, periods of instability have posed obstacles to consistent educational progress (International Crisis Group, 2020). In Pakistan-administered Kashmir (AJK), there has been a significant focus on expanding the educational infrastructure. The region boasts several universities and medical colleges, indicating a commitment to providing higher education and healthcare training opportunities to its residents (Ahmed, S., 2018; Rai, M. M., 2019).

1. **Universities:** Pakistan-administered Kashmir is home to several universities, including:

- **University of Azad Jammu and Kashmir (UJK):** Located in Muzaffarabad, UJK is one of the oldest universities in the region, offering a wide range of undergraduate and postgraduate programs in various disciplines.
- **Mirpur University of Science and Technology (MUST):** Located in Mirpur, MUST is another prominent institution known for its focus on science and technology education.
- **University of Kotli:** This university, situated in Kotli district, offers undergraduate and graduate programs in diverse fields.

- **Women's University of Azad Jammu and Kashmir:** Established to promote women's education, this university provides opportunities for female students to pursue higher studies.

2. **Medical Colleges:** Pakistan-administered Kashmir also has medical colleges dedicated to training healthcare professionals:

- **Azad Jammu and Kashmir Medical College (AJKMC):** Located in Muzaffarabad, AJKMC is a leading medical institution providing undergraduate medical education and training.
- **Mohtarma Benazir Bhutto Shaheed Medical College:** Situated in Mirpur, this medical college is named after former Prime Minister Benazir Bhutto and contributes to healthcare education and research in the region.

In contrast, Indian-occupied Kashmir has faced challenges in maintaining educational stability during periods of unrest. However, the region has historical educational institutions like the University of Kashmir and the Central University of Kashmir, which have played significant roles in providing higher education opportunities to the local population. Despite challenges, these institutions continue to contribute to the educational landscape of the region.

| Pakistan-Administered Kashmir (AJK) | Indian-Occupied Kashmir |
|-------------------------------------------------------|-------------------------------------|
| Universities: | Universities: |
| 1. University of Azad Jammu and Kashmir (UAJK) | 1. University of Kashmir |
| 2. Mirpur University of Science and Technology (MUST) | 2. Central University of Kashmir |
| 3. Women University of Azad Jammu and Kashmir | |
| 4. University of Kotli | |
| Medical Colleges: | Medical Colleges: |
| 5. 1. Azad Jammu and Kashmir Medical College (AJKMC) | Government medical college Jammu |
| 6. Mohtarma Benazir Bhutto Shaheed Medical College | Government medical college Srinagar |

But the factor that made difference is the factor of independence. In Pakistan-Administered Kashmir, the independence factor has facilitated a stable educational environment and the establishment of several universities and medical colleges. This autonomy has allowed for uninterrupted academic progress and infrastructure development. On the other hand, Indian-Occupied Kashmir, despite having historic educational institutions like the University of Kashmir and the Central University of Kashmir, has faced challenges in maintaining educational stability due to ongoing unrest and lack of autonomy. This has hindered the

region's ability to fully capitalize on its educational advancements.

• Healthcare

Healthcare indicators shed light on the commitment to public welfare in both regions. Pakistan-administered Kashmir has demonstrated efforts to enhance healthcare services, reflected in the establishment of hospitals, medical colleges, and community health programs (Ahmed, S., 2018; Rai, M. M., 2019). The focus on healthcare infrastructure is indicative of a proactive approach to ensure the well-being of the population.

In Indian-occupied Kashmir, healthcare has been affected during periods of conflict, impacting the accessibility and quality of medical services. Nevertheless, there have been initiatives to improve healthcare facilities, especially in recent years, contributing to positive developments (International Crisis Group, 2020).

• Infrastructure

The development of infrastructure plays a pivotal role in fostering economic growth and improving living standards. Pakistan-administered Kashmir has invested in the construction of roads, bridges, and energy projects, contributing to improved connectivity and regional development. The commitment to infrastructural development is evident in projects aimed at enhancing the quality of life for residents.

In Indian-occupied Kashmir, the terrain and historical challenges have influenced infrastructural development. Efforts have been made to address infrastructure gaps, and recent initiatives signal a commitment to improving connectivity and overall infrastructure in the region.

| Pakistan-Administered Kashmir (AJK) | Indian-Occupied Kashmir |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1. Roads and highways: Investments in construction and maintenance of roads and highways, e.g., Muzaffarabad-Mirpur Expressway, and Neelum-Jhelum Highway.</p> | <p>Investments in expanding the road network and upgrading existing infrastructure, e.g., Jammu-Srinagar Highway, and Leh-Manali Highway.</p> |
| <p>2. Construction of bridges and river crossings: to improve accessibility, e.g., Mangla Dam Bridge, and Hattian Bridge.</p> | <p>Specific projects such as bridges over rivers like the Jhelum and Chenab, and crossings near major urban centers like Srinagar and Jammu,</p> |
| <p>3. Energy projects: Investment in energy projects such as hydroelectric power plants, e.g., harnessing natural resources for sustainable energy production.</p> | <p>hydroelectric power due to the region's abundant water resources from rivers like the Jhelum and Chenab</p> |
| <p>4. Telecommunications Infrastructure: Expansion of telecommunication infrastructure,</p> | <p>Efforts include expanding coverage,</p> |

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|
| <p>including mobile networks and internet connectivity.</p> | <p>upgrading technologies, and enhancing network reliability</p> |
| <p>5. Tourism Infrastructure: Development of tourism infrastructure, including hotels, resorts, and recreational facilities.</p> | |
| <p>6. Urban Development Initiatives: Urban development projects, including housing complexes and commercial centers.</p> | |

• **Economic Progress**

Economic progress is a vital indicator of development, reflecting the region's ability to generate income and sustain livelihoods. In Pakistan-administered Kashmir, economic initiatives, trade policies, and natural resource utilization contribute to economic growth. The focus on sustainable economic development aligns with the broader goal of improving living standards (*Planning & Development Department AJ&K*, n.d.). Indian-occupied Kashmir, historically known for handicrafts and tourism, has faced economic challenges during periods of unrest. Recent efforts to diversify the economy and attract investments signify a renewed commitment to economic progress.

| Development Indicators | Pakistan-Administered Kashmir | Indian-Occupied Kashmir |
|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Education | <ul style="list-style-type: none"> • Strides in improving literacy rates and infrastructure. • Expansion of schools, colleges, and universities. Scholarship programs and vocational training | <ul style="list-style-type: none"> • Historical achievements, but challenges during the unrest. • Periods of instability impacting educational progress |
| 2. Healthcare | Establishment of hospitals, | Impact on accessibility and quality |

| | | |
|----------------------|------------------------------------------------------------|-----------------------------------------------------------|
| | medical colleges | during conflict |
| 3. Infrastructure | Investment in roads, bridges, and energy projects | Terrain and historical challenges influencing development |
| 4. Economic Progress | Economic initiatives, trade policies, resource utilization | Historical reliance on handicrafts and tourism |

8. Military Contributions

In the realm of military service, AJK stands out for its substantial contribution, with an impressive 12% of the total troops originating from the region. This statistic not only reflects the commitment of AJK residents to national defense but also highlights their active participation and representation in the armed forces. Furthermore, AJK boasts a notable achievement in the form of producing a four-star general, exemplifying the region's potential for leadership and excellence within the military hierarchy. This individual accomplishment not only showcases the Caliber of individuals from Kashmir but also emphasizes the diverse talent pool contributing to the defense forces. In stark contrast, the Indian army lacks a proportional representation of Kashmiris, highlighting a significant gap in inclusivity. The absence of Kashmiris in the Indian army raises questions about equitable participation and representation, particularly in a region with a distinct cultural and historical identity (table of organization by PA directorate GHQ).

| Military Contributions | Azad Jammu and Kashmir (AJK) | Indian Army |
|----------------------------------------|---------------------------------------------------------------|-------------------------------------------------------------------|
| 1. Percent age of Troops | An impressive 12% of the total troops from the region | Lack of proportional representation of Kashmiris |
| 2. Commitment to Defence | Reflects strong commitment to national defense | Questions raised about equitable participation and representation |
| 3. Active Participation | Active involvement and representation in the armed forces | A potential gap in inclusivity |
| 4. Leadership Achievement | Produced a four-star general, showcasing leadership potential | Absence of similar achievements |
| 5. Equitable Participation | Demonstrates inclusivity in the armed forces | Questions raised about the equitable representation of Kashmiris |
| 6. Diversity in the Talent Pool | Highlights diverse talent pool contributing to the | Potential lack of diverse representation |

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|--|----------------|----------------------|
| | defense forces | tion in the military |
|--|----------------|----------------------|

9. Comparative Analysis:

In contrast to Indian-administered Jammu and Kashmir (IOK), where constitutional autonomy under Article 370 was revoked in 2019, Azad Jammu and Kashmir (AJK) operates with a different framework within Pakistan. The term "Azad," meaning free or liberated, signifies Pakistan's approach to AJK, emphasizing a degree of administrative and political autonomy. Unlike IOK, where local governance structures were altered significantly, AJK maintains its legislative assembly and president, elected by its population (*UN Resolutions on Jammu & Kashmir - Pakistan Mission to the UN, Geneva, n.d.*).

The people of AJK have a distinct status within Pakistan's constitutional framework, allowing them a level of self-governance that includes making laws and managing their internal affairs. This autonomy extends to matters such as education, health, and local administration. AJK's legislative assembly, consisting of elected representatives, holds powers to enact laws on various subjects not under the exclusive jurisdiction of Pakistan's federal government. Moreover, AJK residents participate in Pakistan's national political processes, including electing members to Pakistan's Parliament.

In contrast, the residents of IOK experienced a fundamental shift with the abrogation of Article 370, altering their historical political autonomy within the Indian Union. The move effectively integrated IOK more closely into India's federal structure, diminishing its previous special status. This change sparked significant local and international debate, particularly regarding its implications for the region's political future and the rights of its residents.

Pakistan maintains that the UN resolutions on Kashmir provide a legitimate framework for resolving the Kashmir issue, emphasizing the right to self-determination through a free and impartial plebiscite. This stance underscores Pakistan's support for the aspirations of Kashmiri people, including those in AJK, to determine their political future in accordance with international principles (Aamin Hussain, 2020).

Conclusion

This research paper provides a comprehensive analysis of the constitutional and legal positions of India and Pakistan regarding the Kashmir dispute. The study highlights the historical context, legal frameworks, and international dimensions of the conflict, paving the way for a deeper understanding of the complexities involved in resolving the Kashmir issue. Further research and diplomatic efforts are necessary to address the contrasting legal positions and work towards a sustainable solution that respects the aspirations of the Kashmiri people.

Policy Recommendations and Way Forward:

1. **Renewed Diplomatic Engagement:** Both India and Pakistan should demonstrate a renewed commitment to diplomatic dialogue. Diplomatic channels need to be reactivated to

foster open communication, understanding, and negotiation. The resumption of talks should prioritize addressing the core concerns and aspirations of the people of Kashmir.

2. **Inclusive Stakeholder Consultations:** Policy formulation and negotiations should involve comprehensive consultations with all stakeholders, including representatives from Indian-occupied Kashmir, Pakistan-administered Kashmir, and other relevant parties. Inclusivity is essential to ensuring that diverse perspectives are considered in the decision-making process.
3. **Humanitarian Initiatives:** Humanitarian efforts should be prioritized to alleviate the suffering of the Kashmiri people. Both India and Pakistan should collaborate on initiatives addressing human rights concerns, providing aid, and facilitating the return of displaced populations. A joint commitment to human welfare can build trust and create a conducive environment for conflict resolution.
4. **International Mediation and Support:** The international community, including the United Nations and regional organizations, should play an active role in facilitating mediation efforts. The involvement of neutral third parties can provide a balanced platform for dialogue and contribute to the implementation of international resolutions, fostering a sense of justice.
5. **Development and Economic Cooperation:** Initiatives for economic development and

cooperation between the two regions should be explored. Joint projects, trade agreements, and economic partnerships can promote mutual benefits and build confidence between India and Pakistan. Economic collaboration has the potential to create interdependence, fostering stability.

6. **Track II Diplomacy:** Parallel to official negotiations, Track II diplomacy involving non-governmental actors, academics, and civil society can play a crucial role. These informal channels can facilitate discussions, bridge gaps, and generate innovative solutions to longstanding issues.
7. **Public Awareness and Education:** Public awareness campaigns and educational initiatives should be launched in both India and Pakistan to inform citizens about the historical context and complexities of the Kashmir conflict. An informed public is better positioned to support diplomatic initiatives and foster a culture of peace.
8. **Long-Term Confidence-Building Measures:** Gradual confidence-building measures should be implemented to build trust between the conflicting parties. These measures may include the demilitarization of certain areas, cultural exchanges, and joint initiatives aimed at fostering people-to-people connections.

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