



# INTERNATIONAL JOURNAL OF KASHMIR STUDIES



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# INTERNATIONAL JOURNAL OF KASHMIR STUDIES

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## **Objectives of the IJKS**

- To assess and examine the needs and requirements of research in Kashmir studies and dynamics of Pakistan.
- To publish articles related to Kashmir conflict, international affairs, political studies, diplomacy and public advocacy, security paradigm, defense and strategic studies, law-based approaches, peace and conflict studies, governance and economy, self-determination and other solidarity rights.
- To coordinate research programs of various universities and other research bodies in and outside Pakistan and cooperate in the academic activities and scholarly pursuits of all official and nonofficial institutions engaged in this field;
- To seek, acquire and preserve source material (private papers, newspapers, rare books, documents and pamphlets, etc.) relevant to the above fields;
- To arrange interviews with important persons who can recall significant incidents relating to the fields mentioned above and to preserve a record of such conversations for current and further use by Historians, Social Scientists and scholars of various fields;
- To publish biannual Journals of high academic quality
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- To devise and adopt ways and means to further the objectives of the forum as a body responsible for research in above-mentioned areas;
- To cooperate with international research organizations, and study Kashmir Issue in wider context of its neighbouring countries.

Reminding the Governments and authorities concerned of the principle embodied in its resolutions 47 (1948) of 21 April, 1948, 51(1948) of 3 June, 1948, 80 (1950) of 14 March, 1950 and 91(1951) of 30 March, 1951, and the United Nations Commission for India and Pakistan resolutions of 13 August, 1948, and 5 January, 1949, that 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,

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(UN Security Council Resolution  
Resolution 122 (1957))

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For the sake of uniformity, we have included a “Note to Contributors” on the back of the cover page. For citation and references, the IJKS follows the format outlined in the Sixteenth Edition of *The Chicago Manual of Style*.

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(Dr. Sania Muneer)  
Editor in Chief





# Safety Issues of Journalists Reporting in Conflict Zone: A Case Study of Pakistan & Indian Administered Kashmir

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## **Abstract**

*We are largely dependent on local media reports to keep informed about the ground realities and latest happenings in any region. These reports become the sole source of information in a conflict situation in any society or state wherein the parties involved in the conflict bar independent human rights observers and bodies to operate freely in the disputed territories. Due to journalism's unique and extremely powerful role in conflict situation, the key players involved in the dispute kept trying to exploit the media to influence public opinion, delude global community and legitimate their power. Consequently, journalists are facing serious challenges such as threats to their lives and livelihood, targeted killings, harassment, intimidation, and censorship. The article places a particular focus on the safety as the main challenge for journalists in both divided parts of Jammu and*

*Kashmir and examines that if they had been provided safe working environment or are they trained to tackle their safety issues. Seventy-three journalists representing both parts of the disputed state participated in the qualitative study by responding to a semi-structured questionnaire, in depth interviews and FGDs. The interviews were analyzed through NVivo software by using thematic analysis approach, a widely used technique to identify themes, i.e. patterns in the data that are important or interesting. Results showed that journalists working in Indian administered Kashmir (IaK) were facing more serious challenges than journalists in Pakistan administered Kashmir (PaK). These challenges were included unfavorable media environment, abusive treatment, violence and threats to their lives and livelihood. The study revealed that journalists working on both sides of LoC were not being adequately trained on safety issues in conflict zone.*

**Keywords:** Kashmir, Conflict Zone, Journalism, Safety, Pakistan, India, Muzaffarabad, Srinagar, PaK, IaK, LoC

## **Introduction**

There is a deep, complex, and ancient link between media and conflict. In conflict zones, news and views are being considered as bestselling commodities. The parties involved in the conflicts use media to enforce their viewpoints and ideologies to influence the opposing sides in conflict.<sup>1</sup>

In such a situation, the role of journalists becomes very crucial as they serve the masses affected by the conflict with news and views on a regular basis. A news report published in a newspaper or broadcast on TV or Radio in a conflict zone can be the sole information for the readers or audience. Such important role of journalism in violent

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<sup>1</sup>Ivan Sigal, "Digital Media in Conflict Prone Societies," The Center for International Media Assistance (CIMA), October 19, 2009.

conflict zone invites numerous challenges for journalists as parties involved in the conflict seek to control the media which create greater risks for those reporting on the sensitive issues. Statistics showed that media workers are highly exposed to the hostilities, pressures, threats, unlawful detentions, and kidnappings and one journalist being killed each-week in the world. Not all these injustices with the journalists are investigated and unfortunately perpetrators normally walk away without proper prosecution.<sup>2</sup>

In its 2015 World Trend Report, UNESCO states that ‘international standards on the safety of journalists have been strengthened significantly in the past two years’ (p. 156). Despite these efforts, however, an increasing number of journalists face violence and murder because of doing their jobs.

In Kashmir, which is a major conflict between two neighboring atomic powered countries scores of journalists have lost their lives, kidnapped, and tortured in the line of their duties while reporting in conflict ridden state. Particularly after 1980’s, killing of Burhan Muzaffar Wani (July 2016) and August 5, 2019 Indian act of abrogating the articles 370 and 35-A of the constitution, the journalist’s community faces extreme hardships such as threats from the authorities, torture and targeted killings by the unknown assailants.<sup>3</sup>

The Committee to Protect Journalists, which is an independent, nonprofit organization established with the aim to promote press freedom worldwide published a report on November 14, 2018 titled *Kashmiri Journalists Face Multiple Restrictions, Attacks in October*.

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<sup>2</sup> “Gender Matters in War Reporting,” Kilden, February 27, 2017, Accessed February 7, 2020, <http://kjonnsforskning.no/en/2017/02/gender-matters-war-reporting>.

<sup>3</sup> “Human Rights Watch”, Human Rights Watch, January 14, 2020, Accessed January 20, 2020, <https://www.hrw.org/news/2020/01/14/india-mounting-human-rights-abuses>.

The report unveiled the facts how authorities in Indian administered Kashmir suppressing free voices and threatening journalists in the Valley.<sup>4</sup> The New Arab also published a special report on January 8, 2019 that journalists in Kashmir facing tough challenges. The report stated that 21 journalists have so far been killed in Kashmir, either directly targeted or caught in the crossfire while reporting, as dozens more face hardships in their daily jobs.<sup>5</sup>

Terming Indian administered Kashmir among the most dangerous places for journalists, Kashmir Media Service (KMS) reported that people on journalistic assignments are performing their professional assignments in the hardest circumstances. According to data released by the research wing of the organization on the eve of the World Press Freedom Day 2019, nineteen media men killed, scores injured since 1989 in the Indian controlled parts of the Kashmir.<sup>6</sup>

Both India and Pakistan found labeling allegations on each other's that their rival, imposed curbs on independent media to silence the free voices, public sentiments and to hide the ground realities of the region. United Nations' Office of the High Commissioner for Human Rights in its first-ever report on the situation in Kashmir published in 2018 also pointed out about the restrictions on the right to freedom of expression, violence against human rights defenders and abusive treatment by the authorities against the journalists working in the disputed region.<sup>7</sup> This article particularly examined the working

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<sup>4</sup> "Kashmiri Journalists Face Multiple Restrictions, Attacks in October," Committee to Protect Journalist, November 14, 2018, Accessed June 24, 2019, <https://cpj.org/2018/11/kashmiri-journalists-face-multiple-restrictions-at.php>.

<sup>5</sup> N. Sidiq, "In-depth: Journalists in Kashmir Face Tough Challenges," *The New Arab*, January 08, 2019, Accessed June 24, 2019, <https://www.alaraby.co.uk/english/indepth/2019/1/8/journalists-in-kashmir-face-tough-challenges>.

<sup>6</sup> "Journalists Working in Difficult Situation in IOK," Kashmir Media Service, May 3, 2019, .Accessed June 24, 2019,<https://kmsnews.or g/news/2018/05 /03 /journalist s-working-in-difficult-situation-in-iok/>.

<sup>7</sup> "Report on the Situation of Human Rights in Kashmir", United Nations High Commissioner for Human Rights, 1018.

environment of the journalists on both sides of LoC about their safety challenges and measures.

## **Geo-political Significances and Historical Background**

Kashmir officially known as Jammu and Kashmir has a great geopolitical significance and is a geographic bridge to central Asia, which is a vital geographic component to the Belt and Road Initiative. Its geographical connectivity to the central Asia via Afghanistan makes it a very important region in the South Asia.<sup>8</sup> The state has massive energy deposits, huge tourism potential and abundant hydropower generation resources. With all its unrivaled natural landscape, God-gifted wealth and geopolitical significance, the state has also known as a longstanding conflict between two nuclear archrival neighboring countries India and Pakistan from last seven decades. The tension between these two important countries destabilized South Asian region and paved way for three full-fledged wars and other minor clashes. The unsettled dispute is also posing potential threat to the global peace.<sup>9</sup>

It has become a fact that durable peace in the region could not be achieved till the peaceful settlement of the dispute. Despite several major bilateral, multilateral efforts at diplomatic fronts, dialogues and mediations over its settlement, the goal has remained elusive.<sup>10</sup>

In between the international peace efforts, mediation offers by world powers and bilateral talks, India kept strengthening its control over

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<sup>8</sup> Bahauddin Foizee, "Kashmir's Geopolitical Significance is Growing by the Day", Geopolitical Monitor. May 24, 2018, Accessed June 30, 2019, <https://www.geopoliticalmonitor.com/kashmirs-geopolitical-significance-is-growing-by-the-day/>.

<sup>9</sup> Peer Ghulam Nabi, and Muhammad Ammad Khan "Kashmir Conflict: Tracing the History Suggesting the Solution," *Asian Journal of Humanity, Art and Literature* 1, no. 1 (2014): 30-40.

<sup>10</sup> Moeed Yusuf, & Adeel Najam. "Kashmir: Ripe for Resolution?" *Third World Quarterly*, (2009): 1503-1504.

the disputed territory using state might and on other side Pakistan kept extending its political, moral, and diplomatic support to Kashmiris for their UN acknowledged right to self-determination.<sup>11</sup>

A credible Kashmiri independent research and news organization, Kashmir Media Service (KMS) compiled the data of casualties and other human rights abuses in Indian held territory during the indigenous liberation movement, which showed 95,670 total civilian killings out of which 7146 were custodial killings by the Indian military and paramilitary forces from January 1989 till September 7, 2020. The research institute reported that during this period 1,60,983 civilian were arrested, 110,355 structures arson/destroyed, 22,918 women become widows, 1,07,798 children were orphaned, and 11,219 Kashmiri women were gang raped or molested.<sup>12</sup>

Presently, the state of Jammu and Kashmir has been divided among three major Asian powers; India, Pakistan, and China. India controls the central and southern portions; Northwestern part of the state is being administered by Pakistan while China controls its Northeastern areas. India controls its largest portion 39,127 square miles, while an area of 33,145 square miles is under Pakistan's administration. China controls 14,500 square miles.<sup>13</sup> Line of Control (LoC) refers to the de-facto border between the Pakistani and Indian controlled parts of the state.

## Methodology

The study used qualitative inquiry in which thematic analysis technique was used to investigate the phenomenon. Qualitative

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<sup>11</sup> Abdul Majid, and Dr Mahboob Hussin, "Kashmir: A Conflict between India and Pakistan," *South Asian Studies* 31, no. 1 (2020).

<sup>12</sup> "Kashmir Media Service", Kashmir Media Service/News, 2020, Accessed September 28, 2020, <https://kmsnews.org/news/>.

<sup>13</sup> Amanda Briney, "Geography and History of Kashmir", Thought Co. May 25, 2019, Accessed June 30, 2019, <https://www.thoughtco.com/geography-of-kashmir-1435549>.

inquiry is used when a problem or issue needs to be explored; it is focused on words not numbers.<sup>14</sup> Thematic analysis is a qualitative research method that can be widely used across a range of epistemologies and research questions. It is a method for identifying, analyzing, organizing, describing, and reporting themes found within a data set.<sup>15</sup> The process begins at the initial stage of data collection and continues till transcribing, reading, re-reading, analyzing and interpreting the data.

- a) **Sample Size.** Fifteen (15) accredited and senior journalists from Kashmir Press Club (KPC) Srinagar and all members of Central Press Club (CPC) Muzaffarabad were taken as participants.
- b) **Sampling Technique.** In Indian administered Kashmir, snowball sampling technique has been used because the authorities in had imposed ban on communication after August 5, 2019 so it was almost impossible to locate the specific persons due to the inability of moving across the LoC. In Pak, Census Sampling technique was used to obtain maximum responses.
- c) **Period of Study.** The period of study was October 2019 to October 2020.
- d) **Data Collection Technique.** Face to face meetings, in-depth interviews and focus group discussions (FGDs) in PaK while Email and Google Survey questionnaire in Srinagar.
- e) **Research Design.** In-depth interviews of fifteen (15) accredited and senior journalists from Srinagar, Indian administered Kashmir and fifty-eight (58) including freelancers and independent journalists from Muzaffarabad, Pakistan administered Kashmir were conducted for the study.

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<sup>14</sup> Matthew B. Miles, and A. Michael Huberman. *Qualitative Data Analysis: An Expanded Sourcebook*. Sage, 1994.

<sup>15</sup> V. Braun, and V. Clarke. "Using tThematic Analysis in Psychology," *Qualitative Research in Psychology*, 3, 77–101. doi:10.1191/1478088706qp063oa, 2006.



Due to sensitive nature of the data and considering the threats to the lives of IaK based Kashmiri journalists, in-depth interviews of fifteen were chosen randomly with the commitment to keep them anonymous. However, in Muzaffarabad, PaK, the maximum interviews were conducted to obtain utmost primary data for the study.

In first phase, a semi-structured written interview questionnaire was sent to the journalists on both sides of LoC through emails, social media networking sites like Facebook, twitter and few through their WhatsApp numbers but due to security reasons and constant monitoring of the emails, Facebook and WhatsApp accounts of the IaK based journalists; the number of respondents was less than expectations. Later, the same questionnaire developed through Google Survey Form was sent to them with the help of a UK based university's professor, which received the desired results.

## **Thematic Analysis**

Thematic analysis was applied on a dataset of texts including interview transcripts to minutely examine the data to identify common themes. The process involved examining the topics, patterns and ideas that came up repeatedly in the dataset.

Thematic analysis of the structured interviews was done using its most common six step process:

- 1) Familiarization/ reading, re-reading the data.
- 2) Process of coding
- 3) Generating/extracting themes
- 4) Reviewing the extracted themes
- 5) Defining and naming to the themes
- 6) Writing up/ analysis of the data

## **Familiarization**

All primary data was carefully reviewed, transcribed audios and notes were prepared after thorough reading of the text. The process helped to get familiar with the qualitative data

## **Coding**

In next step, the most used phrases and sentences in the respondent's answers were highlighted, assigned short labels/codes to describe their contents.

## **Generating Themes**

After assigning codes, patterns were identified among the generated themes. It significantly helped to extract broader themes out of the assigned codes. Several codes were merged into a single theme. It also helped in eliminating some of the too vague codes.

## **Reviewing Themes**

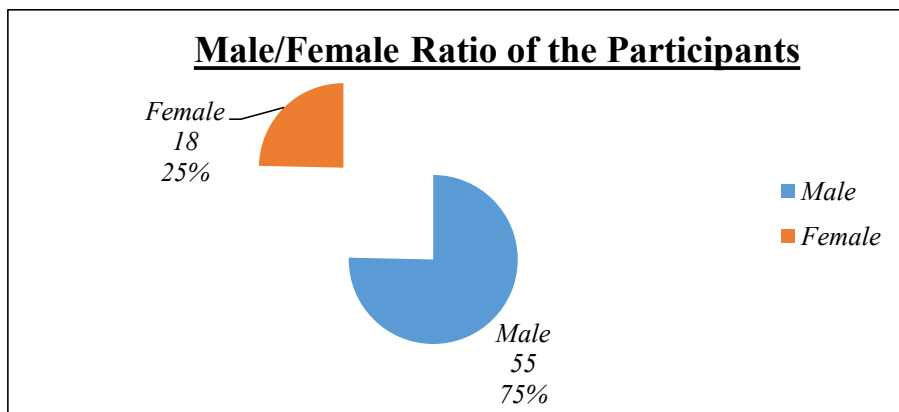
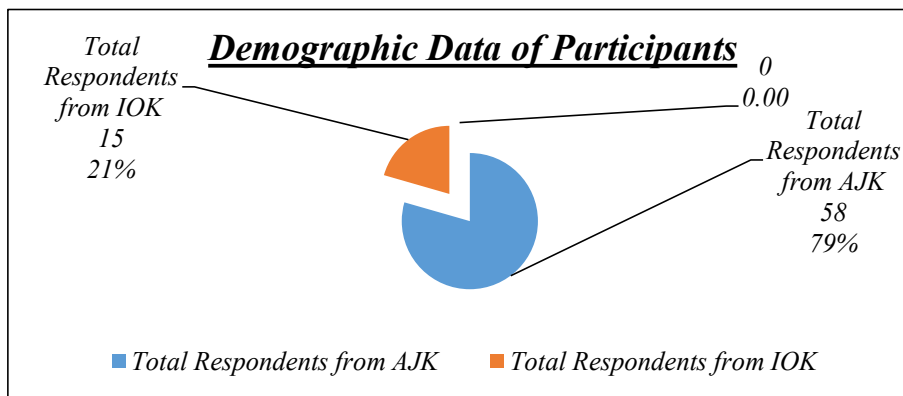
To make sure that extracted themes are the accurate representation of the data compared these with dataset. It helped to find out that if anything is missing or really present in the data. The review helped to further improve the themes. The process also helped splitting, combining, discarding, and creating new themes.

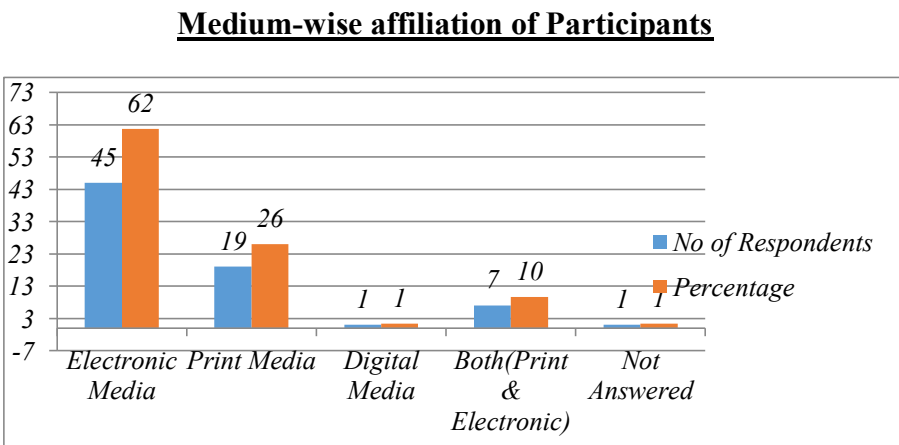
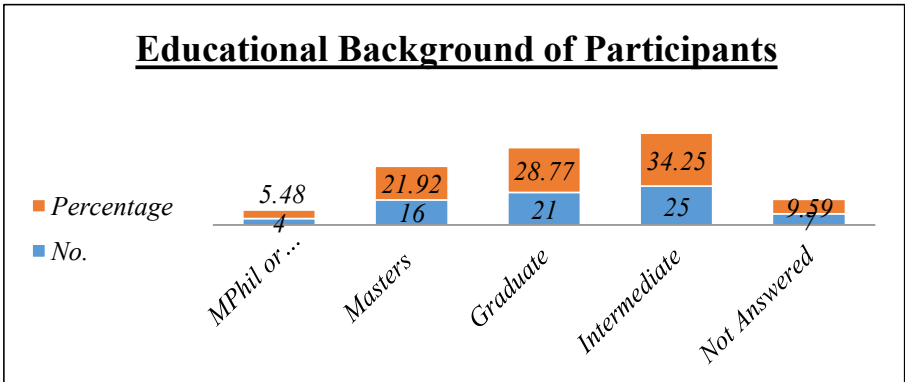
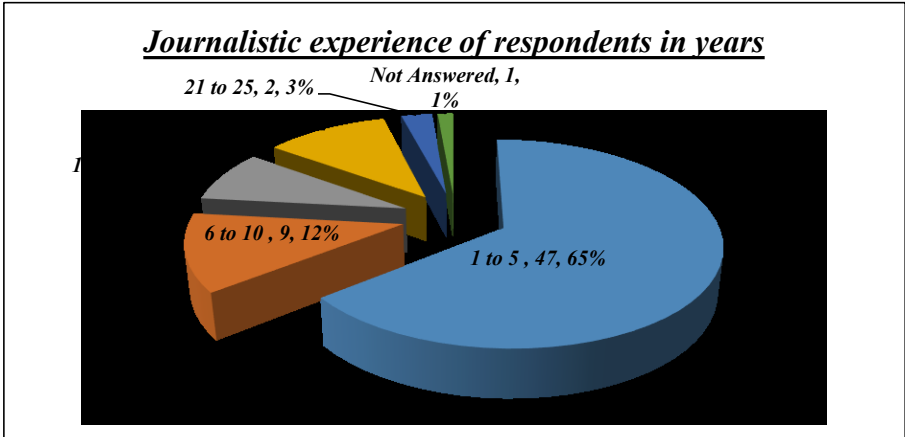
## **Defining and Naming the Themes**

After having final list of themes, these were given names and proper definition. In this process, the priority was given to those names that were easy and understandable. To make it further easy, these themes were categorized according to questions asked to the respondents, under which qualitative data was obtained for further examination. Themes generated through the process are given below:

- 1) Hostile environment
- 2) Training on safety issues

### Participants





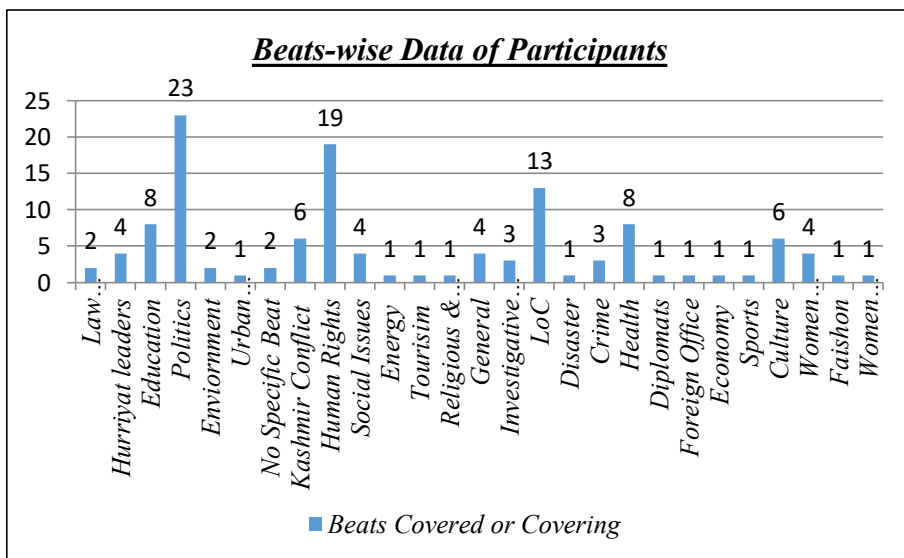
## Writing up/Analysis of data

Each theme has been separately discussed in the light of the respondents' answers.

### Data Analysis and Interpretations

#### 1. Hostile Environment

**Q. Have you ever witnessed any violent behaviour from any state-owned institution to you or fellow journalist? If yes, then what was the reason behind it?**



#### IaK Responses

Hundred percent respondents admitted that they had witnessed such offensive treatment to them or their colleagues by the state-owned institutions during their journalistic assignments. IaK based journalists who were covering pro-freedom or anti India beats were facing such intimidating behavior from state institutions on daily

basis. According to journalists they are being harassed, threatened, and summoned in police stations interrogated, tortured, and sometimes killed by the unidentified assailants. A respondent informed that they face such situation several times while covering the activities of All Parties Hurriyat leaders or anti India demos in different parts of the state. Tahira (Fake name) another journalist said that it happened many times and the reason behind the abusive treatment was to prevent us from covering law enforcement agencies' crimes which will expose them obviously.

### **PaK Responses**

In Azad Jammu and Kashmir forty-five percent respondents, which comprise 77.59 percent of the total interviewees apprised that they had never experienced such obnoxious conduct by the any government body or law enforcement agencies throughout their professional journalistic career. However, thirteen percent respondents that constitute 22 percent admitted that they gone through such distasteful situation after publishing news reports related to corruption, favoritism and nepotism of politicians or their relatives. Journalists were warned through third party for serious consequences if they continue to highlight such issues.

**Q. Who do you think is primarily responsible for such treatment against journalists?**

### **Indian Administered Kashmir Responses**

Fifty-three percent journalists believe that government is exclusively responsible for the abusive treatment against the media men in Jammu and Kashmir. However, twenty-seven percent consider that security agencies are directly involved in such actions.

## **Pakistan Administered Kashmir Responses**

In Pakistan administered Kashmir, twenty-nine percent respondents think that media owners are responsible for the abuses against the journalists. However, twenty-one percent journalists believe that absence of media person's protection laws is the reason behind such obnoxious treatment to them. Twelve percent respondents alleged government, eight percent to law enforcement agencies and seven percent to non-professional attitude of journalists.

### **2) Training on Safety Issues**

**Q. Have you ever received any capacity building training particularly focused on safety issues of journalists working in conflict zone? If yes, then which agency arranged it?**

## **Indian Administered Kashmir Responses**

According to responses, thirteen respondents, which constitute eighty-seven percent of the interviewees, have never received any specialized training on the safety issues of the journalists in conflict zone. Only 2 out of 15 journalists received this training, which was jointly arranged by a nongovernmental organization and their employers.

## **Pakistan Administered Kashmir Responses**

In PaK, forty-six respondents, 79.31 percent have also not received any specialized training on safety issues of journalists in conflict zone. Twelve, 20.69 percent who received it were including four trained from employers while eight journalists received safety training by nonprofit organizations.

## Discussions

### 1. Hostile Environment

Reporters without border, a Paris based independent media watchdog described India among the most dangerous countries for the world. In its annual assessment of global press freedom, citing the ruling party's increased pressure on media to toe the Hindu nationalist government's line and an atmosphere of hostility towards journalists who report critically on the government. In its 2021 World Press Freedom Index, the organization stated that police are directly involved in violence against journalists in India as well as in Kashmir.<sup>16</sup>

Since the Indian unilateral and unlawful act of abrogating the special disputed status of the state, journalists have become the victim of constant harassment, violence and abusive treatment by the police and other law enforcement agencies. Reporters without Borders in an investigative report on March 5, 2020, published a summary of recent cases of police harassment of journalists and violation of confidentiality of their sources in IaK. It includes the incidents of confiscation of Cameras and Cell Phones of journalists such as Qayyume Khan, CNN, Qisar Mir TV9 Bharatvarsh due to the coverage of an operation carried out by Indian National Investigation Agency. The Report further highlighted the systematic violations particularly examining the personal belongings of the journalists like cell phones and cameras. Kamran Yousaf, a local reporter in Pulwama district was summoned in Police Station to examine his phone. Naseer Ahmed Ghani and Haroon Nabi, two journalists were also summoned in the police station and interrogated for hours regarding their work and sources. Local journalists Basharat Masood, Safwat Zargar were

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<sup>16</sup> "India: Kashmir Sees Surge in Intimidation of Journalists, Violation of Sources," Reporters Without Borders, March 05, 2020, <https://rsf.org/en/news/india-kashmir-sees-surge-intimidation-journalists-violation-sources>.



detained while reporting in Handwara. Similarly, Muzzamil Mattoo, Zubair Dar, Azaan Javed, Anees Zargar was beaten up by Police for covering protests in Srinagar. Masood and Hakeem Khan were also taken to counter insurgency centre for interrogation purpose on November 30, 2020. Pirzada Ashiq, a renowned journalist was summoned in Police Station Srinagar and ordered to reveal his source of the story.<sup>17</sup>

In this study, all fifteen participants from IaK admitted that they or their colleagues had faced the abusive treatment of the authorities particularly security agencies. They were of the view that Indian governments and law enforcement agencies were solely responsible for the abuses against the media professionals in Jammu and Kashmir.

On the other hand, study shows that majority of the PaK based journalists never experienced any incident of violence or abusive treatment throughout their professional career. Those witnessed any similar incident, accused influential political elites, business tycoons' particularly real estate businessmen and somewhere some top government functionaries. Twenty-one percent journalists of the study believe that absence of basic media person's protection laws is the basic reason behind such unpleasant treatment to their community.

## **2. Training on Safety Issues**

Reporting from an armed conflict zone is a very dangerous job as the life of the reporter is always at the risk. Journalists who are discharging their professional duties in disputed areas facing numerous challenges such as danger to their security, meeting their basic physical needs, multifaceted information environment and many others. To tackle with the situation, they must be trained

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<sup>17</sup> "Journalists Working in Difficult Situation in IOK," Kashmir Media Service, May 3, 2019, Accessed June 24, 2019, <https://kmsnews.org/news /2018 /05/03 /journalists-working-in-difficult-situation-in-iok/>.

regarding safety protocols. Such as capacity building training opportunities that not only help journalists to minimize harm while covering their stories but also provide a sense of satisfaction during the work. Study revealed that majority of the journalists on both sides of LoC was not adequately trained either by the concerned governments, employers, or the media organizations/bodies. A small number however trained by different non-profit organizations operating in respective territories.

According to a CJP's analysis, local journalists become the soft target and are most vulnerable in armed conflict areas as compared to the others. Eighty-five percent journalists killed while discharging their professional duties in an armed conflict zone were not the foreign journalists but locals. Typically, they were murdered during their houses, office timings or on their commutes but not on their assignments. In such situation, the safety trainings for the local journalists become imperative to save their lives.<sup>18</sup>

## **Conclusion**

The study concluded that hundred percent journalists working in Indian administered Kashmir have been facing abusive treatment, serious threats and violent behavior from government machinery particularly law enforcement agencies while discharging their professional assignments. However, eighty percent journalists belonging to PaK stated that they had never experienced such obnoxious conduct by the any government body or law enforcement agency throughout their professional journalistic career.

The study also concluded that journalists working on both sides of LoC were not being adequately trained on safety issues in conflict

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<sup>18</sup> UNESCO, "Safety of Journalists", UNESCO, June 01, 2016 <http://www.unesco.org/new/en/unesco/events/prizes-and-celebrations/celebrations/international-days/world-press-freedom-day/previous-celebrations/worldpressfreedomday2009000/themes/safety-of-journalists/>.

zone. Both IaK and PaK governments and media houses are least bothered regarding the security challenges to the journalist community.



# Conflict Transformation through Constitution Building Processes in Indian Administered Jammu and Kashmir (IaJK)

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## **Abstract**

*The purpose of this research paper is to critically analyze and explore the concept of constitution building process and conflict transformation in the context of the Indian administered Jammu and Kashmir (IaJK). The conflict of J&K is a longstanding conflict and a larger part of the erstwhile state of Jammu and Kashmir is under the illegal occupation of India. The people of IaJK have been struggling for their right to self-determination against the illegal occupation of India. India has been committing gross and systematic violations of human rights and war crimes in the IaJK. The Indian Government has revoked Article 370 and abrogated article 35–A in IaJK on August 05, 2019 that further aggravated the situation and has badly affected the constitutional framework existing within the conflict zone of IaJK. This paper also aims to critically analyze the constitutional processes introduced by IaJK and also the unlawful and non-democratic act of August 05, 2019 that bifurcated the state and converted IaJK into Union territories of J&K and Laddkh. This research has great importance for the academicians, researchers and activists working on the conflict of Jammu and Kashmir and can be more useful in*

*future activities regarding the conflict transformation through constitution building in IaJK.*

**Key Words:** Constitution, Conflict Transformation, Conflict of Jammu and Kashmir, Violations of Human Rights and Article 370.

## **Introduction**

The conflict of Jammu and Kashmir is a very complex and multipronged dispute which has been pending for the settlement since 1947. This conflict is the unfinished agenda of the political decolonization of the colonized India including all the princely states. This conflict has many aspects and perspectives ranging from political to humanitarian to social to legal etc. and has badly affected the socio-economic lives of the people of the entire South Asia due to the ripple effects of this conflict halting the integration of the SAARC and developing of the collective socio-economic initiatives of this region. India unlawfully occupied a major part of the erstwhile state of J&K which is still lying under the forced and unlawful occupation of India. The matter was taken to United Nations Security Council (UNSC) in 1948 and around twenty resolutions have been passed by the UNSC and United Nations Commission for India and Pakistan (UNCIP) during its mediation on the J&K from 1948 to 1971.

These resolutions of UNSC and UNCIP recognize the disputed status of the erstwhile state of J&K and the right to self-determination of the state subjects of the erstwhile state of J&K though the plebiscite under the supervision of the UNSC. The Indian occupational forces have been committing violations of the human rights in an organized and systematic way. With the presence of the highest number of occupational forces, the IaJK is the highest militarized zone of the world. Due to the occupation of India, and the Indian occupational forces' acts of war crimes, crimes against humanity and incremental genocide this region has become a highly militarized zone. The nature of the conflict has been aggravated because this region is surrounded

by three nuclear powers of the world. Due to this complex and violent conflict, the lives of the people have been jeopardized and socio-economic conditions of the people have also been badly affected. That is why, this is very important to take practical and effective measures to transform the conflict for a transition period pending the final settlement of the conflict through free, fair and impartial plebiscite.<sup>1</sup>

The concept of constitution building is the most effective tool to address the main issues and transform them to ensure the socio-economic and general well-being of the people of the conflict zone during the transition period till the final settlement of the conflict.<sup>2</sup> Through this way, the harmful and lethal effects and implications of the conflict can be minimized and the human cost of the conflict can be minimized for a better tomorrow of the conflict ridden territory.<sup>3</sup> Moreover, the population of the conflict region can also be developed and promoted in terms of financial, political, economic and social domains to uplift the social, economic and psychological lives of the people. This will ultimately help to resolve the conflict in a peaceful and logical manner without compromising on the dividends of the peace and to take into consideration the best available options for the socio—economic wellbeing and political emancipation of the common people.

There are three concepts closely associated with each other: conflict management, conflict resolution and conflict transformation. These concepts are different from each other and have their different meaning, scope, and application in the context of the conflicts.<sup>4</sup> The

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<sup>1</sup> Lucian W. Pye, and Sumatra Bose, “Kashmir: Roots of Conflict, Paths to Peace.” *Foreign Affairs* 82 (6: 2003.). JSTOR: 172. Doi: 10.2307/20033809.

<sup>2</sup> Cheryl Saunders, “Constitution Making in Asia,” *Chinese Journal of Comparative Law* 7 (2: 2019), Oxford University Press: 251–65. doi:10.1093/cjcl/cxz014.

<sup>3</sup> Alexander Moseley, “Alexander Moseley-A Philosophy of War Algora Publishing (2003). Pdf.”

<sup>4</sup> L. Kriesberg, “The State of the Art of Conflict Transformation,” *Berghof*, 2011, 77–89. [http://edoc.vifapol.de/opus/volltexte/2013/4684/pdf/kriesberg\\_handbook.pdf](http://edoc.vifapol.de/opus/volltexte/2013/4684/pdf/kriesberg_handbook.pdf).

conflict resolution means finally resolving the conflicts through any of the available model in accordance with the stated positions of the parties to the conflict. On the other hand, conflict management means to manage the conflict by minimizing its implications and promoting its positive impacts to make the conflict less violent and least complicated. The concept of conflict transformation is quite different and broader as compared to the first two concepts. This concept means to provide a conceptual framework to transform the conflict through some fundamental changes with the aim to address the underlying issues and drivers of the conflict as well as to take into consideration the relationships and structures related to the conflict within the broader context and perspective to ensure the real outcomes of democracy and justice for the people of the territory undergoing any form of the conflict. The constitution building processes are very important to find out a sustainable solution of any ethnic, religious, political, and culturally diverse and pluralistic conflict to pave the way for the real democracy by involving all the stakeholders in the constitution making.

As the erstwhile state of J&K is divided through ceasefire line which has been now called as Line of Control (LoC) since 1971. The territory of Azad Jammu and Kashmir and Gilgit Baltistan are under the administration of Pakistan since 1947 and on the other hand, the valley of Kashmir, Jammu and Laddakh are under the illegal and forced occupation of India since October 27, 1947. From 1947 to 2019, the whole J&K under the occupation of India was united and treated collectively. But India revoked article 370 and abrogated article 35 – A on August 05, 2019 and also abolished the status of the state of J&K and divided it into two union territories of J&K with a legislature and Laddkah without a legislature.

Now question arises that what would be the possible effects of the conflict transformation in the IaJK? How this conflict transformation through constitution building processes would bring peace, limited



form of democracy, and socio-economic wellbeing of the people during the transition period pending the final settlement of the conflict of J&K as per the popular demands of the people of the IaJK?

There is also another important perspective. What would be the impact of this conflict transformation through constitution building processes approach during the transition period on the longstanding and protracted conflict of Jammu and Kashmir? Would it adversely affect and sabotage the indigenous movement for the right to self-determination? The answer to this question is very important to explore and critically analyze. The idea of transitional justice system and constitution building processes through restoration of the autonomy of the IaJK on the status of 1952 and the restoration of the Article 370 and Article 35 – A on the pre-August 05, 2019 status would be positive for the peaceful indigenous uprising in the IaJK against the occupational forces of India and would also protect the demographic profile of the IaJK. This popular movement of the people would remain continue and can acquire a peaceful form or even can continue by the armed groups along with the constitution building processes for the conflict transformation in IaJK. However, this conflict transformation would bring some empowerment and protection to the people of IaJK and strengthen the institutions of the legislature, executive and judiciary for the protection and promotion of the socio-economic wellbeing of the people of IaJK during the transition period of this protracted conflict.<sup>5</sup>

There are two stages in the conflict of Jammu and Kashmir. The first stage is the transition stage that would end on the resolution of the conflict of J&K through the impartial plebiscite. The second stage is the post plebiscite scenario where a new political and constitutional order is needed to ensure the democracy, rule of law and peace in post

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<sup>5</sup> Valerie Braithwaite, Sinclair Dinnen, Matthew Allen, John Braithwaite, and Hilary Charlesworth, *Pillars and Shadows: State Building as Peacebuilding in Solomon Islands*. ANU Press. Doi: 10.26530/oapen\_459442.

conflict perspective.<sup>6</sup> So the constitution building processes are required at both the levels to ensure the protection of lives of the people and promotion of socio-economic rights and interests of the people so that the gross and systematic violations of human rights can be minimized in IaJK. The ultimate objective of the popular movement is to attain the right to self-determination through UN supervised plebiscite, but it is mandatory to bring some drastic reforms during this turbulent transition period through multipronged and effective strategies of the conflict transformation through broad based consultation and public participation in the constitution making processes. The goal of an economically empowered and socially dynamic and proactive society in post plebiscite phase can only be attained through an effective conflict transformation approach coupled with constitution building processes during the transition period.

It is also necessary to adopt non-traditional approaches and ways to effectively apply the conceptual framework of the conflict transformation in an effective and systematic manner due to the disintegration of the societal and democratic structure in IaJK including union territory of J&K and union territory of Laddakh.<sup>7</sup>

### **Constitution Building Processes and Conflict Transformation: Concept and Scope**

The constitution building processes and conflict transformation are two different concepts and domains. The constitutional building processes fall under the domain of constitutional law and the conflict transformation is a concept lies within the broader domain of peace

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<sup>6</sup> Thania Paffenholz, "Designing Transformation and Intervention Processes." in *Transforming Ethnopolitical Conflict*, 2004, 151–69. VS Verlag für Sozialwissenschaften. Doi: 10.1007/978-3-663-05642-3\_8.

<sup>7</sup> Volker Boege, "Traditional Approaches to Conflict Transformation - Potentials and Limits," *Australian Centre for Peace and Conflict Studies. The Occasional Papers* 5: (2007): 1–22.

and conflict studies.<sup>8</sup> The core idea of the constitution building processes is that the processes of the constitution building have an impact on the peace and political legitimacy which ultimately lead to the socio-economic well-being and good governance in any society. The core question is the impact of the processes of constitution making on the outcomes of peace, development and democracy in any society. Although, the design of constitution is an important factor, but the active and broader public participation in the constitution building affects both the design of the constitutions as well as creating peace in the society. That is why constitution building processes can be used as an effective tool for the conflict transformation to bring lasting peace. In the special context of IaJK, the idea to use constitution building processes as a tool to bring deep rooted and far-reaching conflict transformation can be very effective and result oriented. This can also provide a democratic framework for the people of IaJK for a transitional period and can also suggest an effective and viable constitutional framework for the post plebiscite situation.<sup>9</sup>

On the other hand, the concept of conflict transformation is new as compared to the old similar concepts of conflict management and conflict resolution, but it is very comprehensive and all embracing.<sup>10</sup> The idea of conflict transformation is to transform the underlying causes and deeper structures and relationships responsible for the conflict in a particular society through deep rotted and multipronged approaches and strategies. The most important and foundational concept of peace lies in the in justice.<sup>11</sup> In order to promote lasting and deep-rooted peace building, it is mandatory to address structural

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<sup>8</sup> Robert A. Baruch, Bush y Joseph P. Folger, "The Promise of Mediation: The Transformative Approach to Conflict," (1996): xiii & 287.

<sup>9</sup> Silvia Suteu, "University of Edinburgh in the United Kingdom's Constitution-Making," 2015.

<sup>10</sup> Catalina Galer, "Introduction to Conflict Resolution: Concepts and Definitions," *Contemporary Conflict Resolution* (3rd Edition, 2011): 1–32.

<sup>11</sup> Zulfiya Tursunova, "Review: The Moral Imagination: The Art and Soul of Building Peace - John Paul Lederach," *Journal of Human Security*. Vol. 3, 2008.

relationships and social changes to pave the way for human rights and socio-economic justice in the society. The framework of conflict resolution provide a quick and superficial solution to the deep rooted and complex problem without addressing the deep rooted and complicated socio-economic issues driving the conflict towards violence and chaos in the society.<sup>12</sup> We have seen successful conflict resolution models in Afghanistan and Iraq like states but without any transformation of the deep issues and without providing a constitutional and supplementary mechanism which did not prove long-lasting. The conflict transformation focuses more on constructive changes in the conflict zone to transform the social and cultural contexts and relationships for effective socio-economic wellbeing of the people.

The conflict transformation is not any school of thought or independent discipline of knowledge rather it is a framework for the structural changes and social transformation in a conflict zone. In every conflict, there is an immediate situation which needs quick response. But the real issues lie beneath the immediate situation in the form of deep patterns of relationships and underlying patterns and contexts. The conflict resolution framework only addresses the immediate situation and does not provide any long-term solution. The framework of the conflict transformation provides a comprehensive and effective mechanism to address context, content and the structure of relationships which are largely responsible for driving of the conflicts.<sup>13</sup>

There are many processes and impacts, and every process has different impact on the people in the society. Out of all these contexts, political, historical, and regional contexts are important. That is why,

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<sup>12</sup> Fanny Coulomb, *Economic Theories of Peace and War. Economic Theories of Peace and War* (Routledge Taylor & Francis Group, 2004), Doi: 10.4324/9780203495964.

<sup>13</sup> John Paul Lederach, *Building Peace Sustainable: Reconciliation in Divided Societies-United States Institute of Peace*, 1999.

the processes and design of constitution are important for political and governance transition.<sup>14</sup> The impact of the constitutional processes and design of the constitution in a society can be measured in terms of the concrete criteria of democracy and peace. So, if any constitutional process and design is giving effective and viable democratic framework with its operational system has more impact as compared to the constitutional process and design giving less impact on the democratic structure. Similarly, the impact of the constitutional processes and constitutional design can be evaluated based on the nature and level of peace in any society. The effective and strong constitutional structures yields more peaceful and harmonious society.

This conceptual framework can be very effective and useful for the Jammu and Kashmir to transform it to bring a better governance structure and socio-economic well-being of the masses during the transition period.<sup>15</sup> This need to deliberate and debate on the following important and relevant questions: Why this conceptual framework is relevant with the conflict of Jammu and Kashmir? How this framework of conflict transformation is applicable on the divided erstwhile state of J&K? What would be the immediate and long-term impacts of the conflict transformation on Jammu and Kashmir? Why and how the processes of the constitution building, and constitutional design are relevant and effective for the democracy, peace and socio-economic wellbeing of any conflict-ridden society? I will try to address these questions in the debate to specifically apply this conceptual framework of constitution building processes through conflict transformation in the local context of IaJK.

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<sup>14</sup> L. Kriesberg, "The State of the Art of Conflict Transformation," *Berghof*, (2011), 77–89. [http://edoc.vifapol.de/opus/volltexte/2013/4684/pdf/kriesberg\\_handbook.pdf](http://edoc.vifapol.de/opus/volltexte/2013/4684/pdf/kriesberg_handbook.pdf).

<sup>15</sup> Christine Bell, "Transitional Justice and Political Settlements." *SSRN Electronic Journal*, January, 2015, Elsevier BV. doi:10.2139/ssrn.2546423.

## Constitutional History of IaJK

The erstwhile state of J&K, which was illegally occupied by India on October 27, 1947 is known as IaJK. There was also a conditional Instrument of Accession signed by the Maharaja with the dominion of India at that time<sup>16</sup>, but that Instrument of Accession was not justified and legally applicable based on following significant reasons:

- a) Firstly, this Instrument of Accession was conditional on the plebiscite duly signed by the Lord Mountbatten being the first Governor General of India. There were two counterparts of the said Instrument of Accession and Lord Mountbatten signed on the second counterpart with the condition that when the situation of law and order will be restored in Jammu and Kashmir, the question of the accession of the Jammu and Kashmir shall be referred to the people of J&K. As under law, both the counterparts collectively constitute a legal document, so that Instrument of Accession is not legally applicable unless and until India refers the matter to the people of J&K for a plebiscite in a democratic and transparent manner.
- b) Secondly, the Maharaja Hari Singh signed a Standstill agreement with the dominion of Pakistan by sending a telegram on August 12, 1947 which Government of Pakistan affirmatively responded on August 15, 1947. Thus, an agreement was established between the princely state of J&K and dominion of Pakistan on August 15, 1947<sup>17</sup> by the reply of the telegram with the intention to accept the offer put forwarded by the Maharaja of the Jammu and Kashmir. As per

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<sup>16</sup> Instrument of Accession, 1947. Some of the sources mention that there was no signed Instrument of Accession at that time and this was managed at a later stage to justify the annexation of IaJK by Indian occupational forces.

<sup>17</sup> F. N. Lone, *Historical Title, Self-determination and the Kashmir Question: Changing Perspectives in International Law*.

legal opinion of the Sir Gerald Fitzmaurice, legal advisor to the British Foreign Office, Instrument of Accession is not legally applicable as the Maharaja was not a free agent at the time of the signing of the Instrument of Accession as he already surrendered the subjects vested with the outgoing British Imperialist state to dominion of Pakistan through Standstill Agreement on August 12, 1947.

- c) There was no effective control of Maharaja on the entire erstwhile state of J&K at the time of the signing of Instrument of Accession with India. As a result of a successful indigenous rebellion of Muslims of parts of the erstwhile state of J&K adjoining the dominion of Pakistan, a representative and revolutionary government was established on the liberated territory of AJ&K and was named as Azad Government of the state of J&K. Moreover, there was also law and order situation in the region of Jammu which caused the deaths of around two lacs Muslims of Jammu. Besides, the local Muslims aided by the tribal people from Pakistan were near to Srinagar and Maharaja Hari Singh was escaping from Srinagar to Jammu to save his life from the Muslims revolted against him. In this situation, Maharaja Hari Singh signed the Instrument of Accession with India, and this Instrument had no standing in international law.

After this Instrument of Accession of 1947, an interim governmental setup was established in IaJK with Sheikh Muhammad Abdullah as emergency administrator which was later nominated as Prime Minister of IaJK. When the negotiations were underway in Delhi, India on the drafting of the constitution of India with particular focus of relationship of India with IaJK, a delegation was sent by Sheikh Muhammad Abdullah to Delhi to negotiate on the constitutional relationship of IaJK with India that resulted into the Article 370 in the Constitution of India, 1950. The four-member delegation of the IaJK was comprised of Sheikh Muhammad Abdullah, Mirza Muhammad

Afzal Beg and Shri Moti Ram Bagda. This delegation had detailed deliberations and negotiations with the Drafting Committee of the Constituent Assembly of India and these rigorous and long negotiations resulted in Article 370 of the Constitution of India, 1950.

On the day of the adoption of the Constitution of India, 1950, the then President of India issued its first order under article 370 titled, “The Constitution (Application to J&K) Order, 1950 and the powers were given to ninety-two entries corresponding with the subjects transferred to the India by Maharaja Hari Singh through conditional Instrument of Accession, 1947. On May 01, 1951, a proclamation was issued to convene the J&K constituent assembly through general elections on the basis of adult franchise. In accordance with this proclamation, elections were held in 1951 and National Conference won all the seats of the constituent assembly. These elections were rigged as almost all the seats were won by the candidates of National Conference unopposed. The constituent assembly appointed a Basic Principles Committee on November 07, 1951 to frame a constitution for IaJK. This committee submitted its interim report in 1952 and it started working on the assignment of the constitution making for the people of IaJK.<sup>18</sup>

The Delhi Agreement was entered into between India and IaJK in 1952 which made some agreements on the further integration of IaJK with India in with reference to the Instrument of Accession, 1947. After the Delhi Agreement, Sadar- i-Riyasat dissolved the cabinet and appointed Bakshi Ghulam Muhammad as the new Prime Minister of IaJK. Meanwhile, Sheikh Abdullah was arrested on August 09, 1953 and his trial was started in the court of law. The Delhi Agreement resulted in constitution (Application to J&K Presidential Order, 1954 which recognized the IaJK as part of the Indian Union and in connection with it, Article 35–A was incorporated in the Constitution

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<sup>18</sup> A. G. Noorani, *Article 370: A Constitutional History of Jammu and Kashmir*, (, 2011), <https://doi.org/10.1093/acprof>



of India, 1950 to not allow the Indian citizens to purchase lands and acquire any scholarships or jobs in IaJK. This order also allowed the legislative assembly of IaJK to define the state subjects of IaJK.

The report of the basic principles committee was submitted on February 03, 1954 which made comprehensive suggestions for the executive, legislature and judiciary of the IaJK. The committee also recommended for termination of the hereditary rulership in IaJK and to replace it with Sadar-i-Riyasat and an elected parliamentary form of government. After a long debate and thorough deliberations, constituent assembly of the IaJK adopted a constitution on November 17, 1956 and it was also decided that the constituent assembly would stand dissolved with effect from January 26, 1957 as the constituent assembly completed its task of making of the constitution for IaJK. The constitution of Jammu and Kashmir, 1956 was enforced with effect from 1957. The provisions of the constitution declaring IaJK as integral part of India were against the resolutions of the UNSC and UNCIP on J&K.<sup>19</sup>

According to the J&K Constitution, 1956, there was an executive, legislature, and judicature of IaJK. This constitution recognized IaJK as integral part of Indian union by defining the constitutional relationship between India and IaJK. This constitution also recognized AJK and GB as territorial part of IaJK. The power to define permanent residents was given to the legislature of IaJK. Executive of the IaJK comprised of Sadar-i-Riyasat as head of the state and a council of ministers headed by Prime Minister to aid and advise the Sadar-i-Riyasat in exercise of its executive functions. There was a bicameral legislature under this constitution with Legislative Council and Legislative Assembly as upper house and

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<sup>19</sup> A. S. Anand, *The Constitution of Jammu & Kashmir: It's Development & Comments* (5th Ed.), (Universal Law Publishing Company Pvt. Limited, 2007), <https://books.google.com/books?id=wSXRUwNnMB0C>

lower house respectively. Moreover, the judiciary of IaJK comprising of J&K High Court as the highest judicial forum within the IaJK.<sup>20</sup>

Although, there was a relatively better constitutional status of IaJK till 1957 despite of illegal occupation of IaJK by India, but then there has been a long process of erosion of the autonomy and constitutional status of IaJK by India through consecutive J&K Application of Presidential orders in accordance with the Article 370 of the Constitution of India, 1950 and through the successive puppet governments and consecutive governor rules in IaJK. This is also a history of lawfare of India within IaJK to gradually integrate IaJK with India through presidential orders. India eroded the autonomy and constitutional status of IaJK gradually from 1947 to August 05, 2019 in a systematic and gradual manner. Initially, the law-making powers of the central and concurrent legislative lists were corresponded only with the subjects on which Maharaja Hari Singh acceded with India on October 26, 1947. After the incorporation of Article 370 in the Constitution of India, 1950, the constitution (Application to J&K) Presidential orders have been issued by succeeding Presidents of India to completely erode the autonomy of IaJK and to integrate it with Indian union through lawfare in violations of the resolutions of the UNCIP and UNSC on J&K and various bilateral agreements between India and Pakistan. Finally, India abrogated Article 35–A and revoked Article 370 in the Constitution of India, 1950, which was already hollowed and made ineffective through consecutive Presidential orders to erode the autonomy of IaJK.

Article 35–A was more important as its abrogation allowed citizens of India to purchase lands in IaJK which could ultimately lead to the demographic changes in IaJK. India has already been working on the same agenda to bring demographic changes in IaJK to sabotage the

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<sup>20</sup> Noorani, *Article 370: A Constitutional History of Jammu and Kashmir*.

implementation of the resolutions of the UNSC and UNCIP on J&K. At the time of revocation of Article 370 on August 05, 2019, 94 out of 97 items of the Union List of India were applicable to IaJK and 26 out of 47 items of the Concurrent list were already applied on IaJK by India. Moreover, out of 395 articles of the Constitution of India, 1950, 260 articles were already extended to the IaJK through Presidential orders in IaJK.<sup>21</sup> From 1950 to 1956, a few Presidential orders were issued by the India, but during this period, no significant structural changes were taken place to erode the autonomy of IaJK except the inclusion of the article to declare IaJK as the integral part of India in the Constitution of J&K, 1956. However, the next period between 1956 and 1994 was very significant in this regard as presidential orders gave lawmaking powers to the Parliament of India. With revoked Article 370 and abrogation of Article 35–A extended all the articles of the Constitution of India, 1950 to IaJK.<sup>22</sup> This constitutional onslaught of India was also against the resolutions of UNSC and UNCIP on J&K.

### **Constitutional Structure in IaJK in post August 05, 2019 Scenario**

India completely changed the structure of IaJK through the constitution (Application to J&K) Presidential Order, 2019 that paved the way for the revocation of Article 370 and abrogation of Article 35 –A. Moreover, India also passed the J&K Reorganization Act, 2019 which abolished the statehood of the IaJK and converted the IaJK into two union territories of J&K and Laddakh.<sup>23</sup> The union territory of J&K has a legislature, executive and judiciary, but with limited powers and mandate. An administrator is appointed by India with the title of Lieutenant Governor. A legislative assembly was also given with 107 seats and limited powers of law making about state

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<sup>21</sup> *Constitution of India, 1950.*

<sup>22</sup> D. Tiwary, Explained: Jammu and Kashmir State to two UTs — Today, Later,” *The Indian Express*, 2019. <https://indianexpress.com/article/explained/jammu-and-kashmir-union-territories-today-article-370-special-status-6095406/>

<sup>23</sup> *Jammu and Kashmir Reorganization Act, 2019.*

legislative list. Besides, there is also a council of ministers headed by Chief Minister to aid and advise the Lieutenant Governor. Similarly, there is also High Court for both the union territories to be the highest judicial body. On the other hand, there is no legislative assembly in the union territory of Laddakh and it is also administered by a Lieutenant Governor appointed on behalf of the Government of India.

Through abrogation of Article 35–A India has changed the domicile laws and land laws of IaJK and made grounds for the demographic changes which is the severe violation of the resolutions of the UNSC and UNCIP on J&K.<sup>24</sup> The Indian designs are unfolded gradually which plans a Palestine styled settler colonialism in IaJK by converting the Muslim majority into minority through issuing Domicile certificates to non-Kashmiris. Moreover, India has also been planning to change the Muslim majority character of IaJK through the revised delimitation commission to give less representation to the majority Muslims in the Assembly as compared to the minority non-Muslims.<sup>25</sup>

The whole process of eroding the autonomy and special status of IaJK particularly in post August 05, 2019 scenario was neither elitist nor public participatory rather a secret and imperial agenda to integrate the IaJK with India. Moreover, India did not involve local population and mainstream political parties of IaJK for the broad based and comprehensive consultation process to bring structural and deeper constitutional reforms in IaJK.

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<sup>24</sup> “Article 370 and 35(A) Revoked: How it would Change the Face of Kashmir,” (2019). *The Economic Times*. <https://economictimes.indiatimes.com/news/politics-and-nation/article-370-and-35a-revoked-how-it-would-change-the-face-of-kashmir/articleshow/70531959.cms>

<sup>25</sup> Noorani, *Article 370: A Constitutional History of Jammu and Kashmir*.

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## **Conflict Transformation through Constitution Building Processes for Transition Period**

Before the August 05, 2019, the separatist parties, and armed groups with popular support of the general masses were demanding for the independence of the IaJK from the occupation of India through the UN supervised plebiscite in accordance with the resolutions of the UNSC and UNCIP on J&K. However, in post August 05, 2019 scenario, even the mainstream political parties turned against India and they resisted against the unconstitutional, immoral and non-democratic constitutional invasion of India on IaJK. The majority of the population of the IaJK have been demanding their right to self-determination as promised by UN and the endorsed by the Governments of India and Pakistan. But this is also important to develop a democratic and empowering constitutional framework during the transition period pending the final settlement of the longstanding conflict of J&K to safeguard the socio-economic interests of the people as well as to minimize the effects of the conflict through effective legal and remedial mechanisms and checks and balances.

This is the need of hour to adopt a framework of the conflict transformation in IaJK to bring structural changes in the constitutional, social and cultural contexts, perspectives and relationships to restore positive peace beyond the concept of mere absence of violence to ensure democratic values, socio - economic rights as well as the prevention of the violent activities and gross and systematic violations of the human rights and war crimes in IaJK during the transition period pending the final settlement of protracted and longstanding conflict of J&K.<sup>26</sup> Moreover, the tool of constitution building processes can only be the most effective way to attain this conflict transformation as the other ways and strategies of conflict

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<sup>26</sup> Tom Ginsburg, *Comparative Constitutional Design*, (Cambridge University Press, 2012), Doi: 10.1017/CBO9781139105712.

management and conflict resolution can only set the ground for negotiations and engagements through various confidence building measures (CBM),<sup>27</sup> but the most effective and deeper approach can only be the conflict transformation which can address drivers of the conflict, its contexts and relationships; grievances and deprivations of the people. The constitution building processes through broad based consultation and active participation of the masses, political parties and marginalized groups would increase confidence of the people through democratic and political dispensation in IaJK. This would also promote peace and protect the socio-economic rights of the people during worst transition phase till the attainment of right to self-determination. The concept of right to self-determination is of two folds: internal and external. This framework of the conflict transformation through the constitution building processes would provide the internal right to self-determination to the people of IaJK and fulfil their demands to restore the complete autonomy and disputed status as per the resolutions of the UNSC and UNCIP on J&K.<sup>28</sup> The indicators of the conflict transformation can be the peace, democracy, social development, economic development and decreasing threshold of violations of human rights and war crimes. These indicators can explain the effectiveness and success of the framework of the conflict transformation through constitution building processes in IaJK.

### **Conflict Transformation and its Impact on the Status of IaJK**

The erstwhile state of J&K is a disputed territory. The bilateral agreements between India and Pakistan also recognize the J&K as a disputed territory with various rounds of negotiations and peace processes. Moreover, the states of India and Pakistan also fought full-

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<sup>27</sup> Electoral Assistance, "Principles and Processes of Constitution Building," *International IDEA* 1 (1, 2019): 1–11.

<sup>28</sup> Matt Qvortrup, "Comparative Constitution Making," in *The Referendum and Other Essays on Constitutional Politics* (Hart Publishing, 2019), doi:10.5040/9781509929320.ch-009.

fledged wars and engaged in various border, LoC and working boundary skirmishes due to the conflict of J&K. In spite of this framework to attain the constructive constitutional, political, social and economic changes, the disputed status of the erstwhile state of J&K will not be affected at all on the basis of following reasons inter alia:

- a) This arrangement and framework would provide the people of IaJK their internal right to self-determination and their indigenous and popular movement to attain their external right to self-determination would remain continue without any legal and political hindrances.
- b) The application of the constitution building processes through the framework of conflict transformation would not adversely affect the nature and application of the resolutions of the UNSC and UNCIP on J&K.
- c) The disputed status of IaJK and the popular demand of the people of IaJK to attain the external right to self-determination can be given constitutional protection and safeguard in the interim constitutional framework of IaJK for the transition period.
- d) The peaceful environment, democratic values and socio-economic wellbeing of the people of IaJK would provide opportunities to people to build their capacities and intellectual approaches which would ultimately help in their indigenous, peaceful and widespread movement for the attainment of the external right to self-determination in an effective manner.
- e) This conflict transformation framework can be more effective and result oriented if it is being applied on both sides of the Line of Control (LoC) with the active support of India and Pakistan as well as under the supervision of any third mediator to ensure the proper and actual implementation of the conflict transformation through constitution building processes.

## **Conclusion**

The IaJK is a disputed territory and is a larger part of the conflict of J&K. People of the IaJK have been struggling for their right to self-determination and numerous resolutions have been passed by UNSC and UNCIP on the J&K recognizing its disputed status and right to self-determination. The conflict transformation is a framework to transform the conflict by addressing its contexts, perspectives and underlying drivers and relationships to bring lasting peace and socio-economic wellbeing of the people. The constitution building processes are the most effective mechanisms to address the constitutional issues and various perspectives of the longstanding and complicated conflicts. The framework of conflict transformation through the tool of constitution building processes can be the most effective way to cause a positive constitutional and socio-economic fundamental changes in IaJK with positive peace and democracy necessary for the wellbeing of the people during the transition period pending the final settlement of the conflict of J&K as per the wishes of the people from the divided parts of the erstwhile state of J&K. Moreover, this framework of the conflict transformation would not affect the disputed status of the IaJK and also would not adversely affect the indigenous and popular movement of the people of IaJK for the external right to self-determination.





## Indian Struggle for Permanent Seat in Security Council: Implications for the Region

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### **Abstract**

*United Nations Organization (UNO) is an international organization established for peace and cooperation in the world. The Security Council is an administrative organ of UNO. Numerous members of UNO emphasize the administration of the Security Council for a slight change in structure as per timely requirements. Many proposals were presented for the magnification of the Security Council but delayed due to some reasons. The four countries claimed for the permanent seat in the Security Council such as Japan, Germany, Brazil, and India. The UNCS bound these countries that firstly they compete with the criteria of UNSC membership then they can claim for the permanent seat. India is included in these countries and struggling for the permanent seat since 1992 to date. But this membership may create problems for the regional countries of South Asian. The current paper aims to ascertain possible repercussion about Indian struggle of being permanent member in the Security Council. India has different sort of conflict with regional countries, and it always*

*shows hostility towards the Pakistan, China and Jammu & Kashmir. It has been argued that India has always violated the UN resolutions. Hence, it does not qualify for the enduring seat in the security council, it's against the wellbeing and security of the whole region. The Indian attitude towards the region is not a friendly and progressive, the regional countries are against this membership. It is suggested that India should extend cordially relations with the regional countries first to remove animosity and misunderstandings.*

**Key Words:** Administrative Organ, Permanent Seat, United Nation Security Council, India, and South Asia

## **Introduction**

United Nations Organization was established on October 24, 1945, after the Second World War 1939-1944. At the end of the First World War, major powers planned to establish an institution that works for the peace and security of the world. resultantly, the League of Nations was established in 1920. The prime objective of this was to maintain peace and prevent the world from another world war. However, due to inefficiency of resources and lack of decisions to the League of Nations, the 2<sup>nd</sup> world war occurred. The league totally failed to achieve its prime objective and no longer exist<sup>1</sup> and the desire to establish an institution that may be capable of preventing another world war was felt. For the fulfilling of this purpose, they met in New York and established an international organization known as United Nations Organizations (UNO). Many objectives of UNO like cooperation among the members of nations, resolve issues among the members, and assistance to the deserving nations.

There are six main organs of the UNO such as General Assembly, Security Council, International Court of Justice (ICJ), Trusteeship

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<sup>1</sup> V. Cohsin Benjamin, *The United Nations* (Massachusetts: Harvard University Press, 1961), 30.

Council, Social & Economic Council, and its Secretariat. The main secretariat of UNO is in New York.<sup>2</sup> António Guterres is performing duties as 9<sup>th</sup> Secretary-General of the United Nations since 1<sup>st</sup> January 2017 to date. The General Assembly consists of 193 members. The Security Council has divided its power in different organs of UNO which consist of 15 members, including 05 permanents and 10 non-permanent members. The 05 permanent members are the United States of America (USA), the United Kingdom (UK), France, Russia, and China. These members have veto power and secure the seat in UNO Security Council from its evaluation to onward. The ten non-permanent members select through the General Assembly on a regional basis for two years of the term. The International Court of Justice (ICJ) is sorts of court cases where international dispute hears and solved. The trusteeship council is related to the disputed area of different countries, Social and Economic Council member countries through their special agencies.<sup>3</sup> The secretariat organizes the whole structure of the UNO.

The Security Council is the most important and administrative organ of UNO, comprising of five permanents and ten non-permanent seats. All major decisions were taken by the UN Security Council; the permanent five members have veto power. Anyone among the five veto powers will not agree with any resolution; it would oppose that decision through veto right. The ten non-permanent members only participate in discussions and suggestions. With the passage of time, many members want to reform in UNSC. For this purpose, many proposals submitted in the UN General Assembly for the salvation of this issue but all these became result less.<sup>4</sup> After 1990, many countries

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<sup>2</sup> M. Asif, *International Organization* (Lahore: Publisher Emporium, 2010), 4.

<sup>3</sup> Johan Peter, *The Globalization of World Politics* (New York: Oxford University Press, 2011), 25.

<sup>4</sup> Waters Waurice, *The United States* (New York: United States Publishers, 1970), 20.

claimed for the permanent seat in the Security Council, like Japan, Germany, India, and Brazil.

Security Council is one of the most powerful organs of UNO, many books, articles and journals are related to UNSC and its reforms like Danesh Sorooshe in his book *The United Nations and the Development of its Security* described the function and procedures of UN and its organs. *United Nations Security Council from the Cold War to 21st Century* edited by David M. Malan explain the nature and scope of UNSC decisions, the future of the institution and its reform. Khan Amir Hussain in his article “United Nation Security Council Expansion Prospects for Change Implementation for the Region and the World” discussed security council background, reforms and its role, power and responsibility of UNSC, he gives strong arguments related to the favor and against the Permanent Seat of security council. Matthew could in his article “Reforms of UNSC Equity and Efficiency” highlights the reform of UNSC, voting process, power, decisions rules and its enlargement. “Voting for Veto: India in Reformed United Nations” by Shairi Mathur writes a brief introduction of UNSC and gives arguments in the favor of India’s claim for permanent seat in UNSC and the reaction of p5 countries. “India Pursuit of United Nation Security Council Reforms” by Manish Dabhdhe explains Indian perspectives on security council reforms, categories of membership and regional representation. All the books, articles and journals are explored different dimensions of UNSC its reforms, background, voting process, p5 reactions, Indian claim but no one is written on the Indian permanent seat, implementation for region and especially in south Asian region this paper presents to fill the gap above-mentioned ground.

### **Rationale of the Study**

This study will highlight the real face of the Indian government for seeking a permanent seat in the United Nation Security Council, UNO and increasing influence on South Asian countries for their own interests. With the passage of time, India is a big threat for this region

due to the involvement and support of militants and terrorist activities in Pakistan, Disputed Jammu & Kashmir, Bangladesh, Nepal, Bhutan, and Sri-Lanka, etc.<sup>5</sup> Pakistan and India have divergence over Siachen, Sir Creek, Kargil, and Kashmir.<sup>6</sup> All these countries except Disputed Jammu & Kashmir are working under the charters of UNO. The UNSC also warned the Indian authority to remove its forces from J&K. On the other hand, the Indian authority publicize for foremost revolutionising to the authorized position of its Muslim-majority Jammu and Kashmir (J&K) state, and especially by revoking Article 370 of the Indian Constitution and Section 35A of its Annex, which provide the “special” independent status, of state and by bifurcating the state into two successors “Union Territories” with more limited aboriginal secretarial powers.<sup>7</sup> However, the Indian government neglected the orders of the UNSC and increased its forces in the valley. They want to force control on the religious activities of other religions and promote Hindu culture in the whole region. No doubt, India is a big market and a huge financial supporter to UNO than other countries of this region.<sup>8</sup> However, the region cannot accept the terroristic attitude of India toward its neighbours. India is claiming that she is eligible for gaining the Security Council seat. The criteria for securing of permanent apply to India. But due to many reservations from other members of UNO, some other members opposed its permanent seat of India in the Security Council, especially the regional countries. India has portrayed the project as anti-Indian bond.<sup>9</sup>

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<sup>5</sup> Ejaz Ghani, Lyer Lakshmi, “Conflict and Development—Lessons from South Asia,” *Economic Premise*, no. 31, (2010): 8.

<sup>6</sup> Muhammad Ayaz. & Muhammad Idrees, “Peace and Conflicts in South Asia: A Case Study of Pakistan and India,” *International Journal of Political Science and Development* 3, no. 10 (2015): 400-404.

<sup>7</sup> K. Alan Kronstadt, “Kashmir: Background, Recent Developments, and U.S. Policy,” *Congressional Research Service* (2020). <https://crsreports.congress.gov/R45877>.

<sup>8</sup> Kersti Kaljulaid, “Security Council Elections,” *Security Council Report* (2020):3.

<sup>9</sup> Ghulam Mustafa & Khan Robina, “India has Portrayed the Project as anti-Indian Bond,” *A Research Journal of South Asian Studies* 34, no. 1 (2019):165-83.

## **Objective of Study**

To explore the Indian influence in United Nation Security Council after gaining a permanent seat in United Nations Security Council on South Asian countries.

## **United Nations Security Council (UNSC)**

Being a permanent member of the UNSC carries significance among the world powers.<sup>10</sup> The association and composition of the UNSC have been amongst the main contentious and obstinate problems measured by UN members since its foundation. Large number of rising global international powers from the whole world as well as Japan, Germany, India, Brazil, South Africa, Indonesia, Egypt, and Nigeria are sorting permanent seats on the UNSC for last many years.

The criteria for the permanent seat in the Security Council are as follows:

- 1) The nation must be an emerging power as well as their economy must be dominated by global trades to some extent.
- 2) The country must be a foremost donor for the United Nations.
- 3) Human rights infringement causes must be bare minimum in country demanding UNSC permanent seat.
- 4) The demanding nation must not be in dispute with other nations over any nation that can create a war-like situation.
- 5) Nations must be contributing to the peace army of the UNSC.
- 6) The nation of course offer must be passed with majority.

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<sup>10</sup> H.G. Nichoolas, *The United Nation as a Political Institution*, (London: Oxford University Press, 1971), 32.

## Security Council Reforms

The UNSC has been in the process of consistent reforms since its establishment. As consequence, numerous new members joined the UN after being decolonized in late 1940s and early 1950s. Spain, and several Latin American countries planned amendments in its charter in 1956 to enlarge the number of non-permanent seats from six to eight. After many years of discussion including the Soviet Union's determination on the issue of security council reformation to the issue of China's attachment in the UNO, there was a split in early 1960s.<sup>11</sup> In December 1960 UNGA officially permitted rapid increase in non-permanent seats from six to ten. According to this, ten non-permanent seats granted out of which five will be taken from Asian and African states, two from Latin America Caribbean states, two from western Europe other one from Eastern Europe. This successful approval of security council enlargement satisfied the member countries of the world. The question of security council was neglected many times but after 1965 many member countries raised the issue of security council reforms.<sup>12</sup> From 1979 and 1980 India along with other countries of non-aligned movement raised the issue of SC expansion but due to opposition of P5 and other countries this decision could not be taken. After the Cold War, the whole scenario was changed and UNGA declared a statement sponsored by India through the member countries invited to submit their proposals for UNSC reforms. Many countries give their suggestions after discussion and concluded that SC must be enlarged, and permanent seats be increased from 5 to 9 and non-permanent from 10 to 17.<sup>13</sup>

The UNGA continued its discussion on the expansion of SC. After two years Ismael Razali suggested that five permanent seats without

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<sup>11</sup> M. Bahati Sohail, *International Relations* (Lahore: Publisher Emporium, 2004),40.

<sup>12</sup> <http://www.un.org/en/charter-United-nations/index.html> (29,12 2016)

<sup>13</sup> E. Jose Guzzardi, "The Politics of Seeking a Permanent Seat on the United Nations," (2012): 6.



Veto power and four non-permanent seats these suggestions also accepted by UNGA but many member countries opposed. Kofi Annan the secretary general of UNO and his panel also gives their point of view in 2003, 2004, the panel proposed two plan. The six new seats without Veto power three non-permanent seat and eight non-permanent seats for four years' renewable, and one supplementary non-permanent seat should be incorporated. This entire proposal for the improvement of SC of the world divided into many groups some groups favor the suggestion and some opposed it.

### **1. Permanent Members of the Security Council and their Privileges**

Joined Nations suffering individuals have authority and noteworthy prominence status as contrast with non-lasting individuals. In addition, these countries consistently lounge around the Security Council's table; every individual from the P-5 has huge capacity to convince them of the UNSC decisions. The UK and Russia unequivocally contradicted the inclusion of Northern Ireland and Chechnya as equipped clashes particularly in light of the fact that these contentions would be liable to checking under the provisions of the goal. They sign all their concealed vetoes by declining to help the content. The UN Secretariat was then compelled to make official amendments to the first report with the goal that it alluded to the responsive cases not as furnished clashes but as a circumstance of concern. Aside from this and composed advantages, veto power likewise has unwritten privileges.<sup>14</sup> It has brought about various arrangements for key positions held for nationals of the lasting part in the UN Secretariat. Being a perpetual individual from the Security Council is extremely lovely. This disequilibrium is unfriendly on the grounds that it enables the P-5 to control and oversee the UN. Besides,

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<sup>14</sup> P. E. Agbebaku & A. S. Akpotor, "The United Nations Reforms and Nigeria's Quest for a Permanent Seat," *Journal of Social Sciences*, 24 no. 1 (2010): 51-55.

the cooperation and administration of its organs ought to recreate its worldwide character and not the P-5's unique position.

### **Indian Struggles for the Permanent Seat**

India got independence on August 15, 1947 and was already a member of the United Nation. Technically, India is mainly a regional power but wants to introduce itself in terms of international power in maintaining the relationship with other superpowers like the US, China, Russia, and Europe. India's case for a permanent seat, its arguments are frequent in several pro-reform camps. Indian Prime Ministers and representatives of India's mission to the UN have stated the representation and legitimacy point of view on many occasions. India's basic approach is that the Security Council is not thoughtful of present-day realities and needs for reforms with time. India has been framing itself as a legitimate and even permanent member of a reformed council.

### **India's Past Stance in the United Nations Security Council**

India was one of the 51 establishing countries from the United Nations when it was set up on June 26, 1945. Its first experience with the UNSC fixated on the conflict over Kashmir in 1948, which was affected by an assault of ancestral powers upheld by Pakistan because of Indian wildy control in Kashmir. Indian Prime Minister Jawaharlal Nehru took this issue in the Security Council. Unfortunately, this issue did not tackle the most recent seventy years because of opposition and awful disposition from the Indian government. He felt that the western forces of the Security Council saw this issue between two nations and not as an assault of one region on the other. Chinmaya R. Gharekhan's India and the United Nations expands on this contention by expressing that the Indian head believed the Security Council to be a political body oppressed by singular nations' public advantage, and not as the entire story of the current issue. Since that day, the Kashmir debate proceeds to a hot clash that has brought about

expanded pressures between India and Pakistan. In its initial term on the Security Council in 1950, India worried that the United Nations should resolve the Korean War without inclusion. Be that as it may, the Security Council inevitably decided to pursue equipped impedance, which India upheld just by means of a field rescue vehicle unit. After the Korean War, India played a powerful role in bringing home of detainees of war and exiles. It consistently upheld UN endeavours through compassionate assistance, military onlookers, and senior authorities in UN activities in West Asia, Africa, and Asia. In its second term in the council in 1967, India talked crucially of the Israeli assault against the neighbouring Arab nations. Besides, it accentuated a favourable Arab strategy by advancing the standard and the privileges of Arab nations at that point. During the subsequent term, India additionally disposed of the Nuclear Non-Proliferation Treaty as it saw ethically off-base and uncalled for towards the balance of states. In particular, the Nuclear Non-Proliferation Treaty permits expresses that have atomic weapons to hold them while different nations are not permitted to possess them. India sees this as one-sided as the United States, Soviet Union, Great Britain, France, and China were the main nations that had atomic weapons at that point and hence, considered this to be mastery for having atomic arms. In its third term in the council in 1972, the body basically centered the decolonization of Africa and issues in West Asia. At that point, India determined its solid remain against Israel and stayed a lively supporter against imperialism.

India drew a great deal of thought when it led its initial atomic test in 1974. Because of the atomic test, numerous nations met up to frame the nuclear suppliers group in the expectation of enhancement of atomic limitation endeavors and shields. India guarantees that the atomic underground test was directed for quiet methods as it was viewed as examination for mining strategies, support of oil stores, and

endeavors towards atomic engineering.<sup>15</sup> India molded the atomic gadget, CIRUS, or also called the Canada-India Reactor U.S., which incorporated a 40-megawatt reactor and plutonium. Numerous nations did not see this impact as quiet and wandered from atomic innovation coordinated efforts with India with expectations of counteraction India's future atomic tests.

India battled to make the United Nations' member state comprehend that it did not send out atomic weapons-related data, innovation, or materials from its fringes, however these endeavors were useless. The momentary target of the nuclear suppliers group was to control India's atomic meditations stockpile and separate entrée to atomic material and innovation. As India isn't a member of the Nuclear Non-Proliferation Treaty or an individual from the nuclear suppliers' group right up 'til today, it remains to a great extent detached from global exchange atomic plants or materials. India got back to the UNSC for its fourth term in 1977, playing a functioning part by co-supporting an assortment of goals. For instance, it co-supported goal focusing on the withdrawal of Israeli military soldiers from Lebanese area, reproached South Africa's activities in Angola's considerate war, and three goals that criticized the peripheral white system in Southern Rhodesia. Distinguishing as a Third World nation, India likewise reprimanded politically sanctioned racial segregation in South Africa and the managing of Indians in South Africa. In its fifth term on the Security Council in 1984, India proceeded with its position on South Africa and Israeli activities towards the Palestinians.

India was battling with coalition legislative issues inside its outskirts and a financial emergency, especially after the dissolution of the Soviet Union. It likewise had a conflicting conclusion on the Iraq-Kuwait circumstance, as its first reaction was to rebuke the US assault. Notwithstanding, Delhi at that point upheld US endeavors and

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<sup>15</sup> Julie George, "Rethinking Geographical ambition: An Analysis of India and its Role in the United Nations Security Council," *Boston University*, 2016: 05.

permitted US planes to refuel on the Indian region. This started triteness among the homegrown group, which drove the Indian government to prevent US planes from arriving in India for refueling. As far as casting a ballot in the council on the issue of Iraq, India in the end decided to avoid two indispensable votes. Also, it swore off four goals that zeroed in on arms ban against Libya, contributing helpful guide in Bosnia, expanding the UN peace keeping power in Bosnia, and the execution of Yugoslavia's enrollment to the United Nations. To a few nations, India appeared to come up short on an idea about these overall issues.<sup>16</sup>

In contrast with the Security Council's ability, occasionally inclination to work power, India turned into a demonstrator of human and military obstruction in the 1990s. India endeavored to turn into a non-lasting individual from the Security Council by and by in 1996 yet fizzled. Rather, Japan won the situation by a huge edge, with many highlighting its money related capability to pick up votes in the General Assembly. India disposed off the Comprehensive Test Ban Treaty (CTBT), which may have influenced the political race for the non-lasting seat. Two years after the origin of the CTBT, India sought after further atomic tests, which evoked cynical responses from the global network for quite a while. Be that as it may, numerous nations noticed of India for its rising force because of its quick monetary development and atomic abilities. It was likewise during the 1990s that India turned out to be more voiced in affirming more noteworthy portrayal in worldwide associations. India pushed for this foundational change dependent on public capacities, earlier commitments to the United Nations, and ability to see issues impartially for the overall great of the worldwide network. For India, this encouraged its yearning to look for perpetual enrollment in the Council.

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<sup>16</sup> de Carvalho Gustavo, "Rejoining the High Table South Africa and the UN Security Council," *Institute of Security Studies*, 4 (2018): 09.

## **Indian Claim for a Permanent Seat in the Security Council**

India thought herself as a qualified for the perpetual seat of the Security Council. India assured for this seat on the certain grounds:

### **World's Second Populated Country**

India is the World's second-biggest population after China with a populace of 1.22 billion individuals. That is multiple times greater than the population of United Kingdom. Even further, India is developing and, typically, India could be the World's most crowded nation by 2028.<sup>17</sup>

### **Biggest Economy**

Indian's financial development additionally underpins this case. Since 1991, after the execution of the financial changes, India's monetary development rate is 5-7%, which gave more stimuli to India among the provincial just as extra-territorial forces, putting India on the planet's better-performing financial matters as far as GDP development rate. India's economy keeps on developing and there are reports that its economy could be the World's third greatest by 2030. As concerned to the Permanent Seat in Security Council many other nations contributing much as compared to India

### **Democratic Role and Largest Military Force**

In contrast to China and Russia, India is a fair express that welcomes the standard of law, it is the greatest majority rules system on earth that attempts the greatest popularity in the World concerning 814 million electors including 100 million first time citizens in the General Election in 2014. The political race will happen over the

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<sup>17</sup><http://www.dawn.com/news/1294912/pakistan-opposes-creation-of-new-permanent-seats-at-un-security-council> (20-12-2016).

tremendous nation and 930,000 surveying stations should be opened. India is a supporter of crafted by the UN including peacekeeping missions, its work on environmental change and majority rule government, and ought to hence be viewed as a symbol of vote-based system in the World that ought to be compensated for its endeavors as opposed to kept out of the key UN foundation dynamic body.

### **Strongest Case to be a Permanent Member in the UNSC**

Far beyond is the world's biggest popular government and home of over 1.2 billion individuals, India is one of the biggest labors and in the top 5% of money related, supporters of peacekeeping missions in UN offices separately. Regardless of some homegrown administration issues identified with debasement and irregular partisan brutality, India has kept up a status as an extreme vote-based system and has become a becoming financial power. The assortment of its kin as far as culture, language, and religion is unrivaled anyplace else on the planet. It is additionally a provincial authoritative and the chief has the support of some of the key forces (particularly previous president Obama) to move to lasting part status. Giving India a seat would show that the UNSC is committed about change and speaking to the world's current real factors, instead of being stuck in the Cold War-period international relations.

Three unique conclusions from the individuals about the amplifications some of them contending in the courtesies of G4, some expressed against it and some given opinion with few suggestions like JOSEPH NYE (author of *The Paradox of American Power*) said:

Yes, Japan and India should be added as Security Council members. Given the political difficulty of amending the Charter, the best prospect for accomplishing this would be a "gentleman's agreement" that they would be continually re-elected as non-permanent members. But even this will be difficult.

Gerard Baker (Chief U.S. Commentator and Associate Editor, Financial Times, Washington) also expressed that:

I would not add Japan and India to the UN Security Council that would give us way too many countries with veto power, but I would replace France and Russia with Japan and India if that is the question. France simply does not have the geopolitical weight to justify its continuing veto (and in any case wants to wrap much of its foreign policy into a common EU policy), and Russia, while it continues to have geopolitical weight now, seems unlikely to have as much of a global role in the future as either Japan or India.

It's true that Indian claim for the enduring seat of the Security Council is somehow considerable, but on the other hand its "negative role" in the region wondered the world to think about if UNSC should give the permanent seat to India or not.

### **Implication on the Region**

India lies in the south Asian region as a concern to the regional role of India. India always shows its aggressive attitude towards regional countries. The great element of its size, area, and financial viewpoint, India accepted a normal position of authority in the locale. Be that as it may, the domineering presence of a neighbor with desires for overall authority has likewise been a wellspring of fears for the other South Asian nations. Therefore, agreeable endeavors of the South Asian nations have been commandeered by the issue of fathoming India's clear and real part as a venturing stone or a reluctant square for the territorial efforts. India guarantees an authority position for herself, while its South Asian neighbors reprimand her for practicing domination. For a reasonable comprehension of India's position and function in the area, the ideas of administration and authority should be unwound, and India's strategies and neighbors' discernments



inspected in the light of ensuing derivations.<sup>18</sup> Indian relations with neighboring countries are discussed below:

### **Bangladesh and India**

The administrations of India and Bangladesh have had contrasts over various issues including the dispersion of the Ganga and Brahmaputra River issue. The Indian government has been discontenting with Bangladesh's logical inconsistency of unlawful migration to the subcontinent, its support for against Indian Islamic fundamentalist gatherings, Bangladesh's disavowal to permit Indian soldiers to travel through its region to northeastern India. The effect of this decision, India cannot export natural gas to Myanmar through Bangladesh. The governments of Bangladesh have felt for the last many decades about the ruthless attitude of the Indian government like a local harasser over the sharing of river, empowering rebellion in the Chittagong Hill Tracts, attempting to uncover its gaseous petrol, and being unreasonable in trade.<sup>19</sup> Regardless of their disparities, India and Bangladesh do participate on numerous issues. Economic relations have improved impressively over the most recent ten years. On catastrophe the board and ecological issues, the two states have collaborated regularly. Efforts are on to expand the zones of participation further by distinguishing normal dangers and being more delicate to one another's needs.<sup>20</sup>

### **Nepal and India**

Nepal and India appreciate an exceptional relationship that has not justified in this region. Arrangements between the two countries allow

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<sup>18</sup> Susanne Droge, "Addressing the Risks of Climate Change What Role for the UN Security Council?" *SWP Research Paper, Berlin* (2020): 28.

<sup>19</sup> International Economy, 2003,

<http://povertydata.worldbank.org/poverty/country/IND> (20-12-2016).

<sup>20</sup> Sahar Okhovat, "The United Nations Security Council: its Veto Power and its Reform," *Major Issues and Technological Foundation*, the University of Sydney, (2011): 12.

the residents of the two nations to travel and work in the other country without visas and passports. Despite this uncommon relationship, the administrations of the two countries have had exchange related debates the past. The Indian government has frequently communicated dissatisfaction at the warm connection among Nepal and China and at the Nepal government's inaction against hostile elements to India.<sup>21</sup> Indian security offices consider this development in Nepal as a security danger, given the ascent of Naxalite bunches in different Indian states from Bihar in the North to Andhra Pradesh in the South.<sup>22</sup> Many leaders and residents of Nepal feel that the Indian governments intervene in its internal issues. The Indian government has plans on its stream waters and hydropower and precludes Nepal a landlocked nation from getting simpler admittance to the ocean through the Indian Territory. Despite contrasts, exchange, logical participation, customary assets, authority control, and intertwined water the board matrices hold the two countries together. Nevertheless, Indo-Nepal relations are not steady and peaceful.

## **Bhutan and India**

India appreciates a specific relationship with Bhutanese as well and does not have any significant clash with the government of Bhutan. The endeavors made by the Bhutanese ruler to get rid of the guerrillas and activists from northeastern India that work in his nation have been useful to India. India is engaged with enormous hydroelectric undertakings in Bhutan and remains the Himalayan realm's greatest wellspring of improvement aid.

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<sup>21</sup> Amjed Jaaved, "RAW's Machinations to topple Nepal Government," 2020. <https://modernndiplomacy.eu/2020/11/02/raws-machinations-to-topple-nepal-government/>

<sup>22</sup> Rashid I. Khalidi, "European Members of UN Security Council, Joint Statement on Jerusalem," *Journal of Palestine Studies* 41, no. 3 (2012):5.

## **India and Maldives**

India's binds with the Maldives stay warm and cheerful. In November 1988, when some Tamil hired soldiers from Sri Lanka assaulted the Maldives, the Indian flying corps and naval force responded rapidly to the Maldives' solicitation to help stop the invasion. India has additionally contributed towards the island's monetary turn of events, the travel industry, and fisheries.

## **India and Sri Lanka**

The challenges in the connections between the governments of India and Sri Lanka are generally over an ethnic contradiction in the island country. Indian leaders and residents think that it is difficult to stay unbiased when Tamils are politically hopeless and are being killed.<sup>23</sup> After the military inclusion in 1987, the Indian government currently lean towards an arrangement of separation opposite Sri Lanka's inside difficulties. India consented to a deregulation arrangement with Sri Lanka, which fortified relations between the two countries. India's assistance in post-tidal wave reproduction in Sri Lanka has additionally brought the two nations closer.

## **India and Pakistan**

Before 1947, this region was under British rule, when Muslims realized that their survival is only in getting freedom from British and Hindu hegemony which was severely opposed by the Hindu leadership. Division of this region into two dominions was not acceptable for Indian leadership. Since the creation of a Muslim country, there have been various clashes between the two states. The first, issue which is considered a bone of contention between the two countries is the Kashmir problem. It started in 1948 and is still not resolved. UNSC has passed many resolutions for the solution of this

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<sup>23</sup><http://www.dawn.com/news/1294912/pakistan-opposes-creation-of-new-permanent-seats-at-un-security-council> (20-12-2016).

problem but this is not yet resolved due to the rigid behavior of India towards the Kashmir problem.

Besides the Kashmir issue, several wars have been fought between the two countries from 1947 to 1999. In 1965, the Indian Army attacked Pakistan from the Wagha border without any warning. In 1971, the Indian government used the internal issues of Pakistan and supported East Pakistan rebellion which resulted in the separation of East Pakistan.<sup>24</sup> presently, there are various issues between India and Pakistan, Kargil war is another issue of the strained relationship between both countries. Pakistan is under a consistent threat from the Indian side that any time creates a problem for Pakistani security and disturbs the balance of power.

We may have seen that India has different issues with its neighbors in the area. Since India is the largest country in the regions and has issues with every neighboring country. At the same time, these smaller countries have their strained relations with each other Nepal and Bhutan, just as Bangladesh and Myanmar, have had contradictions in the past over the relocation of ethnic Nepalese into Bhutan and the Rohingyas into Myanmar, separately. Bangladesh and Nepal have had a few contrasts over the fate of the Himalayan stream waters. The significant clashes and contrasts, however, are among India and the others, halfway due to the topography of the locale, where India is found midway and is, thusly, the main nation that outskirts the others. India has differences in the regional countries and Indian strong hostile attitude towards Pakistan shows that if the India received permanent status in the Security Council, its harmful for the regional countries.

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<sup>24</sup> Von Jonas Freiesleben, "Reform of the Security Council, *Managing Change at The United Nation 1945-2008*," Center for UN Reform Education c/o WFM 708 Third Avenue, 24th floor New York 1, no. 5 (2013):12.

## **Indian Claim for Permanent Seat and UNSC Criteria**

### **a. Emerging Power and Economy**

As concerned to emerging economy no doubt India is emerging economic power but on the other side its poverty is increasing day by days. The miserable conditions of its population is visible through social media and international indicators of population living below poverty line.

### **b. Donor to United Nations**

It is the second indicator for Permanent Seat in Security Council but India did not prove suitable for this criteria as many other countries have also contributed much as compare to India such as South Korea 1.994, Italy 4.448, Mexico 1.842, Canada 2.984, and turkey 1.388. Comparing to international donations, Indian contributions is just 0.666, so Indian claim does not fulfill this point of criteria.

### **c. Human Rights**

The third criteria is human rights infringement, the country must encourage human rights in the world but reality shows that India is not a success in maintaining human rights within its own borders. The most prominent human rights violation example of India is Jammu and Kashmir where food, education, liberty, right of expression are totally banned by Indian government.

### **c. Dispute and War**

Another criterion is member country must have friendly relations with other countries and especially regional countries and not create war like situations but history proved that India always actively participated in war like situations with its neighbors like China, Pakistan, Sri Lanka, three major wars fought between India and Pakistan.

India fulfilled only one demand of permanent membership in contributions to peace keeping army other five points of criteria are not in the favor of India's claim for permanent seat in UNSC.

## **Conclusion**

UNO is the custodian of peace in the world and the most important organ of the UNO is the Security Council which consists of fifteen members, ten non-permanent and five permanent members. Five permanent seats are allotted to the five influential powers. All major decisions are taken by the Security Council and if any of the five veto powered countries would not agree with the decision she can veto the decision. With the passage of time, the world opinion changed, and some other countries want changes in the structure of the UN Security Council. For this task, many proposals were preceded for the enlargement of the Security Council in different eras. After that, Japan and Germany raise the voices for the permanent seat in the Security Council, but the two countries were restricted on the account. In the G4 countries, one actor is India. The Indian struggle for the permanent seat in the Security Council is criticized on many grounds. The united consensus previously known as the coffee club is the biggest group against the Indian permanent seat in the UN Security Council.

Indian poverty and equity indexes are inferior as compared to the other competitors of the UNSC permanent seat. Approximately, 21% of people living below the poverty line in the world. If we see India according to the Human development index then India has also low parentage as India, if made a permanent member in the UNSC, would be at the lowest (130<sup>th</sup> out of 188, with a score of .609) if compared with other UNSC members. The Indian permanent seat also seems threat to the other countries of the region and this shows negative implications for the region. India has an ethnic issue and conflicts with Sri Lanka and shows a hostile attitude towards it. Nepal, Bhutan,

Maldives has also clashes with India on water issue and sometimes border issues.

India and Pakistan have big rivalries as India did not accept Pakistan's sovereignty. Kashmir Dispute is a recognized and declared issue adopted by the UNSC and the council has also passed several resolutions on Kashmir, but the issue is still unresolved. If India becomes permanent member of the UNSC, its hegemonic design and aspirations will create havoc to neighboring countries. All the above mentioned points show that Indian claim for the permanent seat in the Security Council is unjustified.



# Action in Aid of State Sovereignty and Security: A Challenge for the International Human Rights Law Regime

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# **Action in Aid of State Sovereignty and Security: A Challenge for the International Human Rights Law Regime**

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## **Abstract**

*A violation of human rights in the name of state sovereignty and security is posing serious threats to the existing laws. There is need to reappraise the concept of state sovereignty and security in order to discourage terror and violence by adopting necessary procedures. After the 9/11 attacks, states responses have changed in which states view human rights in their effort to combat terrorist threats. In the contemporary era, the external and internal threats have evolved states as a security state. Pakistan is not yet immune from this policy. Keeping this scenario in mind, the present study provides state's response in particular focus on the issues of human rights and security in Pakistan. The study further provides analysis to the challenges faced by the people in relation to terrorism and the way states pursue targets in the name of state sovereignty and security. It studies finally proposes to have a well balance, therefore, is required between human rights protection and State actions to preserve security.*

**Keyword:** Human Rights, Security, Sovereignty, Terrorism, Missing Persons, Attacks, Violations

### **Describing Human Rights, Human Security, and Sovereignty**

Human rights are universally inherent to us all, regardless of nationality, sex, national or ethnic origin, color, religion, language, or any other status.<sup>1</sup> These rights are inalienable and should not be taken away.<sup>2</sup> The concept of Human rights became more significant after the Second World War,<sup>3</sup> when the task to formulate the *International Bill of rights*<sup>4</sup> was given by the United Nations.

These rights have been endorsed by states in the form of fundamental rights as well. “Human security should mean a situation in which the life, the body and the socio-economic-political wellbeing of a human been protected through the use of physical force.”<sup>5</sup> “Human rights therefore form the foundation of human security, because state security means protection of its people (human security), of territorial integrity, of governmental system and of political independence, there can be conflicts between these four obligations.”<sup>6</sup> State security may not always establish human security, for example, a strong dictatorship cannot be a guarantee of human rights. Human security

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<sup>1</sup> What are Human Rights [https://www.ohchr.org/en/issues/pages/whatare\\_hum\\_anright\\_s.aspx](https://www.ohchr.org/en/issues/pages/whatare_hum_anright_s.aspx)

<sup>2</sup> What are Human Rights [https://www.ohchr.org/en/issue\\_s/pages/whatar\\_ehum\\_anr\\_ights.aspx](https://www.ohchr.org/en/issue_s/pages/whatar_ehum_anr_ights.aspx)

<sup>3</sup> War fought between 1939 and 1945, caused major destruction in the form of human catastrophes, and compelled nations to think for the protection of humanity. To see the consequences and destruction of the war see <http://dcac.du.ac.in/documents/E-Resource/2020/Metrial/408MukeshBagoria2.pdf> accessed 13.07.2021

<sup>4</sup> UDHR 1948 together with ICCPR 1966 and ICESCR 1966 are termed ‘International Bill of Rights.’

<sup>5</sup> Richard Smith, “The Margin of Appreciation and Human Rights Protection in the War on Terror: Have the Rules Changed before the European Court of Human Rights?” (LLM: Dissertation, Oxford Hart Publishing, 2007).

<sup>6</sup> Smith, “The Margin of Appreciation and Human Rights Protection in the War on Terror”.

could depend upon state security, for example, a weak or occupied state may not be able to assure the well-being of its citizens. Sometimes human security may necessitate sacrifice of state security. Example, a state may surrender to an aggressor or may be broken up to protect the lives and the well-being of its citizens.<sup>7</sup> The state encompasses the obligation to ensure individual protection through governmental institutions. They are also responsible for taking the potential measure in order to protect the individuals against the acts of terrorism and bring such action to the attention of judicial bodies.<sup>8</sup>

Contrary to that, it has become a common practice that most of the states are significantly engaged in ill-treatment and torture to counter terrorism. However, the practical and legal steps for preventing the torture of human beings are still not fruitful, judicial independence is also lacked.<sup>9</sup>

Other than this, it has been observed that the extrajudicial killings which comprise of the execution of prisoners, murder of civilians via indiscriminate attacks and other types of killings are unlawful and have violated the rights of human all around the world.<sup>10</sup>

The term ‘attack’ in international law is referred to as an act of violence against the rivals both in defence or offence and in any

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<sup>7</sup> Smith, “The Margin of Appreciation and Human Rights Protection in the War on Terror”.

<sup>8</sup> “Report of the United Nations High Commissioner for Human Rights on the Protection of Human Rights and Fundamental Freedoms While Countering Terrorism,” in English' (*Webcache.googleusercontent.com*, 2021) [https://webcache.googleusercontent.com/search?q=cache:2FVjGFcpw3wJ:https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A\\_HRC\\_28\\_28\\_ENG.doc+&cd=1&hl=en&ct=clnk&gl=pk](https://webcache.googleusercontent.com/search?q=cache:2FVjGFcpw3wJ:https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_28_ENG.doc+&cd=1&hl=en&ct=clnk&gl=pk) Accessed March 25, 2021.

<sup>9</sup> J. Vedsted-Hansen, “The European Convention on Human Rights, Counter-Terrorism, and Refugee Protection' (2010) 29 *Refugee Survey Quarterly*” <https://www.jstor.org/stable/45054470> Accessed May 20, 2022.

<sup>10</sup> William J. Aceves, “When Death Becomes Murder: A Primer on Extrajudicial Killing,” *Colum. Hum. Rts. L. Rev.* 50 (2018): 116.

territory.<sup>11</sup> The primary purpose of the attacks on the civilian population is to spread terror among different populations, all across the world.<sup>12</sup> A number of non-political attacks have been observed which caused disruptions all across the world, in terms of terrorism, cyber-attacks, extrajudicial killings, warfare issues and so on.<sup>13</sup>

In strict legal terms, sovereignty is absolute power that is unlimited and indivisible. In empirical terms, state sovereignty means a state's political independence to determine its domestic affairs and its foreign relations free of external controls. State sovereignty has been claimed on many grounds:

Divine sovereignty (in the name of God or His anointed agent on earth); monarchical sovereignty (in the name of the King or Queen); parliamentary sovereignty (in the name of the representative bodies, even if they do not represent all the citizens); constitutional sovereignty (in the name of the legal-political system, especially under federalism); and popular sovereignty (in the name of the citizens entitled to vote, especially on the principle of universal adult franchise). All these forms of sovereignty are claimed in the contemporary world.<sup>14</sup>

## **Global Aspects of States Sovereignty and Human Rights**

United Nations Charter provides state sovereignty as the foundation of the UN system.<sup>15</sup> Only sovereign states can be members of the United Nation. Thus, state sovereignty provides a safeguard against naked aggression and against forces that exploit weaker societies on

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<sup>11</sup> Annyssa Bellal, Gilles Giacca, and Stuart Casey-Maslen, "International Law and Armed non-state Actors in Afghanistan," *International Review of the Red Cross* 93, no. 881 (2011): 47-79.

<sup>12</sup> Bellal, Giacca, and Casey-Maslen, "International Law and Armed non-state Actors in Afghanistan."

<sup>13</sup> Bellal, Giacca, and Casey-Maslen, "International Law and Armed non-state Actors in Afghanistan," 1.

<sup>14</sup> M.V. Naidu, "Security, Sovereignty, and Intervention: Concepts and Case Studies", *The Canadian Journal of Peace and Conflict Studies* 34, no. 1 (2002): 33-58, <https://www.jstor.org/stable/23608020>, Accessed: June 15, 2021.

<sup>15</sup> (Article 2[1]) of United Nation Charter.

one cause or another.<sup>16</sup> Though the United Nation charter has emphasized on State's sovereignty, but, at the same time respect for human rights remained the cornerstone of the organization.

To further this, the purpose of Article 1 of the Charter is to "encourage recognition of human rights." The intention to reaffirm faith in essential human rights' is articulated virtually inside the preamble to the UN Charter, which declares the preference to 'protect humanity.'<sup>17</sup> Following the UN's set-up order in 1947, NGOs and different international actors started lobbying the institution to adopt an international bill of rights, which might enumerate the rights of all people regardless of religion, tradition, nationality, or creed.

The United international relations declaration on Human Rights (UDHR) was signed in 1948 due to those efforts. The horrors dedicated by the Nazis toward the Jews throughout global warfare II laid the foundation for ultra-current global human rights guidelines and treaties. Germany's sovereignty has become criticized within the West for permitting those atrocities whilst also prohibiting humanitarian assistance on behalf of individuals imprisoned inside its borders. Sooner or later of the relaxation of the arena, wherein colonialism became popular at the time, the situation changed into the polar contrary. The absence of sovereignty emerges as blamed for grave human rights violations in the one component of the world.<sup>18</sup>

For this reason, even though sovereignty blanketed the Nazis in Germany and allowed for human rights breaches at the side of the Holocaust, the denial of sovereignty was taken into consideration due to the fact the primary cause of obvious human rights crimes beneath colonialism in the relaxation of the globe. This lack of sovereignty,

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<sup>16</sup> United Nation Charter Art, 2(1).

<sup>17</sup><https://www.un.org/en/about-us/universal-declaration-of-human-rights> Accessed May 20, 2022.

<sup>18</sup>Thomas Buergethal, "The Evolving International Human Rights System," *American Journal of International Law* 100, no. 4 (2006): 783-807.

the preference for colonial self-willpower, and the selection to limit state authority within the West all served as the foundation for the UN's 'worldwide assurance of human rights. Regardless of the situation, the warfare for human rights safety culminated with the adoption of the commonplace announcement of Human Rights (UDHR) at the 1948 Paris convention. "All human beings are born loose and same in dignity and rights," the UDHR stated. They are endowed with reason and feel of right and wrong, and they must act in a brotherly manner in the direction of each other. The UDHR outlines critical human rights collectively with the right to existence, the right to vote, the freedom of expression, and the prohibition of torture.<sup>19</sup>

With the independence of states within the global South, mainly in Africa, wherein collective rights were emphasized, this listing of enumerated rights changed into improved in the Nineteen Sixties. Following the ratification of the acquainted assertion of Human Rights in 1948, the global "Covenant on Civil and Political Rights" (ICCPR) and the global "Covenant on Monetary, Social and Cultural Rights" (ICESCR) had been followed in 1966. Treaties and conventions on the abolition of slavery, the slave change, and institutions and practices much like slavery were followed in 1956, the "Convention at the Elimination of All Forms of Racial Discrimination" in 1965, the Conventions at the Rights of a little one in 1989, and some of the other hassle-particular areas were followed to in addition enlarge the kind of rights.<sup>20</sup>

Since the 9/11 attacks, states view human rights in a different context. "The decision of the United States to initiate a "global war on terror" in response to the suicide aeroplane bombings in New York and Washington had predictably negative human rights consequences. In

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<sup>19</sup> Fassue Kelleh, *The Changing Paradigm of State Sovereignty in the International System*(University of Missouri-Kansas City, 2012).

<sup>20</sup> Kelleh, *The Changing Paradigm of State Sovereignty in the International System*.

combating a tiny network of violent political extremists, human rights have been restricted, infringed, violated, ignored and trampled in many countries in various ways.”<sup>21</sup>

## **Respecting and Implementing Human Rights**

Other than participation and advertising, the worldwide network, states, non-governmental establishments, and individuals have regularly occurred of alternatives for imposing human rights. When countries fail to fulfill their duties regarding human rights, the rising paradigm of sovereignty as people-targeted phenomena compels motion to protect the essential rights of those who are patients of their personal governments. Following that, the worldwide community can use commonplace of gadget to punish the perpetrators, together with diplomatic isolation, palms embargos, monetary and economic results, tour regulations, public shame, and indictment of these answerable for gross human rights violations. Different mechanisms used to deal with human rights violations encompass truth and reconciliation commissions, apologies, and, in a few instances, reparations to victims of human rights violations.

## **Historical Analysis Sovereignty, Security and Human Rights in Pakistan**

Pakistan has faced continuous threats to its sovereignty since its inception. Meanwhile, the contemporary challenges in the form of the US intrusions adversely affected the sovereignty of the country. On the other hand, the external and internal threats integrated with the intolerant policies have evolved Pakistan as a security state in the contemporary era. While considering the human rights abuse, the situation has remained the same in the pre and post 9/11 era.

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<sup>21</sup> Jack Donnelly, Human Rights and War on Terror: Introduction, <https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=1127&context=hrhw>, Accessed May 20, 2022.

Additionally, new kinds of victims have been added in the violations lists that include innocent civilians of FATA<sup>22</sup> and Balochistan.

In terms of the internal challenges to Pakistan, it can be stated that at the domestic level, Pakistan has been a recipient of regional instability which has exacerbated the plight of its economy due to increasing sectarian violence. Furthermore, the rise of sectarian violence has been linked to the jihadi culture that emanated during the prior decades.<sup>23</sup>

Moreover, apart from the sectarian violence, the country has been plagued with ethnic violence as well as evident from the rise of populist groups such as the Pashtun Tahaffuz Movement which has served the purpose of creating a divide along ethnic lines and resulted in skirmishes. Such measures are considered to pose a substantial amount of threat to the internal security of Pakistan since it is found to levy a considerable amount of impact on the country's economy and stability.<sup>24</sup> Furthermore, regarding the prevalence of sectarian violence in the country, it has been found to manifest in an array of ways most notoriously in the form of target killing. In terms of countering the country's internal issues posed to its security, National Internal Security Policy (NISP) was formed for the purpose of arresting the cause of violence emanating from security and ethnic sources.

The United States provided training to our people. This harmed our religious institutions and our Madaris were criticized by the security institutions citing their alleged role in terms of providing manpower

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<sup>22</sup> Federally Administered tribal areas, For details see [https://en.wikipedia.org/wiki/Federally\\_Administered\\_Tribal\\_Areas](https://en.wikipedia.org/wiki/Federally_Administered_Tribal_Areas), Accessed July 12, 2021.

<sup>23</sup> Sehrish Naz, "Pakistan's Military Strategy: Challenges and Response," Available at SSRN 3576087 (2020).

<sup>24</sup> Zain Ul Abiden Malik, H. Zhilong, and D. Ashraf. "Terrorism: The Biggest Security Challenge to the Integrity of Pakistan," *Orient Research Journal of Social Sciences* 4, no. 1 (2019): 96-106.



to disrupt peace and compromise the security of the country in accordance with sustaining their ideology<sup>25</sup>. It can be traced back to the events occurred in the neighbouring country of Pakistan i.e. Soviet invasion of Afghanistan. It was deemed a prerequisite to support the Afghan cause which was facilitated by religious institutions i.e. Madrasahs for the purpose of indoctrinating the soldiers with materials regarding the cause.<sup>26</sup> However, such endeavours have proven costly to Pakistan since the fighters are now found to translate their ideological war into militancy and through their various outfits are venting their aggression against Pakistan.

Before the events of 9/11, the terrorism laws in Pakistan were influenced by events occurring during the cold war such as the drug culture and fervent use of guns respectively. In addition, it can be stated that the concept of terrorism was widely discussed in Pakistan citing the deteriorating law and order situation in the country on ethnic and sectarian violence. However, preceding the 9/11 event, the country enacted the Anti-Terrorism Act 1997 which was formed to surmount the obstacles prevalent in the judicial system of Pakistan.<sup>27</sup>

However, in terms of the events occurring after 9/11, it can be stated that the global landscape witnessed a change since there was a global effort to eradicate the notion of terrorism by targeting terrorist networks in countries such as Iraq and Afghanistan respectively.<sup>28</sup> In line with the directive adopted by the world powers coupled with the

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<sup>25</sup> Riaz Ahmad, Hong Mi, and Lloyd W. Fernald. "Revisiting the Potential Security Threats linked with the China–Pakistan Economic Corridor (CPEC)," *Journal of the International Council for Small Business* 1, no. 1 (2020): 64-80.

<sup>26</sup> Malik, and He Zhilong, "Present Scenario of Central Asia with Respect to Pakistan and Afghanistan in the Light of Security Challenges," *International Journal of Political Science* 4, no. 1-4 (2018).

<sup>27</sup> Iftikhar Ahmad, Ramzan Shahid, and Shumaila Rafique, "Z. A Bhutto's Bout for Civil Supremacy in Pakistan: An Analysis," (2020). Accessed May 16, 2022.

<sup>28</sup> Aaron Winter, "The United States of America: Counter-terrorism pre-9/11," in *Routledge Handbook of Terrorism and Counterterrorism* (Routledge, 2018), 615-34.

sluggish economic state of Pakistan, it was deemed a prerequisite for the country in question to participate in the war against terrorism. The geo-strategic relationship was altered due to the intensity of 9/11 and any country that harboured sympathy towards reactionary forces was viewed to be supportive of terrorism.<sup>29</sup> Based on the preceding statement, since Pakistan was one of the few countries that accorded recognition of the Taliban regime in Afghanistan which provided them legitimacy, Pakistan was forced to change its stance citing the severity of the relationships with other sovereign countries respectively.<sup>30</sup> In line with the preceding mentioned statement, it can be inferred that the country in question however adopted a series of laws that were found to serve the purpose of curbing any element that propagated terrorism in the country be it ethnic, sectarian, or religious lines.<sup>31</sup> These laws are found to serve the purpose of facilitating the existing laws that dealt with terrorism and are found to be in line with the democratic tenets of the country since Pakistan has relegated the option of opting for military solutions to deal with terrorism in their country citing 21<sup>st</sup> amendment and 23<sup>rd</sup> amendment in the constitution respectively.<sup>32</sup>

In the light of the above, it can be dictated that the country proposed legislation that is found to realize the objective of addressing any actions which can be construed as terrorism effectively.<sup>33</sup> Following this, Pakistan enacted the National Counter Terrorism Authority (NACTA) which is considered to provide jurisdictions to law

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<sup>29</sup> Kelly Welch, "Race, Ethnicity, and the War on Terror," in *Oxford Research Encyclopedia of Criminology and Criminal Justice*. 2019.

<sup>30</sup> Irfan, Muhammad. "A Comparative Study of Military Regimes in Pakistan," PhD diss., 2019.

<sup>31</sup> Khusrav Gaibulloev, and Todd Sandler, "What we have Learned about Terrorism since 9/11," *Journal of Economic Literature* 57, no. 2 (2019): 275-328.

<sup>32</sup> Zachary S. Mitnik, Joshua D. Freilich, and Steven M. Chermak, "Post-9/11 Coverage of Terrorism in the New York Times," *Justice Quarterly* 37, no. 1 (2020): 161-85.

<sup>33</sup> Jesse J. Norris, "Explaining the Emergence of Entrapment in post-9/11 Terrorism Investigations," *Critical Criminology* 27, no. 3 (2019): 467-83.

enforcement agencies to conduct investigations and trials without the prior approval of the judiciary.<sup>34</sup> Moreover, the country has proposed amendments in the aforementioned legislation to strengthen it and by extension help in serving the purpose of curtailing extremist elements in the country respectively.<sup>35</sup>

Pakistan secured its de jure sovereignty when the Independence Act of 1947 was signed by the partitioning nations.<sup>36</sup> Since the beginning, the country has been in a tussle to maintain its sovereignty in multiple dimensions. At first, Indian leaders refrained from accepting Pakistan. It was a severe blow to its sovereignty which was carried out by emphasizing the false doctrine of two nations in India. Even some of the prominent leaders such as Nehru went outright to claim that the partition will not survive for long as Pakistan might not be able to protect or maintain its sovereignty.

Later, the distribution of resources also created ire between both nations. The British provided only 11 days to distribute the resources.<sup>37</sup> The stance was detrimental to Pakistan's economic and military capabilities. Initially, India tried to breach the sovereignty of Pakistan by manipulating its borders in connivance with the British, unjust distribution of resources and coercive measures to tilt the instruments of accession towards the Indian territories. During the Ayub era, foreign policy of Pakistan favoured the USA in terms of support for the Cold war. Later, the debacle of East Pakistan adversely

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<sup>34</sup> Brent R. Klein, Jeff Gruenewald, Steven M. Chermak, and Joshua D. Freilich, "A Mixed Method Examination of Law Enforcement Investigatory Strategies used in Jihadi and far-right Foiled Terrorist Plots before and after 9/11," *JQCJC* (2019): 29.

<sup>35</sup> Harmonie Toros, "9/11 is Alive and Well" or How Critical Terrorism Studies has Sustained the 9/11 Narrative," *Critical Studies on Terrorism* 10, no. 2 (2017): 203-19.

<sup>36</sup> Muhammad Shahid Riaz Moazzam, "The State Sovereignty of Pakistan in an Era of Globalization: History, Challenges, Perspectives," PhD diss., 2019.

<sup>37</sup> Shuja Nawaz, *Crossed Swords: Pakistan, its Army, and the Wars within* (Karachi: Oxford University Press, 2008).

affected the sovereignty of Pakistan. It was also due to the connivance of India with the Bengali insurgents.

A major risk to the sovereignty of Pakistan arose at the time of the Soviet invasion of Afghanistan. It was believed that the Soviets might leap down into Pakistan to fulfil czarist ambitions of accessing warm waters – the Arabian Sea. Meanwhile, the post-9/11 scenario acted as the offspring of policy decisions that continue to challenge the sovereignty of Pakistan till today.

The post-9/11 circumstances have challenged the sovereignty of Pakistan at many levels. For instance, the killing of Osama Bin Laden by NATO forces created an uproar among the Pakistani strata. Former President Pervez Musharraf termed the act an attack on the sovereignty of Pakistan. The UN charter defines certain situations under which an intrusion can be carried out by a foreign power. However, none of the conditions justified the US measure of accessing Pakistani territories without prior approval.<sup>38</sup>

From another perspective, the drone attacks propelled by the USA also subjugated the sovereignty of Pakistan. Despite the claims of efficiency by the US, drone strikes have been unable to target the leadership of Al-Qaeda. Not only this but the killing of civilians has also been observed owing to the drone attacks carried out by the US that include children and women too.<sup>39</sup> On the other hand, the NATO forces attacked Pakistani check posts at Salala. The tragedy cost the lives of around 24 soldiers with a dozen soldiers wounded.<sup>40</sup>

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<sup>38</sup> Ashley S. Deeks, "Pakistan's Sovereignty and the Killing of Osama Bin Laden," *ASIL Insights* (5 May 2011) Available at <http://www.asil.org/insights110505.cfm> (2011).

<sup>39</sup> Shahzad Munawar, and Muhammad Mushtaq, "War on Terror and Challenges to the National Sovereignty of Pakistan," *Pakistan Journal of Social Sciences (PJSS)* 36, no. 1 (2016).

<sup>40</sup> M. Mazzetti, "Obama Applauds CIA for Bin Laden Raid," *New York Times*, 20 (2011).

Since the beginning, the unpropitious circumstances continued to establish security fears in Pakistan. At first, the country was deprived of military resources in which 3 out of 17 ordinance factories fell under Pakistani territory. Regarding the training establishments, 7 out of 46 were based in Pakistan. Resultantly, India was able to easily intrude into Kashmir which culminated 1948 Indo-Pak war. The Indian ammunition and military machinery became more stringent that also forced the Pakistani military to face war scenarios with limited capacities. Till today, Pakistan has been developing its military arsenal to build up resistance against India.

On the other level, the issue of Balochistan also raised concerns in the way that Khan of Kalat had refused to join Pakistan. It was the pursuit of Quaid-e-Azam and certain Army interventions that integrated Balochistan into Pakistani territory. Since then, Baluch nationalism has continued to haunt the security dynamics of Pakistan.<sup>41</sup> While considering the Khyber Pakhtoonkhwa province, the Pashtuns looked upon Afghanistan for integration. Meanwhile, Afghanistan also did not recognize Pakistan owing to its dispute over Durand Line that was drawn during the British era.

The four wars of Pakistan with India also played a crucial role in forming its security centrality. The situation between Pakistan and India never remained friendly. A tense situation always exists between the two neighbouring countries. The Indian attacks on the Pakistani territory of Balakot in 2019 also substantiated the assumptions of considering India as a permanent enemy and a consistent threat. One of the key features of the Pakistani national security state is the limitations of public debate over the defence budget in the Parliament.

The human rights situation in Pakistan has been chaotic especially due to the war on terror. The Taliban also carry out attacks on schools

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<sup>41</sup> Mahrukh Khan, "Balochistan," *Strategic Studies* 32 (2012): 200-223.

on a routine basis. They intensified after the participation of Pakistan in the War on Terror. In 2013, the Taliban attacked English Medium Schools as they thought it to be preaching un-islamic teachings such as music, biology, and English literature.<sup>42</sup> The attack on APS Peshawar in 2014 is still remembered as the most horrendous act of violence in Pakistan.

Multiple NGOs are working for human rights in Pakistan. The most well-known among them is the Human Rights Commission of Pakistan.<sup>43</sup> The case of missing persons and enforced disappearances is also one of the existing human rights violations observed in Pakistan. According to the Human Rights Commission of Pakistan (HRCP), around 4000 persons are missing in Pakistan in 2017.<sup>44</sup> “The Commission of Inquiry on Enforced Disappearances has issued its progress report for the month of November 2021 and according to the report, the Commission received 8,279 cases of alleged enforced disappearance from March 2011 to November 30, 2021 from all over Pakistan.”<sup>45</sup> Similarly, during the efforts made to combat terrorism, some miss-calculations and targeted operations were made, which resulted in serious human rights abuse.

## Issues in Legislation and Trial Procedures of National Forces

Several discrepancies were observed in dealing with criminals during various encounters. Similarly, process of trials had also adverse effect

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<sup>42</sup> See ‘Pushtunwali: Honour Among Them,’ for a detailed report on the Pushtunwali code as distinct from the Islamic Sharia.

<sup>43</sup> <https://www.google.com/search?q=human+rights+commission+of+pakistan&q=human+rights+&aqs=chrome.2.69i57j35i39j0i20i263i512l2j46i199i433i465i512j69i60j69i61l2.10664j0j7&sourceid=chrome&ie=UTF-8> Accessed May 20, 2022.

<sup>44</sup> HRCP: “State of Human Rights in 2017,” Human Rights Commission of Pakistan, Government of Pakistan, Lahore, (2017).

<sup>45</sup> Commission of Inquiry on Enforced Disappearances Issues Report, Available at; <https://www.thenews.com.pk/print/913456-commission-of-inquiry-on-enforced-disappearances-issues-report> Accessed May 19, 2022.

on the criminal justice system. Even, serious lacunas were observed in the legislation made to address security issues. The Khyber Pakhtunkhwa's Actions (In Aid of Civil Power) Ordinance of 2019, provided the military authority to detain civilians indefinitely without charge in internment camps, occupy the property, conduct operations, and convict detainees. The military was immune from prosecution in civilian courts for its actions in the province. The ordinance also provides that the military is not required to release the names of detainees to their families, who are therefore unable to challenge their detentions in a civilian court. The provincial high court declared the ordinance unconstitutional in 2018, but the Supreme Court suspended the rulings of the high court. The appeal remained with the Supreme Court at year's end. Pending the outcome of this appeal, the military retains control of its detention centres, although there is an ongoing transition to civilian law enforcement in the former FATA."<sup>46</sup>

A tragic incident took place on January 20, when a local court sentenced Frontier Corps (FC) soldier Shadiullah to death for the killing of university student Hayat Baloch in Turbat, Balochistan. "Civil activists protested that courts did not punish senior FC personnel for their role in the murder and said the senior leadership of the paramilitary forces nurtured an institutionalized culture of violence against the Baloch people."<sup>47</sup>

Ushering into the modern era, 21<sup>st</sup> and 23<sup>rd</sup> Amendments passed in 2015 and have been nicknamed sunset clauses citing the fact that the amendment entails that the military courts will cease to remain effective.<sup>48</sup> This amendment has emerged from the consensus of the All-Parties' Conference which provided leverage to the military

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<sup>46</sup>file:///C:/Users/fazal/Desktop/313615\_PAKISTAN-2021-HUMAN-RIGHTS-REPORT.pdf

<sup>47</sup>file:///C:/Users/fazal/Desktop/313615\_PAKISTAN-2021-HUMAN-RIGHTS-REPORT.pdf Accessed May 16, 2022.

<sup>48</sup> Noor Ullah Khan, "Human Rights Violations during Military Rule of General Zia ul Haq," *Pakistan Journal of Criminology* 10, no. 3 (2018).

courts to speed the trial of any prisoners convicted of capital punishment. In addition to the prior statement, it can be stated that the major significance of the 21<sup>st</sup> amendment is that it is found to incorporate various acts to provide an exemption from Article 8 subsections (1) and (2).<sup>49</sup> Moreover, regarding the 23<sup>rd</sup> amendment, it can be reiterated that it has extended the functioning of the military courts in its entirety by a total of two years citing national interest and under the wake of the Army Public School massacre, the consensus of the parliamentarians dictated that at the expiration of the 21<sup>st</sup> amendment, 23<sup>rd</sup> amendment will come into play and thus by extension validates the military courts' tenure respectively.<sup>50</sup>

The 21<sup>st</sup> amendment provided military courts to try civilians in matters of terrorism. This authority violated several human rights of people facing trials in these courts.<sup>51</sup> The primary concerns of international human rights law on the practice of trial by military courts are addressed by Article 14 of ICCPR. The protection of Article 14 is like Article 10A of the Constitution of Pakistan 1973, which reserves the right to a fair trial. Whereas “the substantive content of the right to a fair trial in IHRL (through ICCPR) and the Constitution is similar to the provisions in IHL, the legality of military courts is more restricted in IHRL.”<sup>52</sup> This and other state necessities in the name of state security must be met as per the international human rights standards and in the light of the trust bond existing between states and their citizens.

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<sup>49</sup> Raja M. Ali Saleem, *State, Nationalism, and Islamization: Historical Analysis of Turkey and Pakistan* (Springer, 2017).

<sup>50</sup> Imtiaz Ahmed Abbasi, “An Analytical Study of Political Parties During Zia Era With Special Reference to Pakistan Peoples Party (1977-1988),” PhD Diss., 2017.

<sup>51</sup> Bakht Munir, Attaullah Khan Wattoo, “Establishment of Military Courts in Pakistan and its Effects on Trichotomy of Powers: International and Domestic Standards,” [http://pu.edu.pk/images/journal/studies/PDF-FILES/18\\_v21\\_2\\_20.pdf](http://pu.edu.pk/images/journal/studies/PDF-FILES/18_v21_2_20.pdf) Accessed May 20, 2022.

<sup>52</sup> <https://www.dlpforum.org/2022/04/15/the-21st-amendment-and-military-courts-in-pakistan/> Accessed May 20, 2022.



## **Conclusion**

States are the guarantor of the rights of citizens and as such protect citizens from foreign aggression and provide them with internal peace and satisfaction. In doing so, priority is given to the sovereignty and integrity of the state and preserving them puts human rights at stake. States make various legislations and form multiple novel institutions to ensure their absolute sovereignty and security without giving precedence to the supremacy of human rights. It would have been better to give supremacy to human rights, as these are the rights which must be respected by states in times of peace, war, or neutrality. This was the idea, that after the formulation of international human rights law, the concept of absolute sovereignty was replaced with limited sovereignty, but, unfortunately, after the incident of 9/11 United States and its allies shifted this notion towards an absolute sovereign state instead of giving importance to human rights. Globalized warfare has, in fact, worsened human rights conditions. It, therefore, necessitates the world to rethink and analyze the concepts of state security (sovereignty) and human rights to draw a balanced approach between state security and human rights.



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### **Abstract**

*The study is planned to examine the moderating role of Islamic Work Ethic in Job Stress and Nurses' Job Performance Relationship at healthcare centers of Muzaffarabad city in Azad Jammu and Kashmir. We employed a cross-sectional design to undertake the study and data were collected from the respondents using a questionnaire. The respondents of the study included 223 female nurses employed at healthcare centers of Muzaffarabad city in Azad Jammu and Kashmir. Pearson's Correlation and multiple regression analysis were applied to analyze the data through SPSS Version 23. The results of the study revealed a significant negative relationship between job stress and job performance ( $r = -0.326^{**}$ ) and positive relationship between Islamic Work Ethic and Job Performance ( $r = 0.701^{**}$ ). Further, we found that Islamic Work Ethic weakened the negative relationship between Job Stress and Nurses' Job Performance. The study has limitation of using self-report measures that may result in response bias. Further, we suggest that future researchers may test the moderating effect of other buffers such as*

*spirituality and organizational virtuousness in relationship of job stress and job performance.*

**Key Words:** Islamic Work Ethic, Job Stress, Job Performance, Healthcare Centers

## **Introduction**

During the last three years, extant literature has examined job stress and its impacts on job performance of employees in different organizational contexts. This literature depicts that major focus of research on this domain remained examination of causes and consequences of work-related stress in the organizations. Studies also examined the detrimental effects of work-related stress on job performance as well as general wellbeing of employees<sup>1</sup>. These studies further depict that due to stressors such as work-overload and work-family conflict, employees in general and especially employees working in health sector may experience acute stress that in turn may negatively affect their job performance. This work-related stress in some cases may become acute enough that it results in work-disengagement as well which is predictor of poor job performance of employees. Consequently, employees feel de-motivated and their thrust for personal achievement is reduced and they may exhibit poor performance at workplace. Studies further suggest that this stress for longer period may hurt individuals' efficiency at workplace<sup>2</sup>.

Based on the findings of these studies, organizational development (OD) managers started devising mechanisms to effectively cope with the job-related stress and its individual as well as organizational

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<sup>1</sup> Dar, Laiba, Anum Akmal, Muhammad Akram Naseem, and Kashif Khan. "Impact of Stress on Employees Job Performance in Business Sector of Pakistan" *Global Journal of Management and Business Research*, 2019: 1-5.

<sup>2</sup> A, E Demerouti Bakkar, and W Werbeke, "Using the Job Demands-Resources Model to Predict Burnout and Performance," *Human Resource Management*, 2016: 83-104.

outcomes. This triggered research on this domain as well and researchers started identifying mechanisms that may help in reducing the negative outcomes of stress. Researchers identified an array of stress coping strategies in the organization to enhance the performance of employees.<sup>3</sup>

However, we found weaker evidence of research on normative factors that may help in curtailing the adverse outcome of job-related stress on employees' work performance.<sup>4</sup> These studies suggest that there are certain normative factors that may buffer the negative outcomes of job-related stress.<sup>5</sup> One of these buffering factors may include knowledge of Islamic Work Ethic. Islamic Work Ethic (IWE) is differentiating right from wrong.<sup>6</sup> However, IWE as a buffer in relationship of work stress and nurses' work performance lacked the attention of the researchers.<sup>7</sup>

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<sup>3</sup> Aasia Manzoor, Hadia Awan, and Sabita Mariam, "Investigating the Impact of Work Stress on Job Performance: A Study on Textile Sector of Faisalabad," *Asian Journal of Business and Management Science*, 2012: 20-28.

<sup>4</sup> Stavroula Leka, *Work Organization and Stress: Systematic Problem Approaches for Employers, Managers and Trade Union Representatives* (Geneva: World Health Organization, 2003).

<sup>5</sup> Muhammad Qasim, Muhammad Irshad, Mehwish Majeed, and Syed Tahir Hussain Rizvi, "Examining Impact of Islamic Work Ethic on Task Performance: Mediating Effect of Psychological Capital and a Moderating Role of Ethical Leadership," *Journal of Business Ethics*, 2021; Mohamed Farah Abdi, Siti Fatimah Dato, Wira Muhamad Nor, and Nor Zuhairatun Md. Radzi, "The Impact of Islamic Work Ethics on Job Performance and Organizational Commitment," *5th Asia-Pacific Business Research Conference*. Kuala Lumpur, Malaysia, 2014. 1-12 & Khurram Khan, Muhammad Abbas, Asma Gul, and Usman Raja. "Organizational Justice and Job Outcomes: Moderating Role of Islamic Work Ethic," *Journal of Business Ethics*, 2013: 1-13.

<sup>6</sup> Wahibur Rokhman, "The Effect of Islamic Work Ethics on Work Outcomes," *Electronic Journal of Business Ethics and Organization Studies*, 2010: 21-26 & S. Nasr, "Islamic Work Ethics," *Hamdard Islamicus*, 7, no. 4 (1984): 25-35.

<sup>7</sup> Qasim, Irshad, Majeed, and Rizvi, "Examining Impact of Islamic Work Ethic on Task Performance".

The evidence clearly suggests that there exists a theoretical and contextual research deficit in this domain.<sup>8</sup> We need clarity on theoretical underpinnings explaining the role of normative guidelines in buffering the adverse impact of job stress on performance of nurses, employed at tertiary healthcare centers. Therefore, we examined the moderating role of IWE in job stress and nurses' work performance relationship to address this theoretical and contextual research deficit.

Based on the assumptions of social learning theory, we argue that employees having knowledge of IWE may believe that nursing profession is a noble work aimed at helping the humanity. This sense of work may help the nurses to effectively cope with work related stress successfully thereby enhancing their job performance.

## **Literature Review and Hypotheses Development**

Job stress has been widely examined in broader domain of individual as well as industrial psychology. Researchers have examined the individual and organizational outcomes of job stress. Among these, job performance remained extensively researched construct.<sup>9</sup> The concept of job-related stress in the profession of medicine and healthcare management was first introduced by Seyle in 1936.<sup>10</sup> Stress is psycho-physical condition that takes place due to the inability of an individual to effectively counter the pressure and demand of situation.<sup>11</sup> Studies suggest that job related stress hinders employees' job performance which in turn may reduce overall

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<sup>8</sup> Jungwe Park, "Work Stress and Job Performance," *Statistics Canada*, 2018: 1-13.

<sup>9</sup> Usman Bashir, and Muhammad Ismail Ramay, "Impact of Stress on Employees Job Performance: A Study on Banking Sector of Pakistan," *International Journal of Marketing Studies*, 2010: 122-26.

<sup>10</sup> Hans Seyle, "A Syndrome Produced by Diverse Noxious Agents," *Nature*, 1936: 132-38.

<sup>11</sup> Rubina Kazmi, Shehla Amjad, and Delawar Khan, "Occupational Stress and its Effect on Job Performance: A Case Study of Medical House Officers of District Abbottabad," *Journal of Ayub Medical College Abbottabad*, 2008: 135-39.

organizational productivity.<sup>12</sup> While examining the effect of work stress and work performance of medical professionals, studies<sup>13</sup> reported an inverse relationship between the both. Earlier in 2004, a curvilinear association was found by AbuAlRub<sup>14</sup> among both these variables showing that mild stress initially increases job performance but later increased job stress decreases job performance of nursing staff. Dar reported similar findings in the banking context of Pakistan. They reported a curvilinear association among work stress and employee's work performance. Similarly, findings of a recent study<sup>15</sup> also reported adverse outcomes of job stress among medical professionals. Their findings further suggest that job related stress among medical professionals adversely affected their job performance. Earlier,<sup>16</sup> a study reported similar findings in Pakistani perspective and informed that job performance was negatively predicted by job related stress among employees.

Thus, it is evident that job-related stress is detrimental to the employees' job performance as well as their general wellbeing. Evidence from healthcare sector also support these findings. Hence it can be hypothesized that

H1: There is a significant negative relationship between job stress and nurses' job performance.

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<sup>12</sup> Simona Gilboa, Arie Shirom, Yitzhak Fried, and Cary Cooper, "A Meta-Analysis of Work Demand Stressors and Job Performance: Examining Main and Moderating Effects," *Personnel Psychology*, 2008: 227-71.

<sup>13</sup> Kazmi, Amjad & Khan, "Occupational Stress and its Effect on Job Performance," 135-39.

<sup>14</sup> AbuAlRub & Raeda Fawzi, "Job Stress, Job Performance, and Social Support among Hospital Nurses," *Journal of Nursing Scholarship*, 2004: 73-78.

<sup>15</sup> C. Mimura, and Griffiths, "Effectiveness of Current Approaches to Workplace Stress Management in the Nursing Profession: An Evidence Based Literature Review," *Occupational and Environmental Medicine*, 2017: 10-15.

<sup>16</sup> Manzoor, Awan, & Mariam, "Investigating the Impact of Work Stress on Job Performance," 20-28.

## **Moderating Role of IWE in Work Stress and Nurses' Work Performance Relationship**

Extant literature has examined the direct impact of work-related stress on employees' work performance in different organizational contexts that included higher education, banking and services industry. However, there is a scarcity of research on buffering mechanisms for job stress and job performance relationships. Further, studies on healthcare sector examining these variables are demanding more and more empirical evidences. Hence, there is dire need to bridge this research gap in general and especially in healthcare management. Proceeding section offers insight into relationships understudy.

Although there are multiple mechanisms that may buffer the negative impacts of job stress on medical professionals' job performance, normative approach may work effectively in this regard.<sup>17</sup> One of the normative mechanisms to curtail negative outcomes of work stress may include work ethics.<sup>18</sup> In a Muslim organization, Islamic Work Ethic may prove effective tool in this regard<sup>19</sup> that may moderate the negative outcomes of work stress on job performance.

Studies suggest that adding ethical contents in HRD programs of an organization will help in reducing the adverse effects of job related stressors which in turn will result in better work outcomes for the individuals and the organization itself. IWE has orientations from teaching of Quran and Sunnah and may help an individual differentiating right from wrong. Further, it offers concept of work as

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<sup>17</sup> Ruhi Mehnaz, Muhammad Asadullah, Bashir Hussain and Shams Ur Rehman, "Impact of Islamic Work Ethics on Teachers' Job Performance at Elementary School Level in Punjab," *The Discourse*, 2020: 131-39.

<sup>18</sup> Novia Zahra. *The Relationship Between Islamic Work Ethics and Religiosity on Job Performance: The Mediating Effect of Work Engagement* (Utara : Universiti Utara Malaysia, 2015).

<sup>19</sup> Khan, Abbas, Gul, & Raja, "Organizational Justice and Job Outcomes," 1-13.



noble task aimed at serving the humanity with a selfless passion.<sup>20</sup> Hence, we may argue that knowledge of IWE may foster the sense of selfless service to humanity among the nurses which in turn may result in improved performance of employees irrespective of the presence of work-related stress.<sup>21</sup>

Based on the assumptions of social learning theory, we believe that employees especially nursing professionals having knowledge of IWE may perceive nursing work as noble profession and help to humanity at large. Hence this may reduce the adverse impacts of job stress on performance of the nurses. We may propose

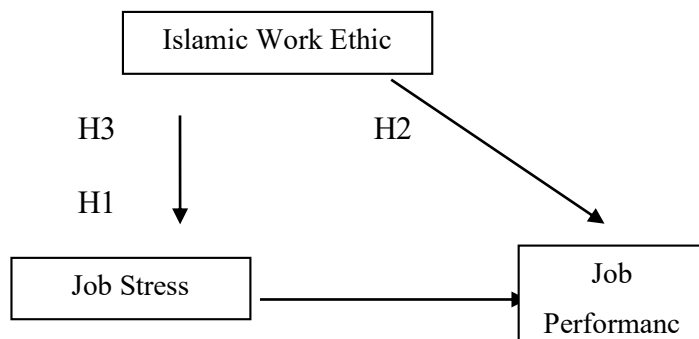


Figure 1: Conceptual Framework

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<sup>20</sup> Wahibur Rokhman, "The Effect of Islamic Work Ethics on Work Outcomes," *Electronic Journal of Business Ethics and Organization Studies*, 2010: 21-26.

<sup>21</sup> Aprianita, and Mafizatul Nurhayati, "The Effect of Job Insecurity on Job Performance with Islamic Work Ethics and Employee Engagement as Mediation Variables (Study at Bank Muamalat West Jakarta Region)," *European Journal of Business and Management Research*, 2021: 20-25 & Muhammad Tufail, Sajjad Hussain, Khurram Shahzad, & Anum, "Combined Effect of Job Insecurity and Islamic Work Ethic on Job Satisfaction and Job Performance," *Journal of Business & Economics*, 2018: 1-24.

H2: Islamic Work Ethic (IWE) positively affects nurses' job performance.

H3: Islamic Work Ethic moderates job stress and nurses' job performance relationship.

## **Design and Procedure**

We employed a cross-sectional design to undertake the study. First the questionnaires were personally administered to the respondents (female nurses) of the study. The data collected from the useable questionnaires were entered in SPSS and descriptive and inferential analyses were made. Later, results were reported to make inferences and draw conclusions.

## **Respondents**

Respondents of the study included all the 587 female nurses employed at all the healthcare centers of Muzaffarabad city in Azad Jammu and Kashmir. Initially, we administered 250 questionnaires to the randomly selected nurses in the city. However, 230 respondents returned the questionnaires. Further, 7 incomplete questionnaires were excluded leaving behind 223 workable questionnaires. The ages of the nurses ranged from 21 years to 48 years. Similarly, 137 nurses were employed at public sector hospitals while 86 of them were employed at private sector hospitals. As far as geographical location of the respondents is concerned, 144 respondents were employed at urban area hospitals while 79 of them were employed at urban area hospitals.

## **Measures**

We used self-report measures to seek the responses of the participants. Responses were anchored on a five-point Likert scale that ranged from Strongly Disagree=1 to Strongly Agree=5.

## **Job Stress**

We measured Job Stress through an 8-items scale developed by Ali, et al. (2022).<sup>22</sup> The reliability of this scale was 0.91 showing a high internal consistency. Sample items include (i) I have adequate control or input over my work duties.

## **Islamic Work Ethic**

We measured IWE through a 17-items scale developed by Ali (1988)<sup>23</sup>. The reliability of this scale was 0.88 showing a high internal consistency. Sample items include (i) Life has no meaning without Work, and (ii) Work enables man to control nature.

## **Job Performance**

We measured job performance of nurses through an 18-items scale developed by Koopmans et al. (2015).<sup>24</sup> The reliability of this scale was 0.93 showing a high internal consistency. Sample items include (i) I took on extra responsibilities, and (ii) I made problems at work bigger than they were.

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<sup>22</sup> A. M. Ali, H. Hori, Y. Kim & H. Kunugi, "The Depression Anxiety Stress Scale 8-Items Expresses Robust Psychometric Properties as an Ideal Shorter Version of the Depression Anxiety Stress Scale 21 Among Healthy Respondents From Three Continents," *Frontiers in Psychology*, 2022.

<sup>23</sup> A. Ali, "Scaling an Islamic Work Ethic," *The Journal of Social Psychology*, 1988: 575-83.

<sup>24</sup> L. Koopmans, C.M. Bernaards, V.H. Hildebrandt, Buuren, S. Van, Beek, A.J. Van Der, Vet, H.C.W. de. "Improving the Individual Work Performance Questionnaire Using Rasch Analysis," *Journal of Applied Measurement*: 2014, 160-75.

## Results

**Table 1: Reliability and Variance**

Variable	No. of Items	Cronbach's Alpha	CR	AVE
Job Stress	8	0.91	0.97	0.86
Islamic Work Ethic	17	0.88	0.78	0.94
Job Performance	18	0.93	0.73	0.85

The above table shows that Composite Reliability (CR) and (ii) Cronbach's Alpha Reliability for these constructs exceeded from 0.7 showing a high internal consistency. Further, Average Variance Extracted (AVE) also exceeded from defined value of 0.60 which depicts that all the items converge on their indicators demonstrating good convergent validity.

**Table 2: Descriptive and Correlation Analysis**

Variables	Mean	SD	Job Stress	Islamic Work Ethic	Job Performance
Job Stress	3.54	0.551	1		
Islamic Work Ethic	4.51	0.380	-.310*	1	
Job Performance	3.29	0.354	-.326**	0.701**	1

Table 1 above presents the correlations between all the under study variables. It is evident that work stress adversely affects job performance ( $r=-.326^{**}$ ) suggesting that greater job stress results in lower job performance among the nurses. However, the table shows that IWE and Job Performance were positively correlated ( $r=0.701^{**}$ )

suggesting that Islamic Work Ethic enhances the Job Performance of employees. This confirms our first and second hypotheses.

**Table 3: Regression Analysis**

	Job Performance		
	B	R <sup>2</sup>	ΔR <sup>2</sup>
Step 1			
Gender		0.243	
Step 2			
Job Stress (A)	-0.17*		
Islamic Work Ethic (B)	0.119**	0.741	0.399***
Step 3			
A×B	0.189**	0.844	0.103**

Results of a stepwise regression analysis are presented in table 3 to test the second hypothesis of the study. We controlled demographic variables at first step of the analysis while second step involved entering Job Stress and IWE. We entered the interaction among work stress and IWE at third step. The interaction term A×B was found statistically significant, demonstrating that Islamic Work Ethic weakened the negative association of work stress and nurses’ work Performance.

## Discussion

The findings of our study offer insight into the relationship of work stress, work performance and IWE based on the assumptions of social learning theory. Consistent with the existing literature.<sup>25</sup> We found

<sup>25</sup> Laiba Dar, Anum Akmal, Muhammad Akram Naseem & Kashif Khan, “Impact of Stress on Employees Job Performance in Business Sector of Pakistan,” *Global Journal of Management and Business Research*, 2019: 1-5; A, E. Bakkar,

that work stress adversely affected work performance of nursing professionals. We found that higher level of job stress among the nurses may result in reduced job performance among them. Earlier, Dar reported that employees experiencing job related stress have been reported to exhibited reduced job performance and in some cases, they have been exhibiting counterproductive work performance harming the wellbeing of organization. This suggests that job stress is toxic for the health of organization at broader level. Specifically, our findings are similar to the results of existing studies.<sup>26</sup> They reported that job stress adversely affects the performance of health professionals. This confirms our first hypothesis that work stress was adversely the work performance of nursing professional.

Participnats of the study reported that knowledge of Islamic Work Ethic positively affect their job performance. our results are similar to the results of recents studies.<sup>27</sup> Studies reported that IWE is instrumental in coping with work related stress and may increase the job performance such that hgher knowledge of IWE predicts increased job performance among nursing professional. This supports the second hypothesis of this study that Islamic Work Ethic positively affect nurses' job performance.

Finally, this study suggests that IWE buffers the adverse effect of work related stress on work performance of nursing professionals. Previous studies on this domain also suggest that knowledge of IWE

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Demeroutic & W. Werbeke, "Using the Job Demands-Resources Model to Predict Burnout and Performance," *Human Resource Management*, 2016: 83-104 & Jungwe Park, "Work Stress and Job Performance," *Statistics Canada*, 2018: 1-13.

<sup>26</sup> Kazmi, Amjad & Khan, "Occupational Stress and its Effect on Job Performance," 135-39 & AbuAlRub & Fawzi, "Job Stress, Job Performance, and Social Support among Hospital Nurses," 73-78.

<sup>27</sup> Mehnaz, Asadullah, Hussain & Rehman, "Impact of Islamic Work Ethics on Teachers' Job Performance at Elementary School Level in Punjab," 131-39.

curtails the adverse individual and work outcomes of job stress<sup>2829</sup> such that increased IWE decreases negatively impact of work stress on work performance. This confirms our third hypothesis that IWE moderates the negative association work stress and nurses' work performance.

## **Conclusion**

Based on the findings of this study, we may argue that job stress is detrimental to employees' job performance in general and especially the job performance of nursing professionals. Healthcare professional's especially nurses may experience acute stress which may prove detrimental to their work performance and may result in work-disengagement in some cases. Consequently, they feel demotivated and their thrust for personal achievement and workplace performance is reduced. Studies suggest that prolonged stress may hurt individuals' efficiency at workplace. However, it has been established by this study that IWE is instrumental to the work performance of nursing professionals. Based on the stepwise regression analysis, we also argue that IWE buffers the negative effect of work-related stress on nursing professionals' work performance.

## **Implications and Future Research**

This study has also certain limitations like other studies. We used self-report measures to examine the impact of job stress on job performance that may have limitation of response bias. To deal with this issue, future studies may employ performance measures to report the job stress of nurses. Further, the sample was limited to female nursing professionals of Muzaffarabad city of AJK. Hence, it is hardly possible to generalize the findings to other health professionals

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<sup>28</sup> Khan, Abbas, Gul, & Raja, "Organizational Justice and Job Outcomes," 1-13.

<sup>29</sup> Zahra, *The Relationship Between Islamic Work Ethics and Religiosity on Job Performance.*"

working in the entire AJK. Future studies may include male nursing professional pooled from the entire AJK to have more reliable and generalizable results. Our study examined job stress as unidimensional construct as predictor of job performance. Studies may examine different job related such as work-family conflict or job insecurity as predictor of employee job performance. Further, studies may also examine certain other factors that may buffers association of work stress with work performance. In an instance, spirituality and organizational virtuousness may develop a climate of cooperation, integrity and compassion that may curtail adverse impact of work related stress on employees' work performance.





# The Contested Nature of Cyber Crimes and Identity Theft: A Case of Balancing Security and Privacy in Pakistan's Cyber Laws

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# **The Contested Nature of Cyber Crimes and Identity Theft: A Case of Balancing Security and Privacy in Pakistan's Cyber Laws**

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## **Abstract**

*There is no denying the fact that human beings have become too dependent on technology. Based on a study conducted by the United Nations Office on Drugs and Crime, around 30 percent of the world's population has access to the internet and currently 70% of the world population has mobile and broadband subscriptions. The downside of the increase in the number of connecting devices and sophistication in information technology is an increase in the number of computer-mediated problems. Cyberspace is a term used to describe the virtual 'geography' of the internet. Computer technology and networking innovations have undoubtedly given rise to what some have described as a 'borderless' and network society which enables instantaneous communication between private individuals, governmental authorities and businesses. That is to say, the usual boundaries of communication do not apply to the "cyberspace," as the internet does not occupy any physical space. Transactions can be initiated in one country, processed in another, and concluded in yet another.*

*Consequently, actions and processes that are conducted in the cyberspace will often not fall under the legal control and jurisdiction of a single state. This article examines these computer-related challenges.*

**Key Words:** Cyber Space, Network Society, Cybercrimes, Computer Technology, Cyber Laws

## **Introduction**

Innovations in information and communication technologies have not only brought facilities for human life but also opened new channels for “identity theft” and fraud. Identity thieves can impersonate the dead as well as the living. In other words, identity theft happens “when someone uses your personal identifying information and pretends to be you in order to commit fraud or to gain other financial benefits.”<sup>1</sup> Identity theft and fraud include: “false applications for loans and credit cards, fraudulent withdrawals from bank accounts, fraudulent use of telephone calling cards or online accounts, or obtaining other goods or privileges which the criminal might be denied if he were to use his real name.”<sup>2</sup> Additionally, offenders can steal credit card details, withdraw savings from personal accounts, or take out loan applications and mobile phone accounts in another person’s name. These acts involve some form of identity impersonation. But in many cases, they also involve some prior data breach (e.g., some form of intrusion on computer networks) that facilitates the misuse or unauthorized access to personal information.<sup>3</sup>

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<sup>1</sup> J.V. Kleut, “Norton Life Lock.” n.d. <https://us.norton.com/internetsecurity-id-theft-what-is-identity-theft.html>

<sup>2</sup> The United States Department of Justice. “What are Identity Theft and Identity Fraud.” November 16, 2020. <https://www.justice.gov/criminal-fraud/identity-theft/identity-theft-and-identity-fraud>

<sup>3</sup> Mike McGuire & S.Samantha Dowling, “Cyber Crime: A Review of the Evidence: Summary of Key Findings and Implications,” *Home Office Research Report* Report no. 75, (2013): 5-7.

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The concept of “identity theft” is still contested. The upsurge in identity related incidents have generated a legal debate about what precisely constitutes an act of identity theft. There is also some confusion over the ‘true’ ‘victim’ of such crimes. For example, scholars disagree over whether a legal distinction can be made between account takeovers and “true name fraud.” Account takeover or ‘hijacking’ refers to a type of identity theft where a fraudster obtains unauthorized access to multiple online e-commerce account using bots or means of hacking and system interference.<sup>4</sup> Bots in particular extract information on a random basis.<sup>5</sup> In such cases, the bank account takeover attacks are, in the first sense, an attack on the critical infrastructure of a banking institution. While the bank bears the primary costs of online bank takeovers, the account holder suffers consequential losses from the original system interference offence. A successful account takeover occurs when an offender obtains enough information to carry out unauthorized transactions in the victim’s name or transfer funds to third-party accounts using the compromised account,<sup>6</sup> and banks are usually liable for losses that directly result from ‘hijacked’ bank servers and payment systems.<sup>7</sup>

A real fraud is said to have occurred when some form of impersonation-related deception is involved. This typically occurs when credit card information is stolen from a victim directly and used to make purchases in the cardholder’s name. In such cases, the only

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<sup>4</sup> Aliza Vigderman, “Account Takeover Fraud: A Consumer’s Guide to Protecting Yourself,” *Security.org*, <https://www.security.org/digital-safety/account-takeover-prevention/>

<sup>5</sup> Pooja Aggarwal, et.al, “Review on Cyber Crime and Security,” *International Journal of Research in Engineering and Applied Sciences*, 2(1), (2014): 48-51.

<sup>6</sup> Graeme R. Newman, & Megan M. McNally “Identity Theft Literature Review,” U.S. Department of Justice, (2005), <https://www.ojp.gov/pdffiles1/nij/grants/210459.pdf>

<sup>7</sup> Hemraj Saini, Year Shankar Rao, & T.C. Panda, “Cyber-Crimes and their Impacts: A Review,” *International Journal of Engineering Research and Applications*, 2(2) (2012): 202-209.

recourse available to the credit card holder is to contact the issuing bank which then initiates a chargeback dispute with the aim of recovering the fraudulent charges on their card. It is apt to note that their losses in terms of money are not only far bigger in proportion, but are also harder to uncover, and take significantly longer time to resolve.<sup>8</sup> Account and/or card theft therefore exposes the account holder to a psychological trauma that is much more harmful than the theft itself.

While existing data demonstrates that financial identity theft and fraud are a significant problem, it is also possible to suggest that statistics on cybercrime are skewed towards a particular sub-set of financial crimes, such as credit card theft. The preoccupation with a credit card and financial fraud tends to overshadow the legal issues in dispute. The next section sheds some light on the key points of distinction and disagreement over the impact of online fraud targeted at companies versus individuals; the theft of identity ownership versus theft of property, or the legal boundaries between “identity theft” versus “identity fraud.” It will consider these issues in the context of existing literature, legislation, and relevant policy debates.

### **The Concept of Identity in Identity Theft**

Scholars such as Robinsons and others argue that a person’s identity is universally recognizable as a category of personal property or as an intangible quality. Identity ownership is a key element of personhood and citizenship in areas such as taxation, national security, immigration, and crime, among others. Identity can take numerous forms, such as documents or a set of data, whose primary purpose is

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<sup>8</sup> Office for Victims of Crimes, “Expanding Services to Reach Victims of Identity Theft and Final Fraud,” October 2010, [https://ovc.ojp.gov/sites/g/files/xyckuh226/files/pubs/ID\\_theft/pfv.html](https://ovc.ojp.gov/sites/g/files/xyckuh226/files/pubs/ID_theft/pfv.html)

to establish a person's unique characteristics.<sup>9</sup> Scholars differ on how to differentiate between "identity" and the more distinct concept of "identification," (e.g., generic information that can be utilized to recognize individuals). These issues will be discussed in a later section on the use of big data and its impact on individual privacy, etc. For the moment, it is important to note that there is also a debate on how "identity" is being used in relation to terms of traditional definitions of crime, theft, and fraud.<sup>10</sup>

As noted, it has been previously assumed that theft cannot occur unless an "actual thing" is stolen, thereby resulting in "a deprivation to the owner."<sup>11</sup> In the age of information-centric crime, most legal systems have taken steps to outlaw data theft used for the purposes of carrying out fraud using another person's identity. However, the criminalization of identity theft and fraud offences are often conflated with the cost of legal clarity on the interests protected by each of these offences. The tendency to elide the distinction between identity related offences with traditional financial crimes also overlooks the idea that the loss or deprivation of identity and identity ownership implies something more than just the loss of a digital asset.<sup>12</sup> Given its critical role in daily aspects of life and its universal nature, the illegal or unauthorized use of a person's identity represents a very serious threat to an individual's privacy, security and autonomy.

Computer-generated attacks on the integrity and confidentiality of online information may also be carried out for non-economic reasons,

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<sup>9</sup> Peter J. Spiro, "A New International Law of Citizenship," *The American Journal of International Law*, 105(4) (2011): 700–705. doi: <https://doi.org/10.5305/amerjintelaw.105.4.0694>

<sup>10</sup> McGuire & Dowling, "Cyber Crime: A Review of the Evidence," 4-5.

<sup>11</sup> Ishita Khurana, "Does Copyright Infringement Fall within the Traditional Definition of Theft?: An Indian and International Analysis," June 5, 2020, *Center For Criminal Law, NUSRL, Ranchi*.

<sup>12</sup> McGuire & Dowling, "Cyber Crime: A Review of the Evidence," 16-17.

particularly in the sphere of identity-related larcenies.<sup>13</sup> Offenders may seek to intercept private communications or create imposter social media accounts using the identity of another with the specific aim of damaging their reputation or manipulating identification documents such as criminal or credit records. These forms of or data interception and impersonation fraud may have lasting effects on the victim's future employability and financial prospects.<sup>14</sup> These and other factors complicate our understanding of identity theft as some individual and identity-centered phenomena while differentiating it from existing definitions of online credit card and account fraud.

### **Existing Definitions of Online Identity Theft**

One of the main reasons why scholars, and law-makers, have not been able to reach consensus around a definition of identity theft is because it rarely manifests as a stand-alone crime, but is often committed as part of a larger criminal enterprise.<sup>15</sup> Thus, the question for lawyers is: at what point in a series of computer-mediated offences does an individual or group actually commit identity theft? Identity-related larceny occurs, according to the Organization for Economic Cooperation and Development (OECD), when an individual and/or a group illicitly collects and uses the information of an existing individual (whether legal or natural) with the intention of committing fraud or other criminal activities.<sup>16</sup> This legal test would seem to establish a link between some initial act of illegal access and data acquisition, with the "financial gain" element of traditional

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<sup>13</sup> United Nations Office on Drugs and Crime, "Computer-Related Offences, *n.d.* <https://www.unodc.org/e4j/zh/cybercrime/module-2/key-issues/computer-related-offences.html>

<sup>14</sup> Judge Mohamad Chawki & Abdel Wahab, "Identity Theft in Cyberspace: Issues and Solutions," *Lex Electronica*, 11(1) (2006): 2-3.

<sup>15</sup> Newman & McNally, "Identity Theft Literature Review," 5.

<sup>16</sup> Organisation for Economic Cooperation and Development, "OECD Policy Guidance on Online Identity Theft," Seoul: OECD Ministerial Meeting on the Future of the Internet Economy, (2008).

definitions of theft and fraud.<sup>17</sup> Some scholars provide a narrower definition of theft related to identity by focusing on the element of impersonation as a key element of this offence, thereby distinguishing it from other forms of traditional conceptions of economically motivated and property-based crimes.<sup>18</sup> What is important to note in the occurrence of identity-related theft, according to Jan Grijpink, is that the perpetrator must, for malicious or criminal purposes, assume an identity that is not his or hers.<sup>19</sup> What could be inferred from this discussion is that an individual or group accused of identity theft can only be successfully prosecuted if the following criteria are met: 1) the act of obtaining private information must have been acquired through illegal means, 2) for the accused's (financial) gain and c) by means of impersonating as someone else.

Experts in the field such as Newman and McNally have expanded on the above criteria to identify three components of identity theft that should be analyzed from a law enforcement perspective. The first refers to the commonality of criminal intent between an initial act of obtaining personal information and some future intention to commit identity theft. A second dimension relates to the degree of criminal liability— that is, to apportion blame to persons who aid and abet fraud offence. For example, how liable is the person involved in a system interference attack but who plays no further part in a later financial fraud i.e., the hacker who hijacks an online account and then sells these details on to third parties? The third factor concerns the variability of outcome and its relation to the discovery of the crime.<sup>20</sup> This refers to the fact that personal identification data may be unlawfully accessed and obtained some time before a financial loss is

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<sup>17</sup> United Nations Office on Drugs and Crime,

<sup>18</sup> Thomas King, et.al., "Artificial Intelligence Crime: An Interdisciplinary Analysis of Foreseeable Threats and Solutions," *Science and Engineering Ethics*, 26, (2020): 98-99

<sup>19</sup> Jan Grijpink, "Privacy Law: Biometrics and Privacy," *Computer Law & Security Review*, 17(3) (2001): 154-160.

<sup>20</sup> Newman & McNally, "Identity Theft Literature Review," v.



discovered by the victim and subsequently reported to the relevant authority.<sup>21</sup>

As noted above, one of the most significant obstacles to the formulation of a workable definition of identity related offences is that these are often inseparable from some original preparatory act of unlawful data gathering, acquisition or system interference. However, the methods used, and motivation behind these acts, vary greatly. In the case of “account takeover” for instance, the act of unlawfully acquiring personal details relating to a specific account holder is an end of itself. In so-called ‘synthetic’ identity theft, offenders blend information relating to any individual with ‘fabricated’ data for the purpose of setting up fake accounts. In other cases, offenders use automated techniques to ‘hack’ data relating to thousands of anonymized accounts is hacked and extracted through malicious software, a technique known as spear phishing.<sup>22</sup> In these cases, the offender may have no further involvement than to extract information which is then sold to gangs on the black market. Under current definitions, this would not be a direct case of identity theft since the offender does not “impersonate” another person, nor would he necessarily benefit from the act of stealing information.<sup>23</sup> These types of crimes are also harder to discover since a true name fraud may not occur till sometime after the information was unlawfully accessed. The anonymity of offenders, combined with the difficulty of proving a causal link between account theft and some subsequent fraud against an individual, are significant factors in the low-rate of identity theft related convictions.

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<sup>21</sup> United Nations Office on Drugs and Crime.

<sup>22</sup> Todd Jones, “Synthetic Identity Theft: The New Way Your ID Gets Stolen,” *Aura*, <https://www.aura.com/learn/synthetic-identity-theft-fraud>

<sup>23</sup> Syed Raza Shah Gilani & Hidayat Ur Rehman, “The Principles of “Necessity” and “Balance”: the Most Important Elements of the Doctrine of Proportionality in the” *Judicial Review Process*, ” *Dialogue (Pakistan)*, vol.15, Issue 3 (2020): 112-35.

## Distinguishing Identity Theft and Identity Fraud

As discussed earlier, there is no clearcut line that differentiates technological offences from traditional crimes, other than the means through which digital offences are committed. Not only does identity theft related jurisdictions vary, but so too does the terminologies in use, i.e., identity fraud, identity theft, for such crimes. Identity theft is a criminal offence in most jurisdictions, though there is significant variation in the relevant legal and definitional criteria used to indict such offences.<sup>24</sup> For example, in the United States, identity theft is criminalized under the 1998 Federal Identity Theft and Assumption Deterrence Act of 1998, 18 USC. The crime is defined by the provisions of this Act as any activity whereby an individual or group:

knowingly transfers or uses, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable state or local law.<sup>25</sup>

This definition of identity theft has been criticized as being too expansive, since it offers no way of distinguishing online fraud, primarily credit card fraud, from identity theft involving some additional element of impersonation. This does not resolve the question of whether non-economically motivated impersonation of an individual's identity is sufficient to meet the criteria of criminal identity theft. Take the case of a deceptive profile on a dating website or the unlawful access to private information or highly sensitive images stored on cloud networks which are then posted onto a public domain website for 'revenge' purposes. These activities do not necessarily result in some direct economic loss for the victim though they have been motivated by the offender's intention to inflict

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<sup>24</sup> Megan Wyre, David Lacey, & Kathy Allan, K. "The Identity Theft Response System," *Trends & Issues in Crime and Criminal Justice*, Australia, No. 592 (2020): 15-16.

<sup>25</sup> Newman & McNally, "Identity Theft Literature Review," 1.

emotional ‘harm’ on a victim or otherwise defame their character. It is not obvious that such acts would be covered by the relevant US criminal statutes and restitution laws.<sup>26</sup> In any case, aggravated penalties for virtual crimes tend to be reserved for financial crimes, especially those involve large scale credit card and banking fraud.

The UK Home Office has defined identity related offences in more information-centric terms as an offence that is committed when somebody gets a substantial amount of information about a person’s identity that assists identity-related theft. Notably, the UK government has emphasized “fraud” as a constitutive element of identity related offences as opposed to the word “theft”. It is arguable that the reference to “fraud” under the current provisions of UK law bypasses longstanding debates on how criminal law should regulate the boundaries between theft and misuse of information properly.<sup>27</sup> By avoiding the question of the conditions under which illegal access to personal information qualifies as an act of “theft”, the terminology of “identity fraud” has the advantage of dealing with a wide range of data privacy violations.<sup>28</sup> This concept of identity fraud would, for example, cover the deliberate act of obtaining goods and services under a false name (a non-existing person). What is less clear is whether identity fraud offences can be established by the simple act of extracting identifying information about a person without their consent? Or would this constitute an overly broad definition that that would bring relatively ‘harmless’ acts, such as commercial use and transfer of data, within the scope of criminal law?

Some scholars have remarked on the differences between the US and the UK in this regard. The US, it is argued, treats identity theft as a

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<sup>26</sup> Harjinder Singh Lallie, et.al., “Cyber Security in the Age of COVID-19: A Timeline and Analysis of Cyber-Crime and Cyber-Attacks during the Pandemic,” *Computers & Security*, 105 (2021): 2-9.

<sup>27</sup> Arjan Reurink, “Financial Fraud: A Literature Teview,” MPIfG *Discussion Paper no. 16/5*, Cologne: Max Planck Institute for the Study of Societies, (2016): 64-69.

<sup>28</sup> Lallie, et.al., “Cyber Security in the Age of COVID-19,” 13.

distinct offence while the UK tends to conceptualize these offences as a technological variant of general fraud offences. The US definition of identity would exclude, by implication, the simple act of acquiring, through unlawful means, personal information relating to personal identity. Some further act of impersonating a specific person using 'stolen' information would need to have occurred beforehand. However, this narrow formulation of criminal identity theft would also preclude, for instance, the use of anonymized 'bots' that may be used to generate a profile of individual users. Once data profiles have been created, a person's anonymity is compromised. In addition to violating individual privacy, identity and data ownership, this information can also be accessed and exploited for fraud purposes. On the other hand, it should be emphasized that while the UK formulation of identity fraud covers a broader range of data violations it also denotes a certain type of economically motivated crime.<sup>29</sup> The difficulty with this definition is that it would seem to place non-financially motivated identity theft offences outside the legitimate sphere of criminal law and penal philosophy.

### **Data Privacy Protection**

While identity theft is ultimately an offence against the individual and individual privacy, it is most likely to thrive on an integrated information economy. In an integrated global economy, more people are willing to enter into contracts to sell goods and services to anonymous buyers. This, in turn, has accelerated retailer's dependency on consumer data for credit verification purposes. The ease with which data is shared also makes it easier for criminals to use the information for theft and fraud purposes. The use of online shopping websites has made it easier to collect and analyse consumer data. Most legitimate sites do not solicit consumers to input confidential financial and will install two-step authentication systems, however, identity thieves can use other methods of social deception

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<sup>29</sup> Chawki & Wahab, "Identity Theft in Cyberspace," 6.

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including pharming and phishing to fill in the blanks.<sup>30</sup> In this regard, identity theft flourishes when a person or group with criminal intent obtain enough information about a chosen victim to “counterfeit this link, enabling the thief to acquire goods while attributing the charge to another person's account,” which expose the personal information of the customers.<sup>31</sup>

As alluded to above, the sharp rise in credit card theft is, however, only the tip of the iceberg. Data is and will continue, to be a valuable currency in the decades to come, while also fundamentally transforming the relationship between individuals, governments, and the private sector. Many ‘big data’ companies collect large amounts of data for marketing purposes.<sup>32</sup> John Marshey is considered to be the first person who used the term “big data”— that is, an enormous set of data. The market in data collection was estimated to be worth around 203 trillion dollars as of 2017.<sup>33</sup> This shows how valuable this industry has become—big data now outpace oil commodities in value. At the same time, the rise of cloud computing has transformed the way companies transfer and store personal data. A vast amount of personal data is being collated, processed, transferred, and stored, for instance, in offshore databases via virtual cloud-computing networks. The popularity of cloud computing services generates obvious privacy related concerns around a company’s ability to sell, collect or transfer private data without the subject’s consent.<sup>34</sup>

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<sup>30</sup> Zainab Alkhalil, Hewage Chaminda, H., Liqaa, Nawaf & Imtiaz Khan “Phishing Attacks: A Recent Comprehensive Study and a New Anatomy,” *Frontier in Computer Science*, 3 (2021): 15-17. doi:10.3389/fcomp.2021.563060

<sup>31</sup> Keith B Anderson, Erik Durbin, and Michael A Selinger, “Identity Theft,” *Journal of Economic Perspective*, Vol.22, Issue. No.2, (2008): 171-72.

<sup>32</sup> Alla Morrison, “Attention Governments: Big Data is a Game Changer for Businesses,” *World Bank Blog*, <https://blogs.worldbank.org/opendata/attention-governments-big-data-game-changer-businesses>

<sup>33</sup> Gil Press, “6 Predictions for the \$203 Billion Big Data Analytics Market,” *Forbes*, January20, 2017, <https://www.forbes.com/sites/gilpress/2017/01/20/6-predictions-for-the-203-billion-big-data-analytics-market/?sh=12114a9e2083>

<sup>34</sup> Sompurna Bhadra, “Cloud Computing and Privacy Risks in the Information/Knowledge/Digital Risk Society and Economy: An Overview,”

Many companies claim that they safeguard the identity of the individual by collecting data that is ‘anonymized.’<sup>35</sup> That is to say, without associating that data sets to specific individuals. There is nothing inherently new about the use of ‘anonymous data-based transactions’ since credit card payment verification systems have long relied on these methods.<sup>36</sup> However, in the current age of cloud computing and data profiling, anonymization is near impossible to achieve, and is, moreover, increasingly susceptible to reverse engineering methods. Big data analysis can be traced back to individual users through re-identification methods (since digital information carries its own signature). To take one example, the internet provider AOL disclosed data relating to 20 million Internet search results for research purposes. To protect the personal identities of its customers, AOL replaced usernames with a random number.<sup>37</sup> But internet cryptographers were able to use reverse engineering techniques to determine the identity of anonymized AOL customers.<sup>38</sup>

Big data analysis and data mining techniques, combined with the vast amounts of personal data made available on the internet, creates the very conditions under which identity theft can thrive. It has also been established that new payment systems and flows of data have undermined individual privacy. However, data flows can also provide solutions to threats, as well as being the source of these threats. Cybersecurity companies rely on large sets of impersonalized data to

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*International Journal for Research in Applied Science & Engineering Technology (IJRASET)*, 8(VI), (2020): 2244-45.

<sup>35</sup> Alex Hern, “Anonymised Data can never be Totally Anonymous” *The Guardian*, July 23, 2019,

<https://www.theguardian.com/technology/2019/jul/23/anonymised-data-never-be-anonymous-enough-study-finds>

<sup>36</sup> Bhadra, “Cloud Computing and Privacy Risks in the Information/Knowledge/Digital Risk Society and Economy,” 2225 & 2244.

<sup>37</sup> Michael Arrington, “AOL Proudly Releases Massive Amounts of Private Data,” *TechCrunch*, August 7, 2006, <https://techcrunch.com/2006/08/06/aol-proudly-releases-massive-amounts-of-user-search-data/>

<sup>38</sup> Bruce Schneier, “Why ‘Anonymous’ Data Sometimes Isn’t,” *Wired*, December 12, 2007, <https://www.wired.com/2007/12/why-anonymous-data-sometimes-isnt/>

analyze threats based on the information gathered. How then can data privacy and protection be achieved while sacrificing flexibility, accessibility, and innovation in ICT sectors? This trade-off will be briefly discussed in the next section regarding the extremes of broad and narrow legislative approaches to data protection within the broader cybersecurity debate.

### **Blurred Boundary between Data Protection and Criminalization**

The above-mentioned regimes, however, have historically been conceived as separate and segmented from broader approaches to criminal law. The arena of internet governance breaks down the usual boundaries set up between international and domestic norms and public and private legal spheres. It also collapses the distinction between civil law-governed data breaches and criminal law definitions of theft and fraud. In most legal systems, an act of transferring or using personal data would not amount to a crime, without some additional evidence of criminal purpose and intent. Nonetheless, it is also clear that no sharp line separates an original act of unauthorized access and misuse of data and a subsequent “crime” of theft or fraud. From this vantage point, the information era raises difficult questions about the role of user consent in data use or transfer (can a person “steal” private data if the user has posted information on any social media platform.<sup>39</sup> Similarly, debates on data misuse reopen longstanding debates about the scope of the law in criminalizing data breaches, or how companies should handle and process personal data.

Responding to the increasing identity-related offences, some scholars advocate for a legal definition of cybercrime that does not hinge upon physical means through which crime is committed i.e., computer hardware or networks, but on the value and utility of the personal

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<sup>39</sup> Mathew B. Prince, et.al., “Understanding How Spammers Steal Your E-Mail Address: An Analysis of the First Six Months of Data from Project Honey Pot,” *Proceedings of the Second Conference on Email and Anti-Spam (CEAS)*, (2005).

information that is being transmitted or abused. Dr. Debarati Halder and Dr. K. Jaishankar go further in formulating a definition of ‘harm’ and they include:

offences that are committed against individuals or groups of individuals with a criminal motive to intentionally harm the reputation of the victim... directly or indirectly, using modern telecommunication networks such as the Internet (networks including but not limited to Chat rooms, emails, notice boards and groups) and mobile phones (Bluetooth/SMS/MMS).<sup>40</sup>

This definition would potentially include attempts to falsely impersonate or defame an individual on social media and other public profile websites. Once again, this reopens contentious debates on the extent to which national authorities and courts may (mis)apply or (ab)use criminal law provisions to suppress the freedom of expression and freedom of use of information on the internet. UN Resolutions 55/63 and 56/121 on crushing the criminal abuse of innovation attempted to discover the issue of places of refuge for the individuals who criminally abuse data innovation by mentioning that each nation has made this compelling to lessen the proportion of violations.<sup>41</sup> From that point 2 additional goals were have been received the goals “57/239 and 58/199 on the Creation of a Global Culture of Security and the Protection of Criminal Information Infrastructure.”<sup>42</sup> The United Nations office is therefore working with its member states to develop a coordination mechanism to effectively address cyberspace related crimes. Pakistan is also a victim of the computer-mediated crimes.

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<sup>40</sup> Debarati Halder & Karuppannan Jaishankar, D. *Cyber Crime and the Victimization of Women: Laws, Rights, and Regulation* (Hershey, PA, USA: IGI Global, 2011).

<sup>41</sup> United Nations General Assembly, “Resolution Adopted by the General Assembly,” 2001,

[https://www.itu.int/ITU-D/cyb/cybersecurity/docs/UN\\_resolution\\_56\\_121.pdf](https://www.itu.int/ITU-D/cyb/cybersecurity/docs/UN_resolution_56_121.pdf)

<sup>42</sup> United Nations General Assembly, “Creation of a Global Culture of Cybersecurity and the Protection of Critical Information Infrastructures,” 2004, [https://www.itu.int/ITU-D/cyb/cybersecurity/docs/UN\\_resolution\\_58\\_199.pdf](https://www.itu.int/ITU-D/cyb/cybersecurity/docs/UN_resolution_58_199.pdf)



## Pakistan and Digital Violations

Pakistan is a relatively new member of the comity of nations, yet it has outpaced Canada, Spain, Australia. South Korea in online populaces as it is having 47.5 million of web clients operating in the country. In the last four years, Pakistan's online population grew up to 90% after the introduction of 3G and 4G services. However, there is a downside to having more web users in one's country: the more web users, the more digital crimes. So, Pakistan is no exception to cybercrimes. More alarmingly, Pakistan had no adequate cyber laws as late as 2016. Pakistan's parliament passed a cybercrime law in 2016 and this "law envisages 14-year imprisonment and a Rs 5million fine for cyber terrorism, seven-year imprisonment each for campaigning against innocent people on the internet, spreading hate material on the basis of ethnicity, religion, and sect, or taking part in child pornography."<sup>43</sup>

Moreover, the biggest number of web clients resides cities like Karachi, Islamabad, and Lahore. These three urban areas provide 90% of the client base hence more vulnerable to cybercrimes and online harassment—especially of women.<sup>44</sup> The use of the internet, in most of the case, is for commercial purposes such as business ventures, demand and supply, and national and individual security, however, its use in identity theft like misrepresentation, provocation, and hacking and cybercrimes is not uncommon either. It was therefore imperative on policy makers to formulate and implement laws for addressing computer-mediated crimes.

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<sup>43</sup> Geotv, "Cyber Crime Bill Passed in National Assembly," August 11, 2016, <https://www.geo.tv/latest/111200-Controversial-cyber-crime-bill-passed-in-National-Assembly>

<sup>44</sup> Shirin Naseer & Cameran Ashraf, "Gender-Based Violence in Pakistan's Digital Spaces," *Journal of Feminist Legal Studies*, 30(1) (2022), 29-50.

## Cyber-Crime Legislation in Pakistan

Due to fast development in the field of computer and information technology (ICT), Pakistan has a legitimate concern about digital violations. For the first time, Pakistani government issued an ordinance, the Electronic Transaction Ordinance, 2002, for the purpose of documentation, recognition and record keeping, and communication, etc.,<sup>45</sup> This statute is known as the electronic exchange mandate 2002. The electronic exchange law 2002 is intended to accomplish

1. The greater financial effect.
2. A protected and lawful exchanging occurred between both of the exchanging parties with in the reference to the electronic exchange law 2002
3. Online business and advancing the best Pakistani items like as material, cowhide merchandise, sports products and careful things to the entire world.
4. To expand the E-exchanges
5. Significant advantages for the little and medium business undertakings as the expense of exchanges are enormously diminished electronically.

The Ordinance also “provided for the establishment of an electronic certification accreditation council within 60 days of the promulgation of the ordinance.”<sup>46</sup> This ordinance considered to be the building bloc of laws related to regulating the cyberspace and to contain cybercrimes.

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<sup>45</sup> Khalid Zafar, “*Electronic Transaction Ordinance, 2002*,” Khalid Zafar & Associates,

<https://khalidzafar.com/laws-of-pakistan/electronic-transaction-ordinance-2002/>

<sup>46</sup> Dawn, “Electronic Transactions Ordinance promulgated,” September 12, 2002.

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## Cyber-Crimes Act, 2016

As stated earlier, in August 2016, a significant step towards addressing the cyberspace related issues and challenges in Pakistan, was made when its parliament enacted a law called Prevention of Electronic Crimes Act, 2016. As of 2021, the Federal Investigating Agency (FIA)—Pakistan’s federal agency that deals with cyberspace-related issues—“received a total of 102,356 complaints related to cybercrime in the year 2021. This marks a massive increase in reporting by citizens to the agency tasked for cybercrime under the Prevention of Electronic Crimes Act 2016.”<sup>47</sup> This is a positive sign as more people now feel confident to report cybercrimes to state officials. However, all was not good with the Act.<sup>48</sup>

The law was liable to be abused and it was abused on several occasions. There is a widespread perception about “digital authoritarianism,”<sup>49</sup> so was the case with the 2016 Pakistani law. This “draconian Prevention of Electronic Crimes Act” was struck down by Athar Minallah, Chief Justice of the Islamabad High Court, in April 2021, by stating:

the criminalization of defamation, protection of individual reputations through arrest and imprisonment and the resultant chilling effect was inconsistent with the Constitution. He further held that the offence under Section 20 of the Prevention of Electronic Crimes Act, 2016, to the extent of the expression ‘or harms the reputation and the punishment thereof is unconstitutional, invalid beyond reasonable doubt and is, therefore, struck down.’<sup>50</sup>

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<sup>47</sup> Usama Khilji, “Rise in Cyber Crimes,” *Dawn* January 11, 2021, <https://www.dawn.com/news/1668802>

<sup>48</sup> Syed Raza Shah Gilani, Ilyas Khan, and Shehla Zahoor, “The Historical Origins of the Proportionality Doctrine as a Tool of Judicial Review: A Critical Analysis,” *Research Journal of Social Sciences and Economics Review*, 2(1), (2021): 251-58.

<sup>49</sup> Adrian Shahbaz, “The Rise of Digital Authoritarianism,” *Freedom House*, 2018, [https://freedomhouse.org/sites/default/files/2020-02/10192018\\_Final\\_Booklet.pdf](https://freedomhouse.org/sites/default/files/2020-02/10192018_Final_Booklet.pdf) FOTN\_2018\_

<sup>50</sup> Dawn, “Law: A Triumph of Freedom,” April 17, 2022, <https://www.dawn.com/news/1685420>

It is therefore apt to note that there is no denying the fact cyberspace-related crimes are on the rise in the world, but it does not mean that in the garb of preventing such crimes the fundamental rights of individuals are blatantly violated by state authorities.

### **Recommendations**

It is believed that prevention is better than cure, so making and implementing laws would prevent the occurrence of cybercrimes. In addition, creating public awareness will also help in preventing cybercrimes, if not eliminating them altogether. To make that happen, governments must establishment organizations for creating cybercrime awareness; people need to be trained in these organizations about computer-related crimes. State officials must be trained in investigating internet-related crimes. Moreover, regional, and international cooperation is needed to address the problem of identity theft and deception in the “virtual geography.” Lastly, creative solutions involving IT specialists and smart, forward-looking policy makers will help in addressing the problem of digital infringement and to limit the impact of digital wrongdoings— both nationally and internationally.

### **Conclusion**

This article has explored virtual world-related issues such as the definition, patterns and trends in cybercrime and focuses on where does identity theft offences sit in this continuum. In the age of the internet, the integrity, confidentiality, and security of personal data is increasingly at risk. Internet users often exercise little control over how their data is used. These difficulties exist regardless of whether the site of regulation is national, international or business level. Identity theft offenders have shrewdly deployed sophisticated techniques such as phishing to steal personal information. The

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personal information obtained is then used to deprive the victims of their valuable assets. It is for this reason that identity crime has been specifically chosen as the focus of this article. Perhaps more than other types of cybercrime, identity theft can only be effectively prevented if data protection and security are addressed together.

Developing countries, often lack the regulatory capacities to effectively address modern crimes like cybercrimes or track down and prosecute individual criminals or networks. Pakistan is one of the countries that may need to revise its cybercrime laws to address these deficiencies, particularly in the areas of data protection and privacy. A priority must be given to strengthen the capabilities of the police and modernize its enforcement strategies and investigating techniques for addressing identity theft and deception. However, the types of identity thefts that have generated most attention in Pakistan, outside the financial arena, are those that have targeted prominent governmental representatives and important state institutions. It is well-nigh impossible to wipe out digital wrongdoing, yet it is conceivable to contain it.



## The Third Wave of Democratic Transition in Pakistan: 1988-1990

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## **The Third Wave of Democratic Transition in Pakistan 1980-1990**

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### **Abstract**

*This research paper tries to explore that how the third wave of democratic transition took place in Pakistan. How the phenomena of democratic transition and consolidation in Pakistan passed through different phases? It also spotlights on the factors which played eminent and effective role for democratic transition as well as consolidation in the country. Moreover, the study explains the process of transition from authoritarianism to democracy in Pakistan while focusing on the theory and practice of transitology and consolidology. The different modes of democratic transition have been discussed to see how democratic transitions in different modes took place in Pakistan. Main concern is to see how different theoretical approaches such as transitology and consolidology are associated in the process of transition from dictatorship to democracy. Political scientists of the world have discussed the democratic transitions that took place in several countries of the world. However, no scholar of this domain from abroad and Pakistan has still investigated that how the third wave of democratic transition took place in Pakistan. In this study, an attempt is made to analyze*

*transitional history of Pakistan in general and third wave of democratic transition in particular.*

**Keywords:** Pakistan, Democracy, Transition, History and Wave

## **Introduction**

The development of democracy has become a primary concern of the world in the post-cold war era. Before the end of the twentieth century, it was turned into an age of democratic triumph. The global range and influence of democratic ideas, institutions, and practices made that century far and away from the authoritarianism.<sup>1</sup> It was considered as the flourishing period for democracy in human history. In rest of the world particularly in the United States and Europe, after the collapse of the non-democratic systems, the liberal democracy flourished as the final form of human government. In the present era, public considers democracy as the safe system of governance in the World.<sup>2</sup> In this research paper, the third wave of democratic transitions in the world has been discussed in general and in Pakistan in particular. Main concern is to see how far democracy was consolidated by political leadership of the country.

Since the partition of Sub-continent in the year 1947, Pakistan has entered turbulent process of nation-building. The country's leadership tried to stabilize as well as organized political institutions. Attempts were also made to create harmony among all state actors for the development of people power. Aim was to establish the parliamentary democracy in a well-organized federal setup.<sup>3</sup> However, interethnic

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<sup>1</sup> B. Talisse Robert, *Democracy after Liberalism: Pragmatism and Deliberative Politics* (New York: Routledge Press, 2005), 1.

<sup>2</sup> Lauren M. McLaren, *Constructing Democracy in Southern Europe: A Comparative Analysis of Italy, Spain and Turkey* (London and New York: Routledge, 2008), 2.

<sup>3</sup> Mahmood Manshipouri and Amjad Samuel, "Development and Democracy in Pakistan: Tenuous or Plausible Nexus?", *Asian Survey*, Vol. 35, No. 11, <http://www.jstor.org/stable/2645722> (Accessed: 12/12/13).



strife, social strains, diverse political ideological background of elites, impacts of praetorian rule and external influence created problems in the nation building process. The fragmented political institutions failed the enforcement of parliamentary democracy in the country.<sup>4</sup> Philip E. Jones explains that Pakistan often has been its own worst enemy, precipitated into periodic crisis by both blundering generals and overreaching politicians.<sup>5</sup>

The political disaster weakened the roots of democratic foundations in the country. Instead of promoting the tradition of civilian supremacy bequeathed by Great Britain, the civilian rulers have often relied on the military to preserve their vested power.<sup>6</sup> The self-interests and policies of civilian politicians also destroyed the equilibrium of political institutions in Pakistan. It paved the ways for dictators for intervening in the politics of the country.<sup>7</sup> However, its political culture and civil society remained rich in the creation of many people of integrity, principles and coherent political vision; a few of them like Zulfikar Ali Bhutto and his daughter Benazir Bhutto have risen to national power.<sup>8</sup>

Despite transitions from dictatorships to democracies from time to time and steps taken by political leadership (Bhutto and Muhammad Khan Junejo) in distancing military from politics of the country could not prevent other military coups in Pakistan.<sup>9</sup> The reason was dictatorial attitude and anti-democratic behaviour of politicians. In fact, there was dire need of pro-democracy environment. However,

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<sup>4</sup> Veena Kukreja, *Contemporary Pakistan Political Process, Conflicts and Crisis* (New Delhi: Sage Publications, 2003), 16.

<sup>5</sup> Philip E. Jones, *The Pakistan People's Party: Rise to Power* (Oxford University Press, 2003), 1.

<sup>6</sup> Manshipouri and Samuel, "Development and Democracy in Pakistan: Tenuous or Plausible Nexus?"

<sup>7</sup> Kukreja, *Contemporary Pakistan Political Process*, 17.

<sup>8</sup> Jones, *The Pakistan People's Party*, 5.

<sup>9</sup> Kukreja, *Contemporary Pakistan Political Process*, 18.

vested-political interests and anti-democratic policies of political parties consolidated authoritarian political culture in the country.<sup>10</sup> The vision followed by political leadership was complicated. Thus, it provided space to generals to intervene the political institution of the country.

### **A Brief Transitional History of Pakistan**

General Ayub imposed first martial law in Pakistan on October 7, 1958 in Pakistan. However, no organized movement was launched against unconstitutional government of Ayub Khan's martial law.<sup>11</sup> After almost a decade, in the year 1967, political parties such as Awami Muslim League, Council Muslim League, Nizam-i-Islami Party and Jamat-i-Islami established Pakistan Democratic Movement (PDM).<sup>12</sup> The struggle of political parties resulted in transition from dictatorship to democracy in Pakistan.<sup>13</sup> During this era, the first wave of democratic transition was in progress in the world.

After a half decade, Pakistan National Alliance (PNA) opposed Bhutto government and they launched movement for the removal of Bhutto in the year 1977.<sup>14</sup> Moreover, it was a union of heterogeneous political parties (i) Tehrik-i-Istaqlal (TI) (ii) Jamaat-i-Islami (JI) (iii) Jamiatul-Ulma-e-Islam (JUI) (iv) Jamiatul Ulema-e-Pakistan (JUP) (v) Muslim League Pagaro Group (PML Pagaro) (vi) National Democratic Party (NDP) (vii) Pakistan Democratic Party (PDP) (viii) Khaksar Tahreek (KT) (ix) Azad Kashmir Muslim Conference

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<sup>10</sup> Saeed Shafqat, "Democracy in Pakistan: Value Change and Challenges of Institution Building", *The Pakistan Review*, Vol. 37, No. 4, <http://www.jstor.org/stable/41261058> (Accessed: 11/12/2013 02:32).

<sup>11</sup> Stanley Wolpert, *Zulfi Bhutto of Pakistan: His life and Times* (New York: Oxford University Press, 1993), 209.

<sup>12</sup> *The Pakistan Times*, May 2, 1967.

<sup>13</sup> Wolpert, *Zulfi Bhutto of Pakistan*.

<sup>14</sup> *The Dawn*, January 12, 1977.

(AKMC).<sup>15</sup> The PNA launched a movement against elections of 1977 and demanded fresh elections. The movement against mal-practices in the elections resulted in chaos which resulted in imposition of Martial Law by the then army chief, General Zia Ul Haq.<sup>16</sup>

The Pakistan Peoples' Party formed an alliance with Pakistan Democratic Party (PDP), Tehrik-i-Istiqlal (TI), Pakistan Muslim League (Khawaja Khariuddin Qasim group), Quami Mahaz-i-Azadi (QMA), Mazdoor Kisan Party, Jamiat-i-Ulema-i-Islam and Kashmir Muslim Conference (KMC) launched opposition movement for the restoration of democracy in Pakistan on February 6, 1981.<sup>17</sup> They name it MRD (Movement for the Restoration of Democracy). They desired transition from dictatorship to democracy in Pakistan.<sup>18</sup> During this period, the era of third wave of democratic transition had already taken place in the world.

In analyzing democratic transitions in recent years, social and political scientists have distinguished between problems of “transitions from authoritarian rule” and problems of “democratic consolidation.”<sup>19</sup> In this research paper, the factors are focused that how an authoritarian regime can be suppressed and how democracy can flourish in Pakistan. The paper has briefly spotlighted the historical background of democratic transition in the World to develop comparative thoughts on the democratic transition in case of Pakistan. It has also tried to bring theories of democratic transition

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<sup>15</sup> Hassan Askari Rizvi, *Military, State and Society in Pakistan* (London: Macmillan Press Ltd, 2000), 223.

<sup>16</sup> *The Dawn*, July 06, 1977.

<sup>17</sup> Farkhanda Bukhari, *Ye Bazi Ishq ki Bazi hai (It is the Matter of Intense Love)* (Lahore: Sang-i-Meel Publications, 2012), 65-66.

<sup>18</sup> Faiz Khoso, *Kare Kakkar Heth Mu Jharrendea Chaddiya: Tarikhee Halchal MRD (Fighting Sprit under Dark Cloud: Historical Movement MRD)* (Hyderabad: My Publications, 2013), 11.

<sup>19</sup> Irving Leonard Markowitz, *Constitutions, the Federalist Papers, and the Transition to Democracy*, ed: Lisa Anderson, *Transitions to Democracy*. (New York: Columbia University Press, 1999), 45.

and consolidation. Main concern is to see a connection of theory and practice of democratic transition and consolidation in case of Pakistan.

### **The Third Wave of Democratic Transition in the World**

The term transition is defined as the change from one state to another state (From democracy to dictatorship or authoritarianism to people's rule and from civilian government to military regime). Transition may occur due to crisis and it may also take place without any crisis.<sup>20</sup> The six crisis transitions include Argentina, Bolivia, Uruguay, the Philippines, Brazil and Peru. In Argentina, Bolivia, Uruguay, and the Philippines, regime transitions took place during deep recessions and crisis. In four countries such as Chile, Korea, Thailand and Turkey transition occurred without crisis.<sup>21</sup> In these countries authoritarian rulers left the offices due to pressure from international and domestic forces.<sup>22</sup>

In the recent years, transition has taken place in the number of countries where political institutions were occupied by unelected regimes including military, one-party or non-party and personalist dictatorships. This political occupation took place before the emergence of democracy. A sea of change has taken place in Latin American politics. In most of the region, until the waves of democratization that started in 1974, authoritarian regimes were pervasive.<sup>23</sup> As far as wave of democracy is concerned, it is said to have started in Southern Europe in the mid-1970s, before spreading to Asia. Eventually the result was that, whereas in the early 1970s,

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<sup>20</sup> Talisse, *Democracy after liberalism*, 1.

<sup>21</sup> Dankwart A. Rustow, *Transitions to Democracy: Toward a Dynamic Model* Lisa Anderson, ed: Lisa Anderson, *Transition to Democracy*, 79.

<sup>22</sup> Jon Elster, *Retribution and Reparation in the Transition to Democracy* (New York: Cambridge University Press, 2006), 3.

<sup>23</sup> Sylvia Chan, *Liberalism, Democracy and Development* (United Kingdom: Cambridge University Press, 2004), 14.

only a quarter of countries had democratically elected governments, two decades later more than 50 percent had adopted this system. By the end of the 1990s, about 75 percent of governments around the world were elected.<sup>24</sup>

Many Asian countries have also gone through a period of developmental dictatorship in the 1960s and 1970s such as Pakistan, Burma and Philippines. However, most of these dictatorships broke up in the 1980s and thereafter a new period of post-dictatorship era opened. This post-dictatorship era was known as period of ‘democratic transition’, ‘democratic consolidation’ or democratization broadly.<sup>25</sup> The political circumstances have firmly altered.<sup>26</sup> Many countries were facing social and economic problems during that era.<sup>27</sup> In Argentina and Brazil, democratic government withstood annual inflation rates that went far into quadruple digits. In El Salvador and Guatemala, countries with histories of brutal authoritarianisms, consistent repression of the indigenous populations, and horrendous civil wars, warring factions signed peace treaties and established elected regimes.<sup>28</sup>

### **Theoretical Framework: The Modes of Transition**

The term transition covers different modes and stages. The parameters and standards of transition depend on the political culture which varies from country to country. Apart from this, the nature of transition also varies from country to country. Transitions include gradual change, as the authoritarian regime and the opposition engage

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<sup>24</sup> Jeff Haynes, *Democracy and Political Change in the Third World* (New York: Routledge Press, 2001), 1.

<sup>25</sup> Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Oklahoma: University of Oklahoma Press, 1991), 13.

<sup>26</sup> Haynes, *Democracy and Political Change in the Third World*.

<sup>27</sup> Talisse, *Democracy after Liberalism*, 6.

<sup>28</sup> Chan, *Liberalism, Democracy and Development*, 15.

in a long bargaining process.<sup>29</sup> Or transitions can be the outcome of rapid dramatic ruptures in the balance of power between the regime and the opposition.<sup>30</sup> Samuel P. Huntington developed three major modes of transition with substantial examples such as Transformation, Trans placement and Replacement.<sup>31</sup>

### **(a)Transformation**

In the phenomenon of transformation, when transition from dictatorship to democracy is supposed to begin, the authoritarian ruler acts alone more actively or less actively to defend his unconstitutional rule. The stakeholders of dictatorial rule play main role in the conversion of authoritarianism into democratization.<sup>32</sup> This mode of transition is enduring and longtime taking phenomenon that takes place when an authoritarian rule, except reasonable pressure generated by opponents of authoritarianism or political forces and other social elements of the society does not leave the office. The political pressure generated by pro-democracy may be supportive for political change and national interest.<sup>33</sup>

Transformation usually takes place in well-established military regimes, where ultimate means of coercion are under the control of economically successful governments.<sup>34</sup> This mode of transition is slow and gradual. It also gives better outcomes to ouster military out of the political arena.<sup>35</sup> In simple words, the result of transformation

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<sup>29</sup> Chan, *Liberalism, Democracy and Development*, 17.

<sup>30</sup> Gretchen Casper and Michelle M. Taylor, *Negotiating Democracy: Transitions from Authoritarian Rule* (Pittsburgh: University of Pittsburgh Press, 1996), 5.

<sup>31</sup> Huntington, *The Third Wave*, 124.

<sup>32</sup> Jeff Haynes, *Democracy in the developing World: Africa, Asia, Latin America and the Middle East* (USA: Polity Press, 2001), 24.

<sup>33</sup> Gerardo L. Munk, *Measuring Democracy: A Bridge between Scholarship and Politics*. (America: The Johns Hopkins University Press, 2009), xi.

<sup>34</sup> Huntington, *The Third Wave*, 125.

<sup>35</sup> Chan, *Liberalism, Democracy and Development*, 15.

is likely to be, at best, a limited democracy notable for the continued political dominance of relatively small number of elite apparatus.<sup>36</sup>

### **(b) Transplacement**

In the process of transplacement, transition from dictatorship to democracy occurs through the mutual actions of the opposition and government. The transition is possible through the negotiations among the elites both in the power and beyond the power.<sup>37</sup> The commitment among elites for democratization is necessary provision for political change.<sup>38</sup> Moreover, Linz and Stephan explain that commitment of political leadership and elites is of the vital significance.<sup>39</sup> In other words, the conceptual framework of this mode of transition depends on the harmony among the political leadership and elites.

Approximately, eleven of thirty-five liberalizations and democratizations occurred in the 1970s and 1980s by the process of transplacement.<sup>40</sup> Initially, both the forces such as government and opposition try to suppress each other's strength and unity. With the passage of time, both government and opposition realize that the workable plan only be chalked out through negotiations and both the forces decide to forget the past and begin negotiations to settle the turmoil what Huntington calls trans placement.<sup>41</sup>

In this whole phenomenon, stakeholders in power such as older military officials, elites within opposition as well as government and large-scale feudal lords are not disturbed. Their power is not jeopardized in the new order (political setup). Haynes notes how

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<sup>36</sup> Haynes, *Democracy in the developing World*, 25.

<sup>37</sup> Stepan, *Problems of Democratic Transition and Consolidation*.

<sup>38</sup> Haynes, *Democracy in the Developing World*, 27.

<sup>39</sup> Stepan, *Problems of Democratic Transition and Consolidation*.

<sup>40</sup> Haynes, *Democracy in the Developing World*, 151.

<sup>41</sup> Huntington, *The Third Wave*, 152.

imperative it is for political stability after the transition to integrate elite into stable political democratic setup that does not destroy their interests. However, elites do not judge that their interests are protected in the new stable democratic setup.<sup>42</sup>

### **(c) Replacement**

Replacement is the major mode of transition which differs from transformation and transplacement. Replacement needs imperatives such as severe national crisis and inability of government. It also takes place when government faces problems and opposition become more power than government.<sup>43</sup> The former opposition groups replace government and they come to power. Moreover, they often enter a new phase as groups in the new government covers three distinct phases: the struggle to produce the fall, the fall, and the struggle after the fall.<sup>44</sup> The phenomenon of replacement does not require the elite settlement and their dominance. However, this phenomenon increases pressure against elites to leave the office and accept the will of public.

In this mode of transition, authoritarian rule is mostly ousted out of the power structure by mass mobilization. However, it does necessarily not replace authoritarian regime with democratic regime. In the replacement process, it is also possible that authoritarian regime may be occupied by another type of authoritarian rule.<sup>45</sup> As was the case in Pakistan, after prolonging protests, demonstrations, marches, strikes, rallies and processions, General Ayub Khan's enduring dictatorial rule was replaced by another military dictator General Yahya Khan. This happened due to absence of harmony and mutual understanding among the leadership of democratic forces. It also results in the creation of hindrance to the emergence of the necessary

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<sup>42</sup> Haynes, *Democracy in the Developing World*, 23-25.

<sup>43</sup> Stepan, *Problems of Democratic Transition and Consolidation*.

<sup>44</sup> Huntington, *The Third Wave*, 142.

<sup>45</sup> Haynes, *Democracy and Political Change in the Third World*.



climate of moderation and compromise characterizing democratic consolidation.<sup>46</sup> In transformations and transplacements, the stakeholders in the authoritarian regime usually leave the politics and return to the barracks or private life quietly and with some honour and dignity. At times, authoritarian regimes are ousted out of power through replacement mode of transition.<sup>47</sup>

Transition is an interesting and an excited phenomenon particularly in context to the countries whose political system is weak, ideologically fragmented, and nationally disintegrated.<sup>48</sup> Dankwart A. Rustow's article 'Transition to Democracy' is appeared to be a dynamic model which explains important problems of transition at the time.<sup>49</sup> In the light of problems in political cultures of different countries, he explains that the consolidation of democracy passes through different stages. In this research article, it is to discuss how democratic transition and consolidation crossed these five stages in the case of Pakistan.

### **Democratic Transition and Consolidation in Pakistan**

The first stage of democratic consolidation requires national unity and stability. The development of national unity is necessary to consolidate democracy in political system of polity.<sup>50</sup> Unfortunately, national unity could not be achieved in Pakistan since partition. Incomplete partition of United India into two countries Pakistan and India by British created international problems in the region such as Kashmir dispute and water problem.<sup>51</sup>

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<sup>46</sup> Haynes, *Democracy in the Developing World*, 27.

<sup>47</sup> Huntington, *The Third Wave*, 152.

<sup>48</sup> Munk, *Measuring Democracy*.

<sup>49</sup> Dankwart A. Rustow, "Transitions to Democracy: Toward a Dynamic Model Lisa Anderson," ed: Lisa Anderson, *Transition to Democracy*, 79.

<sup>50</sup> Haynes, *Democracy in the Developing World*, 25.

<sup>51</sup> Ian Talbot, *Pakistan: A Modern History* (London: Hurst & Company, 1988).

In the second stage, mass movements and public unity are necessary provisions for the development of democracy. In this phase of democratic consolidation, polity goes through a prolonged and inclusive political struggle. After transition from dictatorship to democracy, the democratic consolidation may be the result of long lasted mass movement.<sup>52</sup> In simple words, this stage is dependent on the intense political struggles and movements. In the case of Pakistan, MRD's (Movement for the Restoration of Democracy) .<sup>53</sup> struggle to bring Pakistan on the road of democracy was not successful but it developed pressure on dictator Zia for democratic transition in the country.<sup>54</sup> Post MRD era, the democratic transition took place in Pakistan through regime rupture. Resultantly, people's rule was established in 1988 and steps were taken to consolidate democracy in the country.<sup>55</sup> Due to lack of political harmony as well as diverse political ideologies resulted in transition from democracy to dictatorship for the third time in Pakistan on October 12, 1999.<sup>56</sup>

The third stage of transition is signifier of compromises among competitors such as dictators versus dictators and democrats versus democrats; therefore, this stage is called as the inception of transition<sup>57</sup> because leading political players decide to compromise, to adopt democratic rules and create unity. In this phase, political leaders usually work according to democratic rules for the consolidation of democracy.<sup>58</sup> Moreover, this stage is mainly associated with the politics of reconciliation.<sup>59</sup> During Musharraf era,

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<sup>52</sup> Haynes, *Democracy and Political Change in the Third World*

<sup>53</sup> Muhammad Waseem, *Pakistan Under Martial Law 1977-1985* (Lahore: Vanguard Book (Pvt) ltd., 1987).

<sup>54</sup> Talbot, *Pakistan*.

<sup>55</sup> Mushahid Husain, *Pakistan's Politics: The Zia Years* (Lahore Progressive Publishers, 1990).

<sup>56</sup> Aqil Shah, *The Army and Democracy: Military Politics in Pakistan* (London: Harvard University Press, 2014).

<sup>57</sup> Munk, *Measuring Democracy*.

<sup>58</sup> Haynes, *Democracy in the Developing World*, 2 9.

<sup>59</sup> Husain, *Pakistan's Politics*.

the and the then Co-chairman of PPP, Asif Ali Zardari reconciled politically with opposition for the consolidation democracy in the country.<sup>60</sup>

The fourth stage is called as the second transition in which democratic construction and consolidation begin to become mature.<sup>61</sup> the contemporary phase of the history of Pakistan can be called the era of consolidation of democracy with certain complexities and uncertainty. In countries like Pakistan, the development and empowerment of democracy remain non-permanent. As a result, authoritarianism easily finds its roots to flourish in the political system of the countries like Pakistan.<sup>62</sup> The history reveals in Pakistan that democratic transition and consolidation processes have been passing these all stages since the inception of the partition era. However, no pro-democracy atmosphere has yet been created in Pakistan.<sup>63</sup>

### **Dynamics of Democratic Consolidation in Pakistan**

The circumstances and factors that are concerned with democratic consolidation are spotlighted here including vastly consensual, political attitude, social structures and political institutions.<sup>64</sup> There are other eminent factors regarding democratic consolidation such as level of national prosperity; a robust relatively well-organized civil society; and an institutionalization, relatively undivided as well as political party system.<sup>65</sup> There are also converse factors that prevent

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<sup>60</sup> Faiz Khoso, *Kare Kakkar Heth Mu Jharrendea Chaddiya: Tarikhee Halchal MRD (Fighting Sprit under Dark Cloud: Historical Movement MRD)* (Hyderabad: My Publications, 2013), 11.

<sup>61</sup> Haynes, *Democracy in the Developing World*, 30.

<sup>62</sup> Lawrence Ziring, *Pakistan at Cross Currents of History* (Lahore: Vanguard Books, 2004).

<sup>63</sup> Ian Talbot, *Pakistan: A Modern History* (London: Hurst & Company, 1988).

<sup>64</sup> Robert. B. Talisse, *Democracy After liberalism: Pragmatism and Deliberative Politics*, 102.

<sup>65</sup> Munk, *Measuring Democracy*.

democratic consolidation enduring economic crisis, lack of societal toleration among ethnically and or religiously divided groups; a weak civil society; a highly fragmented party system; factional party politics.<sup>66</sup>

Among the Muslim states and developing world, Pakistan is one of those a few states, where people prefer parliamentary democratic system and have shown their strength to reject military dictatorships through mass movements and mobilization.<sup>67</sup> The upsurge of mass movements for the revival of democracy such as PDM (Pakistan Democratic Movement, Anti-Ayub Movement, MRD and ARD (Alliances for the restoration of Democracy) showed the disapproval of military rule in Pakistan.<sup>68</sup> Non-serious attitude of politicians could not produce healthy atmosphere for the promotion of stable democracy in the country.<sup>69</sup>

Democracy in Pakistan, rather emerged by default once the ruling regime voluntarily stepped aside after the sudden death of General Zia and his top brass in plane crash on August 17, 1988.<sup>70</sup> From 1988 to 1999 Benazir Bhutto and Nawaz Sharif emerged to represent new generation. Both the political leaders from different political parties took steps in their own patterns to consolidate democracy and uphold rule of law. They began political retaliation rather than following democratic rules. But both applied conceptual framework of autocratic tendencies that gave birth to the politics of retaliation. The challenges for the party leadership in Pakistan are to transform the

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<sup>66</sup> Huntington, *The Third Wave*, 155.

<sup>67</sup> Rasool B. Rais, "Elections in Pakistan: is Democracy Winning?," *Asian Affairs*, Vol. 12, No. 03, (Spring, 1988): 78-97.

<sup>68</sup> Tarique Ali, "Movement for the Restoration of Democracy in Pakistan," *India International Centre Quarterly*, Vol. 11, No. 01, (March 1984): 57-79.

<sup>69</sup> Shafqat, "Democracy in Pakistan: Value Change and Challenges of Institution Building".

<sup>70</sup> C.G.P. Rakisits, "Centre-Province Relations in Pakistan Under President Zia: The Government's and Opposition's Approaches," *Pacific Affairs*, Vol. 61, No. 1, (Spring, 1988): 78-97.

character of political party from an instrument of mass mobilization to interest representation and advocacy in the parliament. In the political history of Pakistan an outstanding feature in party politics has been the construction and tearing of alliances and coalitions.<sup>71</sup> However coalitions are proved to be weak within the parliament but in rare cases multiparty consensus on issues developed. The best example is the removal of the eighth amendment.

In fact, democracy was never allowed to flourish in political atmosphere of Pakistan. The fact of irony is that political culture of Pakistan is dependent on several classes and sub-classes which include fragmented civil society in the form of bridaries, feudal communities, and fragmented political party system. In such political system, when champions of democracy, who struggled and desired to bring the country on the routes of democracy. They are not only suppressed but also ousted out of the political arena by several anti-democratic forces.<sup>72</sup>

In spite of movements and a huge struggle for the restoration of democracy in Pakistan, the political leadership of Pakistan People's Party has been unable to formulate a legal frame and most eminently neither built a network of policies nor gave birth to a pro-democratic environment in which contradictions among political elites may be solved. But they have only developed a framework on the basis of reconciliation for the consolidation of their own positions. The promotion and progress of democracy require patience, consensus, political dialogue and deliberation among the powerful groups and political parties. Democracy cannot function vigorously in the absence of elite consensus and harmony.

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<sup>71</sup> Shafqat, "Democracy in Pakistan: Value Change and Challenges of Institution Building".

<sup>72</sup> Khalid Bin Saeed, "Pakistan in 1983: Internal Stresses More Serious than External Problem," *Asian Survey*, Vol. 24, No. 02, (February 1984): 219-28.

## **Conclusion**

This research article concludes in the light of theoretical framework that transitions from democracy to dictatorship take place either by regime rupture, elite settlement, social, economic and political crisis as well as mass mobilization. Ayub Khan left office due to political crisis and mass mobilization against his regime. Yahya Khan transferred powers to civilians after election process (elite settlement). General Zia's downfall became by disaster (his death in plane crash). However, crisis did not remain the main cause of democratic transition in Pakistan. Despite restoration of democracy, political leadership faced failure to consolidate democracy and develop healthy atmosphere for democracy in Pakistan. Their vested interests and dictatorial autocratic attitude weakened democracy in the country. Therefore, the process of democratic consolidation remained slow and democracy did not lay its foundation roots to nourish in Pakistani state. Finally, this research paper concludes that democracy could be promoted in future. If political leadership could either change their autocratic attitude or follow the principles of democracy. By doing this, healthy democratic atmosphere could be developed in Pakistan.

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