

A comparative Study of Legal Positions: A case study of Indian-occupied Kashmir and Pakistan-administered Kashmir

. Nimra Maqsood¹ Dr. Waleed Rasool²

Abstract

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

Keywords: Legal IloJK, AJ&K Legal dimensions, Constitutional dimensions, Geopolitics

1. Introduction:

The Kashmir conflict stands as one of the most protracted and complex geopolitical disputes, with its roots deeply embedded in the historical narratives of British India's partition in 1947. The contested region, divided between Indian-occupied Kashmir and Pakistan-administered Kashmir, has been a focal point of political tension and international concern for decades. This research embarks on a comprehensive examination of the legal positions in the

Kashmir conflict. The necessity for this inclusive analysis arises from the recognition that the Kashmir conflict is not merely a territorial dispute; rather, it is a multifaceted conundrum shaped by historical, political, socio-economic, and cultural dimensions. By delving into a range of comparative elements, this research seeks to unravel the complexities inherent in the legal positions of both regions. It goes beyond a mere examination of legal frameworks and international agreements, aiming to paint a holistic picture that encompasses administrative efficiency, political stability, development indicators, reverse ideology, natural resource management, and the thriving horticultural sector. The comparative elements outlined in this research have been carefully selected to offer a well-rounded understanding of the strengths and resilience of Pakistan-administered Kashmir. This approach is driven by the belief that a comprehensive analysis will not only contribute to the existing body of knowledge on the Kashmir conflict but will also foster a more nuanced and balanced discourse. In outlining the significance of this research, it becomes apparent that a narrow focus on legal frameworks alone does not capture the intricate layers of the Kashmir conflict. The inclusion of diverse dimensions allows for a more robust analysis, offering a platform for dialogue

¹ MPhil Scholar, Riphah Institute of Public Policy, Islamabad

² Associate professor, Riphah institute of public policy

that extends beyond legal intricacies. By adopting a favorable perspective on Pakistan-administered Kashmir, the research aims to encourage a more empathetic and comprehensive understanding of the region's unique strengths and challenges. As the research unfolds, it endeavors to navigate through the historical complexities, unravel the current dynamics, and present a holistic view that underscores the resilience and positive contributions of Pakistan-administered Kashmir. Through this endeavor, the research aspires to contribute not only to academic discourse but also to the ongoing dialogue aimed at fostering peace, stability, and cooperative engagement in the troubled region of Kashmir(Haq, 2020)

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

• Accession to India

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

• Article 370

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

Legal Framework

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

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

• Azad Jammu and Kashmir (AJK)

Pakistan administers a part of the region it calls Azad Jammu and Kashmir. The legal foundation for Pakistan's claim lies in the UN-mandated ceasefire line established in 1949.

• UN Resolutions

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

• Legal Framework

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

Legal Positions	India in Indian-Occupied Kashmir	Pakistan in Pakistan-Administered Kashmir
1. Basis of claim	Accession through Instrument of Accession in 1947	Administered part known as Azad Jammu and Kashmir, based on the 1949 ceasefire line

2. Key Legal Document	Instrument of Accession signed by Maharaja in 1947	UN-mandated ceasefire line established in 1949
3. Constitutional Provision	Article 370 in the Indian Constitution	Relies on UN Resolutions
4. Special Autonomy	Granted by Article 370, providing a separate constitution	Administration consistent with UN resolutions and international law
5. Applicability of Laws	Indian laws apply only to matters specified in the Instrument	Advocates plebiscite for final status, withdrawal of forces, and fair voting
6. Legal Framework Assertion	An integral part of India, legal norms, and historical agreements	Questions raised about local representation in the absence of elected leaders

4. Political Stability

Pakistan-administered Kashmir, also known as Azad Jammu and Kashmir (AJK), has a distinct political structure that has

evolved over the years. Historically, AJK has maintained a relatively stable political environment with a President and a Prime Minister serving as the key figures in the governance hierarchy. The President is elected by the Azad Jammu and Kashmir Council, and the Prime Minister is chosen through legislative processes, ensuring a system of checks and balances. The political landscape in AJK reflects a commitment to democratic principles, where elected representatives play crucial roles in decision-making processes. The historical context of AJK's political stability is marked by periods of local autonomy and active participation in regional affairs, fostering an environment conducive to sustainable development and peace.

Indian-occupied Kashmir:

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

The assessment of political stability in both regions considers the governance structures, political processes, and the sentiments of the local population. In

Pakistan-administered Kashmir, the historical political stability is indicative of a conducive environment for sustainable development and peace. The democratic principles embedded in the political system contribute to local representation and participatory governance.

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

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

7. Development Indicators: A Holistic Examination

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

• Education

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

signaling a commitment to nurturing human capital.

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

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

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

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

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

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

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

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

• Healthcare

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

In Indian-occupied Kashmir, healthcare has been affected during periods of conflict,

impacting the accessibility and quality of medical services. Nevertheless, there have been initiatives to improve healthcare facilities, especially in recent years, contributing to positive developments.

• Infrastructure

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

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

Pakistan-Administered Kashmir (AJK)	Indian-Occupied Kashmir
1. Roads and highways: Investments in construction and maintenance of roads and highways, e.g., Muzaffarabad-Mirpur Expressway, and Neelum-Jhelum Highway.	Investments in expanding the road network and upgrading existing infrastructure, e.g., Jammu-Srinagar Highway, and Leh-Manali Highway.
2. Construction of bridges and river crossings: to improve accessibility, e.g.,	

Mangla Dam Bridge, and Hattian Bridge.	
3. Energy projects: Investment in energy projects such as hydroelectric power plants, e.g., harnessing natural resources for sustainable energy production.	
4. Telecommunications Infrastructure: Expansion of telecommunications infrastructure, including mobile networks and internet connectivity.	
5. Tourism Infrastructure: Development of tourism infrastructure, including hotels, resorts, and recreational facilities.	
6. Urban Development Initiatives: Urban development projects, including housing complexes and commercial centers.	

• **Economic Progress**

Economic progress is a vital indicator of development, reflecting the region's ability to generate income and sustain livelihoods. In Pakistan-administered Kashmir, economic initiatives, trade policies, and

natural resource utilization contribute to economic growth. The focus on sustainable economic development aligns with the broader goal of improving living standards(*Planning & Development Department AJ&K*, n.d.). Indian-occupied Kashmir, historically known for handicrafts and tourism, has faced economic challenges during periods of unrest. Recent efforts to diversify the economy and attract investments signify a renewed commitment to economic progress.

Developme nt Indicators	Pakistan- Administe red Kashmir	Indian- Occupied Kashmir
1. Edu cati on	<ul style="list-style-type: none">• Stri des in imp rovi ng liter acy rate s and infr astr uctu re.• Exp ansi on of sch ools , coll ege s, and uni	<ul style="list-style-type: none">• Hist oric al achi eve men ts, but chal leng es duri ng the unre st.• Peri ods of inst abili ty imp acti ng edu cati

	versities . Scholarship programs and vocational training	onal progresses
2. Healthcare	Establishment of hospitals, medical colleges	Impact on accessibility and quality during conflict
3. Infrastructure	Investment in roads, bridges, and energy projects	Terrain and historical challenges influencing development
4. Economic Progress	Economic initiatives, trade policies, resource utilization	Historical reliance on handicrafts and tourism

8. Military Contributions

In the realm of military service, AJK stands out for its substantial contribution, with an impressive 12% of the total troops originating from the region. This statistic not only reflects the commitment of AJK residents to national defense but also highlights their active participation and

representation in the armed forces. Furthermore, AJK boasts a notable achievement in the form of producing a four-star general, exemplifying the region's potential for leadership and excellence within the military hierarchy. This individual accomplishment not only showcases the Caliber of individuals from Kashmir but also emphasizes the diverse talent pool contributing to the defense forces. In stark contrast, the Indian army lacks a proportional representation of Kashmiris, highlighting a significant gap in inclusivity. The absence of Kashmiris in the Indian army raises questions about equitable participation and representation, particularly in a region with a distinct cultural and historical identity.

Military Contributions	Azad Jammu and Kashmir (AJK)	Indian Army
1. Percentage of Troops	An impressive 12% of the total troops from the region	Lack of proportional representation of Kashmiris
2. Commitment to Defense	Reflects strong commitment to national defense	Questions raised about equitable participation and representation
3. Active Participation	Active involvement and representation in the armed forces	A potential gap in inclusivity
4. Leadership	Produced a four-star general,	Absence of similar

Achievement	showcasing leadership potential	achievements
5. Equitable Participation	Demonstrates inclusivity in the armed forces	Questions raised about the equitable representation of Kashmiris
6. Diversity in the Talent Pool	Highlights diverse talent pool contributing to the defense forces	Potential lack of diverse representation in the military

9. Comparative Analysis:

UN Resolutions:

Pakistan steadfastly upholds the validity and relevance of the UN resolutions on the Kashmir issue, asserting that they provide a legitimate framework for addressing the region's status. These resolutions emphasize the right to self-determination through a free and impartial plebiscite for the people of Jammu and Kashmir. Despite the passage of time, Pakistan contends that the international community, particularly the United Nations, should play a more active role in implementing these resolutions to ensure a just and democratic resolution to the longstanding Kashmir dispute (*UN Resolutions on Jammu & Kashmir - Pakistan Mission to the UN, Geneva*, n.d.).

Constitutional Autonomy:

From Pakistan's perspective, the reliance on Article 370 by India for constitutional

autonomy in Jammu and Kashmir was a positive and progressive measure. Pakistan acknowledges the historical significance of Article 370, which granted the region a special status within the Indian Union. The abrogation of Article 370 in 2019, according to Pakistan, is viewed as a departure from the principles of autonomy and a shift towards a more centralized approach (Aamin Hussain, 2020).

In contrast, Pakistan's administration of Azad Jammu and Kashmir operates within the broader constitutional framework of Pakistan. The term "Azad," meaning free or liberated, reflects Pakistan's commitment to upholding the aspirations of the people in this region.

Conclusion:

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

Policy Recommendations and Way Forward:

- 1. Renewed Diplomatic Engagement:** Both India and Pakistan should demonstrate a renewed commitment to diplomatic dialogue. Diplomatic channels need to be reactivated to foster open communication, understanding, and negotiation. The resumption of talks

should prioritize addressing the core concerns and aspirations of the people of Kashmir.

2. **Inclusive Stakeholder**

Consultations: Policy formulation and negotiations should involve comprehensive consultations with all stakeholders, including representatives from Indian-occupied Kashmir, Pakistan-administered Kashmir, and other relevant parties. Inclusivity is essential to ensuring that diverse perspectives are considered in the decision-making process.

3. **Humanitarian Initiatives:**

Humanitarian efforts should be prioritized to alleviate the suffering of the Kashmiri people. Both India and Pakistan should collaborate on initiatives addressing human rights concerns, providing aid, and facilitating the return of displaced populations. A joint commitment to human welfare can build trust and create a conducive environment for conflict resolution.

4. **International Mediation and Support:**

The international community, including the United Nations and regional organizations, should play an active role in facilitating mediation efforts. The involvement of neutral third parties can provide a balanced platform for dialogue and contribute to the implementation of international resolutions, fostering a sense of justice.

5. **Development and Economic Cooperation:**

Initiatives for economic development and cooperation between the two regions should be explored. Joint

projects, trade agreements, and economic partnerships can promote mutual benefits and build confidence between India and Pakistan. Economic collaboration has the potential to create interdependence, fostering stability.

6. **Track II Diplomacy:**

Parallel to official negotiations, Track II diplomacy involving non-governmental actors, academics, and civil society can play a crucial role. These informal channels can facilitate discussions, bridge gaps, and generate innovative solutions to longstanding issues.

7. **Public Awareness and Education:**

Public awareness campaigns and educational initiatives should be launched in both India and Pakistan to inform citizens about the historical context and complexities of the Kashmir conflict. An informed public is better positioned to support diplomatic initiatives and foster a culture of peace.

8. **Long-Term Confidence-Building Measures:**

Gradual confidence-building measures should be implemented to build trust between the conflicting parties. These measures may include the demilitarization of certain areas, cultural exchanges, and joint initiatives aimed at fostering people-to-people connections.

References

1. Aamin Hussain, S. (2020). *Abrogation of Article 370 and its Consequences:- An Analytical Study* (SSRN Scholarly Paper

3840782).

<https://papers.ssrn.com/abstract=3840782>

<https://www.aljazeera.com/news/2023/12/11/whats-article-370-what-to-know-about-india-top-court-verdict-on-kashmir>

2. Haq, I. (2020). Partition and Legacies of Violence: A Study of Kashmir Conflict. *Displaced Voices: A Journal of Archives, Migration and Cultural Heritage*, 1(1), Article 1.
3. Khan, D. R. M. (2015). *KASHMIR DISPUTE: A LEGAL PERSPECTIVE* (world). <https://www.prdb.pk/front/kashmir-dispute-a-legal-perspective-1427>
4. *Planning & Development Department AJ&K*. (n.d.). Retrieved January 6, 2024, from <https://pndajk.gov.pk/>
5. Rather, T. (2020). *Abrogation of Article 370 of the Constitution of India: Socio-Economic and Political Implications on Jammu and Kashmir* (SSRN Scholarly Paper 3664550). <https://doi.org/10.2139/ssrn.3664550>
6. *UN Resolutions on Jammu & Kashmir—Pakistan Mission to the UN, Geneva*. (n.d.). Retrieved January 6, 2024, from <https://www.pakungeneva.pk/ContentPage.aspx?ID=20>
7. *UN-resolutions-on-Kashmir.pdf*. (n.d.). Retrieved January 6, 2024, from <https://ajkhightcourt.gok.pk/userside-assets/JK/UN-resolutions-on-Kashmir.pdf>
8. *What's Article 370? What to know about India's top court verdict on Kashmir | Conflict News | Al Jazeera*. (n.d.). Retrieved January 6, 2024, from