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**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General**

Written statement* submitted by World Muslim Congress, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 May 2024]

* Issued as received, in the language of submission only.



Indian Government's Unilateral Action to Abrogate Articles 370 and 35/A of the Indian Constitution which Gave a Special Status to the Indian Administered Jammu and Kashmir and Subsequent Consent by the Supreme Court of India, which Violated the United Nations Resolutions and 4th Geneva Conventions

The Office of the High Commissioner for Human Rights (UN Human Rights) is mandated by the UN General Assembly to promote and protect the enjoyment and full realization, by all people, of all human rights. The Charter of the United Nations, the Universal Declaration of Human Rights, and international human rights laws and treaties established those rights. Resolution 48/141 of general assembly mandates UN Human Rights:

- Promote and protect all human rights for all
- Recommend that bodies of the UN system improve the promotion and protection of all human rights
- Promote and protect the right to development
- Provide technical assistance to States for human rights activities
- Coordinate UN human rights education and public information programmes
- Work actively to remove obstacles to the realization of human rights and to prevent the continuation of human rights violations
- Engage in dialogue with Governments in order to secure respect for all human rights
- Enhance international cooperation for the promotion and protection of all human rights
- Coordinate human rights promotion and protection activities throughout the United Nations system
- Rationalize, adapt, strengthen and streamline the UN human rights machinery.
- The Kashmir region is an UN recognised disputed territory and United Nations has a responsibility to promote and protect the human rights of the disputed region.

United Nations resolutions on the Kashmir region prohibits the parties to dispute, India and Pakistan to make any material change in the territories Under their administration.

The Jammu and Kashmir region throughout history enjoyed its independent. According to Partition plan independent states union Jack were asked either to join India or Pakistan. The rulers of these states were supposed to keep population and geographical connectivity in consideration while deciding the final accession. Indian government invade Jammu and Kashmir region on 27th of Oct , 1947 on

against the principles laid down in the Indian Independence Act, and the aspirations of the people. But retained with legislative, executive and judicial powers except to the limited access in respect of defense, foreign Affairs and communication while signing the Instrument of accession.

During the making of the Indian constitution and, having regard to the indefinite and uncertain position of the state in matter of accession, especially clause 7 of the accession document signed by the then ruler who made it clear that “ Nothing in this instrument shall be deemed to commit me in any way to accept any future constitution of India or to fetter my discretion to enter into arrangement with the government of India under any such future constitution” and the Resolutions of United Nations, special provision was incorporated in the constitution of India under Article 370.

The founding fathers of the Indian Constitution given the peculiar position of the state accepted that the Constitution which was being made cannot be made applicable to Indian Administered Jammu and Kashmir. But a mechanism can be provided to run its affairs till the issues are finally decided and settled.

Therefore, none of the provisions of the constitution of India dealt with Indian Administered Jammu and Kashmir except Article 370 and under this provision, the President was given the power to apply the provisions of the Constitution of India with “exceptions” and “modifications”.

On 5th of August 2019 the government of India in flagrant violation of international law and relevant UN Security Council Resolutions, especially Resolution 122(1957) annexed the disputed territory by scrapping Article 370, Article 35A. This was to allow non-Kashmiris to buy property in the region paving the way for “demographic shift” in UN disputed territory and bifurcated Kashmir into two regions – Jammu and Kashmir in the west and Ladakh in the east – to be ruled directly from New Delhi.

Aggrieved by the Indian government’s decision different political parties and the Jammu and Kashmir High Court Bar Association approached the Supreme Court of India to correct the wrong, however, the Indian Supreme Court did not fix the case for five years and in these years the government created grounds for irreversible changes, applied laws disempowering Kashmiris and issued more than 4 million domiciles certificated to non-Kashmiris to purchase land and frustrate demographic composition which is one of the important components of people’s right to self-determination.

The Indian Supreme Court after hearing the petition for 16 days on 11 December 2023, upheld the end of special constitutional privileges instituted 74 years ago, ruling that the former state had no claim to sovereignty after accession to India in 1947 and that the union government’s removal of Article 370 on 5 August 2019 was not “*mala fide*”. This decision not only let down the people of Indian-Administered Jammu and Kashmir by giving its final seal and approval to the loss of special privileges that the people enjoyed but solidified India’s illegal occupation.

The verdict fails to recognize the internationally recognized disputed nature and miscarries to cater for the aspirations of the Kashmiri people.

Before the abrogation of the Article 370 Indian Administered Jammu and Kashmir was under the President’s rule, the recommendation/consent of the government was not taken as there was no government. The will of the people was not duly expressed by the Governor as he was not elected by the people directly. The Article 370(3) makes it mandatory for the President to take the recommendation of the Assembly before abrogating the article. In this case, no recommendation of the Assembly was taken. According to the Constitution of Jammu and Kashmir, 1956 an elected government should be representing the state and if there exists no such government, the Union should consult the citizens before making such an unprecedented move.

The engineering in the Supreme Court Judgment can be gauged when it says the exercise of power is *mala fide* only if it is “intended to deceive”, and since there was no intention to deceive, there was no need for the union government to get permission from the state government to remove Article 370.

Chief Justice Chandrachud further said he did not agree that the Constitution of Jammu and Kashmir, 1956 indicated a unique relationship with the Indian Constitution or that there was sovereignty contained within it. He said the fact that Indian Administered Jammu and Kashmir was an integral part of India is made clear from section 3 of the Constitution of Jammu and Kashmir, 1956 itself, apart from Articles 1 and 370 of the Indian Constitution. Article 1 of the Indian Constitution says, ‘India, that is Bharat, shall be a Union of States.’ Justice Kaul said Indian-Administered Jammu and Kashmir only followed a slightly different path to accession from the rest of the princely states. But forgot that Jammu and Kashmir region’s accession with India was different from other princely states. There is enough historical evidence to show why Indian-Administered Jammu and Kashmir, given its demography, area, and geographical congruity with both the dominions of India and Pakistan and United Nations resolutions, placed it differently. Its accession happened under particular circumstances. The Instrument of Accession was signed conditionally by the then-monarch and the accession was accompanied by a letter to Lord Mountbatten, pleading Indian-Administered Jammu and Kashmir’s unique case.

In his reply on 27 October 1947, Lord Mountbatten responded: ‘It is my government’s wish that as soon as law and order have been restored in Kashmir and her soil cleared of the invaders, the question of the state’s accession should be settled by a reference to the people.’”

What is more absurd is that the court has not even examined whether, under Article 3, Indian-Administered Jammu and Kashmir could have been dismembered and demoted into two union territories, Indian-Administered Jammu and Kashmir and Ladakh. Without adjudicating on the matter, the court has taken the government’s stance at face value, that it is committed to holding elections and restoring statehood. At the same time, it upheld the formation of the union territory of Ladakh.

Fali Sam Nariman an internationally recognized jurist and senior advocate Supreme Court of India identified four or five different errors made by the Supreme Court in two specific aspects of its judgment: upholding the dilution of Article 370 and re-organizing Indian-Administered Jammu and Kashmir, both in terms of the size of the territory as well as in terms of reducing its status from a state to a union territory. Nariman believes the judgment is “totally erroneous and bad in law”.
