[Ishtiaq Ahmad](https://www.thenews.com.pk/writer/ishtiaq-ahmad)

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**Policy paralysis**

Since dividing and annexing the disputed state of Jammu and Kashmir on August 5, 2019, India has geared up the process of reshaping its demography and identity, using the global pandemic as a plausible cover. However, Pakistan’s Kashmir policy continues to suffer from paralysis, as the government is yet to offer any tangible response to Indian excesses against the Kashmiris.

Prime Minister Imran Khan said he would be open to a referendum to determine if Kashmir wants to join Pakistan or become independent. In his opinion, the proposed referendum can be held after the UN-mandated plebiscite to determine if Kashmiris want to join India or Pakistan.

Since this proposition was made at an election rally in Azad Jammu and Kashmir, with the purpose of garnering votes for the ruling party, it has only irked the political opposition at home. Otherwise, the idea carries zero value for Kashmir settlement, as its precondition – the implementation of the UN-mandate plebiscite in Jammu and Kashmir – remains a distant dream after more than 70 years. Pakistan’s lack of response to Indian unilateralism in the past two years dashes the leftover hope in this regard.

Contrary to Pakistan, India has all along been very clear about its goal and action in the disputed territory. It has consistently flouted the will of the international community by refusing to exercise the UN option on Kashmiri self-determination. Since the situation turned violent in 1989, first under the guise of counterinsurgency and then counterterrorism, India has employed brute force to crush Kashmiri freedom struggle.

In the last over three decades, the Indian oppression against Kashmiri Muslims is manifested in the presence of estimated 700,000 security personnel (one armed person for every 17 civilians), and enforcement of draconian laws such as the Armed Forces Special Powers Act and the Public Safety Act, and the consequent arbitrary arrests, enforced disappearances and extrajudicial killings. Human rights groups have estimated over 8,000 instances of extrajudicial killings since 1990, including nearly 2,000 such cases during 2008-18.

India has also used the bilateral peace process with Pakistan to buy time and achieve status quo ante in the disputed territory, be it the Composite Dialogue of the 1990s and its revived form during the Musharraf era, when Pakistan even abandoned the UN option and offered a four-point formula as an ‘out of the box’ solution.

Except for extending moral or material support to Kashmir freedom fighters, successive Pakistani government have either wasted time on pinning false hopes on Track I and II diplomacy with India or remained busy in refuting Indian allegations of sponsoring terrorism and insurgency in the contested territory. At best, Islamabad has tried to remind the world about its obligations in Kashmir. But, that also, to no avail.

After the re-election of Indian Prime Minister Narendra Modi in May 2019, there were clear signs about the impending hell awaiting the Kashmiri people: the enactment of the Indian Citizenship Amendment Act, the deliberate promotion of Amarnath Yatra, the Hindu pilgrimage in Kashmir, and the intensification of the military campaign in the Kashmir Valley. Yet, our government failed to take any preventive or pre-emptive measure to checkmate Indian transgression before August 5, 2019.

Yes, Prime Minister Imran Khan spoke well before the UN General Assembly in September that year, but it was too late then. After the ceasefire agreement on the Line of Control earlier this year, there was even talk of renewed peace and trade with India. “Absolutely not”, says the prime minister, but his government’s inability to formulate a cohesive Kashmir policy is making Pakistan increasingly aloof from the emerging ground realities in the disputed region. Lack of action on Kashmir, before August 2019 and especially afterwards, has allowed India to extend the scope of its militarization campaign to the marginalization of Kashmiri demography and identity.

India has not only bid farewell to its pretence of sovereignty in Jammu and Kashmir by revoking Article 370, but the simultaneous annulment of Article 35-A (which was made part of Article 370 in 1954) has seen Kashmiri land being sold out for cheap, Kashmiri demography being re-engineered to accommodate Hindu settlers, and Kashmiri identity being reshaped with the exclusion of Kashmiri Muslims.

The saffron project of the ruling Bharatiya Janata Party aims to Hinduize Kashmir, for which almost half a million non-Muslims have acquired residency in Kashmir through a new Domicile Order. The new Land Act allows non-resident Indians to re-purpose agricultural land, constituting 90 percent of the occupied territory. Meanwhile, the delimitation process is setting the stage for politically empowering the majority-Hindu Jammu at the expense of the majority-Muslim Valley of Kashmir.

The Kashmiris have already paid a huge price with their blood and tears. They are now at the receiving end of India’s settler colonialism, which is meant to ethnically cleanse the Kashmiri Muslim population. Naturally, the International Criminal Court could be the most appropriate forum to appeal, but neither Pakistan nor India has signed its protocol.

However, Pakistan is free to sue India in the International Court of Justice, which is mandated to resolve disputes between states. This means that breaches by a state, of international law obligations, can be brought before the court. Pakistan can approach the ICJ under Article 36 (1) of the Statute, as India has violated international law (UN Security Council resolutions) on an international dispute, of which both countries are legitimate parties. Thus, it may not be so difficult to prove that the ICJ does have the jurisdiction to hear this case.

All that the government needs to do is put in place an effective team of legal counsels, including from amongst the Kashmiri diaspora, to prepare a convincing case on the basis of India’s unlawful unilateral actions, and its subsequent subjugation and displacement of Kashmiri people. Simultaneously, it can gear up a proactive global diplomatic campaign to expose India’s attempt to permanently colonise the indigenous population of Kashmiri Muslims.

The writer is the former vice-chancellor of Sargodha University, and Pakistan Chair at Oxford University. He can be reached at ishtiaq11a@gmail.com