

The emblem of India is a large, light-colored watermark in the background. It features a four-lion capital of an Ashoka pillar standing on a circular abacus. The abacus is decorated with a frieze of four animals: a galloping horse on the left, a bull in the center, and a lion on the right. The entire emblem is set against a white background.

SelaQui International School
Model United Nation Conference 2018

Inclusion et Egalite

सत्यमेव जयते

All India Political Party Meet

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Agenda 1: ANALYZING FOREIGN POLICY OF INDIA

ABOUT THE AGENDA

The Kashmir dispute dates from 1947. The partition of the Indian sub-continent along religious lines led to the formation of India and Pakistan. However, there remained the problem of over 650 states, run by princes, existing within the two newly independent countries. In theory, these princely states had the option of deciding which country to join, or of remaining independent. In practice, the restive population of each province proved decisive. The people had been fighting for freedom from British rule, and with their struggle about to bear fruit they were not willing to let the princes fill the vacuum.

Although many princes wanted to be "independent" (which would have meant hereditary monarchies and no hope for democracy) they had to succumb to their people's protests which turned violent in many provinces. Because of its location, Kashmir could choose to join either India or Pakistan. Maharaja Hari Singh, the ruler of Kashmir, was Hindu while most of his subjects were Muslim. Unable to decide which nation Kashmir should join, Hari Singh chose to remain neutral. But his hopes of remaining independent were dashed in October 1947, as Pakistan sent in Muslim tribesmen who were knocking at the gates of the capital Srinagar. Hari Singh appealed to the Indian government for military assistance and fled to India. He signed the Instrument of Accession, ceding Kashmir to India on October 26.

Indian and Pakistani forces thus fought their first war over Kashmir in 1947-48. India referred the dispute to the United Nations on 1 January. In a resolution dated August 13, 1948, the UN asked Pakistan to remove its troops, after which India was also to withdraw the bulk of its forces. Once this happened, a "free and fair" plebiscite was to be held to allow the Kashmiri people to decide their future. India, having taken the issue to the UN, was confident of winning a plebiscite, since the most influential Kashmiri mass leader, Sheikh Abdullah, was firmly on its side. An emergency government was formed on October 30, 1948 with Sheikh Abdullah as the Prime Minister.

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Pakistan ignored the UN mandate and continued fighting, holding on to the portion of Kashmir under its control. On January 1, 1949, a ceasefire was agreed, with 65 per cent of the territory under Indian control and the remainder with Pakistan. The ceasefire was intended to be temporary but the Line of Control remains the de facto border between the two countries. In 1957, Kashmir was formally incorporated into the Indian Union. It was granted a special status under Article 370 of India's constitution, which ensures, among other things, that non-Kashmiri Indians cannot buy property there. Fighting broke out again in 1965, but a ceasefire was established that September. Indian Prime Minister, Lal Bhabur Shastri, and Pakistani President, M Ayub Khan, signed the Tashkent agreement on January 1, 1966. They resolved to try to end the dispute, but the death of Mr Shastri and the rise of Gen Yahya Khan in Pakistan resulted in stalemate.

In 1972 Indira Gandhi, the Indian prime minister, and Zulfikar Ali Bhutto, her Pakistani opposite number (and father of Benazir Bhutto, a later Pakistani premier), signed the Shimla Agreement, which reiterated the promises made in Tashkent. The two sides once again agreed to resolve the issue peacefully, as domestic issues dominated. Both India and Pakistan had other important domestic problems which kept Kashmir on the back-burner.

In 1975 Indira Gandhi declared a state of national emergency, but she was defeated in the 1978 general elections. Zulfikar Ali Bhutto was overthrown and hanged in 1977; Pakistan reverted to military dictatorship under Gen Zia ul Haq. The balance of influence had decisively tilted in Pakistan's favor by the late 1980s, with people's sympathy no longer with the Indian union as it had been in 1947-48 and 1965

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On January 19, 1990, the central government imposed direct rule on the state. By May 1990, rising tension between Pakistan and India following the escalation of the conflict in Kashmir raised fears of another war between the two countries. In the mid-1990s, Indian security forces began arming and training local auxiliary forces made up of surrendered or captured militants to assist in counterinsurgency operations. These state-sponsored paramilitary groups have committed serious human rights abuses, and human rights defenders and journalists have been among the principal victims.

In May 1996, parliamentary elections were held in the state for the first time since 1989. Militant leaders called for a boycott, however, and there were widespread reports that security forces had forced some voters to go to the polls. During state assembly elections in September of that year as well, residents- particularly those living in Srinagar and other cities-also complained that the security forces had tried to counter a militant boycott by forcing some people to go to the polls. However, a large number appeared to have voted voluntarily.

Article 370 of the Indian Constitution

Article 370 of the Indian constitution is an article that grants special autonomous status to the state of Jammu and Kashmir. The article is drafted in Part XXI of the Constitution, which relates to Temporary, Transitional and Special Provisions. The state's constituent assembly was empowered to recommend the articles of the Indian constitution to be applied to the state or to abrogate the Article 370 altogether. After the state constituent assembly has dissolved itself without recommending abrogation, the Article 370 is deemed to have become a permanent feature of the Indian constitution.

Jammu and Kashmir's original accession, like all other princely states, was on three matters: defense, foreign affairs and communications. All the princely states were invited to send representatives to India's Constituent Assembly, which was formulating a constitution for the whole of India. They were also encouraged to set up constituent assemblies for their own states. Most states were unable to set up assemblies in time, but a few states did, in particular Saurashtra

Union, Travancore-Cochin and Mysore. In May 1949, the rulers and chief ministers of all the states agreed to accept the Constitution of India as their own constitution. The states that did elect constituent assemblies suggested a few amendments which were accepted. The position of all the states (or unions of states) thus became equivalent to that of regular Indian provinces. In particular, this meant that the subjects available for legislation by the Central and State governments was uniform across India.

In the case of Kashmir, the representatives to the Constituent Assembly requested that only those provisions of the Indian Constitution that corresponded to the original Instrument of Accession should be applied to the State. Accordingly, the Article 370 was incorporated into the Indian Constitution, which stipulated that the other articles of the Constitution that gave powers to the Central Government would be applied to Jammu and Kashmir only with the concurrence of the State's constituent assembly. This was a "temporary provision" in that its applicability was intended to last till the formulation and adoption of the State's constitution. However, the State's constituent assembly dissolved itself on 25 January 1957 without recommending either abrogation or amendment of the Article 370. Thus the Article has become a permanent feature of the Indian constitution, as confirmed by various rulings of the Supreme Court of India and the High Court of Jammu and Kashmir, the latest of which was in October 2015.

This article specifies that the State must concur in the application of laws, except those that pertain to Communications, Defence, Finance, and Foreign Affairs.

Similar protections for unique status exist in tribal areas of India including those in Himachal Pradesh, Arunachal Pradesh, Andaman & Nicobar Islands and Nagaland. However, it is only for the state of Jammu and Kashmir that the accession of the state to India is still a matter of dispute between India and Pakistan still on the agenda of the UN Security Council and where the Government of India vide 1974 Indira-Sheikh accord committed itself to keeping the relationship between the Union and Jammu and Kashmir State within the ambit of this article .

The 1974 Indira-Sheikh accord between Kashmiri politician Sheikh Abdullah and then Prime Minister Indira Gandhi stated, "The State of Jammu and Kashmir which is a constituent unit of the Union of India, shall, in its relation with the Union, continue to be governed by Article 370 of the Constitution of India".

AFSPA CONTRIBUTION

Armed Forces (Special Powers) Acts (AFSPA), are Acts of the Parliament of India that grant special powers to the Indian Armed Forces in what each act terms "disturbed areas". One such act passed on September 11, 1958 was applicable to the Seven Sister States in India's northeast. Another passed in 1983 and applicable to Punjab and Chandigarh was withdrawn in 1997,

roughly 14 years after it came to force. An act passed in 1990 was applied to Jammu and Kashmir and has been in force since.

The Acts have received criticism from several sections for alleged concerns about human rights violations in the regions of its enforcement alleged to have happened.

The continuing application of the Armed Forces Special Powers Act to the State of J&K in the rapidly changing situation has attracted much debate, often heated. Chief Minister J&K Omar Abdullah has in fact announced withdrawal of the application of the law in certain areas, whereas the army has stoutly argued in favor of continuing with the status quo. In 1997, the Apex Court had laid down a number of dos and don'ts for AFSPA. According to the Supreme Court guidelines, any person arrested and taken into custody in exercise of the powers under Section 4(c) of the Central Act should be handed over to the officer-in-charge of the nearest police station with the least possible delay, so that he can be produced before the nearest Magistrate within 24 hours of such arrest, excluding the time taken for journey from the place of arrest to the court of the magistrate; the property or the arms, ammunition etc., seized during the course of a search conducted under Section 4 (d) of the Central Act must also be handed over to the officer-in-charge of the nearest police station together with a report of the circumstances occasioning such search and seizure. The other major guideline says that the provisions of the CRPC governing search and seizure have to be followed during the course of search and seizure conducted in exercise of the power conferred under Section 4 (d) of the Central Act; and a complaint containing an allegation about misuse or abuse of the powers conferred under the Central Act shall be thoroughly inquired into. The debate around the continuation of the AFSPA has centered around the following issues:

- Complete Revocation of AFSPA.
- Partial Revocation of AFSPA. (Disturbed Area status lifted from certain parts of State
- AFSPA be amended to include specific safeguards and provisions thereby ensuring that current concerns are met.
- Status quo.
- Application of Ranbir Penal Code, the equivalent of the Indian Penal Code (With additional safeguards for security forces)
- Operate Under Unlawful Activities (Prevention Act) 2008 (With additional safeguards for security forces.

(a), for the commission or suspicion of any of the following offenses: acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons, carrying weapons or carrying anything which is capable of being used as a fire-

arm or ammunition. To justify the invocation of this provision, the officer need only be “of the opinion that it is necessary to do so for the maintenance of public order” and only give “such due warning as he may consider necessary”.

The army can destroy property as per Section 4 (b) if it is an arms dump, a fortified position or shelter from where armed attacks are made or are suspected of being made, if the structure is used as a training camp, or as a hide-out by armed gangs or absconders.

Besides, the army can arrest anyone- without a warrant under section 4 (c)-who has committed, is suspected of having committed or of being about to commit, a cognizable offense and use any amount of force “necessary to effect the arrest”. Under section 4 (d), the army can enter and search without a warrant to make an arrest or to recover any property, arms, ammunition or explosives which are believed to be unlawfully kept on the premises.

This section also allows the use of force necessary for the search on Article 21 of the Constitution i.e. the Right to Life which is very basic to the Fundamental Rights. This law also overrides the CRPC. The apex Court’s concern that when the armed forces personnel act in aid of civil power; it should be clarified that they may not act with broader power than the police and that these troops must receive specific training in criminal procedure. While explicating the AFSPA bill in the Lok Sabha in 1958, the Union Home Minister stated that the Act was subject to the provisions of the Constitution and the CRPC. He said “these persons [military personnel] have the authority to act only within the limits that have been prescribed generally in the CRPC or in the Constitution.”

If this is the case, then why was the AFSPA not drafted to say “use of minimum force” as done in the CRPC? If the government truly means to have the armed forces comply with criminal procedure, than the AFSPA should have a specific clause enunciating this compliance. It is interesting to compare this section with the powers that the army has to disperse assemblies under section 4 (a) of the Act. The CRPC clearly specifies the ranks which can disperse such an assembly, whereas the Act grants the power to use maximum force even to noncommissioned officers. Moreover, the CRPC does not state that force to the extent of causing death can be used to disperse an assembly. Sections 130 and 131 of the same chapter set out the conditions under which the armed forces may be called in to disperse an assembly.

These two sections have several safeguards which are lacking in the Act. Under section 130, the armed forces officers are to follow the directives of the Magistrate and use as little force as necessary in doing so. Under 131, when no Executive Magistrate can be contacted, the armed forces may disperse the assembly, but if it becomes possible to contact an Executive Magistrate at any point, the armed forces must do so. Section 131 only gives the armed forces the power to arrest and confine. Moreover, it is only commissioned or gazette officers who may give the command to disperse such an assembly, whereas in the AFSPA even non-commissioned officers are given this power.

The AFSPA, then grants far wider powers than the CRPC for dispersal of an assembly. Moreover, dispersal of assemblies under Chapter X of the CRPC is slightly more justifiable than dispersal under section 4 (a) of the AFSPA. Sections 129-131 refer to the unlawful assemblies as ones which “manifestly endanger” public security. Under the AFSPA the assembly is only classified as “unlawful” leaving open the possibility that peaceful assemblies can be dispersed by use of force.

Section 46 sets out exactly how arrests are to be made. It is only if the person attempts to evade arrest that the police officer may use “all means necessary to affect the arrest.” However, subsection (3) limits this use of force by stipulating that this does not give the officer the right to cause the death of the person, unless they are accused of an offence punishable by death or life imprisonment.

This power is already too broad. It allows the police to use more force than stipulated in the UN Code of Conduct for Law Enforcement Officials (see section on International law below). Yet the AFSPA is even more excessive. Section 4(a) lets the armed forces kill a person who is not suspected of an offence punishable by death or life imprisonment. And although it cannot be so construed legally, the public is convinced that this has allowed the army to overlook custodial killing of the atrocious kind perpetrated in Michal, which triggered widespread disturbance in J&K in 2010.

Murder is not one of the offenses listed in section 4(a) of the AFSPA. Moreover the 4(a) offences are assembly of five or more persons, the carrying of weapons, ammunition or explosive substances, none of which are punishable with life imprisonment under the Indian Penal Code. Under section 143 of the IPC, being a member of an unlawful assembly is punishable with imprisonment of up to six months and/or a fine.

Even if the person has joined such unlawful assembly armed with a deadly weapon, the maximum penalty is imprisonment for two years and a fine. Moreover, persisting or joining in an unlawful assembly of five or more persons is also punishable with six months’ imprisonment, or a fine, or both. The same offence committed by someone in a disturbed area under the AFSPA is punishable with death. This again violates the Constitutional right to equality before the law. Different standards of punishment are in place for the same act in different parts of the county, violating the equality standards set out in the Constitution. Because of these features which directly contravene democratic polity there would be a good case made out for the complete revocation of the AFSPA.

When India presented its second periodic report to the United Nations Human Rights Committee in 1991, members of the UNHRC asked numerous questions about the validity of the AFSPA. They questioned the constitutionality of the AFSPA under Indian law and asked how it could be justified in light of Article 4 of the International Covenant on Civil and Political Rights, ICCPR. On 23 March 2009, UN Commissioner for Human Rights Navanethem Pillay asked India to

repeal the AFSPA. She termed the law as "dated and colonial-era law that breach contemporary international human rights standards.

On 31 March 2012, the UN asked India to revoke AFSPA saying it had no place in Indian democracy. Christof Heyns, UN's Special Rapporteur on extrajudicial, summary or arbitrary executions said "During my visit to Kashmir, AFSPA was described to me as 'hated' and 'draconian'. It clearly violates International Law. A number of UN treaty bodies have pronounced it to be in violation of International Law as well.

The act has been criticized by Human Rights Watch as a "tool of state abuse, oppression and discrimination.

(IV) EXTREMISTS UPSURGE

A spate of Islamist cross-border attacks into Indian-held territory, the December 2001 storming of the Indian parliament in New Delhi, and the 2008 Mumbai attacks have all reinforced Kashmir's standing as the significant bone of contention between India and Pakistan. Both states have nuclear weapons, making Kashmir one of the world's most dangerous flashpoints.

ORIGINS OF THE CONFLICT

Kashmir has been a constant source of tension since 1947, when the British partitioned their imperial holdings in South Asia into two new states, India and Pakistan. For Pakistan, incorporating the majority Muslim province of Kashmir is a basic national aspiration bound up in its identity as an Islamic state. Islamabad's official line on Kashmir, which the United States echoed as recently as June 2009, is that incorporation into either India or Pakistan must be determined by Kashmiris. Meanwhile, India sees the province as vital to its identity as a secular, multiethnic state. Movements for an independent Kashmiri state, such as the Kashmir Freedom Movement and the Jammu Kashmir Liberation Front, also exist and have many supporters. India now holds about two-thirds of the disputed territory, which it calls Jammu and Kashmir. Pakistan controls about one-third, which it calls Azad (meaning "free") Kashmir. China also controls two small sections of northern Kashmir. India and Pakistan fought two wars over the region in 1947 and 1965, and a limited conflict in 1999. At least fifty thousand people have died in political violence in Kashmir

since 1989. Though flare-ups have occurred on both sides of the line, violence in Kashmir has decreased dramatically. According to the Indian Home Ministry, the number of violent incidents in 2008 was the lowest in twenty years (AFP) at seven hundred, a 40 percent drop compared to the number of incidents reported in 2007. The South Asia Terrorism Portal reports that 2008 also marks the first time civilian casualties have been under one hundred since 1990.

IMPORTANT POINTS OF DISCUSSION

1. Why is Kashmir disputed?

2. How dangerous is the Kashmir dispute?

3. Why has there been so much violence in Indian-administered Kashmir? (special reference to AFSPA)

4. What's changing now? (scenario of the last 10 years)

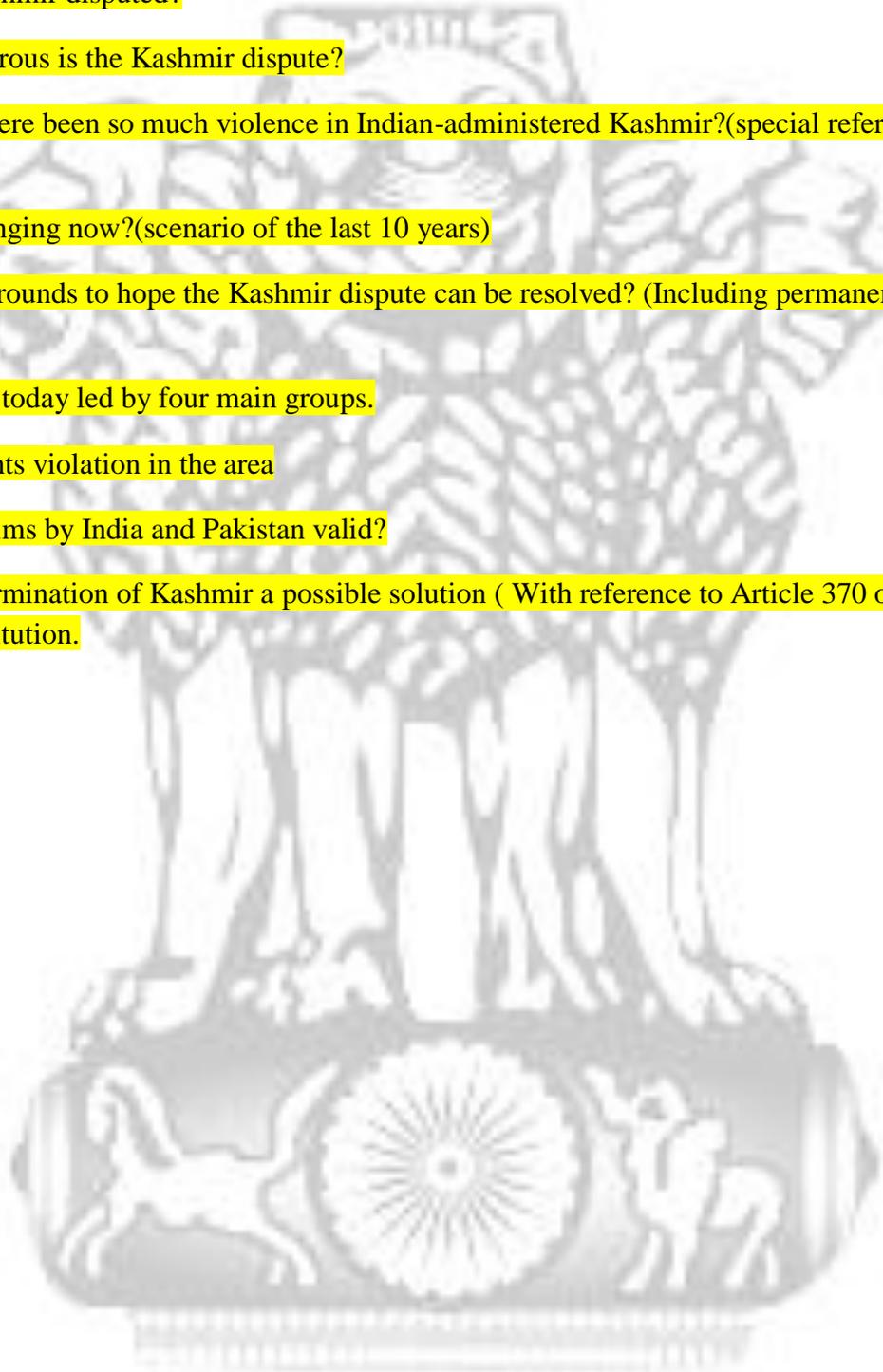
5. Are there grounds to hope the Kashmir dispute can be resolved? (Including permanent solutions)

6. Insurgency today led by four main groups.

7. Human rights violation in the area

8. Are the claims by India and Pakistan valid?

9. Is self-determination of Kashmir a possible solution (With reference to Article 370 of the Indian Constitution).



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