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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

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.

[30 May 2019]

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



Indian designs to change the demography of Indian administered Kashmir

Article 49 of Geneva Convention (1949) states that “ individuals or masses forcible transfer, as well as deportation of protected persons from occupied territory to the territory of the occupied power or to that of any other country, occupied or not, are prohibited, regardless of their motive.”

Indian administered Jammu and Kashmir enjoys a distinct position in the Indian Constitution as being internationally recognized disputed territory and has its own Constitution with absolute sovereign power to legislate laws touching rights of its subjects qua their immovable properties, separate flag to represent it and set of Articles in the Indian Constitution which gives it special status and makes it different from other Indian states. It has several UNSC Resolutions to support a free and fair plebiscite under UN auspices so that people of Jammu and Kashmir can decide their political future.

Article 35A of the Constitution of India gives Jammu and Kashmir state legislature a *carte blanche* to define “permanent residents” of state and provide special rights and privileges to those permanent residents. It prohibits people from outside the state from buying or owning immovable property, settling permanently or becoming beneficiaries of the state-sponsored scholarship scheme. It also authorizes the state to deny the non-permanent residents jobs in the occupied Jammu and Kashmir. The state prides in being unique this way and the people of Jammu and Kashmir affirm that Article 35A is sacrosanct for the Kashmiris since it gives them assurance of identity and protects their demography.

This Article was incorporated in the Constitution of India after having regard to indefinite and uncertain position of the state in the matters of accession, especially clause 7 of the engineered accession document signed by the then ruler who made it clear that “ *Nothing in this document 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 United Nations Clause (B), part 6, January 5, 1949, which reads as “ *All persons (other than citizens of the state of Jammu and Kashmir) who on or since 15 August 1947 have entered it for other than lawful purpose, shall be required to leave the state*”, special provision was under Article 35 A was incorporated in the Indian Constitution.

The continuous demand by the people of the state for the implementation of United Nations resolution which guarantees for Right to self-determination under UN auspices and the Article 35A protecting the demographic composition of the state has always been infuriating Indian state, particularly BJP and its sister organization.

These organizations since long have been pleading for its erosion from the constitution and exploiting the same for political and electoral gains knowing the fact that this Article is according to the spirit of engineered Instrument of Accession as the “state subject” was finalized in 1932 after the vehement demand made by non-Muslims especially the Dogra’s of Jammu and Kashmir to reserve all the state government jobs for residents of the state and deny the same to people from outside, and also has the approval of both the Constituent Assembly and Union parliament , and is the result of an agreed position on the constitutional relations between the Union of India and Indian administered Kashmir.

To fulfil its ulterior motives the organization through its NGO (We the Citizens approached the Supreme Court of India in 2014 and pleaded for declaring Article 35A unconstitutional. In the said petition, the petitioners raised political issues more vigorously than legal or constitutional issues knowing the fact that legal issues relating to this Article have long been settled by the apex court in various writ petitions notably, Puran Lal Vs President of India (1962(1) SCR 688) and Sampat Prakash Vs State of Jammu and Kashmir, AIR 1970 SC 1119.

State subject is nothing but a different name of citizenship of the state of Jammu and Kashmir, and same has been acknowledged by the Supreme Court of India and United Nations resolutions. The malicious intention of BJP government to erode Article 35A

which protects the state subject law will make people of the state endangered species within their land and such scenario is not permissible in the present day world where land of aborigines have become sacrosanct.

Jammu and Kashmir is a disputed territory on which the final solution is yet to be determined. Article 35A was incorporated in the Indian Constitution keeping in mind the nature of the accession, the conditional acceptance of accession by the Governor General of India followed by United Nations resolutions, the commitments of Indian leaders to the people of Jammu and Kashmir and to international community to give the people chance to decide their future, and to keep the demographic composition intact till final disposal of the state. It is beyond any shadow of doubt that this Article safeguards the demographic composition of the state of Jammu and Kashmir and India under Geneva Convention and Hague Regulations of 1907 is bound to keep it intact. The evil designs of BJP government to demean the demographic composition by abrogation Article 35A would be a complete catastrophe and will pave the ways to settle non-state subjects in the disputed territory of Jammu and Kashmir which should be a cause of concern for the United Nations in as much as the august body has conferred right to self-determination to the people through various resolutions providing a mechanism for the exercise of this right. In addition to this India and Pakistan are parties to the UN resolution on Jammu and Kashmir and have signed this resolution in the presence of comity of nations. These resolutions have got sanctity of international agreements and under international law both the countries are bound to honour these resolutions. Moves, for the change the demography of the state in the context of the United Nations resolution of 1948, 1949 and 1957 tantamount to violation of these international agreements, and if India is allowed to repeal Article 35A which guarantees demographic composition will frustrate the mechanism laid down for ascertaining the well of the people.

BJP's promise in its election manifesto to abrogate Article proved a greater seller in the recent elections in India, but would have far-reaching consequences for regional peace and security if the said promise accomplished. The BJP's promise has the potential to escalate the violence in Indian administered Kashmir and tension between the two nuclear powers India and Pakistan, the early warning signals were witnessed in February 2019.

In such circumstances it becomes imperative upon the International community especially the United Nations to stop by all means the belligerent approach of BJP government which is hell-bent to abrogate Article 35A an important Article of Indian Constitution relating to the demographic dispensation of the disputed territory of Jammu and Kashmir.
