

Proposed Solution of Kashmir Dispute

Mamnoon Ahmad Khan¹
 Faisal Javaid²
 Asghar Ali³
 Shahabuddin⁴

ABSTRACT

Kashmir Dispute has been the bone of contention between the two neighboring countries; Pakistan and India. For a better understanding of the Kashmir issue, one must be well aware of the views of Pakistani and Indian governments regarding this dispute. After having a thorough understanding of the issue, this paper has tried to analyze the viewpoints of both governments. From the very beginning of the Kashmir Dispute up till now Kashmiri nation has been denied to participate in any form of negotiations for solving this decades long dispute. This research paper has tried to find out the view point of Kashmiri nation, as a strongest party to the Kashmir Problem. History about the Kashmir Conflict has been distorted so much that it has become enormously difficult for a common man to differentiate between the aggressor and the victim. This research paper tries to present a true and just picture of Kashmir Conflict by analyzing the viewpoints of all the three parties involved in this issue, namely Pakistan, India and Kashmiri people.

This paper also analyses different prospects of settlement and the existing options to resolve Kashmir Dispute. This paper makes an attempt to formalize a peace process named "Slow but Steady Process" to rid the Kashmiri people of the perpetual miseries and atrocities that they have been facing since 1947; and to save the people of the world from the constant threat of nuclear disaster.

HISTORICAL BACKGROUND

The British had maintained a relationship with 584 Princely states of India, regulating their foreign affairs and defense matters. On the eve of transfer of power, the British advised these princely states to accede to either India or Pakistan, keeping in view the wishes of their masses. Three Princely states had not made their choice until August

15, 1947: Hyderabad, Junagadh and Kashmir. The Muslim ruler of Junagadh, despite the predominant majority of Hindus, decided to accede to Pakistan in 1947. With the opposition among the populace to this move, the Indian army entered the State and conducted a plebiscite that favored its union with India. Similarly in Hyderabad, the Muslim ruler wanted to remain independent but the

¹ PhD, Assistant Professor, Deptt. of International Relations, Federal Urdu University of Arts, Sciences and Technology, Karachi. mamnoonahmad@yahoo.co.in

² Lecturer, Deptt. of International Relations, Federal Urdu University of Arts, Sciences and Technology, Karachi. Faisal.Javaid@Fuuast.edu.pk

³ Lecturer, Deptt. Of International Relations, Federal Urdu University of Arts, Sciences and Technology, Karachi. masghardashti@gmail.com

⁴ Lecturer, Deptt. of International Relations, Federal Urdu University of Arts, Sciences and Technology, Karachi. shahabhashmi2012@gmail.com Date of Receipt: 20/4/2013

majority Hindu population did not approve of his plan. On September 13, 1948 the Indian army entered into Hyderabad and secured its accession to India.

The case of Kashmir was just the opposite of the above two cases where the Hindu ruler, failing to remain independent, eventually decided to join India against the wishes of the predominant majority of Muslim population who wanted to join Pakistan. However, he did not have any authority left to join India because the people of Kashmir had revolted against him and the people had driven him out of Kashmir. It is supposed that it was on Indian soil that he declared accession to India. This time India accepted the accession while before it had rejected accessions in cases of Junagadh and Hyderabad. In fact, the Maharaja of Kashmir, Hari Singh, wanted to buy more time. He, preferably, wanted to remain independent of both India and Pakistan, but given the choice between India and Pakistan, he wanted to throw in his lot with Hindu India rather than Muslim Pakistan. However, proceeding cautiously, as he was apprehensive of the possibility of revolt by the majority of subjects against his rule. He offered a standstill agreement to both India and Pakistan to maintain communication and supplies. Pakistan entered into the agreement while India did not. The Maharaja then began to follow a calculated policy. On one hand, he began a planned genocide of the Kashmiri Muslims with support of other Hindu Maharajas and on the other hand, he took several steps to facilitate accession to India.

The scale of killing of the Muslims can be seen from the fact that the forces of Maharaja in Jammu alone massacred 200,000 Muslims, converting Jammu from a Muslim majority province to a Muslim minority province¹. The Maharaja's contacts with the top Indian

leadership accelerated; the construction of the road linking India to Kashmir was further expedited; the Prime Minister of Kashmir, Pandit Kak, who had signed the standstill agreement with Pakistan, was replaced by Mehr Chand who openly sided with India; and Shaikh Abdullah whose policy was decidedly anti-Pakistan, was suddenly released from jail, while Chaudhary Ghulam Abbas and other Muslim Conference leaders continued to languish in jails.

All these events convinced Pakistani leadership of the Maharaja's longterm plan to accede to India. In that communally charged atmosphere, hundreds of Pathan tribesmen from the Northwest Frontier Province of Pakistan entered into Kashmir to help their Muslim co-religionists who were being slaughtered by the Maharaja's forces.

The Maharaja fled from Srinagar and apparently, was persuaded by the Indian authorities to accede to India on October 22, 1948. However, India had already dispatched its troops immediately after hearing the news of tribesmen's entry into Kashmir, even before the formalities of accession were completed².

India accepted the accession provisionally and conditionally, subject to a referendum to be held under the international auspices to ascertain the wishes of the people. Mountbatten, in reply to Maharaja's letter of accession, wrote: "*..... in consistence with their policy that in case of any state where the issue of accession has been the subject of dispute, the question of accession should be decided in accordance with the wishes of the people of the state. It is my government's wish that as soon as law and order have been restored in Kashmir and its soil cleared of the invaders, the question of the state accession should be settled by a reference to the people.*"³

Similarly on November 2, Jawaharlal Nehru declared, "*....We have declared that the faith of Kashmir is ultimately to be decided by the people. That pledge we have given and the Maharaja supported it, not only to the people of Kashmir but to the world. We will not and cannot back out of it. We are prepared when peace and law and order have been established, to have a referendum held under international auspices like the United Nations. We want to be a fair and just reference to the people, and we shall accept that verdict. I can imagine no fairer and just offer.*"⁴

On 1st January 1948, India under articles 34 and 35 of the chapter 6 entitled 'Pacific Settlement of Disputes' of the United Nations Charter, filed a complaint to the United Nations of Pakistan's aggression on a territory which had acceded to India legally.

Recently disclosed documents of the history of the partition amply reveal the British complicity with the top Indian leadership to wrest Kashmir from Pakistan. Alastair Lamb, based on the study of recently declassified documents, has convincingly proved that Mountbatten, in league with Nehru, was instrumental in pressurizing Radcliffe to award the Muslim majority district of Gurdaspur in East Punjab to India, which could provide the only possible access to Kashmir⁵. The British perception was that the strategically located Kashmir was vulnerable to a possible encroachment by Russia or China; and later on it could be better protected by larger and more stable India than by smaller and unstable Pakistan.

REVELATION OF ALASTAIR LAMB

Alastair Lamb based on the thorough research of the events of the partition of subcontinent in his new book 'Birth of a Tragedy: Kashmir 1947' has challenged the Indian claim that the Maharaja Hari Singh ever signed the instrument of accession. His view is that the chronological order of the events strongly suggests that the Indian troops intervened in Kashmir prior to the signing of the instrument of accession. In fact, he believes that the signed instrument of accession does not exist at all because Maharaja was reluctant to sign it; therefore the Indian Government never produced the original document of accession either in official documents or at any

International forum. There appears to be considerable weight in his arguments as they are substantiated by a lot of documentary evidence.

Alastair Lamb's contention that the instrument of accession was never signed, demolishes India's legal claim that Kashmir had become part of India in the wake of signing of the instrument of accession by the Maharaja Hari Singh. M.J.Akbar, a well-known Indian journalist, has also corroborated the same view in his recent book on Kashmir revealing a Nehru-Mountbatten conspiracy to deprive Pakistan of Kashmir⁶.

Against this backdrop, the fundamental positions of Kashmir, India and Pakistan on this dispute, the stakes of each party in it, and the basic issue in the conflict have been identified in the following paragraphs.

The people of Kashmir, who are the primary party to this conflict, have been the worst sufferer of this stalemate between India and Pakistan. They have not only been denied their inalienable right of self-determination promised to them by India and in several United Nations resolutions but also their basic human rights which are being violated every day by the Indian security forces. The primary significance of Kashmir dispute is for the people of Kashmir who have paid a tremendous cost in terms of human lives since partition and have suffered heavily with respect to politics, economics and culture under Indian subjugation. The division of their leadership in secular Nationalist and Muslim nationalists in 1947 was of critical importance in leading to the beginning of the crisis. Shaikh Abdullah in his autobiography admits that the general inclination of the Kashmiri people during the partition days was to join Pakistan but his own political judgment dictated otherwise⁷. The Kashmiri people had to pay a heavy price for Shaikh Abdullah's political interests.

NEHRU'S PERSONAL INTEREST IN KASHMIR

Why is Kashmir important to India? The attitude of Indian decision-makers is determined by a combination of various factors: strategic factors, politico-economic factors and the personality factor.

Nehru mixed all these factors with his personal interest in Kashmir. Nehru told P.M. Attlee in a cable on 25th October 1947:

*“Kashmir's northern frontier, as you are aware, runs in common with those of three countries, Afghanistan, the USSR and China. Security of Kashmir is vital to the security of India. Especially since part of southern boundary of Kashmir and India are common. Helping Kashmir, therefore, is an obligation of national interest of India.”*⁸

Nehru, himself a Kashmiri, never hid his personal interest in Kashmir. He declared in the Parliament, *“I was intensely interested, apart from the larger*

*reasons which the government have, for emotional and personal reasons; I do not want to hide this; I am interested in Kashmir.”*⁹ Apart from these economic and strategic rationalizations and justifications, the main motive behind the policies pursued by the parties, which led to this dispute, seems to be the clash of one- nation versus two-nation theory. This clash, indeed, underlay the conflict.

Nehru himself had expressed it eloquently: *“It is not Kashmir, therefore, but rather a much deeper conflict that comes in the way of friendly relations between India and Pakistan and the situation is grave one. We cannot give up the basic ideal concept of our state in founded.”*¹⁰

The emotional and personal attachment of Nehru to the idea of secularism is seen also in the account of J. Korbil, an Indian nominee in the United Nations Commission for India and Pakistan.

*“I attempted to appeal to his inspiring leadership and suggested that India might be in a position to make a gesture of concession to Pakistan. Pandit Nehru reacted vehemently.” In afloat of bitterness he leaped onto a chair, shouting ‘You seem not to understand our position and our rights. We are a secular state, which is not based on religion. We give to everyone freedom of conscience. Pakistan is a mediaeval state with an impossible theocratic concept. It should never have been created, and it would have never happened had the British not stood behind the foolish idea of Jinnah.’*¹¹

Michael Breeher states that India’s main concern regarding Kashmir arose also in regard to its position as a Central Asian power¹².

Pakistan claims that Kashmir is vital to its security because the main strategic roads and the railway system of the West Pakistan run parallel to Kashmir. Occupation of Kashmir by India would be a direct threat to Pakistan. Economically Pakistan is closely linked to Kashmir as the headwaters of the three major rivers, which are the backbone of Pakistan’s agricultural system, are in Kashmir. Sir Zafarullah Khan, Pakistan’s Foreign Minister, presented the case in the following words:

*“The possession of Kashmir can add nothing to the economy of India or to the strategic security of India. On the other hand, it is vital for Pakistan. If Kashmir should accede to India, Pakistan might as well from both the economic and strategic points of view become a feudatory of India or cease to exist as an independent sovereign state.”*¹³

THE INDO-PAK WAR 1965

Pakistan’s minor tactical victory in Biar Bet (Rann-of-Kutch) gave it a flashy sense of superiority and left India dangerously frustrated. Dupree observes;

“The jubilant Pakistanis saw the Indian withdrawal as a sign of continued erosion of Indian moral and unwillingness to fight. Possibly the whole Rann-of-Kutch was simply a Pakistani test of Indian strength and stamina”¹⁴.

Presumably, a favorable external environment of war persuaded Ayub Khan to permit the infiltration of 3,000 to 5,000 volunteers into the Indian held Kashmir in hope that while Pakistan armed forces would engage the Indian forces in the battle, the Pakistani commandos, together with the Kashmiri freedom fighters, would wage war with the Indian army inside Kashmir. Pakistani decision-makers misperceived the number of Indian forces and the level of Indian commitment to Kashmir. They also underestimated the Indian threat advanced by Nehru in 1951 that if Pakistan ventured into Kashmir, Indian might attack Pakistan, choosing its own place and time¹⁵.

The plan failed as planners had assumed that India would not cross the international borders and would confine its military operation to Kashmir only. Regrettably, there was no general uprising in occupied Kashmir either.

The military conflict between the two countries raged all along the Indo-Pak borders in Lahore, Sialkot, Kashmir and Rajasthan sectors. The military conflict lasted for about seventeen days.

During the conflict, the outside interested parties like the United States, the USSR and the UK confined their actions to diplomatic measures; only China threatened to intervene in the conflict militarily. On 16th September 1965, China delivered an ultimatum to the Indian Government, warning of ‘grave consequences’ if the Indians did not dismantle their military structures and withdraw to their own side of the Sinking-Tibet border within three days¹⁶.

Failure of either side to win a decisive victory, international pressure, the depletion of military resources and efforts of United Nations brought about the ceasefire between India and Pakistan on 23rd September 1965.

THE TASHKENT CONFERENCE (1966)

The Soviet Union mediated between India and Pakistan on Kashmir Issue in the wake of 1965 war¹⁷.

The Tashkent Conference in January 1966 at the Tashkent city is widely regarded as a failure in Pakistan because of lack of progress on the fundamental issue of Kashmir. A limited agreement was achieved through the Soviet Union’s mediatory efforts; wearily, both sides agreed to settle the immediate issues arising out of war and set forth their respective position on the lingering issue of Jammu and Kashmir to be discussed later. The Indian Prime Minister L.B.Shastari’s sudden death at Tashkent on January 11, 1966 proved to be the death knell for the agreement as well. Hysterical reaction against the Tashkent

Declaration in both Pakistan and India, the succession of new leadership in India, and the lack of further interest by the Soviet Union led to the disappearance of the Tashkent spirit between India and Pakistan.

THE SIMLA ACCORD (1972) AND BEYOND

The Indo-Pakistan War 1971 was a turning point in the history of the subcontinent. Unlike the wars of 1948 and 1965, which resulted in political and military statements, India emerged as a major power after the war of 1971. An Indian scholar observed that it was the first time since independence in 1947 that the Indian policy-makers were able to get rid of their opposition with Pakistan.

Perceiving the clear superiority of the 'enemy', Zulfikar Ali Bhutto, the then President of Pakistan, also opted for a policy of bilateralism with India.

The Simla Agreement was concluded on July 2, 1972 between India and Pakistan on bilateral basis without the interference of any third party. In Simla, India wanted to have a package deal with Pakistan including the settlement of the Kashmir question but Pakistan insisted on a step-by-step approach. The positions of both the parties at Simla were just opposite to their positions taken at Tashkent, where India had opted for step-by-step approach and Pakistan had insisted on a 'package deal' including the Kashmir Issue¹⁸. In Simla, India demanded that cease-fire line in Kashmir should be converted into an international boundary, thereby settling the Kashmir dispute on the *status quo* basis, but Pakistan did not want to bargain on Kashmir from a position of weakness. However, in return for the concession made by India concerning the withdrawal of troops from Punjab, Pakistan made an important concession to India over Kashmir. Pakistan agreed to the new line of control in Kashmir resulting from the ceasefire of December 17, 1971.¹⁹

According to the new line of control, India retained the area it had captured in Kargil, Tithwal and Poonch in Azad Kashmir, this left India in possession of a better military position²⁰. According to some Indian sources, Z. A. Bhutto privately assured Mrs. Gandhi during the Simla meeting that he would not disturb the status quo in Kashmir. Pakistan has acquiesced in de-linking Kashmir from the United Nations. However, it does not accept the Indian interpretation of the Simla Accord. The text of the Simla Accord does not contradict Pakistan's principled position on Kashmir. The Simla Agreement recognized that "*the principles and purposes of the charter of the United Nations shall govern the relations between the two countries.*" It always recognizes that the "Jammu and Kashmir remains the unsettled dispute without prejudice to the recognized position of either side" and the representatives of both Governments will meet to discuss "the final settlement."

PROPOSED SOLUTION OF KASHMIR DISPUTE

SLOW BUT STEADY PROCESS

After a thorough research work and minute examination of all the possible options for the resolution of Kashmir enigma, this paper presents a carefully drafted peace process that will definitely lead to the resolution of the Kashmir Dispute.

For the settlement of Kashmir issue in accordance with the wishes of the Kashmiri people, the only feasible, viable, practicable, equitable and honorable way is to adopt a **“Slow but Steady Process”**. This “Slow but Steady Process” is based on three factors.

1. Peoples' Factor
2. Economic Factor
3. Political Factor

1) PEOPLES' FACTOR

The peoples' factor of the 'Kashmir Problem' requires free passage and interaction of the people living on both sides of the LoC, meeting each other and exchanging views on different issues as members of 'one geo-political family' i.e. the Jammu and Kashmir State. For this purpose, easy travel permits should be issued to the Kashmiris, of course, consistent with the 'security interests' of both India and Pakistan. Duration of this experiment should be five years, to start with. The task of issuing permits for travelling, to and from the temporary LoC, can safely be entrusted to the local authorities like the Deputy Commissioner or the Senior Superintendent of Police of the concerned district of the applicant, or any special officer appointed by the State Governments of the respective side of the LOC, with the prior approval of the Government of India-in case of Indian Occupied Kashmir (IOK) and the Pakistan Government-in case of Pakistan Occupied Kashmir (POK). There shall be no constitutional or

legal difficulty in this matter because according to India as well as Pakistan's own law, the question of issuing visas to their citizens for entering into the other part of the territory of Jammu and Kashmir cannot arise at all.

According to the Pakistani constitution, the Azad Kashmir is not a part of Pakistan, and is held and controlled by the Pakistani Government until and unless a peaceful settlement of Kashmir Dispute is reached. Similarly, under the authority of article 370 of the Indian Constitution, 25 provincial assembly seats have been reserved for the people of Azad Kashmir, in the Jammu and Kashmir State Assembly. In the same way Jammu and Kashmir is not a part of India. India is ruling on Jammu and Kashmir by force and against the wishes of the people of Jammu and Kashmir.

It may be mentioned here that all Indo-Pak agreements, UN resolutions, and directions have been ratified by the parliaments of both India and Pakistan at relevant times, which have consequently acquired the sanction and force of law. During this period, the rehabilitation of more than a million refugees of Jammu and Kashmir should be ensured in their original homes in Indian held Kashmir and Jammu under the auspices of the United Nations High Commissioner for rehabilitation of the Refugees. According to the International law, India and Pakistan cannot refuse or avoid to rehabilitate the hereditary citizens of Jammu and Kashmir State in their original residential places, who were either forcibly driven out of their original State or left with no alternative but to migrate to India or Pakistan to save their lives, and had to temporarily settle there with "refugee status". Even the Indian law does not allow the Government of India to refuse rehabilitation of the Jammu and Kashmir refugees, who are at present living in various places of Pakistan. These refugees of Jammu and Kashmir are more than a million in number. They are waiting to return to their native-state. The Indian law is clear in this regard. That is why, even a person of Indian origin, who has acquired a foreign citizenship, can easily and conveniently resettle in his/her mother-land and freely enjoy dual citizenship, i.e.,

citizenship of his/her mother-land as well as of a foreign country where he/she has settled and has acquired citizenship either by domicile or by process of naturalization, or by marriage with a woman/man of that foreign country.

The urgent need of the hour is to break the ice of hatred and take positive and concrete steps for creating a congenial atmosphere in South Asia.

The inaugural point for this purpose starts from the Jammu and Kashmir State. In this connection, the first and foremost perceivable and visible step to be taken is the starting of the Srinagar-Muzaffarabad bus service for the citizens of both sides of the actual LOC, at the earliest. This process will satisfy the aspirations of people of each region, and no region shall complain of any deprivation or imposition of any decision against the overall will of its inhabitants. Till the final disposition of the future of Jammu and Kashmir State, the Governments of India and Pakistan should take necessary steps to ensure full-fledged internal autonomy in parts of Jammu and Kashmir State, over which they exercise de-facto control and authority either in pursuance of the international agreements or under their unilaterally enacted laws.

2) ECONOMIC FACTOR

Free trade relations between the two parts of Kashmir (Indian occupied Kashmir and the Pakistan occupied Kashmir) are allowed. Economic factor is one of the most important and powerful factors for the sustainability of the State of Kashmir whether it remains independent or is annexed with Pakistan or India subject to the aspirations and wishes of the Kashmiri people. Trade associations of Pakistani and Indian part of Kashmir should come close and sign

trade agreements and MoUs (Memorandums of Understanding) for hassle free trade between the two parts of Kashmir. Pakistani and Indian governments should also look into the matter urgently and formulate a policy to promote free trade relations between the two parts of Kashmir.

3) POLITICAL FACTOR

After a period of five years, all the political parties and recognized leaders of the people of all the regions of the State of Jammu and Kashmir be allowed to hold a Peoples' Convention to express their views and suggestions based on the aforesaid five years' experience and for mass thinking to finally settle this dispute, which would be equitable, honorable, practicable, and above all, in the larger interests of the people of Jammu & Kashmir.

Each solution, suggested in the State Peoples' Convention, should be allotted a separate symbol, like assembly or parliamentary election symbol. Any such symbol that secures majority-support in any region should be treated as the decision of that region in favor of that solution, and should accordingly be honored and implemented, for purposes of deciding the ultimate political future of that region.

The solution suggested in this convention be placed before the people of all the recognized geographic regions of the entire Jammu and Kashmir State through a referendum, under the supervision of an impartial agency such as the Commonwealth, SAARC, Special Committee of Non-Aligned Movement, or any special committee constituted by the UN Security Council, in order to ascertain the will and opinion of the people of all these regions. The decision of the people be honored and implemented peacefully, by India and Pakistan, through the channel of UN Security Council.

In view of the above averments, it is demanded that both India and Pakistan should agree to hold free and fair elections in their respective 'controlled' territories of Jammu and Kashmir State, under the supervision of some impartial agency, without any oath pertaining to accession or sovereignty of the constitution of India and Pakistan, so that the real elected representatives of the people look after the administrative matters as well as the peoples' day-to-day problems and maintenance of law and order, for the intervening period of five years till the final settlement of the political future of the Jammu and Kashmir State. If India and Pakistan are sincere and honest about resolving the 'Kashmir problem', they should make a 'Joint Declaration', without unnecessary delay, containing the sum and substance of the above averments.

CONCLUSION

This process will work in such a way that there would be no sense of defeat to India, Pakistan or the people of J&K State. There would be no break in the dialogue process. This option suggests solutions, in a stage-wise manner. It

shall provide a reasonable time, to all the three parties to the dispute, to review their stands and go through all the factors of this 'dispute', and thus, arrive at a viable, reasonable and practicable conclusion.

The process involves and accommodates all sections of the people of J&K along with all the political parties, in connection with the settlement of the 'Kashmir Problem'.

It has kept all the options open for the Jammu and Kashmir people, afterdispassionate and prudent thought.

The solution would dilute the long-standing hatred and mistrust created by the 'KashmirProblem', and would pave the way for ultimate elimination of enmity and hostility between India and Pakistan.

The 'Process' shall destroy the gold mine, created in the name of 'Kashmir dispute' by unscrupulous politicians, leaders, and agencies that have built a vicious network within the Jammu and Kashmir state, India, Pakistan and other countries all over the world, to mint money at the cost of the life and honor of the people of India and Pakistan.

The adoption and implementation of this process shall not create any constitutional and legal problem for India and Pakistan, nor shall it be prejudicial to the national interests of India and Pakistan.

By this process, the letter and spirit of the UN Charter and the demand for right and justice shall be fully honored and fulfilled.

The aforementioned special features of this 'Process' shall enable it to play the role of a sincere friend, facilitator and even a **mediator** between India, Pakistan and the people of Jammu and Kashmir as a whole.

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