

## **THE KASHMIR ISSUE: SOLUTIONS AND OPTIONS**

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### **ABSTRACT**

Kashmir is a bone of contention between India and Pakistan ever since the partition of the sub-continent in 1947. Unless a just and honourable solution is arrived at, the relations of both the countries will remain strained. It is for the world community to force India to come to the negotiation table with Pakistan and solve this issue according to the U.N. resolutions calling for a settlement through the right of self determination.

India is however, still reluctant to allow the Kashmiris to exercise their legitimate right of self determination. She is ruling the state for the past 50 years, with the help of military and para military forces. These forces have left no stone unturned to force the Kashmiris to surrender to the Indian might. They have killed/murdered/butchered thousands of men, women and even innocent children. They have burnt whole villages, violated the human rights and humiliated the Kashmiris particularly, the women folk to such an extent that a similar example in the history would be difficult to find.

To challenge the Indian might, the Kashmiris have started a struggle of courage, valour and bravery indigenously, and are passing through a difficult time of their history. They are confident to achieve their mission of exercising their right of self determination sooner or later. They are ready to sacrifice everything in the way of their struggle.

The purpose of this study is to carry out an analytical research into the political inspirations of the Kashmiri

Muslims and suggest/discuss the likely solutions and options for a just and peaceful settlement of the issue.

#### **KASHMIR DISPUTE**

The cold war came to an end, with the collapse of communism in Eastern Europe and disintegration of Soviet Empire, the USA became the champion of new world order. Palestine issue has been settled partially. Bosnian problem has been resolved amicably and even an agreement on Northern Ireland has been signed but the one long outstanding issue, still to be resolved is the Kashmir issue. It is a known fact that this issue has caused a number of bloody wars between India and Pakistan and in future it may lead to more destructive wars may be a nuclear war.

At the time of partition, under the partition plan, the rulers of the princely states were given an option to accede to either India or Pakistan on the basis of complexion of their Hindu-Muslim population and contiguity of these states with either of the dominion.<sup>1</sup>

Most of the states acceded to one or the other of the two sovereign nations. The Muslim rulers of Jodhpur and Junagarh opted for Pakistan, whereas the ruler of Hyderabad (Daccan) preferred an independent status. India forcefully acceded both Jodhpur and Hyderabad (Daccan) on the plea that majority of population of these states is Hindu.<sup>2</sup> Subsequently Junagarh was also acceded by India on the plea that the decision of the ruler of Junagarh was an utter violation of the principle, on which the partition was agreed upon and became a fact.

The Kashmir's unpopular Hindu ruler, could not take any decision as regards to the accession of the state, although over 80 percent of its population was Muslim and the state was adjacent to Pakistan. The principle that brought freedom to Pakistan applied by India in its favour

in Junagarh, but violated in Kashmir. This was the foul play which gave birth to the Kashmir problem. the Maharaja's indecision caused a sense of insecurity and tension in Kashmir which caused a Muslim revolt in August 1947. The Pathan tribes-men from Pakistan in large number, joined the Kashmiri Muslims and together they attacked some of the Western border areas of Kashmir.<sup>3</sup> The tribes-men continued their advance and easily defeated the state forces and reached within a few miles of Srinagar.<sup>4</sup>

On September 13, 1947, The Azad Government was proclaimed, and Maharaja fled to Jammu. He requested India for help, which never came through till he acceded Kashmir to India. India accepted the accession and sent its army to the valley.<sup>5</sup>

Pakistan condemned the Indian action and declared the accession of Kashmir is based on fraud and violence and that such action cannot be recognised. At the same time, Pakistan began to give aid to the fighting tribesmen in Kashmir and ordered its regular forces to enter Kashmir. Pakistan army and the tribesmen soon captured Northern and Western Kashmir. On the other hand the Indian troops, after heavy fighting were able to quell the rebellion. By the time the cease fire was agreed, India was in control of two-third of Jammu and Kashmir.<sup>6</sup>

#### **THE UNITED NATIONS EFFORTS**

Direct negotiations between India and Pakistan failed to make any progress towards the settlement of Kashmir issue. Therefore on January 1, 1948 under Article 35 of UN Charter, India took up the case with Security Council, alleging Pakistan for assisting tribesmen and other invaders to violate her sovereignty.<sup>7</sup> India demanded an immediate withdrawal of Pakistani troops from North Western Kashmir, return to a climate of normalcy in the region and preparation for a plebiscite to

ascertain the views of Kashmiris on the question of accession. Pakistan supporting the plebiscite, refused to withdraw its troops and responded with relatively more forceful complaint accusing India of organised genocide of the Muslims and securing accession of Kashmir by fraud and violence.<sup>8</sup>

The UN Security Council heard both the parties i.e. India and Pakistan in length and secured an agreement asking both sides to refrain from aggravating the situation and do everything to improve it. A mediatory commission later on known as United Nations Commission on India and Pakistan (UNCIP), was also established. In February 1948, a draft resolution based on consensus of the opinion of majority of Security Council members, calling for immediate cessation of all violence and fighting, withdrawal of all forces and armed individuals, who had entered the state, return of all citizens who have left the state, the establishment of an administration, commanding the confidence and respect of the people and that the future of Jammu and Kashmir would be decided through a free and impartial plebiscite to be held under UN supervision at the earliest possible date. Pakistan accepted the resolution but the Indian delegation sought adjournment, at the time when the resolution was about to be voted. The members of the Security Council though annoyed on the Indian request, had no choice but to adjourn the voting.<sup>9</sup> The Indian diplomats, used the adjournment period in manoeuvring the political scenario to their advantage and with the British conspiracy the situation was completely changed. When the Council resumed the debate in March 1948, the draft resolution of February 1948, was scrapped and a fresh draft was tabled by the new President of Security Council.<sup>10</sup> This resolution called for an immediate ceasefire to be followed by a plebiscite generally regarded as a diplomatic victory by Pakistan and a justification of their i.e. Pakistan's stand by the United

Nations. UN however failed to enforce its resolution, when India did not comply and refused to implement the other part of the resolution, to which they themselves were a party.

Apart from the UN resolution a number of committees were formed by the UN to negotiate with leaders and diplomats of both India and Pakistan for a possible solution of the Kashmir issue. India, however, have refused to accept any proposal, inspite of repeated UN calls for allowing Kashmiris, to exercise their fundamental right of self-determination. Pakistan too approached the UNO a number of times since 1948, to implement its resolution but neither the UNO exerted sufficient pressure on India, nor India by itself took any initiative to solve the long outstanding issue of Kashmir, thus the ultimate sufferers are the innocent Kashmiris i.e. men, women and children. It is very astonishing, rather frustrating to note, that human right violation of very minor nature are viewed with great concern elsewhere in the world by the leaders of the so called world community, but the human right violation, genocide and brutal atrocities of the poor Kashmiris by the military might of India is continuing unnoticed.

Since 1988, the freedom struggle took a new phase of fierce militancy and uprising inside Kashmir. For the first time in 50 years, freedom fighters, young and old have been resolutely engaged in an armed struggle of the Kashmiris, by the Kashmiris and for the Kashmiris.<sup>11</sup>

#### **PAKISTAN'S ROLE**

Presently Pakistan's role is at a very low pitch, and is restricted only to the political/diplomatic support to the cause of Kashmiris. It has not yet extended its full moral, material support to the uprising, probably because of the internal political instability in the past few years. To prepare herself to play a vital role in any further

negotiations for the solution of Kashmir issue Pakistan, must:

- a) Ensure internal stability and unity by all means,
- b) Must adopt a superior diplomacy to win over international support,
- c) Achieving the above it must exploit the opportunity provided by the uprising, by whole-heartedly supporting the Kashmiris with weapons and equipment, arms and ammunition, apart from the moral and political support at all international forums. The Indians every now and then accuse Pakistan to have been providing training and arms to the freedom fighters in Kashmir.<sup>12</sup> Pakistan should use this accusation as an excuse for any action, she decides to take. Pakistan must ensure, that the uprising spread equally in the valley and its momentum is never allowed to die down.

#### **INDIAN ATTITUDE TOWARDS KASHMIR**

History bears evidence to the fact, that the Indians have always manipulated the demographic factors to their advantage. If one tries to draw analogy between Junagarh, Jodhpur, Hyderabad and Kashmir, one finds different logics applied by the Indians to suit their political expedifencies. In Junagarh and Jodhpur religion of the majority, was the basis of it accession to India, rather than the wishes of their rulers. In Hyderabad a Muslim majority area was absorbed on the pretext of territorial contiguity, whereas in Kashmir decision of the ruler was held supreme over all the other considerations. India claims Kashmir to be its integral part and has never agreed to hold negotiation with Pakistan for its settlement. Very recently the Indian Prime Minister Mr.Vajpai, announced that the Indian Government will resume dialogues with Pakistan on all matters of mutual interest except Kashmir. India knows that it is very difficult to control the Kashmiris by force, but is still adamant to come to the negotiation table. Kashmir issue was taken up by the Indian Government, with the UN but have always shown reluctance to implement the resolution adopted by the UN Security Council, thus have

been guilty of showing sheer disregard to the will of the entire world community.

#### POSSIBLE SOLUTIONS

It is a natural/universal right of every human being to decide about his fate/destiny himself. How can someone else i.e. a Hindu ruler, decide the fate of millions of the Kashmiris against all the principles/norms of the partition agreement. Logically now there could be no one, but the Kashmiris themselves to decide about their future destiny. Whether they decide to accede to India or live with Pakistan or run an Independent State of their own. No solution against their wishes could be imposed on them. Three wars have been fought between India and Pakistan during last 50 years since Independence on the same issue, but the gravity of the issue has not shown a bit of change. It therefore suggests that any future war, will also not change the status of Kashmir issue, rather the war will bring, more devastations and destructions to the already weak economy and will further add to the miseries of the two people. The result of any future war and the destruction caused by it may not be visualised in comparison with the wars of the past, as this time it may not be a conventional war but a nuclear war, which means total destruction.

The need of the hour, therefore is, to create and develop an atmosphere of mutual trust and equality, between India and Pakistan. This is a difficult task, but not an impossible one, as both the countries have certain reservations against each other. Sincere and impartial mediation under the UN auspices, would definitely bring the two countries on the negotiation table. Indian interpretation of the Simla agreement say that now Kashmir issue, cannot be raised at UNO and it should be resolved by bilateral talks.<sup>13</sup> India should be made to realize that the UN charter is a supreme international law, and no argument which contradicts the UN charter,

can be considered effective or over-riding.

Gone are the days when "Might was Right", and the wars and battles used to decide such issues. Now is the era of mutual respect, peace and tranquility and the disputes are decided on the negotiation tables, provided there is a political will. *"Where there is a will, there is a way"*. Hence leadership from both sides, must show a political will to solve the issue through negotiations. At the same time any negotiations/dialogue without the active participation of Kashmiris would be meaningless, hence their participation in any future dialogues, must be made mandatory.

At present one may think of numerous possible solutions, which may have countless merits and demerits, but there are some viable solutions, which are discussed below:

#### **Option I - Plebiscite - Under UNO**

The UN resolution points that the accession of the state of Jammu and Kashmir to India or Pakistan, will be decided by holding a plebiscite. This option was originally favoured by both India and Pakistan.<sup>14</sup> India has no moral, legal or historical justification, to deny the right of self determination to the people of Kashmir. The exercise of this legal right, would give an opportunity to them to join the country of their choice i.e. Pakistan or India. If India shows a political will, this option seems to be more appropriate as the plebiscite under the UN auspices, would be acceptable to both Pakistan and the Kashmiris.

#### **Option - II - Partition/Division**

The partition/division may have a number of forms:

a) Partition of Jammu - Kashmir along the existing line of control with minor adjustment. This type of partition will be more like maintaining a status quo, and



will hardly put an end to the atrocities faced by the Kashmiris, and their struggle may get more momentum instead of settling down. Secondly there could be no improvement in Indo-Pak relations.

b) Partition on the basis of Muslim/Hindu population as per the partition formula for the Indian sub-continent. Thus parts of Kashmir where the Muslims are in majority will join Pakistan and those areas where Hindus are having dominance in population will go to India. This option too will not be acceptable to India, as they know that Muslims are in majority in Kashmir.

c) In 1964, President Muhammad Ayub Khan of Pakistan, was once asked his views about the possible solution of Kashmir issue. He said: "Jammu and Ladakh should go to India, Azad Kashmir to Pakistan and the valley be made independent, with both India and Pakistan guaranteeing its autonomy".<sup>15</sup> One wonder if such an option could at all prove practicable.

### Option - III - Independence

To give an Independent Status to the entire Kashmir. The JKLF (Jammu Kashmir Liberation Front) and seven other Kashmiri political organisations stress this goal of total Independence status to Kashmir. They believe that the best, most equitable and practical solution of Kashmir issue is a fully independent country, whose geographical borders would be the same as existed before India and Pakistan in 1947.<sup>16</sup> They have declared that Jammu and Kashmir state or any part thereof is not a constitutional part of India or Pakistan or any other country but is an individual political entity.<sup>17</sup>

This demand derives its logic but perhaps it is not a viable political proposition due to the following considerations:

a) Independence of Kashmir is against the basic principle of accession of the princely states.

b) The idea of Independent Kashmir has no

credence in other areas except the valley and that too in limited circles.

c) Jammu and Kashmir occupies a unique position of strategic importance. Hence will be a small land locked country vulnerable to overtures of the neighbours.

d) Due to its strategic location, it will become a centre of tension between USA and China.

e) Sir John Wheeler, a British member of Parliament and Chairman of the Home Affairs Committee has strongly supported the Kashmir freedom movement, but had disagreed with those who are campaigning for independent Kashmir. He contends that a land locked country of few millions people will not be viable.<sup>18</sup>

This option is primarily US inspired and is getting more popularity these days amongst the Kashmiris, but not attractive for either India or Pakistan. Perhaps Pakistan would still accept such status of Kashmir, as till todate it has not yet incorporated Azad Kashmir in Pakistan's territory, whereas India has made the occupied Kashmir as its integral part already.

#### **Option - IV - Condominium**

Condominium of India and Pakistan over the whole of Kashmir (meaning joint management of Kashmir's defence and external affairs by India and Pakistan).<sup>19</sup> Under this option the condominium status will apply only to the Kashmir valley, while the rest of the state partitioned between India and Pakistan. This proposition too would not go alongway, as when both India and Pakistan cannot agree on minor issues, how can a joint control be exercised by these countries over a disputed territory.

#### **Option - V - Integration**

a) Integration of Jammu and Ladakh with India,

Azad Kashmir with Pakistan and a plebiscite in the valley to ascertain the wishes of the people. This approach will not be acceptable to India as majority of the population of the valley are Muslims.

b) Integration of Jammu and Ladakh with India and Azad Kashmir with Pakistan. In addition the valley be converted into UN trust property for at least 5-10 years and plebiscite there after to find out which country they would prefer to join. Dr.Mahboob-ul-Haq a World Bank Economist and Amanullah Khan of JKLF, have proposed that Kashmir should be given to the United Nations.<sup>20</sup>

### Option - VI - Confederation

To form a confederation of India, Pakistan and Kashmir with maximum autonomy to each of the constituent unit.<sup>21</sup> This is an impracticable proposal and unacceptable to both India and Pakistan. The proposal of a confederation of India and Pakistan had been rejected by the Muslim leaders, even prior to the partition in 1947. This proposal therefore cannot fetch any worthwhile support.

### Option - VII - Trieste Settlement

Trieste was a disputed territory between Italy and Yugoslavia, it was partitioned between them. However, the people of Trieste, both parts were given the facility of trade and travelling. A similar agreement can be signed by giving a limited reunification to Kashmir and ceasefire line would remain intact as international boundary. If the formula is applied in case of Kashmir, India and Pakistan would continue to hold sway over the two parts which are under their control at present, but special permits be issued to the Kashmiris to travel from one part to the other. US Under Secretary of State for International Security Affairs on the Subcontinent, reported in November 1991, that US were "in favour of a Trieste like settlement with the border neutralized, but independent Kashmir open to both India and Pakistan."<sup>22</sup>

Selig Harrison, a senior associate of Washington's Carnegie Endowment also advocated a Trieste like agreement by which the ceasefire line should be turned into international border, between India and Pakistan. It should be a soft border, allowing a free movement of people. Under this model, the troops be withdrawn by both the countries from the whole of Jammu and Kashmir.<sup>23</sup>

Rajiv Gandhi was also in favour of Trieste model for the solution of Kashmir. Before his assassination he predicted in his last interview to the New York Times and Gulf News, "We were close to finishing agreement on Kashmir. We had the maps and everything ready to sign, but Zia-ul-Haq was killed".<sup>24</sup>

#### **INDIAN PROPOSALS**

a) In 1992 the BJP (Bhartiya Janta Party) proposed demographic change, that is pushing Muslims out of Kashmir and replacing them with Hindus from other parts of the country, to convert the result of any future plebiscite in their favour.<sup>25</sup>

b) Justice M.V.Tarkunde suggested a truly democratic government in Kashmir with protected civil liberties and Indian government having control over defence, communication and foreign affairs. He suggested Kashmiris to try this arrangement for 10 years. If dissatisfied with the arrangements, then could opt for plebiscite for the entire Kashmir on independence or accession to India or Pakistan.<sup>26</sup> This is not acceptable to Kashmiris because they have already tried Indians for 50 years.

c) Columnist Kuldip Nayar's option is unique. Merge the two parts of Kashmir with India and Pakistan having control over the line of actual control and external

affairs. The United Kashmir should have its own flag, a common assembly with soft borders.<sup>27</sup>

d) Very recently the coalition BJP government, have decided to establish a state of Kashmir by merging both the parts. An assembly, constituted by equal representative will administrate the state. Security arrangements will be made by Indian and Pakistan joint forces or by an international police. This plan was initially speculated in the Indian News media, however, in the next stage this idea will be presented at broad spectrum.<sup>28</sup>

## CONCLUSION

Kashmir, "*The paradise on earth*" has become an agonizing nightmare. The seven hundred thousands strong Indian and para military forces have crossed all the limits and norms of decency. Barbarity, uninterrupted violations of basic rights, mass massacres, genocide, gang rapes, an atmosphere of constant miseries, hunger and fear are the gifts brought by the Indian occupation forces to Kashmir. A heaven has been turned into a living hell. Kashmiris are in open rebellion since 1988 and demanded a future for themselves and their coming generations.

For Pakistan, the future of Kashmir is irretrievably linked with that of her own destiny, not just because of the religious, geographical, historical and legal dimensions, but also because the future of balance of power in South Asia and Indo-Pak relations will be greatly influenced by the current uprising in Kashmir.

The current freedom movement finds Pakistan at a crucial juncture of making difficult decisions. There is, thus a need to evolve a national policy over Kashmir in keeping with the aspirations of our nation and then allow it whole-heartedly to attain the policy objectives.

As far as the possible options available to solve the Kashmir issue are concerned, none except the "Third Option" seems to be viable. It envisages of a right of self determination for the Kashmiris with an option of Independence from both India and Pakistan. Although it will be departure from the options given to the Kashmiris by the UN Resolutions which offered Kashmiris a plebiscite, allowing them to chose whether to join India or Pakistan.

Emergence of Independent Kashmir on world map, will have a possible inclination towards Pakistan. Moreover, it will be seen as an ideological victory for Pakistan, since independent Kashmir would be far better than an Indian Kashmir. It would also block one of the corridors of invasion against Pakistan as the independent Kashmir will act as a buffer state. Moreover, with the removal of the chief irritant, there would be less likelihood of future wars between India and Pakistan. The settlement of the Kashmir issue according to the *will* of the Kashmiris, will on one hand bring independence to them from the yoke of the Indian occupation, while on the other it will bring stability to the sub-continent. Thereby both Pakistan and India will reduce their defence spendings and will divert the same to the socio-economic uplift of their people.

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