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# **The Kashmir Dispute**

## ***Solution Through Plebiscite***

**How and Why?**

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## **Kashmir Perspectives # 6**

One of the most harmful consequences of the cold war was that it paralysed the peace-making capability of the world's statesmanship. In a distorted perspective, the essential requirements of the lasting settlement of an international dispute were often forgotten or ignored. At best, it was considered enough to contain conflicts; little effort was made to resolve them. The result was that disputes continued to fester, threatening recurrent dangers to peace. Oppression thrived; elementary human rights were massively violated; tensions became chronic and the law of the jungle held sway as it was condoned by the acquiescence or indifference of the world powers.

The Kashmir dispute is an outstanding example.

The pages that follow represent an attempt to elucidate the core issue of the dispute. The issue is purely that of Kashmiri's right of self-determination, not of the territorial claims of either India or Pakistan.

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The idea that the dispute over the status of Jammu and Kashmir can be settled only in accordance with the will of the people which can be ascertained through the democratic method of a free and impartial plebiscite was the common ground taken by all the three parties to the dispute - viz: the people of Kashmir, Pakistan, and India. It was supported without any dissent by the United Nations Security Council- and prominently championed by the United States, Britain and other democratic States.

It became a matter of controversy only after India realized that she could not win the peoples' vote and, in conditions of the cold war, the Soviet Union supported India's obstructionist position. With the end of the cold war, it is right to expect that the original perspective will be recovered.

### *Background*

When Britain liquidated her Indian empire , the question arose: to whom would power be transferred? This was settled by a process of election. The National Congress party won the overwhelming majority of votes in Hindu areas and the Muslim League party in Muslim areas. Accordingly, through a tripartite agreement concluded by Britain, the Congress and the League, British India was partitioned between the two successor states of India and Pakistan. There was an element of doubt about two territories - the Northwest Frontier Province and Sylhet - as to whether their people would wish to be included in India or in Pakistan. To resolve it, referendums were held in both and the people voted for incorporation in Pakistan.

This left undecided the disposition of those territories which were not directly administered by Britain, but ruled by feudal princes under British paramountcy. These were called states; they numbered more than 500, ranging from tiny pockets of land to country-size areas. The principle that was accepted regarding them was that they would merge with India or Pakistan according to (a) whether they were contiguous to one or the other and (b) what there people wished. The technical form that the merger took was the signing of an Instrument of Accession by the ruler. But the act was not, as it could not be, based on the arbitrary decision of one individual; it had to have popular approval; otherwise, the people would

revolt and an international conflict arise. In actual fact, in most cases there was no dispute between the ruler and the people regarding accession; such a dispute arose in only three out of more than 500 cases. In two of these, Hyderabad and Junagarh, the ruler was Muslim while the majority was Hindu. When the ruler hesitated or refused to sign the Instrument of Accession to India, even though his people wished him to, India felt justified in marching in her troops and annexing the territories. Her decision obtained international acquiescence.

Kashmir was the third such case. The largest of all states and the only one bordering on four countries - Pakistan, India, China, and Afghanistan - it was the opposite of Hyderabad and Junagarh: the ruler was Hindu while the overwhelming majority of the people was Muslim. There was the additional circumstance here that the people had a year earlier staged a revolt against the ruler. They ousted him from his capital on 23 October 1947. After fleeing from Srinagar, he called upon India to send her army to quell the revolt. India set the condition that he sign the Instrument of Accession to India. He promptly did so, and India marched in her troops the next day - 27 October 1947.

### *India's Position*

The act was so incongruous with what had happened elsewhere in the subcontinent - where in all cases the wishes of the people had prevailed - that India knew it would provoke violent opposition from the people of the State as well as Pakistan and outrage world opinion. India, therefore, felt compelled to declare that the accession executed by the ruler (the Maharaja) was "provisional" and subject to "a reference to the people." It pledged that after peaceful conditions were restored, the question of accession would be submitted to the people's vote. "We have given this pledge," said Jawaharlal Nehru, the Prime Minister of India, "not only to Kashmir, not only to Pakistan, but to the whole world. We will not and cannot back out of it." Some days later, he proposed to the Prime Minister of Pakistan in a telegram on 8 November 1947:

"The governments of India and Pakistan should make a joint request to the United Nations to undertake a plebiscite in Kashmir at the earliest possible date."

However, while this proposal was under negotiation, fighting between the people's forces, joined by volunteers from Pakistan, on the one side, and the remnant of the ruler's troops joined by the Indian army, on the

other, spread to different areas of the state and India brought the issue to the United Nations Security Council. Pakistan reciprocated the move and the Council had before it India's complaint and Pakistan's counter-complaint.

### *Security Council Decisions*

Much in these submissions was controversial between India and Pakistan, but the proposal of a plebiscite was not. This is clear from the statement made on 28 January 1948 by the President of the Council. He said:

" ... the documents at our disposal show agreement between the parties on the three following points:

- (1) The question as to whether the State of Jammu and Kashmir will accede to India or to Pakistan shall be decided by plebiscite;
- (2) This plebiscite must be conducted under conditions which will ensure complete impartiality;
- (3) The plebiscite will therefore be held under the aegis of the United Nations."

Led by the United States and Britain, the Council adopted a resolution on 21 April 1948 which noted "with satisfaction that both India and Pakistan desire that the question of accession ... should be decided through the democratic way of a free and impartial plebiscite." The resolution appointed a Commission of the United Nations, of which the United States became a member, to work out a plan for the demilitarization of Kashmir prior to the plebiscite.

The United Nations Commission for India and Pakistan (UNCIP) submitted proposals to the two governments which were formulated as resolutions but, upon being accepted in writing by both governments, constituted an international agreement between them. Part III of the Commission's resolution of 13 August 1948, agreed to by both India and Pakistan states:

"The governments of India and Pakistan reaffirm their wish that the future status of the State of Jammu and Kashmir shall be determined in accordance with the will of the people and , to that end, upon acceptance of the truce agreement, both governments agree to enter into consultations with the Commission to deter-

mine fair and equitable conditions whereby such free expression will be assured."

### *Why Plebiscite Was Not Held*

What prevented the holding of the plebiscite was India's refusal to accept any proposals about the withdrawal of the bulk of her forces from Kashmir and thus conclude a truce leading to the induction of a Plebiscite administrator. When the Commission reported this to the Security Council, an eminent jurist from Australia, Sir Owen Dixon, was appointed as United Nations Representative to negotiate the synchronized withdrawal of the forces of both India and Pakistan in order to prepare the stage for an impartial plebiscite under the supervision of the United Nations. After an intense effort, Sir Owen Dixon reported to the Commission on 15 September 1950:

"In the end I became convinced that India's agreement would never be obtained to demilitarization in any form or to provisions governing the period of plebiscite of any such character, as would in my opinion, permit the plebiscite being conducted in conditions sufficiently guarding against intimidation and other forms of influence and abuse by which the freedom and fairness of the plebiscite might be imperilled."

The same was the substance of the reports of Senator Frank Graham (of the United States) and Gunnar Jarring (of Sweden) who succeeded Sir Owen Dixon as United Nations Representatives.

Since the plebiscite could not be impartial unless both India and Pakistan withdrew their forces from Kashmir, a stalemate ensued, which has lasted for forty years.

### *Position of Democratic Powers*

The United States, Britain and France have traditionally been committed supporters of the plebiscite agreement as the only way a solution could be implemented. They sponsored all the resolutions of the Security Council calling for a plebiscite. Their commitment was indicated by a personal appeal made by President Truman of the United States and Prime Minister Clement Attlee of Britain that differences about demilitarization be submitted to arbitration by the plebiscite administrator, who was a distinguished American war hero, Admiral Chester

Nimitz. India rejected this appeal and objected to an American being the Plebiscite Administrator. As mentioned earlier, another U.S. personage, Senator Frank Graham, went to the subcontinent as the U.N. Representative to negotiate the demilitarization of Kashmir prior to the plebiscite. His proposals were also rejected by India.

The American position was a bipartisan one and maintained equally by Republicans and Democrats. Secretary of State John Foster Dulles stated on 5 February 1957:

" We continue to believe that unless the parties are able to agree upon some other solution, the solution which was recommended by the Security Council should prevail, which is that there should be a plebiscite."

On 15 June 1962, the U.S. representative to the United Nations, Adlai Stevenson, stated;

"...The best approach is to take for a point of departure the area of common ground which exists between the parties. I refer of course to the resolutions which were accepted by both parties and which in essence provide for demilitarization of the territory and a plebiscite whereby the population may freely decide the future status of Jammu and Kashmir. This is in full conformity with the principle of the self-determination of people which is enshrined in Article 1 of the Charter as one of the key purposes for which the United Nations exists."

Similarly in Britain, both Labor and Conservative governments consistently upheld the position that plebiscite was the only way the dispute over Kashmir could be democratically and peacefully settled. Indeed, when the dispute first arose, Clement Atlee launched a conciliatory effort and conveyed to the Prime Minister of Pakistan the assurance of the Indian Prime Minister that India would allow Kashmir's status to be determined by the people's vote. Two years later, the Prime Ministers of the Commonwealth informally proposed alternative arrangements for the demilitarization of Kashmir prior to the plebiscite. They suggested that a neutral peacekeeping force either consisting of contingents from the Commonwealth countries or composed of local troops from both sides under the control of the Plebiscite Administrator could be stationed to safeguard the security of the state. India rejected all these suggestions.

## *Pebiscite Entirely Feasible*

India's obdurate stand has been effective in creating the impression among policy-makers in the United States and Britain that the idea of a plebiscite is unworkable. This, however, cannot be a considered conclusion.

In the first place, the commonsense appeal and justice of the idea is undeniable. There is no way the dispute can be settled once and for all except in harmony with the people's will and there is no way the people's will can be ascertained except through an impartial vote. Secondly, there are no insuperable obstacles to the setting up of a plebiscite administration in Kashmir under the aegis of the United Nations. The world organization has proved its capability even in the most forbidding circumstances to institute an electoral process under its supervision and control and with the help of a neutral peace-keeping force; the most recent and striking example is Namibia which was peacefully brought to independence after seven decades of occupation and control by South Africa. Thirdly, as Sir Owen Dixon, the United Nations Representative, envisaged four decades ago, the plebiscite in Kashmir can be so regionalized that none of the different zones of the state will be forced to accept an outcome contrary to its wishes. Fourthly, the idea of a referendum or plebiscite can be translated, without derogation, into the idea of elections to one or more constituent assemblies which will determine the future status of the state or of its different zones: the sole condition is that the election should be completely free from undue pressure, rigging or intimidation and, therefore, under the supervision of the United Nations.

India's position, though plainly untenable and unjust, appeared to gain a measure of plausibility from the circumstances of the cold war. To demilitarize Kashmir under those circumstances was to expose it (and India as well) to unpredictable dangers -- this was the undertone of India's pleas. Since India was supported by the Soviet Union and Pakistan had allied itself with the United States, the insinuation was that Kashmir would somehow become an American base with detriment to India's professed non-alignment.

With the end of the cold war, this line of argument, if argument it ever was, is no longer sustainable. In the post cold-war-era, demilitarization of Kashmir will not result in a power vacuum because a peace-keeping force under the command of the United Nations will immediately replace the



troops of India and Pakistan and remain there until Kashmir becomes part of either India or Pakistan or chooses independence for itself. The imponderable element was a fiction contrived by India that can no longer stand against reality.

### *Arrangements for Plebiscite*

It is apparent from this historical narrative that there is nothing fuzzy about the modalities of holding the plebiscite. These were exhaustively worked out during the negotiations concluded by the United Nations about the implementation of its peace plan regarding Kashmir. The phased withdrawal of forces on both sides, the appointment of the plebiscite Administrator by the Secretary General of the United Nations, his induction into office, the institution of the electoral process under his authority, the exercise of powers deemed necessary by him - all these are fully known to the parties. If a credible peace process is instituted, some t's will need to be crossed and some i's dotted but, given the political will on the part of India and Pakistan to implement their international agreement and on the part of the Security Council to secure that implementation, these can present no obstacles. It is not the inherent difficulties of a solution but the lack of the will to implement a solution that has been the cause of the prolonged deadlock over the Kashmir dispute. The deadlock has meant indescribable agony for the people of Kashmir and incalculable loss for both India and Pakistan. In the new world order jointly promised by President Bush and President Gorbachev, that agony should be brought to an end and that loss repaired. The peace that has eluded the South Asian subcontinent, home to one-fifth of humanity, should be made secure.

# **THE KILLING FIELDS OF KASHMIR**

**It's one thing to deny a people their right to freedom of speech and the freedom to vote. It's another thing to deny them the right to live!**

**Authoritative voices are finally speaking out against Indian genocide in Kashmir.**

"In Kashmir, human rights monitors report systematic abuses committed by [Indian] soldiers, including rape of women, killing of Kashmiri boys, arbitrary arrests and detentions, widespread use of torture in prison, and burning of houses while individuals remain locked in-doors"

**CONGRESSIONAL HUMAN RIGHTS CAUCUS**

September 25, 1990

"I heard stories of people being summarily executed, of women being held for days at [Indian] security force encampments where they were repeatedly raped, and children who were forced to watch the brutalization of their parents, or who were themselves tortured."

**SENATOR ALAN CRANSTON (D-CA)**

Upon his return from visiting Kashmir's Refugee Camps in Pakistan

July 12, 1990

"Troops reportedly fired into the crowd with automatic weapons without warning after demonstrators began shouting slogans calling for the independence of Kashmir... methods of torture are reported to include beatings, hanging people upside down, rolling heavy wooden rollers on legs and electric shocks"

**AMNESTY INTERNATIONAL**

September 25, 1990

"These inhuman acts MUST stop! The only way they will stop is for the world to see them, for the media to focus attention on them ... It's a terrible thing that is going on over there. IT MUST STOP!!!"

**CONGRESSMAN DAN BURTON (R-IN)**

Congressional Record, May 23, 1990

"The total number of people either killed, detained, tortured, raped or in some other way abused by the Indian forces in Kashmir was, at a minimum, 150,000 people and that some estimate went as high as 500,000."

**BRITISH PARLIAMENTARIAN, MR. MAX MADDEN**

"...We have declared that the fate of Kashmir is ultimately to be decided by the people. That pledge we have given, and the Maharaja (the ruler of Kashmir) has supported it, not only to the people of Kashmir but to the world. We will not and can't 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".

**PANDIT JAWAHAR LAL NEHRU, FORMER PRIME MINISTER OF INDIA,**

**BROADCAST ON ALL INDIA RADIO,**

November 2, 1947

The Bush Administration and the United States Congress have an obligation to end the genocide in Kashmir, and to help the Kashmiri people in securing their right of self-determination as guaranteed under the United Nations Security Council resolutions.

**DONATIONS FOR RELIEF EFFORTS ARE GREATLY APPRECIATED**

**The Kashmiri-American Foundation**

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# Kashmir: A Summary

## *Location:*

Heart of Asia, with historical links to both South and Central Asia. Surrounded by Pakistan, Afghanistan, China and India.

## *Area:*

86,000 square miles, more than three times the size of Belgium, the Netherlands and Luxemburg combined.

## *Population:*

12 million (estimate) including 1.5 million refugees in Pakistan and 0.4 million expatriates.

## *Status:*

Historically independent, except in the anarchical conditions of late 18th and the first half of 19th century and when incorporated in the vast empires set up by the Mauryas (3rd century BC), the Mughals (16th to 18th centuries) and the British (mid-19th to mid-20th centuries). All these empires included not only present-day India and Pakistan but other countries as well. Under the British, Kashmir had internal autonomy.

## *Present Status:*

In dispute since 1947. 63% of the area occupied by India.

## *Cause of Dispute:*

India's claim that Kashmir is Indian territory. The claim is rejected by the people of Kashmir, challenged by Pakistan. It has never been accepted by the United Nations, never legally validated.

## *Solution:*

Demilitarization of Kashmir (through withdrawal of all outside forces) followed immediately by a plebiscite under impartial control to determine the future status of Kashmir.

## *Great Power Policies:*

When the dispute was first brought to the United Nations, the Security Council, with the firm backing of the United States, urged the solution described above. At that time, the Soviet Union did not dissent from it. Later, because of the cold war, the Soviet Union blocked every resolution of the Council calling for implementation of the settlement plan.

## *Likely Possibilities:*

Only two. *Either* ascertaining the wishes of the people about their future and acting accordingly *or* the continuance of the status quo with violent repression and the spectre of carnage in the Indian-occupied part and chronic conflict and the danger of war in the subcontinent of South Asia.



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