

INDIA AND PAKISTAN THE KASHMIR CONFLICT

Dr. Imtiyaz Ahmad Batti

DOI: 10.46609/IJSSER.2022.v07i01.019 URL: <https://doi.org/10.46609/IJSSER.2022.v07i01.019>

Received: 2 Jan. 2022 / Accepted: 20 Jan. 2022 / Published: 31 Jan. 2022

ABSTRACT

The state of Jammu and Kashmir with its exclusive physical location has its own importance in the tactical point of view. The state of Jammu and Kashmir is bordered by Pakistan, China, Afghanistan, Russia and Tibet. The colonial masters left the subcontinent flaming in violence, hatred, communalism and regionalism which eventually culminate into the rise of terror campaign and fundamentalism in the cub-continent. The research aims and objectives is to discuss and analyze the Kashmir dispute between India and Pakistan. The share of combined exchange of ideas between India and Pakistan to talk about a range of critical issues as well as Jammu and Kashmir. Which will be fruitful for abridged of poverty, illiteracy and underdevelopment in these two neighboring nations as well as other adjoining nations. Diplomatic coexistence and increasing in trade and commerce can eliminate the wars and militancy in the state of Jammu and Kashmir

Introduction

The Jammu and Kashmir dispute has become one of matter as the main center of attention between India-Pakistan . this is commonly assumed that Pakistan desires to have the state by hook or by crook but since 1947 Indian elected leadership have unsuccessful to give confidence, the mainstream of the Kashmiri population especially Kashmiri Muslims, with the purpose of they be able to live cheerfully and fearlessly life. There exist absence of trust and faith among two nuclear powers of south Asia (India and Pakistan) that be required to eliminate tension as earliest as possible in order to escalate the tension between two hostel nations and engage in bilateral dialogs related to address controversial issues that have emerge large manipulate in their dealings with one another This expectation must be build through increased trade and cooperation, people to people contact and bilateral relations. Global and regional implications aside the insecurity and lack of any conclusive decision to the political disagreement have left the inhabitants of Kashmir divided and uncertain about their future and caused the emergency of militancy and radical movement.

Background of the Conflict

The state of Jammu and Kashmir is north most state of India with an area of 85,806-square-mile. The Kashmir is the land of enormous beauty and attractiveness for the tourists and promising vacationland which attract millions and millions of tourist across the globe. Kashmir is considered as the haven on the earth due to its enormous beauty and hospitality provided by the local populace. Jammu and Kashmir is a disputed territory between Indian and Pakistan since the independence of two nations from Britishers. The state of Jammu and Kashmir on October 1947 aggressively attacked by Afghan tribes backed by Pakistani armed forces. The area occupied by Pakistan is called as Azad Kashmir by Pakistani authorities and Pakistani occupied Kashmir (POK) by Indian government at national and international forum. The area which is governed and administrated by India is considered as Jammu And Kashmir State. Kashmir has been considered as one among the unsafe places on globe. Since the independence of the two nations from the colonial ruler the Kashmir conflict remain unresolved and the inhabitants constantly live in a zone of uncertainly. The United Nations Security Council on 12 April 1948 adopted a resolution on Kashmir and asked India and Pakistan to ensure the region and peaceful settlement of dispute through democratic method and free and impartial plebiscite. The United Nations Security Council on passed dozens of resolutions related to Jammu and Kashmir dispute under-UNSCR-38-(1948), UNSCR-39-(1948), UNSCR-47-(1948), UNSCR-51-(1948), UNSCR-80-(1950), UNSCR-91-(1951), UNSCR-98-(1952), UNSCR-122-(1957), UNSCR-1172-(1998). India and Pakistan fought three major wars over the disputed territory of the Jammu and Kashmir state but failed to find a peaceful solution of the dispute. due to advancement in science and technology and ripped advancement in weaponry in recent years which highlights the fear of nuclear war between the two hostile nations which may be resulted as huge distraction of human race.

Britishers leave Indian subcontinent in 1947 and divide the subcontinent on religious line and it's approved that the rulers of the princely states to join either India or Pakistan or remain independent. Kashmir is a Muslim majority state ruled by a Hindu ruler Maharaja Hari Singh. Jammu and Kashmir state with a 77 percent of the Muslim population have the same right to accede either dominance of India or Pakistan or to remain independent. Kashmir share territorial boundaries with both the nations and due to its strategically importance and delay in the Maharaja decision invites the invaders to invade the Kashmir, who was backed by Pakistani army to invade the state on 20 October 1947,. Tribesmen at the place of Dalanga a village situated in Uri Sector of Baramulla district crossed the river Jhelum and marched toward the Srinagar the summer capital of the state in an attention to capture the Srinagar by or before 26 October 1947 on the Eva of Eid celebrations. However tribesmen fell short of getting their target by resistance of the National Conference workers and Dogra Army of the state. On 26 October the ruler of the state signed a treaty of accession with Indian government on certain terms and conditions. Which was accepted by India's first and British last governor general Lord

Mountbatten. Treaty of Accession allows Indian army to push back the advancement of the invaders in the summer capital of the state. Since that the history of the subcontinent took a strange twist and Kashmir becomes a core conflict between the two sovereign states (India and Pakistan). In 1947 one third of the Kashmir which was invaded by the invaders remains under the control of Pakistan and remaining portion of the state is controlled and administrated by Indian government. Monarchical government of the Dogra are replaced by the representative government of the people and state of Jammu and Kashmir state constitute her continent assembly and draft a constitution for state under special provisions provided by Indian constitution under article 370. Since 1947 United Nations Security Council Passed dozens of revolutions over the Kashmir conflict and urge India and Pakistan to resolve the dispute through peacefully and bilaterally. Since 1947 India and Pakistan fight three major wars over Kashmir and the conflict is still alive. The state of Jammu and Kashmir is a contested region between Pakistan and India. Both lay claim of all the state but each administrator's only part of it.

India control of 60% of the area of the former Princely State of Jammu and Kashmir; Pakistan controls 30% of the region, known as Gilgit-Baltistan and Azad Kashmir. China has since occupied 10% of the state in 1962. China has occupied Aksai Chin since 1962 and, in addition, an adjoining region, the Trans-Karakoram Tract was ceded by Pakistan to China in 1963. 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. In the late 1980s however, simmering discontent over the high-handed policies of the Union Government and allegations of the rigging of the 1987 assembly elections triggered a violent uprising which was backed by Pakistan. Since then, the region has seen a prolonged, bloody conflict between militants and the Indian Army, both of whom have been accused of widespread human rights abuses, including abductions, massacres, rape and looting. The army has officially denied these allegations. However, militancy in the state has been on the decline since 1996, further more the situation has become increasingly peaceful in recent years. The status quo was largely maintained until 1989 when pro-independence and pro-Pakistan guerrillas struck in the Indian Kashmir valley. The Indian army moved in to flush them out. Meanwhile Indian and Pakistani troops regularly exchanged fire at the border. India and Pakistan both tested nuclear devices in May 1998, and then in April 1999 testified missiles in efforts to perfect delivery systems for their nuclear weapons. Pakistan tested its Ghauri II missile four days after India's testing of its long-range (1,250km) Agni II. The cross-LOC firing in Kargil began during the mid-1990s. The death toll including both soldiers and civilians was more than 30,000 and killed all diplomacy efforts. In the first week of August 1998 Indian and Pakistani troops exchanged artillery fire, described by locals as heavier than that of the 1948 and 1965 wars put together. An estimated 50,000 rounds of ammunition were expended and a large number of soldiers and civilians killed. The

conflict ended only after Bill Clinton, the US President, and Nawaz Sharif, Pakistan's Prime minister, met in Washington on July 4, 1999.

Role United Nations

In 1947 India and Pakistan fight their first war on Kashmir. In 1948 January 1, for the peaceful solution of the dispute India approached to United Nations. Since 1948 United Nations passed dozens of resolutions over Kashmir and urged both India and Pakistan to settle the dispute in a peaceful way. 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 which Pakistan declined. On January 1, 1949, a ceasefire was agreed, with 65% of the territory under Indian control and the remainder with Pakistan. A brief explanation of the important resolutions related to the state of Jammu and Kashmir conflict is given below:

UNSCR 38 (1948): The resolution requests that the Security Council should be immediately informed of any material change in the situation in J&K.

UNSCR 39 (1948): The resolution established the UN Commission for India and Pakistan (UNCIP) to investigate and share facts with the Security Council about the situation in J&K.

UNSCR 47 (1948): The resolution rules that the question of the accession of Jammu and Kashmir to India and Pakistan should be decided “through the democratic method of a free and impartial plebiscite”.

UNSCR 51 (1948): Through this resolution, the Security Council emphasizes the need to resolve the dispute for maintaining international peace and security.

UNSCR 80 (1950): The resolution reaffirms that final disposition of J&K dispute will be in accordance with the will of the people, expressed through the democratic method of a free and impartial plebiscite.

UNSCR 91 (1951): This resolution is significant as it pronounces that any determination of the final solution by the erstwhile Constituent Assembly in IIOJ&K would not constitute disposition of the State of J&K, in accordance with the principles mentioned in UNSC resolutions.

UNSCR 98 (1952): Reaffirming that the question of accession of the State of Jammu and Kashmir to India or Pakistan would be decided through the democratic method of a free and impartial plebiscite conducted under the auspices of the UN, the resolution laid down the maximum number of troops to be maintained by both India and Pakistan at the end of the period of demilitarization before the plebiscite.

UNSCR 122 (1957): The resolution once again stipulates that any action that Constituent Assembly in IIOJ&K may have taken or might attempt to take to determine the future shape and affiliation of the entire State of J&K and any part thereof, would not constitute a disposition of the State in accordance of the above principle

UNSCR 1172 (1998): The resolution urges India and Pakistan to resume dialogue on all outstanding issues, particularly on all matters pertaining to peace and security, in order to remove tensions, and encourages them to find mutually acceptable solutions that address the root causes of those tensions, including Kashmir.

UN COMMISSION FOR INDIA AND PAKISTAN (UNCIP) RESOLUTION (1948): Under this resolution, both India and Pakistan have reaffirmed 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 determine fair and equitable conditions whereby such free expression will be assured.

UNCIP RESOLUTION (1949): The resolution states that the question of the accession of the State of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of a free and impartial plebiscite.

The constitutional position of Jammu and Kashmir

Jammu and Kashmir is the only state in India which enjoy extraordinary status under Article 370 of the Constitution of India according to which, no law enacted by the Parliament of India, except for those in the ground of security, communication and foreign affairs, will be extendable in Jammu and Kashmir unless it is ratified by the state parliament of Jammu and Kashmir. Afterward state parliament ratifying the authority of Supreme Court of India over the state been extended. Jammu and Kashmir is also the single state in India which has its own flag and own constitution. Right to property in the state of Jammu and Kashmir is restricted on for the state domicile. The state flag features as red background plough and three stripes. Plough representing labour, three stripes represent three administrative divisions of the state namely, Kashmir valley, Jammu and ladakh, and red background represent the martyrs of 1931. Armed Forces Special Power Act Which gives extraordinary power to the Indian defense forces has bee extended over the state 1990. Armed Forces Special Power Act is criticized by the Human Rights organizations since the first day of its implementation over the state. The state has a multi party political system with a bicameral parliament. At the time of drafting of the Constitution for state hundred seats were earmarked for direct elections from territorial constituencies out of these 100 seats 25 seats are reserved for the area which is occupied by Pakistani forces since 1947

Constitutional 12th amendment reduced the allotted seats 24 for Pakistan occupied Kashmir. These twenty-four seats in the parliament shall remain unoccupied and shall not be taken into account for calculation the total membership of the Assembly. Section 47 and 48 of the state constitution relates to the territories of the state. The state territories consist of all the territories which were under the control of the state ruler on the day of 15 august 1947.

Election of 1987 a Turning Point in the History of Kashmir

The Assembly elections in the state of Jammu and Kashmir were held in 23rd March, 1987 The MUF promised a corruption free government initiation of an accountability process against those politicians and bureaucrats who had held the reins of government and administration in the state and amassed wealth through questionable means. MUF had openly declared that Quran and Sunna were the final authority to guide the organisation. MUF wanted to win the election as a united group and therefore they began electioneering with a joint manifesto and common election symbol. The approach of the MUF and its manifesto attracted a lot of adherents and fellow travelers amongst the Muslim leaders and intellectuals in the valley. The MUF ideology was discussed in every home and the party stalwarts made it known that the victory of the front in the forthcoming Assembly elections would be a victory for the faith of Islam. Every nook and corner of the street was flooded with the exhibition of green flags of the Front. Seeing the crescent moon and the stars sign of the Islamic faith on the green flag of the MUF would make people dance with joy on the street. The people were told that with the victory of the MUF the entire face of the state would be changed. There will be prosperity and abundance of everything including of corruption, profiteering, hoarding, and black marketing root and branch. Those found guilty of such nefarious acts would be dealt with severely. People sincerely believed that this would happen because under Nizam-e- Mustafa (in Islamic countries) such guilty people may lose their limbs as punishment. People were indeed sick of these evils in the society. These elections form a watershed in the politics of the state. Never was the ragging so blatant and brazen. Legendary fraud was committed in this election. There were reports of beating up of candidates of opposition and their workers. Hundreds of them were arrested advance. This time they resorted to both capturing also. Some people had been entire book of ballot papers already stamped for the NC- Congress (I) candidates lying in the polling booth. The large numbers of votes cast in the favour of MUF were invalidated on technical grounds like being smudged. In fact, for several constituencies where MMF candidates were leading, counting was kept suspended for as much as a week. In several places, the opposition candidates were thrown out of counting centers. To cap the lot, almost all the MUF leaders were arrested latter. Though the election results were rejected by the opposition on the charges of large scale rigging, eighteen election petitions were filed in the state High Court , Anti- India stance among the MUF leaders became more pronounce and even the states accession to India was questioned . So much so, the

hawks in the jamaat-e-islami also demanded that the government of India should accept the right of self-determination. The jamaat-led MUF, the major opposition group concentrated on the Islamization drive and anti-India propaganda to score over the other. On August 30, 1989, three of the four members belonging to MUF resigned from they termed it as their disapproval of the state government headed by Farooq Abdullah.

The pooling agents of MUF were mostly young students, and when they saw the broken rigging during counting, they lost faith in the electoral system itself, they came to be believed that the Sheikh Mohammad Abdullah and his family, who had treated Kashmir as their pocket borough, Thus these young men joined Jammu and Kashmir Liberation Front and Hizb-ul – Mujahideen in strength, of eighteen of these polling agents, five joined JKLF, twelve Hizb-Mujahideen and one Islamic Students Federation Yasin Malik who was JKLF Area Commander for Srinagar was reported to have been a polling agent of the MUF and Shaukat Ahmad Bakshi, who was injured in an encounter with security forces on April 8, 1991. Abdul Hamid Sheikh, another polling agent was injured in an encounter in October 1989. People surrounded him and did not allow police to arrest him. They took him first to a private nursing home which refused admission. Then he was taken to Government Hospital where he was arrested. He had been released in exchange of Dr. Rubbaiya mufti, Daughter off Mufti Mohammad Sayeed, the then Union Home Minister. The swap took place on December 13, 1989. He had gone across into Pakistan for organizing infiltration of trained militants into Kashmir valley. Another polling agent was Nabi Khan of Pulwama. He was indoctrinated by Jamait-e- Islami. Working as polling agent of behalf of Muslim United Front, he lost faith in the peaceful transfer of power. He then joined Hizb-ul- Mujahideen. He was arrested by the security forces. Similar is the case of Mohammad Ahmed Sogar, resident of Batmallo, Srinagar, who worked as polling agent, and after the rigged defeat of Muslim United Front, joined Hizb-ul – Mujahideen. He was arrested in the wake of an encounter. Similar is the case of Sheikh Ahmed Bakshi of Batmaloo who, seeing how the elections were manipulated, left Jamait-e-Islami. He was later arrested by the security forces. Muzzfar Ahmed of Bandipur and Farooq Ruhmain of Kaloora Bandipur, who were polling agents and belonged to Peoples Conference, joined Hizb-ul- Mujahideen and went to Pakistan- occupied Kashmir, for taking care of the training camps for the Kashmiri youth. Thus the electoral victory which National Conference and Congress claimed for themselves in the election of March 1987 was nothing but a usurpation of power. Although MUF lost election they received a lot of public sympathy for their cause. Everywhere people were discussing about rigging in the election. People surmised that Rajiv Gandhi and Dr. Farooq have deliberately taken away their right to vote and betrayed them by such massive rigging. They have not only checked democracy but also buried it forever. The Kashmiri perceived the denial of their right to fair and free elections as the final humiliation. Not only were the votes rigged reports indicate that several electoral candidates of the MUF were arrested

and beaten up not by the police but also by the winning NC candidates. Though the 1987 elections provided on ample proof that the people of Kashmir were denied democratic rights.

Research methodology

The researcher uses juridical normative research with international law approach and discusses how peace should be implemented through the primary legal materials such as the UN Charter, UN Security Council Resolutions, and case laws in assessing the Jammu and Kashmir dispute . The researcher also use secondary and tertiary legal materials, including books, journals, and reports. The researcher also uses case study approach with referring to the conflict and its historical background.The method of collecting data in the paper was done through library research by literature learning. The method collects the data by reading, writing, analyzing, and gathering information related to the topic of the research. After obtaining the information from the different documents such as international legal instruments, books, journals, and others related to the main problem of the research.

The data were analyzed systematically through juridical normative approach. It is conducted systematically through evaluative method, where the data relating to the issues to be researched was taken. The juridical normative approach means that it would be connected to the principle of law, convention, and other regulations, so that it can be systematic and comprehensive, illustrating the facts that are valid and related to prevailing law.

Suggestions

The political and militant forces active in Jammu and Kashmir need a patient hearing by both sides to resolve the Kashmir crisis permanently. The bilateral engagement between India and Pakistan could not bear fruit unless the people of two side of the state of Jammu and Kashmir from different shades are involved in the process of conflict resolution. The unilateral initiative by Government of India to hold negotiation with Hurriyat Conference and other representative of the people of Jammu and Kashmir will not pave the way for permanent peace in the state unless Pakistan and the militant organization are involved in such a process. Mountainous topography of the state of Jammu and Kashmir, it is not possible for the Indian security personal to stop cent percent infiltration into Kashmir and as long as infiltration is not stopped, permanent peace cannot bring about. The only option left with Government of India is to secure the goodwill of Pakistan and militant organization at the most minimally affordable cost in terms of economic, and political bargaining .the Indian official stand to talk to Pakistan only when it stops the cross-border terrorism indirectly amounts to help the suffering of the people of Jammu and Kashmir in cross-firings, bomb blasts, and other sorts of armed violence. As records the solution to the Kashmir Problem,

The first is that the dispute may be settled by negotiations with Pakistan and by entering into an agreement with it. An earlier effort in the terms of Tashkent Pact or Simla Agreement has not yielded expected results. The Calendar of unpleasant events and half-hearted attempts from Tashkent to Lahore demonstrate the lack of political will to resolve the problem. It is nighttime to inspire confidence amongst the people of both the nations and the state authorities must create peaceful atmosphere and adopt amicable and more practical approach, avoiding median on to resolve the dispute and there should be no hesitation in entering into a dialogue with the Pakistan, Government.

Second way out is sincere efforts on the part of the Government to allay the fears of the Kashmir's, by gaining their confidence and making them believe in the spirit of secularism as enshrined under the Indian Constitution. At present, we may say that the Indian leaders are not sure whether the people of the Valley will support the stand of India. This is an area which needs utmost attention.

Bibliography

*1 - Lal khan "Kashmir's ordeal ... a revolutionary way out" Wellred publications, London, England -2005

*2 - Gul Mohd .Wani, "Kashmir: From Autonomy to Azadi"- Valley Book House, Srinagar _1996

*3 – R. A. Zia "International Relations: Theory and Practice"-Ali Mohd & Sons, Srinagar -2007

*4 -Tavleen Singh, Kashmir: A Tragedy of Errors, New Delhi 1995, p.240

* 5- Prem Nath Bazaz, Struggle for Freedom in Kashmir, New Delhi 1954, pp.140-160

*6 - Balraj Puri, Kashmir: Towards Insurgency, New Delhi 1993, p.19.

*7 - Prem Nath Bazaz, Democracy through Intimidation and Terror, New Delhi: Heritage Publishers, 1978, p.15.

*8 - Alastair Lamb, Kashmir A Disputed Legacy 1846-1990, Roxford 1991, pp.227-231o

* 9- Balraj Puri, Kashmir: Towards Insurgency, New Delhi 1993, p.31

*10 - Victoria Schofield, Kashmir in Conflict, New York 2000, pp.114-6.

*11 - Alastair Lamb, Kashmir A Disputed Legacy 1846-1990, Roxford 1991, p.295

* 12- Victoria Schofield, Kashmir in Conflict, New York 2000, p.125. 1977 Elections

- *13- Prof. G. N. Aali, "Restive Kashmir"- ITME-NON Publishing, Srinagar -2002
- *14- Birbal Nath, "Kashmir – The Nuclear Flashpoint "- Manas Publications, New Delhi-1998
- *15- Khem Lata Wakhul, "Kashmir Behind the white Curtain" Konark Publishers Pvt. Ltd, Delhi-1992
- *16 - Pro-India parties to take power in Indian Kashmir International Herald Tribune, 30 December 2008
- *17 - Medicins sans Frontiers. Kashmir: Violence and Death. Amsterdam: Author.2012
- *18 - NDTV, Amarnath row divides Jammu and Kashmir, 16 August 2008
- *19 - Abdul Majid Mattu, "Kashmir Issue: A Historical Perspective"- Srinagar, 2002
- *20 - Shellgrore, David, L the Cultural Heritage of Ladakh Vol. I and Skorupki Tadeusz
- *21 - Andrew Whitehead, "A Mission in Kashmir", Penguin India, 2007