
Jammu and Kashmir in Legal perspective

Whereas certain emotional, sentimental, cultural, ethnic and religious dimensions can be argued, this paper aims to examine the issue of (the Princely State) Jammu and Kashmir State from a purely legal perspective.

The Princely State of Jammu and Kashmir (J&K), created in 1846 under the Treaty of Amritsar signed between the East India Company and Maharaja Gulab Singh, remains divided till date. The Maharaja became the founder of the Royal Dogra Dynasty and the first king of the Princely State of Jammu and Kashmir by paying 7.5 million of Nanak Shahi rupees (the ruling currency of the Sikh Empire) to the British Government and bought Kashmir Valley, Ladakh Wizarat (comprising of Baltistan, Kargil and Leh) and added it to Jammu which was already under his rule. Gilgit Wizarat (comprising of Gilgit and Pamiri areas) were conquered later in the war against Sikh rule led by Dogra Generals.

Historical Background - Partition & Standstill Agreement

India gained independence in 1947 from the British and the same year Pakistan came into existence. 562 Princely States existed in British India before the partition, which were not completely and formally part of British India; Its rulers were allowed to govern internal matters like law and order, health, education and economic development. These Princely States enjoyed internal autonomy, while by treaty, the British had a control over their Foreign Policy and International Relations. During partition, the State of Jammu and Kashmir was ruled by Maharaja Hari Singh under the paramountcy of British India. The British Viceroy offered individual Kings of Princely States the right to accede either to India or Pakistan by executing an Instrument of Accession signed by the Ruler and accepted by the Governor General of the Dominion. The decision to accede to either Dominions was an exclusive right of the ruler.

The state of Jammu and Kashmir, which was contiguous to both India, and newly formed Pakistan, initially decided to remain Independent. It offered to sign Standstill Agreements with both the Dominions. Pakistan immediately signed the Standstill Agreement while India asked for further discussions on its contents. The draft of the Standstill Agreement was formulated on 3rd June 1947 by the political department of the British Indian government and stated that all the administrative arrangements that existed between the British Crown and the Princely State would continue unaltered between the signatory dominions (India and Pakistan) and the State, until new arrangements were made.



Identical telegrams were sent by the Prime Minister of Jammu and Kashmir to Dominions of India and Pakistan on 12th August 1947. The text is as follows: "Jammu and Kashmir Government would welcome Standstill Agreements with India/Pakistan on all matters in which these exist

at present moment with outgoing British India Government. It is suggested that existing arrangements should continue pending settlement of details.

Reply from Government of Pakistan sent on August 15th 1947.

"Your telegram of the 12th. The Government of Pakistan agrees to have a Standstill Agreement and Kashmir for the continuance of the existing arrangements pending settlement of details and formal execution."

Reply from Government of India:

"Government of India would be glad if you or some other Minister duly authorized in this behalf could fly to Delhi for negotiating Standstill Agreement between Kashmir Government and India dominion. Early action desirable to maintain intact existing agreements and administrative arrangements."

The representative of Jammu and Kashmir did not visit Delhi and no Standstill Agreement was concluded between the State and the Dominion of India.

Pakistan violated the treaty soon after it was signed when it began to organize raids and distribution of ammunition to the population near its border with Jammu and Kashmir. The Prime Minister of Jammu and Kashmir made two formal requests to the Pakistani Government to stop the continuous border raids, but Pakistan resolutely denied both its support to the raiders and their actions.

Instrument of Accession

On 22nd Oct 1947, Pakistan invaded Kashmir and Jammu provinces from the north. The invaders comprised hordes of tribesmen from Pakistan's North West Frontier Province (NWFP) and regulars from its Army. The invaders were organized in company-level units and armed with lethal weapons. Houses were burnt, property looted and destroyed and large scale rapes and abductions of women took place.

On 26th October 1947, the intruders massacred about eleven thousand residents of Baramulla (North-western city in the Baramulla district of Jammu and Kashmir) and destroyed the Mohra power station that supplied electricity to the capital city of Srinagar. The panic-stricken Maharaja made an appeal to India to come to its rescue, to which India agreed, asking the Maharaja to sign an Instrument of Accession.

"With the conditions obtaining at present in my State and to great emergency of the situation as it exists, I have no option but to ask for help from the Indian Dominion. Naturally they cannot send the help asked for by me without my State acceding to the Domination of India. I have accordingly decided to do so and I attach the Instrument of Accession for; acceptance by your Government. The other alternative is to leave my State and my people to diabolical killers and beasts. On this basis, no civilized Government can exist or be maintained. The alternative I will never allow to happen as long as I am Ruler of the State and I have life to defend my country."- Maharaja Hari Singh ,The Palace Jammu, dated 26.10.1947 (Excerpt from his letter)

The Instrument of Accession is a legal document executed by Maharaja Hari Singh on 26th October 1947, thereby agreeing to accede to the Union of India. Consequently to the signing of the Instrument of Accession, the first war was fought between India and Pakistan over the Princely State of Jammu and Kashmir from 1947 to 1948. In 1948, Indian forces successfully thwarted the Pakistani attack and were ready to invade Mirpur and Muzaffarabad (now under administration of Pakistan). On the night of 1st January 1948, Prime Minister of India, Jawahar Lal Nehru called his forces and a formal cease-fire was declared as he took matters to the UN Security Council. By the end of the war, India was able to clear the regions of Kashmir Valley, Jammu and Ladakh from invading forces.

The Governor General of India Lord Mountbatten accepted the Accession of Jammu and Kashmir with a remark, *“It is my Government's wish that as soon as law and order have been restored in Jammu and Kashmir and her soil cleared of the invader, the question of the State's accession should be settled by a reference to the people”*.

While Prime Minister Nehru had the legal authority to exercise the legality of the Instrument of Accession vis-à-vis the whole State of Jammu and Kashmir (including the parts which are currently under administration of Pakistan), it is unclear why he didn't and chose to take the issue to the international theatre (UN Security Council). Some sources claim that Prime Minister Nehru hoped that the International community would recognize Pakistan's aggression and intervene to stop further bloodshed.

Pakistan has questioned the legal status of Instrument of Accession at several occasions, claiming that Maharaja Hari Singh was not legally competent to decide matters concerning his State as his power had already been arrogated by popular revolts. Despite some minor revolts, the State was still under the law of its Maharaja, and as per International Law the new Government of Jammu and Kashmir had not yet acquired Statehood, as it did not meet the conditions of being a Sovereign Government, which has the power to deal with external matters. Under International Law, a dictated treaty is as valid legally as one freely entered on both sides, corroborating the Maharaja being the competent legal authority to execute the Instrument of Accession.

[Constitutional position of J&K – Article 257 and Article 370](#)

Article 257

Article 257 of the Pakistani Constitution is a provision related to the State of Jammu and Kashmir defining the relation between the State of Jammu and Kashmir and Pakistan; *“When the people of the State of Jammu and Kashmir decide to accede to Pakistan, the relationship between Pakistan and the State shall be determined in accordance with the wishes of the people of that State”*.

Pakistan Administered Kashmir consists of two regions namely 'Azad' (Urdu for 'Free') Jammu and Kashmir (4144^{sq} miles) and Gilgit-Baltistan (29,814^{sq} miles), formerly known as Federally Administered Northern Areas (FANA). 'Azad' Jammu and Kashmir is being governed under the Interim Constitution Act of Azad Jammu and Kashmir Act 1974, which was passed by Legislative Assembly of 'Azad' Kashmir and approved by the Government of Pakistan. Gilgit Baltistan is governed by the Gilgit-Baltistan (Empowerment and Self Governance) order 2009, which was issued by the President of Pakistan after informal consultations with local leaders. It is suggested

that both these regions are autonomous, but practically, the real power for 'Azad' Kashmir is vested in the Kashmir Council based in Islamabad, of which the Prime Minister of Pakistan is the head. Likewise, Gilgit-Baltistan is controlled by a council based in Islamabad with the Prime Minister of Pakistan as its Chairman.

"Although 'Azad' means 'free,' the residents of Azad Kashmir are anything but that, the Pakistani authorities govern Azad Kashmir government with tight controls on basic freedoms.- Brad Adams, Asia Director, NGO Human Rights Watch, USA.

There is contradiction between the Constitution of Pakistan and the Interim Constitution of Pakistan Administered Jammu and Kashmir Act 1974; Article 257 states that people of Jammu and Kashmir are free to define their relationship with Pakistan if (and after) they decide to accede to Pakistan, however as per the Azad Jammu and Kashmir Interim Constitution Act of 1974, no person or political party in Azad Jammu and Kashmir is permitted to propagate against, or take part in activities prejudicial or detrimental to, the ideology of the State's accession to Pakistan. No person can assume office unless he/she takes the oath of Jammu and Kashmir's accession to Pakistan and nobody can be appointed to any government job unless he/she expresses loyalty to the concept of Jammu and Kashmir's accession to Pakistan.

Article 370

The Instrument of Accession grants the state of Jammu and Kashmir federal autonomy within the Union of India except Defense, Central Finance, Communications and Foreign Affairs.

In 1948, mass leader of Jammu and Kashmir, Sheikh Abdullah became the Prime Minister of Jammu and Kashmir and in 1949, Sheikh Abdullah and Maharaja Hari Singh agreed that Jammu and Kashmir should remain united with India with the maximum possible autonomy.

A special status was given to the State by the Indian Constitution under Article 370 and in 1951, the first elections for the J&K Constituent Assembly were held which later elected a body of representatives to formulate the Constitution of Jammu and Kashmir.

On 14th July 1954, the Constituent Assembly of Jammu and Kashmir decided that Article 370, which was temporary in nature shall remain in force, making it in essence a permanent feature of the Indian Constitution. The Constituent Assembly of J&K State had the legal authority to recommend the articles of the Indian constitution to be applied to the state or to abrogate Article 370 altogether. With the dissolution of the Constituent Assembly in 1957, Article 370 became un-amendable.

Important Features of Article 370

Jammu and Kashmir State has its own Constitution, which implies adherence to the 'dual citizenship' principle. Indian citizens from other States cannot purchase land or property in Jammu and Kashmir. Emergency in the State can only be declared in case of war or external aggression and apart from the President's rule, Governors rule can also be imposed on the State for a maximum period of six months. The Governor of the State is to be appointed only after consultation with the elected Chief Minister of the State. The Parliament of India is not empowered to make laws on the subjects of State of Jammu and Kashmir under any circumstance and cannot change the name, boundary or territory of the State without the concurrence of the State Legislature. An amendment made to the Constitution of India does not apply to the State unless it is extended by a Presidential order. The Union of India has no power

to declare financial emergency and cannot declare emergency on grounds of internal disturbance or imminent danger unless it is made at the request or with the concurrence of the State Government.

Article 370 of the Indian Constitution is arguably the most contentious provision since its implementation and has flared constant debates. While one section of the Indian polity strongly demand its abrogation, some others have ardently opposed this demand. In October 2015, the High Court of Jammu and Kashmir has ruled that Article 370 cannot be "abrogated, repealed or even amended". It explained that clause 3 of the Article conferred power to the State's Constituent Assembly to recommend to the President on the matter of the repeal of the Article. Since the Constituent Assembly did not make such a recommendation before its dissolution in 1957, Article 370 has taken on the features of a "permanent provision" despite being titled a temporary provision in the Constitution. The arguments in favor and against abrogation of article 370 are both debatable, however on legal grounds it cannot be abrogated as it would translate into fundamentally changing the Instrument of Accession.

Abrogation of State Subject Rule in Gilgit Baltistan by Pakistan (1974)

The Maharaja of Jammu and Kashmir had granted special provisions to the people of his Princely State, one of which was 'the State Subject Rule'. The State Subject Rule protected the status of the indigenous people since the rule allowed only the natives (also referred to as State-Subjects) to acquire permanent residence in the State. Pursuant to this rule, the natural resources of the State were the property of the indigenous people who had the right to utilize them without any outside interference. Prior to the First Kashmir War (1948) between India and Pakistan, Gilgit Baltistan was part of the erstwhile Princely State of Jammu and Kashmir and is currently the northernmost administrative territory of Pakistan which became a separate administrative unit in 1970, known as Federally Administered Northern Areas. It covers an area of 29814^{sq} miles and is inhabited by close to 2 million people. The Government of Pakistan, under the leadership of President Zulfikar Ali Bhutto, abrogated the State Subject Rule in Gilgit-Baltistan in 1974, which resulted in demographic changes in the territory affecting the local culture of the territory and in 2009 it was granted limited autonomy and was renamed from the Federally Administered Northern Areas to Gilgit-Baltistan via the Self Governance Order signed by Pakistani President Asif Ali Zardari, making it de facto a Province of Pakistan without constitutionally becoming part of Pakistan.

UN Intervention and its Resolutions on Jammu and Kashmir

The first Indo-Pakistan War lasted for more than a year when India invited mediation by the United Nations. The UN Security Council adopted its first resolution, 39, on 17th January, 1948, and United Nations Commission for India and Pakistan (UNCIP) was established to investigate and mediate the Kashmir dispute between the two countries.

On 21st April, 1948, Resolution 47 was adopted. The Security Council called for cessation of hostilities, withdrawal of all Pakistani troops and tribesmen and bulk of Indian troops (except for a minimal number required for maintaining law and order), allowing return of refugees, release of political prisoners and holding of a UN supervised Plebiscite in the Princely State of Jammu and Kashmir under a Plebiscite Administrator to determine the aspirations of the people.

On 13th August 1948, after discussions with both the governments, the Commission unanimously adopted a three-part resolution, amending the UN Resolution 47. The Commission gave numerous assurances which include not recognizing the Government of predominantly Muslim 'Azad' Jammu and Kashmir and reiterating that India would be responsible for the security of the territory. In January 1949, another resolution was laid down citing requirements for holding a Plebiscite, one of which was Pakistan withdrawing its troops from that area. Pakistan, however ceased to follow this dictum and it also had differences of opinion over disarmament of 'Azad' Jammu and Kashmir (Pakistan Administered Jammu and Kashmir), hence making Plebiscite impossible. The UNCIP did refer the matter over to Security Council, which in turn appointed several mediators, unfortunately with no further development.

India and Pakistan signed the Karachi Agreement on 27th April 1949. This was an agreement between military representatives of India and Pakistan regarding the establishment of a cease fire line in Jammu and Kashmir supervised by truce, subcommittee of UNCIP called United Nations Military Observer Group in India and Pakistan (UNMOGIP).

On 30th March 1951, following the termination of UNCIP, the Security Council, by its resolution 91 (1951), decided that UNMOGIP should continue to supervise the ceasefire in Jammu and Kashmir. UNMOGIP's functions were limited to observing and reporting, investigating complaints of ceasefire violations and submitting its finding to each party and to the Secretary-General.

The Secretary General, in his report of September 3rd, 1965 stressed that the cease fire agreement of July 1949 had collapsed owing to the military hostilities between India and Pakistan which had erupted on a large scale along the ceasefire line in Jammu and Kashmir (1965 war). On 4th Sept 1965, the Security Council, by resolution 209 (1965), called for a ceasefire and asked the two Governments to cooperate fully with UNMOGIP in its task of supervising the observance of the ceasefire. The Council adopted resolution 211 on 20th September 1965, by which it demanded that a ceasefire take effect on 22nd September 1965, as the hostilities had spread to the international border between India and West-Pakistan. The Secretary General decided to set up an administrative adjunct of UNMOGIP, the United Nations India-Pakistan Observation Mission (UNIPOM), as a temporary measure for the sole purpose of supervising the ceasefire along the India-Pakistan border outside the State of Jammu and Kashmir, since the hostilities extended beyond the Jammu and Kashmir ceasefire line.

Non-compliance of the UN Charter and changes to the UN Resolution

The invasion led by Pakistan on Jammu and Kashmir was against all canons of International Law and a clear contravention of the UN Charter. In July 1948, the Pakistani Foreign Minister admitted delinquency but cited fear of Indian aggression as a main reason behind Pakistan's actions, of which there were no evidences. Furthermore, in accordance to the United Nations Charter, Pakistan had "no right of self-defense in the absence of an armed invasion or attack on its territory".

Changes to the UN Resolution proposed by Pakistan

The Pakistani Foreign Office in a letter to the Security Council, signed by Pakistan's Foreign

Minister Zafrullah Khan enquired if the words “*Future Status*” as stated in the resolution of 13th August 1948 could mean an Independent Jammu and Kashmir. The reply was that the Kashmiri people could have an Independent Jammu and Kashmir if that was the majority’s decision. After receiving this reply, the Pakistani Government decided to suggest an amendment to this resolution and in a letter to General A. G. L. McNaughton, President of the Security Council, dated 28th December 1948, Pakistan wrote to propose a change in this clause for the words, “*The future status of State of Jammu and Kashmir*” substituting it with, “*The question of the accession of the state of Jammu and Kashmir to India and Pakistan*”. Pakistan proposed this change to which India did not object and as a result of this request the next resolution which was passed on 5 January 1949, read: 1) “*The question of the accession of the State of Jammu and Kashmir to India and Pakistan will be decided through the democratic method of a free and impartial plebiscite*”.

The second clause was:

2) “*A plebiscite will be held when it shall be found by the Commission that the cease-fire and truce arrangements set forth in Parts I and II of the Commission's resolution of 13 August 1948 have been carried out and arrangements for the plebiscite have been completed*”.

Part II of the Truce agreement stated:

1) *As the presence of troops of Pakistan in the territory of the State of Jammu and Kashmir constitutes a material change in the situation since it was represented by the Government of Pakistan before the Security Council; the Government of Pakistan agrees to withdraw its troops from that State.*

2) *The Government of Pakistan will use its best endeavor to secure the withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistani nationals not normally resident therein who have entered the State for the purpose of fighting.*

3) *Pending a final solution, the territory evacuated by the Pakistani troops will be administered by the local authorities under the surveillance of the commission.*

This was formally agreed upon by Pakistan on 25th of December 1948, and conveyed to the Security Council. Till date Pakistan has failed to implement its clauses, and as such, the UNCIP was unable to communicate to India ratification of implementation of the Resolution of 13th August 1948 by Pakistan. With that, the question of a Plebiscite fell through and was never revived at the UN level. The factual situation is that these resolutions are based on choice between India and Pakistan; these do not allow unlimited self-determination which means a choice without limitation. If the resolutions were based on self-determination like East Timor, then under the UN Charter, the Secretary-General could move the case at UN level. In such a situation he was not obliged to wait for the willingness of India and Pakistan to discuss the matter in the UN. This was precisely what two former General Secretaries, Boutros Ghali and Kofi Annan have stated.

India-China War (1962)

Chinese claims of India being a threat to its rule in Tibet, veritably became one of the major reasons for the Sino-India War of 1962. On 20th October 1962, China invaded Ladakh, and across the McMahon Line in former North-East Frontier Agency. The war continued for one month and ended when China declared a ceasefire on 20th November 1962. India was defeated by China and Indian posts and patrols were removed from Aksai Chin (Part of Jammu and Kashmir) which came under direct Chinese occupation after the end of the conflict. China claims that Aksai Chin is a part of Western Tibet whereas India claims it to be a part of Ladakh (State of Jammu and Kashmir).

In addition to the Aksai Chin plateau, China also occupies a large territory of Baltistan that was “ceded” by the Pakistan Government to China for the construction of the Karakoram Highway as part of the China-Pakistan Border Agreement signed on 2nd March 1963 between Chinese Foreign Minister Chen Yi and President Zulfikar Ali Bhutto of Pakistan, which (re)established the border between China and Pakistan.

Politically, the agreement further dimmed hopes of any settlement of the Jammu and Kashmir conflict between India and Pakistan.

“Placed China formally and firmly on record as maintaining that Kashmir did not, as yet, belong to India. India does not recognize the agreement, under which China holds 2,000 sq miles of northern Kashmir, as legal”- Times Magazine, New York.

Indo-Pakistan War 1965

In 1965, India and Pakistan fought their second war when Pakistan attacked India in an operation code named, ‘Gibraltar’ on 5th August, 1965 over the status of Jammu and Kashmir. The war is one of the most intense wars that the two neighbors would fight. On 14th August 1965, after the initial skirmishes, the first major confrontation between the two countries took place, with Pakistani forces moving concentrations near Tithwal, Uri, and Poonch. In retaliation, Indian troops captured the Haji Pir Pass (altitude 2637m), eight kilometers inside Pakistani territory. Pakistan launched Operation ‘Grandslam’ to capture Akhnoor town (in Jammu region), with an objective of severing communications and supply routes to Indian troops. The operation ended in a failure, the stated military objectives were not achieved and Pakistani Army was forced to retreat. Following the failure of Operation ‘Grandslam’, Pakistan launched an attack in southern sector of Punjab on 1st September 1965, inflicting heavy losses on Indian Forces. The war witnessed the largest engagement of armored vehicles and tank battle since World War II, causing mass casualties on both sides. On 22nd September, the UN Security Council unanimously passed a resolution calling for an unconditional ceasefire from both sides which ended the war, with diplomatic intervention by the Soviet Union adopting a neutral stand and offering a peaceful settlement between two warring States. Soviet Union hosted ceasefire negotiations in Tashkent (now in Uzbekistan) where the Prime Ministers of India and Pakistan met in January 1966.

Tashkent agreement (1966)

The Indian Prime Minister Lal Bahadur Shastri and President of Pakistan, Ayub Khan, signed a Peace Agreement in Tashkent on 10th January 1966, at the invitation of the Chairman of the Council of Ministers of Soviet Union, announcing the withdrawal of all armed personnel on both

sides to the positions they held prior to 5th August and adhering to the terms of ceasefire not later than 25th February 1966. The declaration further stated that the Nations would not interfere in each other's internal affairs; economic and diplomatic relations to be restored, ensuring an orderly transfer of prisoners of war, and that the two leaders would work towards improving bilateral relations. The troops were withdrawn by both countries, fulfilling the provisions of the Security Council's Resolutions, as was reported by the Secretary General of the UN on 26th February 1965 and which led to the termination of UNIPOM on 22nd March 1966.

By signing the agreement, the two warring countries were successful in putting an end to the war but failed to achieve lasting peace; the diplomatic ties between the two countries exacerbated and tensions kept arising.

Simla Agreement (1972)

The Simla Agreement was signed between Indian Prime Minister Indira Gandhi and Pakistani Prime Minister Zulfikar Ali Bhutto on 2nd July 1971, post the Bangladesh Liberation war of 1971 that resulted in the Independence of Bangladesh, formerly a part of Pakistan territory known as East-Pakistan.

Both countries agreed to put an end to the conflict and confrontation that had hitherto marred their relations, and adjudicate their differences by peaceful means through bilateral negotiations without any third-party intervention. To progressively restore and normalize relations between the two countries it was agreed that the ceasefire line, resulting from the cease fire declared on 17th December 1971 to be converted to the Line of Control (LoC) by both sides and not to be altered unilaterally irrespective of mutual differences and legal interpretations.

The treaty ensured that Pakistan recognized the Sovereignty and Independence of Bangladesh, with India returning over 90,000 Pakistani prisoners of war who had surrendered to the Indian army on 16th December 1971. All POWs were released in a six-month duration following the end of the war.

The signing of the agreement essentially made Jammu and Kashmir dispute a bilateral one, to be mutually resolved between the two countries and taking it out of the purview of the United Nations or any other third party (country) mediation.

Kashmir Accord (1975)

Sheikh Abdullah, mass leader of Jammu and Kashmir, announced in 1972, *"our dispute with Government of India is not about accession but is about the quantum of autonomy"*.

The Kashmir Accord (February 1975) was signed between Prime Minister of India, Indira Gandhi and National Conference Leader, Sheikh Abdullah, latter assuming power as the Chief Minister of Jammu and Kashmir after a gap of 11 years. The Accord strengthened India's role over legislation in Kashmir, though the state continued to be governed by Article 370 of the Indian Constitution. It was agreed that, residuary powers of legislation shall remain with the State but Parliament of India will continue to have power to make laws relating to the prevention of activities directed towards disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or bringing about secession of a part of the territory of India from the Union or causing insult to the Indian National Flag, the Indian National Anthem and the Constitution.

Abdullah assumed power on 26th February 1975, receiving an unprecedented welcome by the people of Kashmir Valley whereas the response to the Kashmir Accord was far less sharp in Jammu, as the people and political elite of the region were not directly involved in Abdullah's relations with the Centre. The new Cabinet was announced for the State, which included Abdullah's second-in-command, Mirza Afzal Beg from Kashmir and D.D. Thakur, a retired judge of the High Court, from Jammu. In 1977, the Congress party of the state withdrew its support in favor of the Abdullah government, ending the National Conference-Congress Alliance. In retaliation, despite having signed the Kashmir Accord in 1975 and reaffirming Kashmir as a constituent unit of the Union of India, Abdullah began supporting a demand for Plebiscite.

Terrorism in Indian Administered Jammu and Kashmir (1989 onwards)

Jammu and Kashmir witnessed sporadic periods of violence post the Independence of India, but never an organized insurgency till 1989. The self-styled movement was influenced by few occurrences around the globe, like the banning of the book "The Satanic Verses" (published in 1988) authored by Salman Rushdie, writer of Kashmiri origin, by Iranian religious leader Ayatollah Khamenei claiming it to be blasphemous. Many Kashmiri Muslims protested in support of banning the book. The year also witnessed the defeat of Soviet Union by the Afghan Mujahedeen. As per trusted Pakistani sources, the Generals of Pakistan mobilized the "war - addicted Afghan Mujahedeen", having no more wars to fight, to the Valley of Kashmir.

Pakistani and Kashmiri religious parties and their militant squads were used as a front to escalate armed attacks in Jammu and Kashmir and succeeded in injecting the ideology of communalism in the Valley of Kashmir. Pakistan's motive to annex and not to liberate Jammu and Kashmir, causing disintegration within India, is corroborated by the fact that majority of terrorist- and separatist group's objective remained merger with Pakistan. The objective was to banish the minority in order to strengthen Pakistan's claim over Jammu and Kashmir and resulted in selective ethnic cleansing of Kashmiri Pandits (Kashmiri Hindus). By 1990, almost all Kashmiri Pandits had left the Valley of Kashmir while many secular Kashmiri Muslims like writers, academics, artists and bureaucrats also fell prey to terrorist bullets. In a bid to frighten the minority, mosques and other public places were misused as hideouts by the terrorists to invigorate the fundamentalist movement and inhibit attacks by the security forces. It is estimated that by 1989, more than 10,000 Kashmiri Muslim youth had undergone training of weapons in Pakistan and Pakistan Administered Jammu and Kashmir.

There was a massive propaganda drive against Sufi Islam and the composite Kashmiri culture, dubbed both as anti-Islamic. The self-styled "movement" was not only religiously fueled but also unevenly distributed across the region. The people of Jammu and Ladakh region distanced and maintained an anti-movement stance; supporting India. Despite the bloodshed and destruction for close to three decades, it remains an enigma to understand the objectives behind this movement. Was the struggle against a professed occupier, a fight against the State for greater political rights or a struggle for an Independent Islamic state? The violence led to killings, displacement of people, disruptive schooling, destruction of infrastructure and support systems, human rights violation and loss of security. It has put into challenge the major consequences for survival, development, health and overall wellbeing of people. Despite varying political positions

of the Kashmiri Muslim majority and the Pandit minority, both continue to suffer as a collective group, while the issue seems to have been buried and its cause lost in ambiguity.

Lahore Declaration (1999)

The Lahore Declaration was signed on 21st of February 1999, between the Indian Prime Minister Atal Bihari Vajpayee and the Prime Minister of Pakistan Nawaz Sharif in Lahore (Pakistan), ratified by the parliaments of both the countries with a commitment to reach a mutual understanding and agreement towards the development of atomic arsenals and avoiding accidental and unauthorized operational use of nuclear weapons. The Lahore Declaration can be viewed as one of the most important and historical treaties between India and Pakistan to normalize relations and slacken the military tensions in South Asia, distinctly after the proposal of South Asia Nuclear Weapon Free Zone (SANWFZ), to limit nuclear race between the two countries of which negotiations were never concluded. In the wake of publicly performed atomic tests carried out by both the nations in May 1998, the treaty beckoned a major breakthrough in overcoming historically strained bilateral relations between the two nations, reaffirming the commitment to find a peaceful resolution to the issue of Jammu and Kashmir.

The treaty was greeted in Pakistan's civil society sphere, the general population pools widely welcomed the move by their Prime Minister, though it was speculated in Pakistan's media that many in the Pakistani Military disapproved of the treaty and consequently worked to subvert it and escalate tensions between the two nations, which would later result into the Kargil War. The reception for the Indian Prime Minister, Vajpayee was described as the leader of an "enemy-combatant nation," and boycotted by the Chiefs of the Pakistan Military (Army Chief, Air Chief and Naval Chief included). In India, the initiative bolstered the popularity of the Indian Prime Minister and the move was hailed.

Kargil War (1999)

The Kargil war, fought between India and Pakistan in May 1999, lasted for over a month in the Kargil district of Indian Administered Jammu and Kashmir, post signing of the Lahore Declaration. The operation was planned and executed by Pervez Musharraf, Chief of Army Staff under Prime Minister Nawaz Sharif and aimed at interdicting the Kargil–Leh highway, the main land route for the Indian Army's logistic supplies to Siachen.

Pakistani forces intruded and occupied strategic positions on the Indian side of the Line of Control (LoC - de facto border in Jammu and Kashmir), prompting an Indian counter offensive in which Pakistani forces were pushed back to their side of the original LoC. Kargil was the first armed conflict between the two neighbors since they officially conducted nuclear weapons tests. Recognition of the potential for escalation of this conflict and its wider implications caused the then US President, Bill Clinton to summon Pakistani Prime Minister Nawaz Sharif and demand that he rein in his troops.

The fighting ceased on 26th July with India regaining position of Kargil and Pakistani forces leaving India in control of the entire territory South and East of the Line of Control, as was established in July 1972 pursuant to the Simla Agreement.

Consequently to the Kargil debacle, relations between the Pakistani Army and the civilian leadership of the country deteriorated and resulted in a bloodless coup carried out by the Army

(led by General Pervez Musharraf) against Prime Minister Nawaz Sharif, subsequently placing the Prime Minister under a strict house-arrest and later exiling him to Saudi Arabia.

Conclusion

Pakistan's invasion of the erstwhile Princely State of Jammu and Kashmir, the state not being well equipped to desist the invaders, left Maharaja Hari Singh with two options: Either to request the neighboring country, India, to come to its rescue or to surrender to the invader. The Maharaja turned towards India, requesting military assistance, with the Indian government agreeing which resulted in the State's Accession to the Union of India by execution of a legal agreement between the Maharaja and the Union of India, The Instrument of Accession.

Lord Mountbatten, the then Governor General, wrote to the Maharaja after the signing of the Instrument of Accession, that it was his wish to hold a plebiscite in the State of Jammu and Kashmir once it was cleared of the invader. Though this statement has emerged as the most controversial feature of Jammu and Kashmir's Accession to India, it is noteworthy that this "letter" is legally not a part of the Instrument of Accession. In legal terms, it does not affect the legality of the Instrument of Accession. The Indian Independence Act does not envisage conditional accession as doing so would be outside its Parliamentary policy, confirming that the Instrument of Accession binds the state of Jammu and Kashmir with India legally and constitutionally.

Prime Minister Nehru took matters to the UN Security Council in January 1948, both the warring nations accepted a UN-sponsored ceasefire bringing an end to the first Indo-Pakistan war. The decision of taking the matters to the United Nations internationalized the issue and made Pakistan a party to the issue. It remains unclear why Prime Minister Nehru chose not to exert the legality of the Instrument of Accession over the whole of the Princely State of Jammu and Kashmir and instead called his troops. Some sources claim that Prime Minister Nehru, in an attempt to put an end to bloodshed may have turned towards the International Community hoping them to recognize Pakistan's aggression.

In pursuance to the resolution of UN Security Council (August 13th, 1948) signed by both countries, Pakistan is legally obliged to withdraw its military forces out of the region first and, India to reduce its forces in the area to minimum strength to preserve law and order. In compliance with this condition, the UN Security Council foresaw a Plebiscite to determine the future of the territory, though the condition of withdrawal of forces until date remains unfulfilled. The conflicting parties engaged in three more wars in 1965, 1971 and 1999 respectively and signed bilateral agreements, viz. Karachi Agreement (1949), Tashkent Agreement (1966), Simla Agreement (1972) and Lahore Declaration (1999).

In accordance with Simla Agreement, both the parties decided to arbitrate their differences by peaceful means through bilateral negotiations without the intervention of any third party which clearly takes the issue of Jammu and Kashmir out of the purview of any third party, like the United Nations. The issue has been intricated from the very outset by first accepting UN Security Council as an intermediary, then by not complying to the suggested resolution and afterwards by intermittently signing bilateral agreements and thereby infringing earlier agreements at UN level.

With India becoming a Republic on 26th January 1950, the Constitution of India laid down provisions for other princely States as developed constituent units of the Union. In the case of other Indian States "Instruments of Accession became obsolete in the new Constitution" as the States were integrated with the Federal Republic with no such condition to execute a document of Accession for becoming Units of the Republic. A special provision in case of Kashmir had to be made, as was explained by Sri Gopaldaswami Ayyanga (member of the drafting committee of the Indian Constitution), *"It would not be so in the case of Kashmir, since a part of that particular State is still in the hands of the enemies"*. Post this clarification by Ayyanga, the drafting of Article 370 was considered and the State was accorded with a Special Status under Article 370 specifying that the State of Jammu and Kashmir has its own Constitution, Flag in addition to the Union Flag and several other provisions like the State Subject rule which only allows State Subjects of the State to purchase immovable property in Jammu and Kashmir and acquire permanent residence.

Article 257 of Pakistan Constitution is a provision related to Pakistan Administered Jammu and Kashmir; stating, *"that if (and after) the citizens of Jammu and Kashmir decide to accede to Pakistan, their relationship with Pakistan shall be determined in accordance with the wishes of the people of the state"*. This provision is contradictory to Azad Jammu and Kashmir Interim Constitution Act of 1974, which clearly states that any person propagating any opinion or action in any manner prejudicial to the ideology of Pakistan, would be disqualified. The Constitution of Pakistan only recognizes those political parties that pay allegiance to Pakistan, unlike in India. The Indian government recognizes all "Pro-Freedom parties (including those demanding secession from both India or Pakistan). Furthermore, the State Subject rule in Gilgit Baltistan was abrogated in 1974, legally enabling Pakistan to change the socio-economic demography, affecting local culture of the territory.

The people of Jammu and Kashmir on both sides of the LOC, have experienced the dreadful consequences of Pakistan's proxy war with Indian Administered Jammu and Kashmir being under the scourge of terrorism for close to three decades while the citizens of Pakistan Administered Jammu and Kashmir are still fighting for the Constitutional Status of their territory. Pakistan has successfully injected a communal ideology and converted a political issue into a religious issue concentrated in the Kashmir Valley which is only a small portion of Jammu and Kashmir. This communal ideology has destroyed the political and social cohesion between diverse ethnic and religious subgroups that once existed in Jammu and Kashmir, spread disorder and diverted the State from constructive socio-economic activities.

The announcement of the construction of the China Pakistan Economic Corridor (an extension of China's ambitions of reconstructing the ancient Silk Road), part of which passes through the disputed territory of Gilgit Baltistan (Jammu and Kashmir) will further complicate matters. The construction of this corridor complimented by the military benefits for both China and Pakistan and an investment of 54 billion dollars, has all the ingredients to exacerbate the complexities of the Kashmir-Issue, threaten peace and secure China's strategic interests by allowing it, to increase its illegitimate share in Jammu and Kashmir.

Pakistan's proposed move to illegally annex Gilgit Baltistan, change the fundamentals of the actual Jammu and Kashmir-issue and cement China's stake in this dispute are in response to concerns raised by Beijing. China finds it internationally indefensible to invest billions of dollars

on a road that passes through a disputed territory claimed both by India and Pakistan. In case Pakistan imposes its sovereign writ over Gilgit-Baltistan, India will then have a political and moral right to fully integrate Jammu and Kashmir into India and scrap Article 370 of its constitution, which gives Jammu and Kashmir a Special Status. Any kind of solution to the long standing issue of Jammu and Kashmir will only be jeopardized by such events.

On legal grounds, the accession of the state of Jammu and Kashmir to India, completely excludes Pakistan, which manifests itself as a self-styled protector of the rights of people of Indian Administered Jammu and Kashmir while it illegally administers almost half of the Princely State of Jammu and Kashmir (Gilgit Baltistan and Pakistan Administered Jammu and Kashmir). The current situation of distrust and fundamentalism is not likely to alter unless there is a structured and genuine dialogue at diplomatic level. There must be a sense of ownership by all stakeholders and efforts made ensuring positive steps forward which includes putting a halt to (cross-border)-terrorism. There is an urgent need for Pakistan and India to comprehend that while they are sovereign and independent, in order to ensure peace in South Asia their very existence has become more interdependent than before. Interrelated stakes, appetite for peace, economic progress, growing menace of Terrorism and respective introspection among all stakeholders should necessitate a solution based on the principles of coexistence.



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