

KASHMIR: A Conflict between India and Pakistan

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ABSTRACT

Kashmir is the oldest and the most serious dispute between Pakistan and India. Various efforts at the bilateral and multilateral levels could not resolve this problem. The two countries have fought hot and cold wars which undermined their bilateral relations. India's efforts to strengthen its control of Kashmir by use of force have always been questioned by Pakistan that supports Kashmiri demand for right self determination under the UN Resolution of 1948-49. This paper analysis the origins of the Kashmir dispute, its influence on Indo-Pakistan relations, and the prospects for its resolution.

Key Words UN Resolution, Human Rights Violations, Human Tragedy, LOC.

Introduction

India's efforts to integrate Kashmir into Indian Union did not succeed because the major Kashmiri leaders and parties resisted these efforts. The Kashmiris want that they should themselves decide about their political future, as committed to them by the UN Resolutions of 1948-49. Indian leadership contests this and use force to crush this demand. This has caused a perpetual conflict between the Indian authorities and the people of Kashmir. India has been using security establishment to control Kashmir which often resulted in human rights violations in Kashmir. Indian actions are driven by the consideration of keeping Kashmir under its control irrespective of the human rights or other cost. The excessive use of security forces and state power by India has the Kashmir Valley into a "Human Tragedy."

The Indian government use security forces and intelligence establishment to subdue Kashmiris. The Kashmiri people want freedom from India and decide their political future on their own. This is not acceptable to India and it use force to control Kashmiris.

We remember the statement of Sardar Patel, who said, "give Jinnah his state, it would not survive in five years, the Muslim league would be knocking at their door begging for India's reunification" (Collins & Lapierre, 2011).

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The interview of Quaid-e-Azam Muhammad Ali Jinnah in “Daliy Hamdard” about Kashmir situation on Feb 3, 1946 is very important and relevant to this article. He said:-

“Although I am fully occupied with the British Indian elections just now yet I have not forgotten the problems of Kashmir he said, I am fully conscious of the suffering of the people there and that though the burden of the struggle against repression and oppression was mainly to be born by the people of Kashmir, we shall always help them in every possible way...” (Collins & Lapierre, 2011). He also said; “In search of an inventive approach to untangle the Kashmir Knot, the ‘merit of the case’ was not a good starting point. Firstly, we might not agree on the merit: we did not for over six decades. Secondly, and more importantly: complex issues are not resolved by providing one or the other side wrong, but by identifying common causes that can be pursued together” (Murshed, 2014).

Geographical and Historical Background

The state of Jammu and Kashmir comprises the regions of Kashmir valley, Jammu and Ladakh with approximately 10 million people. According to S.M Burke and Salim-ud-Din Quraishi, the population figure of Jammu and Kashmir State on the eve of transfer of power, were as under:

Jammu

Muslims	1208675	61%
Hindus	772760	39%

Kashmir

Muslims	1489988	92%
Hindus	139217	8%

Jammu & Kashmir Present

Total Muslims in the state	3101247	77%
Total Hindus in the state	809165	21%
Total Sikhs to the state	65903	
Total Buddhist in the state	40696	
Total Population	4021616	

The Jammu and Kashmir conflict dates back to the partition of the subcontinent in 1947. The first India-Pakistan war over Kashmir soon after the independence resulted in the division of the territory into Indian held “Jammu and Kashmir (comprises the regions of Kashmir valley, Jammu and Ladakh) and the smaller area with Pakistan (Azad Kashmir plus sparsely populated regions in the High Himalayas known as Pakistan's Northern Areas” now designated as Gilgit Baltistan. (Imperial Gazetteer of Kashmir and Jammu, 2002).

The dividing line between Azad Kashmir and Northern Areas and Indian administered Kashmir originated in a Cease Fire line in 1949 under the UN Resolutions. It was marginally altered during Indo- Pakistan 1971 and renamed as the Line of Control (LoC) under the India Pakistan agreement signed at Simla in July 1972.

Both India and Pakistan have contesting claims of sovereignty over the territory of Jammu and Kashmir. They both raised their claims at the UN and also the fight for the Kashmir several times in the past. The majority of the population of the Kashmir is now fed up with this dispute and some of them also want to see Kashmir as an independent state.

The problems between India and Pakistan are very largely a legacy of their histories including the histories of Indian and Pakistani nationalism. The Indian nationalism advocated a secular, pluralist India where all religions should co-exist. The Muslim League argued that India comprised of two nations: Muslims and Hindus and that because of irreconcilable historical, political, social and cultural differences and contradictions. Since Indian nationalism was secular it could not concede to the idea of Kashmir's accession to Pakistan. Therefore, Kashmir was held hostage to the two nationalisms. Both of whom had held on to what parts of Kashmir they controlled and wanting control of the rest.

Kashmir is a very complex dispute, it is an ethnic dispute it is a religious dispute, it is a territorial dispute, it is a dispute over Human Rights, but above all it is a dispute about the right of the Kashmiri people to determine their own political future. Apart from the terrible suffering and deprivation, the people of Kashmir have suffered and are suffering. They have also paid a terrible price. The Kashmir problem was sought not to be resolved by dialogue but by bloodshed not by force of reason but by the reason of force.

The option of plebiscite to settle the dispute of Kashmir was originally suggested by the Indian leadership in 1947 when the dispute arose over the accession of the princely state of Jammu and Kashmir both Lord Mountbatten (the Government General of India) and Jawahar Lal Nehru. (Indian prime minister) categorically stated the option of plebiscite to know the wishes of the dispute of Kashmir. India took the case to the U.N and option of plebiscite was institutionalized in the two cardinal resolution of the U.N passed in 1948-49. However, the plebiscite was never held and India did not honor its pledge. Pakistan considers the Indian pledges to be binding today as it was when first voluntarily made in 1947-1948. Indian politician have used this emotive issue to scare their public that Indian might break-up if Kashmir separates from it.

The plebiscite solution of the Kashmir issue is rejected by India and according to the Indian perception, it smacks of the 'two nation theory' as it is based on two-nation theory which India rejects. India fears that if the Kashmiris quit India, the separatist movements in the North East of India would be even more difficult to handle. Even Punjab and Tamil Nadu might reopen their demand of leaving the Indian Union. That is reason why India has deployed so heavy security forces in

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the valley and uses the state power and laws to suppress the freedom movement in Kashmir.

Since late 1989 a new dimension has been added to the conflict with a guerilla movement launched by the young Kashmiri militants against the Indian government in Jammu and Kashmir. The Indian government's response of repression through a number of draconian laws and deployment of the thousands of Indian security forces against the Kashmiri freedom fighters has transformed the character of the Kashmir conflict from a mere dispute between two adversarial neighbours to a multi-dimensional nationalist struggle.

The political unrest in the state of Jammu and Kashmir has largely been a result of Indian government's ineptitude coercive methods. Many in India propose greater autonomy for the state to redress the sense of deprivation of the Kashmiris. Indian have heavily deployed security forces and para-military troops that have violated human rights of the people, have resorted to torture, rape and summary executions. Major incidents of Indian atrocities in Indian administered Kashmir are as under:

i. Killings	Years	Figures
	Since 1989 — March 2006	90680
ii. House/Shops destroyed		
	Since 1989 — March 2006	105173
iii. Orphaned		
	Since 1989- March 2006	9649
iv. Widowed		
	Since 1989 — March 2006	22377
v. Innocent Kashmiris in Custody		
	Since 1989 — March 2006	3048

India's security are engaged in Indian administrated Kashmir since 1989. These engage in human rights violations. "Estimates of the death toll vary greatly. India places it at 40,000 but the APHC believes that 100,000 have died since 1990. More than 3000 were killed in 2003 alone" (SOS from Indian Held Kahmir, 2006).

Additional information suggests

"Many more have been injured. According to the Indian government, some 1150 government building 540 educational establishment 337 bridges and nearly 11000 private buildings have been destroyed" (The Economist, 2003).

The Indian administered Kashmir is like a military state where the people live under fear. At times they cannot use the mobile phones because of the attacks on military forces.

"In 1996, the election victory of Farooq Abdullah's National Conference raised hopes of a new era of good governance and improved economic policies.

Policies to help Kashmiris were announced but never implemented. The state created 100,000 jobs but gave them out as a form of patronage. Overall levels of corruption rose and few outside the political elite saw any improvement in their lives” (Annual Report 2002-2003).

The Line of Control (LOC) in Kashmir is approximately 150 km by length. The resistance to Indian security forces by Kashmiri groups has increased over time which is condemned by India as Pakistani infiltration. India’s army Chief claimed that in 2003 “no more than 1700-1800 in Jammu and Kashmir. The Indian army chief insisted that our (security forces) anti-infiltration posturing along the border and LOC has succeeded in bringing down level of infiltration” (ICG Asia Report N.69: Kashmir, 2003).

The indiscriminate responses have undermined the faith of many in the government or security forces. Some effort must be made to improve the behaviour of the security forces and to minimize the abuses. But over all scenarios shows us that the Indian Government and the Armed Forces don’t want to let the Kashmir free because they earned a heavy amount from the Kashmir which is also better for the economy of India.

Indian Security Forces in Kashmir

The deployment of Indian forces was “150,000 central para military forces, 50,000 Rashtrya Rifles, 60,000 J and K police, 2486 village defence committees, each with a minimum of 12 persons, and 18,000 SPO’s and lest we forged 3000-4000 Sarkari militants” (www.pipfpd.org).

Various draconian laws such as Public Safety Act (1978) which allows for detaining a person for up to two years. Enemy Agent Ordinance (1948), the Egress and Internal Movement (control) Ordinance (1948), Prevention of Suppression and Sabotage Act (1965) are used indiscriminately.

Indian’s National Human Rights Commission (NHRC) established in 1993 has taken a robust line on these matters, saying “Violations of human rights are far less likely to occur when the role and the responsibilities of the civil authorities under the law are fully respected, not least in respect of cordon and search operations, arrest, interrogation and detention” (Annual Report 1997-1998).

International human rights agreements and covenants do not guarantee that countries will abide by them, therefore a number of international organization like the Amnesty International (AI) are active to actually promote the concept of human rights and uphold them whenever possible. As far as India concerns one of the reliable sources of information’s on human rights violation is the Amnesty International. This organization was banned from operating in the country for number of years. Human rights are being violated with impunity by those who control the territory. Kashmir under India's control as there is wanton denial of the most basic human rights: the right of life, torture, rape, abduction, eviction, fake encounters et al are rampant.

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“Articles 4, 21, and 22 of the Indian constitution provided for equality before law the right of life and right against arbitrary imprisonment while section 330 and 331 of Indian criminal code prohibit torture. Chapter 5 of the code of criminal procedure stipulates various rules. But the practice of the Indian government on human rights in Jammu and Kashmir has been at variance with these guarantees” (Report of Human Rights Watch, 1995).

The deployment of security forces creates serious threats for women. Women are badly treated and raped by the forces during the search operation. The news of such incidents like murder, violence and rape doesn't reach public because of the forces. The ratio of the misbehaving and kidnapping as well as the rape is increasing in every year. There are now so many foundations like students and the civil people of the Kashmir who raised their voices against this violence's but at the end the Indian government and the armed forces treated them very badly and every year several of students and civilian are killed by the forces.

There is a co-relation between their migration and the massive crackdown that ensured. So how many migrated in 1990? As per Indian government 56,487 families are in Jammu, 19,338 are in Delhi and 1995 in other part of India. “Consequently, 16 years of CI have altered the social and economic lives of people. No section of the Kashmiri society has escaped the consequence of violence and counter violence” (Report of the European Parliament Committee on Foreign Affairs, 2004). The human costs of war and extent of damage caused is staggering. Indian government has funding the R&R of those killed by the security forces. “Out of a total allocation for the social welfare department for 2004-05 of Rs. 153Cr a sum of Rs 18 Cr was sanctioned for a corpus ear-marked for social welfare council which is supposed to provide the interest earnings to the victims” (Report of the European Parliament Committee on Foreign Affairs, 2004).

Laws at Variance with Human Rights

a) Jammu and Kashmir Public Safety Act 1978

Under this act the government may detain a person on the ground of the security and public order. Detention without charge is possible for up to one year where there is a threat to public order and up to two years where there is a threat to the security of the state. There is no need to inform the detainee of the grounds of detention. The state authorities may also detain persons from Jammu and Kashmir in place outside the state, thereby making access to the persons more difficult. They enjoy impunity against any lawful scheduled for anything done in good faith.

Its high discretionary tone undermines efforts to discover the where about of arrested persons and the quest for habeas corpus. If a person is released from the umbrella of another law the person may still be apprehended under this law.

b) Terrorist and Disruptive Activities (Prevention) Act (TADA) 1987

The detention without charges is possible for 189 days. TADA defines “disruptive activity” as any speech, article or other act that supports secession from the union. This is a blatant contravention of the right to freedom of speech. TADA also contains provisions which contravene the presumption of innocence. All proceedings under TADA are in camera unless the public prosecutor requests otherwise.

Two special courts in the state are those of Srinagar and Jammu but for a while the operations of the courts in Srinagar were suspended, thereby making life more traumatic for those seeking bail and trial close to home.

c) Armed Forces Special Power Act 1990

The act gives authority’s power to declare state to be a disturbed area and to authorities the use of the armed forces in aid of the civil power. This provision provides the basis for military to suppress legitimate political activity. In a disturbed area any member of the armed forces down to and including non-commissioned officers can authorize the use of lethal force in circumstances which include contravention of any law prohibiting the assembly of five or more persons or the carrying of things capable of being used as weapons. No one acting thus can be tried without the leave of the central government.

d) Prevention of Terrorism Act (POTA)

This is another instrument, which is incompatible with fundamental rights in the Indian constitution and the international human standards. Four main provision are (i) detention without trial (ii) confession before police as evidence (iii) denial of public hearing of trials (iv) criminalisation of legitimate political dissent and free speech.

India has been criticized on the national level for these laws. The high authorities of the UN also made some objections on these laws. The Indian government did not look positive to solve this issue because of the some Hindu foundations like Shiv-Sena and the other force Indian government to take the Kashmir from Pakistan at any cost. “In 1991, during the presentation of the second periodic report to the Human Rights Committee, which monitors compliance with international standards, several members of committee were dissatisfied with the implementation of the covenant of Indian law and practice” (Kashmir Times, 2004).

There are other laws, which have been promulgated or revived with negative impact on human rights. The judicial system in Kashmir according to the international commission of jurist report is almost dysfunctional of failure to address bail applications and for not putting on trial those charged with offences arising out of the disturbances. But over all there is a need of to reconcile the laws which Indian emphasizes on the Kashmir and the people of Kashmir.

The people of Kashmir suffer very badly with this unresolvable issue between Pakistan and India and they are suffering from it a long time ago. So now Indian and Pakistani governments should be sitting together and try hard for resolving this conflict for the better sake of lives and economy of the Kashmir.

Human Rights Situation in Occupied Kashmir

International human rights organization such as the Amnesty International, Human Rights Watch, Physicians for Human Right have regularly reported human rights violations in the occupied Kashmir. Their reports can be divided into two periods. Those that were filed between 1990 and 2003, when militancy in Kashmir was intense and relations between the two countries were less than normal to say the least. And those that were filed after the militancy had considerably subsided and a thaw in relations between the two countries had set in.

For the first period 1996 report of Human Rights Watch Asia and for the second period 2004 report of the European Parliament's Committee on Foreign Affairs are worth mentioning. As to the Watch report, it holds the Indian government responsible for summary executions, torture, illegal detentions, disappearance, rape cases and election related intimidation of voters. It is estimated that the human rights situation started deteriorating from 1995 onward when the Indian government began systematically using "renegades" — described by the Watch as India's secret, illegal army, for its own purpose. It is observed that the Indian government did not make any public investigation into anyone of the documented cases of torture, nor has it ever announced that a number of the security forces were prosecuted or punished for torture. "On custodial killings, it stated that no security forces personnel were prosecuted. According to the Watch in the few high profile cases soldiers were tried for excessive use of force rather than for murder, which should have been done" (Amnesty International India at <http://web.amnesty.org/web.nsf/print/2004-ind.summary.eng>).

According to Watch reports the Indian authorities did little to curb human rights violations by the security forces. In the rare cases in which investigations were made, the most severe punishment was generally limited to dismissals or suspension from duty. The Watch also brings out that article 6 of the covenant on civil and political rights expressly prohibits derogation from the right to life. "It points out that even during emergency no one shall be arbitrarily deprived of life. It also underlines that article 4 and 7 explicitly ban torture even in time of national emergency or when the security of the state is threatened" (The Hindu, 2004).

The Watch also reported human rights violations by militants. The militants have launched indiscriminate attacks that have killed and injured hundreds of civilians. They have made use of car bombs and other explosive devices in crowded places. They have thrown grenades at houses and government buildings

killing and wounding civilians. They have kidnapped civilians including foreigners and held threatened, assaulted and some cases murdered Hindu residents of the valley. "They have kidnapped and summary executed informers and collaborators. They have also kidnapped and murdered civilians" (Reports of Human Rights Watch, Asia, 1996).

The report of the European Parliament's Committee on Foreign Affairs released in 2004, after a visit to the disputed territory is quite instructive on the current human rights situation in the occupied Kashmir. Whereas it census militants for human rights abuses its condemnation of India is particularly strong. It observes that human rights abuse by the Indian security forces feeds the cycle of violence. "It points out the international committee of the Red Cross cannot visit at detention centers and the UN special rapporteur on torture has not been granted permission to visit Kashmir since 1989" (Reports of Human Rights Watch, Asia, 1996).

Mr. David Bowe, a member of the delegation, says: Kashmir has been turned into the most beautiful prison in the world. This analysis shows that the human rights situation in Kashmir is as grim today as it was during the period of the so-called cross border terrorism.

How to Improve the Situation

This prevailing situation can be improved in a number of ways:

1. The government of India should adopt the National Human Rights Commission's recommendation that the magistrate, or other state official, accompany security forces on cordon search operations to reduce the potential for abuse, which would also lower the risk to security forces of false accusations being made against them.
2. NGO's, Human Rights NGOs need to coordinate efforts avoid turf wars and maintain to more even handed position on abuses. In particular:
 - ❖ The National Human Rights Commission (NHRC) should fulfill its mandate to provide training for human rights organizations and the regional office of the UN High Commissioner for Human Rights in Bangkok should help as allowed under its mandate to assist statutory bodies.
 - ❖ The UN High Commissioner for Human Rights should use his good offices to impress on India that it would be useful for rapporteurs on torture disappearances extra judicial killings and human rights defenders to take greater interest in Kashmir, particularly in the provision of technical advice.
 - ❖ Many national and international groups need to expand human rights training. Amnesty International has done training through its national chapter but organizations should expand availability of specially tailored, internet-based human rights education module designed for a situation such as Kashmir.

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- ❖ The International Committee of Red Cross (ICRC) should take up the issue of common article 3 with the Indian government asking it to restrict operation by security forces. Under this article, an impartial humanitarian body like ICRC may offer its services to the party in conflict.
- ❖ As mentioned above, Prevention of Terrorism Act (POTA) repeal would go a long way toward improving the human rights situation in Jammu and Kashmir. The government should follow all safeguards in the implementation of other special laws, such as the Public Safety Act (PSA), the Armed Forces Special Powers Act and Disturbed Areas Act. It should ensure periodic review of their utility, amending them where appropriate. Any special powers must be balanced by review procedures that work. Indeed, some provisions of these laws are draconian and need to be reviewed to bring them into line with standards and commitments to which India has international obligations. Special laws like POTA have been mostly used against non-terrorists such as political activists, union leaders and others. Over-reliance on these laws does not improve security but tends to intensify human rights abuses.
- ❖ The government must ensure that families of those held are informed as rapidly as possible. Disappearances have become a source of corruption as families are forced to pay for information on missing relatives.
- ❖ The Armed Forces Special Power Acts create army authority without accountability, a serious problem in any democracy and a situation that needs review as judicial rulings have suggested.
- ❖ Accepting the National Human Rights Commission's 2002 recommendations for amendments to the protection of Human Rights Act 1993 under which it operates, to give it the right to investigate allegations of human rights violation by security forces including army, paramilitary forces and the police.
- ❖ The Indian government has made much use of surrendered militants in security operations as informants and as police. This policy has caused serious human rights abuses and undermined the accountability of the security forces. The creation of semi-official or official militias and proxies has ended up causing more problems than it has solved. So surrendered militants should not be used in military operations.
- ❖ India must honour the pledges that the question of Kashmir would be decided in accordance with the wishes of the Kashmiris. Both India and Pakistan had accepted that the acquisition of Kashmir would be decided through the democratic method of free and impartial plebiscite.

Conclusion

The political history of Kashmir since 1947 shows that the Kashmiris have resisted India's efforts to integrate Kashmir fully into Indian federation. The Kashmiris have faced the wrath of India's security forces but they did not change their mind on the future of Kashmir. This problem has negatively affected the

relations between India and Pakistan. There is a need to seek a peaceful political solution of the Kashmir problem. For this purpose Pakistan and India should held a regular dialogue for evolving methods to implement the UN resolutions on Kashmir. Meanwhile the Indian Government should adopt ways to control human rights violations by its security forces in Indian administered Kashmir. The hardships of the people of Kashmir should be addressed on a priority basis. The suggestions made in this article can help to improve the situation of ordinary people in India administered Kashmir and create an environment for a just solution of the Kashmir problem.

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