

Kashmir Dispute: A Historical Perspective

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Abstract

Conflict over Kashmir by India and Pakistan is considered to be a nuclear flash point in South Asia. In this paper an effort is made to focus on Kashmir dispute with wide range of points in the historical perspective as well as onward development bilaterally and at UNO level. In conclusion the paper suggest third party mediation as well as constructive role on the part of international community in order to get more flexibility by all parties concerned to resolve this chronic dispute.

(I)

Introduction

Kashmir issue is a long outstanding question on UNO Security Council agenda, brought by India on 1st January 1948. The prolonged nature of the unresolved made it highly complex political dispute. To comprehend the exact nature of the Kashmir issue, it is imperative to approach this with all its historical background. Both countries have fought inconclusive wars. Mediation efforts and intermittent dialogue proved futile exercise not providing solution acceptable to all the parties concerned. Security Council resolution could not finally end the conflict due to lack of force and political will to implement its resolutions. After joining the world nuclear club by both countries, Kashmir dispute is serious source of tension and constant threat between India and Pakistan. Had the issue left unresolved for too long, it could lead an armed conflict – a nuclear one, which would be disastrous for South Asia.

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Historical Background

The State of Jammu and Kashmir, which is the official name of Kashmir, comprised of many regions, i.e. vale of Kashmir, Ladakh and Jammu, stretched beyond Baltistan and numerous hill states.¹ The capital Srinagar is situated in the center of valley. Because of lofty snow capped mountains, rivers and streams, Kashmir is called 'Heaven on Earth'. The total area of Kashmir is 8,4471 sq. miles and its total population is 13 million of whom 77% are Muslims.² The population of Kashmir is more than the individual population of 115 independent countries of the world; and the area is more than the individual areas of 80 free nations. Her immediate neighbours are China, Pakistan, India and Afghanistan and a gateway to Central Asia that signified its strategic importance.

Before Muslim rule in Kashmir, she experienced the rule of twenty-one dynasties of which eighteen were native. The first great king of the Muslim period was Shahabuddin who came to the throne in 1354, followed by Qutub-ud-Din and Sultan Ziaul-Abidin, who ruled Kashmir as a sovereign ruler³ Akbar the Great invaded Kashmir in 1586. "The conquest of the valley by the Mughal is generally regarded as marking the beginning of Kashmir's modern history. For nearly two centuries, Kashmir was the northern most point of an empire whose power base was situated in Delhi".⁴ With the decline of Mughal Empire, Kashmir was annexed by the Afghans who ruled it with an iron fist for sixty-seven years (1752-1819). Afghan rule was ended with Sikh invasion and their tyrannical rule lasted for twenty- seven years. British defeated Sikhs in 1846, the British sold Kashmir to Maharaja Gulab Singh for the sum of 7.5 million rupees as a result of Treaty of Amritsar.⁵ Maharaja Gulab Singh and his dynasty ruled Kashmir in most barbaric way until 1947.

1 Alustair Lamb, *Kashmir, A Disputed Legacy 1846-1990*, (Hertford Shire: Roxford Books, 1992), p.4.

2 *Ibid.*

3 François Bernier, *Travels in the Mughal Empire, 1656-1668*, (Delhi: 1969), p.400.

4 Victoria Schofield, *Kashmir in Conflict*, (London: 2000), p.3.

5 Guru Raj Rao, *Legal Aspects of the Kashmir Problem*, (London: Asia Publishing House, 1967), p.153.

(II)

(a) The Partition of India and the Fate of Princely States

The State of Kashmir was a part of the British Raj in India but not directly ruled by the British. Princely India consisted of over 550 states of varying sizes, making up almost two-fifth of the Empire. Essentially feudal, these states were associated directly with the Crown through the principle of 'paramountcy', a vague concept under which the British granted the princes considerable autonomy of action in exchange for their political loyalty and the surrendering of foreign policy and defence to the supremacy of British imperial interests.⁶

Whatever constitutional reforms, though limited, introduced in British India. From 1890s until the adoption of the 1935 Government of India Act, the doctrine of paramountcy shielded the princes from the governments along representative lines, although some chose to do so through expedience.⁷ As the British moved towards the inevitability of Indian independence the fate of princely states was sealed. In accordance with the 3rd June plan, which was given the force of law by the Indian independence Act on 15 July 1947, new Dominions of India and Pakistan would come into being after the division of the British India and the Princely States had a prerogative to decide the future either by acceding to one of two new Dominions or by making some other arrangements with them.⁸ The majority of the princes wanted to have some kind of independence and they expressed this clearly in a memorandum to the Cabinet Mission on 12 May 1946. The Princes did not want the paramountcy to be transferred to the Indian government. Both Wavell and Mountbatten were slow to disabuse several leading princes of the notion that, once paramountcy had lapsed, they could become sovereigns in their own rights. By July-1947, the newly constituted Department of States clarified the following procedures for the transfer of power for the Princely States. In the first instance,

6 Hewitt, Vemon, "Kashmir: The Unanswered Question", *History Today*, Vol.47, No. 1, Sept. 1997, p.1.

7 *Ibid.*

8 Quoted in P. Zieglar, *Mountbatten, Official Biography*, (London: William Collins & Sons, 1985).

a temporary facilitating agreement would be signed that allowed for the continuation of transport, trade and communication links with either dominion (standstill agreement). The Princes would then be asked to sign a permanent Instrument of Accession, in which power was handed over, in the first instance, in the areas of external affairs, finance and defence to either India or Pakistan.

Significantly, the Dogra kingdom of Kashmir was one of the few large Princely States that, due to its geographical location, could join either India or Pakistan. Despite enormous pressure by Nehru, Patel and Mountbatten and little persuasion by Pakistan, Maharaja Hari Singh was thinking of joining neither state, but of becoming an independent country in his own right. Jammu and Kashmir had signed standstill agreements with both India and Pakistan but had delayed on signing the Instrument of Accession. Apart from Kashmir, the States of Junnagadh and Hyderabad do not accede to any Dominion. India annexed these states violating the rules and procedures of the partition. Fate of Jammu and Kashmir was not different than these states. Arbitrary later changes in the Radcliff Award giving Gurdaspur and Pathankot to India by Mountbatten providing her an access to Kashmir is believed to please Nehru who was adamant to annex Kashmir by hook or crook.⁹ Had the whole of Gurdaspur District been awarded to Pakistan, according to Lord Birdwood, 'India could certainly never have fought a war in Kashmir'.¹⁰

(b) Kashmir's Accession to India

As a result of indecision of Maharaja Hari Singh to join either state or to declare independence, he was facing tremendous amount of pressure by the India government to accede to her. On the other hand, Pakistan was expecting his decision in her favour keeping Muslim majority state. When tribal incursions erupted from the vicinity of Poonch, a district close to the new Pakistani border, forced Maharaja to join India in exchange for Indian military help. In his letter to the Governor General of India, Mountbatten, on October 26th the Maharaja blamed Pakistan for the invasion alleging

9 Phillips and Wainwright, *The Partition of India*, (London: 1956), p.531.

10 Lord Birdwood, *Two Nations and Kashmir*, (London: Oxford, 1956), p.74.

that it had failed to honour the standstill agreement as part of a concerted effort to coerce Hari Singh into joining Pakistan. Maharaja, on the behest of Nehru, also wrote that he intended to appoint Sheikh Abdullah, leader of the National Conference and a man closely associated with Nehru, to the post of prime minister in a new interim government. It is argued by some analysts that either the signature has been forged, the date changed, or the whole document fabricated, whereas others have suggested that the instrument of accession was got signed by V.P. Menon on 27th October, 1947 while Maharaja had left Srinagar for Jammu, losing virtually the control of capital.¹¹ Moreover, Indian army was sent before the accession was actually signed. In this case, article 49 of the Vienna Convention of Law of Treaties apply which has the customary law which states: “A treaty is invalid if its conclusion is procured by the threat or use of force in violation of principles of the charter of the United Nations”.¹² However, it is noteworthy that the accession as agreed by both parties was ‘provisional’. In reply to the Maharaja’s letter Mountbatten wrote: “In consistence with their policy that in the case of any State where the issue of accession should be decided in accordance with the wishes of the people of the State...” Adding further, “It is my government’s wish that, as soon as law and order have been restored in Kashmir and her soil cleared of the invaders, the question of the State’s accession should be settled by a reference to the people”.¹³

(III)

UNO’s Role

(a) **Security Council Response:** On 1st January 1948, India decided to stake the Kashmir dispute to the U.N by instituting a formal complaint against Pakistan in the Security Council.¹⁴ India evoked Chapter VI (article 35) (20)¹⁵ under which parties to the

11 Lamb, *Birth of a Tragedy*, (Hertfordbury: Oxford Books, 1994), p.96.

12 Quoted in Ijaz Hussain, *Kashmir Dispute: An International Law*, (Islamabad: National Institute of Pakistan Studies, 1998), p.41.

13 *Ibid.*, p.75.

14 *Ibid.*, p.11.

15 *Ibid.*

dispute seek to settlements of disputes by “Negotiations, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their own choice. In this chapter there is no provision for any action against an aggressor; whereas Chapter VII of UN deals with acts of aggression.¹⁶ Consequently two resolutions were adopted in the Security Council. First resolution of 17 January 1948¹⁷ asked the two governments to refrain from aggravating the situation and to do every thing within their power to improve the situation. It also requested them to immediately apprise the Council of any material change in the situation.¹⁸ By virtue of the second resolution adopted on 20 January, it established the United Nations Commission for India and Pakistan (UNCIP), mandated to play a mediator role. The Commission composed of three members (later increased to five), one to be nominated by each government and the third by two of them. The Commission was asked to proceed to the spot as quickly as possible in order to check developments and inform the Security Council about the situation at ground and its conclusions and proposals. Commission delayed its operation for the next six months due to Indian government’s delaying tactics.

Security Council’s president General Andrew McNaughton (Canada) presented a draft resolution.¹⁹ It envisaged the withdrawal of all irregular outside forces from Kashmir; the establishment of law and order followed by a withdrawal of the regular forces; the return of all Kashmiri refugees to the state; the establishment of an interim administration acceptable to the people of Kashmir; and finally the organization of a plebiscite under the authority of the Security Council. India accepted the principle of the plebiscite but insisted that Sheikh Abdullah’s pro-India government should remain in office; and that her troops should also remain in Kashmir. Mr. Austin (USA) commented that India’s desire was that “the Security Council should take a position which would amount to that of the ally in a war, and should pull off Pakistan and allow India to

16 *Ibid.*

17 Resolution adopted by the Security Council, 17 January 1948 (S/651).

18 Resolution adopted by the Security Council, 20 January 1948 (S/654).

19 SCOR, 3rd year, 236th meeting, 28 January 1948, p.283 as quoted in Ijaz, p.41.

finish the job by force against the tribesmen. That is very last position the SC ought to take".²⁰ However, as a result of the Indian diplomatic endeavour Security Council adopted Resolution of 21 April 1948, which in many respects differed from the one put forward by General McNaughton, the President of the Security Council. Under the new resolution Pakistan was asked to try to secure the withdrawal of the tribesmen and India was allowed to retain the minimum forces necessary to help the civil administration to maintain law and order. It was also stipulated in the resolution that the UN Secretary General would appoint a plebiscite administrator who was to act as an officer of the State of Jammu and Kashmir.²¹

(b) The Role of UNCIP

Despite Security Council resolution, the Commission did not reach the Indian sub-continent until the first week of July 1948. Amidst the mounting tension between India and Pakistan, adopted two resolution on 13 August 1948 and 5 January 1949. The first resolution²² consisted of three parts. According to Part I, the Government of Pakistan and India were to observe cease-fire to the State of Jammu and Kashmir and according to Part II, they re-affirm their wish that the future status of the State was determined by the will of the people of Kashmir. Part II of the resolution stipulated the following principles on the basis of which truce agreement between India and Pakistan was signed (a) as the presence of Pakistani troops in the State constituted a material change in the situation, the Government of Pakistan agreed to the withdrawal of its troops; (b) The Government of Pakistan would try to secure the withdrawal from the State of the tribesmen and Pakistan nationals not normally resident there; (c) pending the final settlement, the territory evacuated by the Pakistani troops should be administered by the local authorities under the surveillance of the Commission; (d) following the notification to the Indian government of the withdrawal of the tribesmen and Pakistani nationals, the latter would begin to

20 SCOR, 3rd year, 294, meeting 11 February 1948, p.118, *ibid*.

21 Ijaz, p.16.

22 Resolution adopted by UNCIP, 13 August 1948 (S 1100; Para 75), pp. 180-83.

withdraw the bulk of its forces; (e) pending the acceptance of the conditions for a final settlement, the Indian government would maintain within the lines existing at the moment of the cease-fire the minimum forces considered necessary to assist local authorities in the maintenance of law and order.

Accepting to the terms of the resolution of 5 January,²³ the accession of the State would be decided through a free and impartial plebiscite which would be held following determination by the Commission, that the cease-fire and truce arrangements in terms of the resolution of 13 August had been carried out. The UN Security Council, in agreement with the Commission, would nominate a plebiscite Administrator. The resolutions of the 13 August 1948 and 5 January 1949 together spell out the terms and conditions for the settlement of the Kashmir dispute. Consequently a cease-fire agreement came into force with effect from 1 January 1948. Except for that the two resolutions have remained deal letter till today.

(c) General A.G.L. McNaughton's Mission

Security Council asked its President General McNaughton of Canada to undertake the task. General McNaughton, after several meetings with the delegates of both countries, had suggested simultaneous withdrawal of both armies to a point where their presence would 'not cause fear at any point of time to the people on either side of the cease-fire- line'.²⁴ The northern areas of Gilgat and Baltistan would be administered by the local authorities under UN supervision. The proposal was rejected by India and she insisted that Azad Kashmir forces must be disbanded and that the northern area of Gilgat and Baltistan must also be put under the control of the Indian administrator. Despite Commission clarification that the resolution of disbanding of Azad Kashmir forces, India did not accept the proposal.²⁵

23 Resolution adopted by the UNCIP, 5 January 1949 (S/1 196) para 51.

24 Zulfiqar Khan, "India & Pakistan: Conflict Over Kashmir: A Historical Perspective", *Journal of Social Science & Humanities*, Allama Iqbal Open University, Islamabad, Vol.7, Autumn, 2000, No.2.

25 For details see Sarwar Hussain, *Pakistan And the United Nations*, (New York: Manhattan Publishing Co., 1960).

(d) Sir Owen Dixon's Mission

Following the adoption of resolution on 14 March 1950, by the Security Council the UNCIP had wound up and in its place created the office of the United Nations Representative for the purpose of demilitarization of the state. Sir Owen Dixon was appointed in the office. He made strenuous efforts to get two countries to agree to his programme of demilitarization but failed to do so because of India's refusal. Sir Owen Dixon then proposed to have a plebiscite in a limited area including or consisting of the valley of Kashmir and partition of the state between both the countries,²⁶ but could not be materialized due to India's refusal.

In his report the Security Council Sir Dixon stated:

.... In the end I became convinced that India's agreement would never be obtained to demilitarization in any such form or to provisions government the period of the plebiscite of any such character, as would in my opinion permit of the plebiscite being conducted in conditions sufficiently guarding against intimidation and other forms of influence and abuse by which the freedom and fairness of the plebiscite might be imperilled.²⁷

Sir Owen felt extremely frustrated in his mission and eventually resigned. The Security Council accepted his resignation in its resolution passed on 30 March 1951; and appointed Dr. Frank Graham in his place.

(e) Dr. Frank Graham and Commonwealth Prime Ministers Mediation Efforts

Pakistan succeeded to get Kashmir question on the agenda of commonwealth Prime Ministers conference to be held in Jan 1951. As a result there was seven hours long discussion on Kashmir. The Australian Prime Minister, Robert Menzies proposed three alternatives of stationing the troops in Kashmir composed of (a) a commonwealth force; (b) a joint force of India and Pakistan; or (c) a United Nations force during the period of plebiscite. Pakistan agreed to each of these proposals whereas India rejected them all.

26 SCOR, 5th year meeting supplement for September to December 1950, p.36, para 52, quoted by Zulfiqar.

27 Ijaz, p.24.

Dr. Frank Graham's mediation efforts lasted for about two years. He presented five reports to Security Council during this period. Despite his best endeavours no progress could be made simply because of India's non-cooperation and rejecting all the proposals. Finally he recommended to the Council that the parties be left along to settle the dispute bilaterally.²⁸

(f) India's Unilateral Action and Jarring's Mission

When Nehru realized that the world community could not force India for the implementation of the Security Council resolutions, he managed with the connivance of Sheikh Abdullah to convene the Constituent Assembly in the Indian held Kashmir. The Assembly adopted a constitution by virtue of which autonomy of Kashmir in all matters except foreign affairs, defence and communication was recognized. This was contrary to the UN resolution on Kashmir. Pakistani Foreign Minister said it was deliberately designed to bypass the UN and to prevent the holding of free and impartial plebiscite.²⁹ However, the Security Council passed a resolution on 30th March 1951 and made it clear that 'any action that Assembly might attempt to take to determine the future shape and affiliation of the entire state or any part thereof would constitute a disposition of state in accordance with the above principle.'³⁰

Following Sheikh Abdullah's arrest, Bakhshi Ghulam Mohammad was made prime minister.³¹ On his release from prison Sheikh Abdullah disclosed that he had proposed to the Indian Prime Minister to choose one of the following three solutions: (i) Independence of the entire state; (ii) independence of the entire state with India and Pakistan exercising joint control over defence and foreign affairs; (iii) an overall plebiscite.³²

Following the Security Council's resolution of 22 January 1957, which affirmed the right of self determination of Kashmir to decide

28 *Pakistan News*, 7th July 1951, Karachi, Pakistan.

29 SCOR, 6th year supplement for January-March 1951, document 5/2071, Rev./1, pp.25-27.

30 Ijaz, p.25.

31 *Ibid.*

32 Resolution 126, 2 December 1957, quoted in Schafeld, p.87.

their own future, Dr. Gunnar Jarring, the Swedish President of the Security Council visited the sub- continent in order to assess the situation in Kashmir. He reported that for the time being the present demarcation line must be respected and that the use of force to change the status quo must be excluded. The Security Council subsequently passed a resolution expressing his concern over 'the lack of progress towards a settlement of the dispute'.³³

Future development in the Security Council was marred of the cold war tussle of super powers, as Soviet Union decided to veto every fresh resolution to resolve this issue.³⁴ But, even though, the United Nations had failed to ensure that the plebiscite was held, the idea in principle of referendum to ascertain the wished of the people was handed down to a new generation of Kashmiris. They still are hopeful of the world body to play its due role for giving their right of self-determination.

(IV)

Failed Bilateralism

(a) **Endless Talks:** On persuasion of Anglo-American team, led by Duncan Sandys, the Secretary of State for Commonwealth Relations, and Averre; Harrinon, the Assistant Secretary of state for the East Affairs, Nehru met Ayub Khan. In a joint statement issued on 29 November, 1962, both leaders announced that a renewed effort should be made to resolve outstanding differences between the two countries on Kashmir and other related matters. The first round of talks over Jammu and Kashmir between India and Pakistan was held at the end of December 1962. During this and subsequent meetings various proposals were put forward whereas India suggested the ceasefire line should become the international boundary, with a few minor realignments around Poonch, Pakistan wanted to draw the boundary far to the east, giving themselves the whole state with the exception of south-eastern Jammu. In April 1963 Walt Rustow was sent by President Kennedy to India and Pakistan to assess the prospects for agreement between the two

33 Jain, R.K., *Soviet-South Asian Relations 1947-78*, Vol. 1 & 2, (New Delhi: 1978), p.45.

34 James Sir Morrice, *Pakistan Chronicle*, (London: 1993), p.98.

countries. But he did not find a driving determination to settle the quarrel on either the India or the Pakistani side.³⁵

Despite six round of talks, which were held intermittently until May 1963, and in which Bhutto and Swam Singh, Pakistani and the Indian foreign ministers were the principal negotiators, no agreement could be concluded.³⁶ However, the Indian government proposed that both countries should seek only to peaceful methods to settle their differences and that neither side should seek to alter the status quo in Kashmir. Bhutto did not endorse the 'no war declaration, proposed by India, but gave the assurance that Pakistan did believe in peaceful methods.

It is construed that India was no more serious to resolve the dispute but availed the opportunities of bilateral talks just for eyewash to the international community as well as to pacify the political unrest in the valley. Nehru, on 16 June 1963 declared that 'Kashmir was, is and will continue to be an integral part of India'.³⁷ Meanwhile, dramatically Sheikh Abdullah, whose government was dismissed and imprisoned in 1953, was released in 1964. He flew to Pakistan to sell a proposal of a confederation between India, Pakistan and Kashmir and discussed the idea with President Ayub Khan but could not be materialized due to untimely demise of Nehru on 27th May 1964.³⁸ Nehru's successor Lal Bahadur Shastri rushed through a series of constitutional amendments despite strong opposition. The head of State, under the amendment was not to be elected by the State legislator rather Delhi government was vested the privilege to nominate any one. Sheikh Abdullah protested to that and was again arrested.

(b) Indo-Pak war of 1965 and Tashkent Declaration

After successful visit to China in March 1965 and later his first ever visit to Moscow, Ayub Khan had finally convinced to launch

35 *Ibid.*, p.102.

36 G.W. Chaudhry, *Pakistan Relations with India*, (London: Pall Mall Press Ltd., 1968), p.140.

37 A.H. Suhurwardy, *Kashmir; The Incredible Freedom Fight*, (Lahore: Jang Publishers, 1991), p.47.

38 *Ibid.*, p.48.

‘Operation Giberalter’ to get Kashmir liberated. He was assured that the said operation would not result in a full- scale war between the two countries and that it would enhance his public standing. The plan was drawn on the false assumption that the Indian army, still suffering from the after effects of its defeat by the Chinese, and not yet bolstered by its planned expansion, was inferior to their own. Whatever its real motives, it resulted in a full- scale war between India and Pakistan.³⁹ The United Nations Security Council intervened and managed a ceasefire on 23 September 1965. Afterwards the Soviet Premier Kosygin invited Ayub Khan and Lal Bahadur Shastri to Tashkent. The meeting was held on 4th June 1966 and an agreement known as the Tashkent Declaration was signed on 10th January 1966.

Tashkent Declaration emphasized that both countries seek a solution to their disputes through peaceful and bilateral means. The Declaration urged both parties to resolve the Kashmir problem through direct negotiation. Ayub Khan having accepted a return to the status quo, which was far removed from Pakistan’s declared war aims. ‘While the Tashkent declaration noted the existence of the Kashmir dispute it effectively put the issue into cold storage’. The Tashkent Declaration was taken as defeat by Pakistanis and Kashmiris. Morrice James writes: ‘For them Ayub had betrayed the nation and had inexcusable lost face before the Indians’.⁴⁰

(c) Indo-Pak war of 1971 and Simla Agreement

Following the political turmoil after Sheikh Mujibur Rehman victory in East Pakistan, ‘an eager India interfered’; and there was another armed conflict between India and Pakistan. On 16th December 1971, the Pakistan army surrendered to India at Dacca. India retained 94,000 prisoners of war, mainly Pakistani soldiers. The Indians had also occupied about 5,000 sq.miles of Pakistani territory in Sindh including Rann of Kutch. Although the war was not extended to Jammu and Kashmir, it remained a stumbling block to complete normalization of relations. In an open letter to President Richard Nixon, Indra Gandhi wrote: ‘We do want lasting peace with

39 James, p.126.

40 Schafleld, p.117.

Pakistan. But will Pakistan give up its ceaseless yet powerless agitation of the last 24 years over Kashmir?⁴¹

At the end of June 1972, Simla agreement was signed between Indira Gandhi and Zulfikar Ali Bhutto who had become Pakistan's new President. The clause relating to Jammu and Kashmir in the Simla Agreement is inconclusive: In Jammu and Kashmir, the line of control resulting from the cease-fire of December 17, 1971 shall be respected by both sides without prejudice to the recognized position of each side. Neither side shall seek to alter it unilaterally, irrespective of mutual differences and legal interpretation. Both sides further undertake to refrain from threat or use of force in violation of this line. Both governments further agreed to meet again 'at a mutually convenient time in the future to discuss further the modalities of a final settlement of Jammu and Kashmir and the resumption of diplomatic relations.'⁴² Subsequently, without any further commitments other than those expressed in the agreement, Bhutto secured the release of the prisoners of war and 5139 sq.miles of territory. Simla Agreement, however, did not terminate the UN Security Council resolutions for the right of self-determination of Jammu and Kashmir people.

(d) Lahore Declaration.

After India's underground nuclear test in Rajasthan on 11 and 14 May 1998, Pakistan also conducted five tests in Chaghi, Baluchistan on 28 May 1998. On 30th May, 1998, there was a further announcement of one more explosion in order to complete its series of tests. Following Pakistan's detonation, the international community again expressed its disapproval by imposing economic sanctions. Pakistan claimed that its nuclear capability would serve as a deterrence to protect its territorial integrity and sovereignty. Foreign Minister Gohar Ayub Khan said: 'There is a possibility of war, there is a flash point, the world leadership must come as a third party and encourage them to resolve the Kashmir dispute.'⁴³

41 *Ibid.*

42 Simla Agreement, sub-clause 4(ii) as quoted in Lamb, *A Disputed Legacy*, p.297.

43 Quoted in *The Nations*, Lahore, 31 July 1995

Atal Vajpayee made a historic visit on the inaugural run of the Delhi-Lahore bus service on 20th February, 1999. In a document, which became known as the Lahore declaration. Prime Ministers Nawaz Sharif and Atal Vajpayee agreed to 'intensify their efforts to resolve all issues, including the issue of Jammu and Kashmir'. They further agreed to refrain from intervention and interference in each other's internal affairs.⁴⁴ Moreover, India and Pakistan had reiterated their determination to implement the Simla agreement 'in letter and spirit'. But Kashmir was not an issue to be resolved between India and Pakistan but with the consent of Kashmiris as well.

(e) Kargil Confrontation

Barely three months after the Lahore declaration, the two countries found themselves closer to war than they had been since 1971. Kargil district, close to the line of control, northeast of Srinagar, was the target of particularly severe attacks. Although the Kargil war was fought by *mujahideen* with the active support of Pakistani Army. India immediately started air strikes some of the planes crossed the line of control into Pakistani airspace were shot down. The air strikes, however, continued and India also announced plans to send in ground troops. In view of the difficult terrain in which the *mujahideen* had taken up their positions Pakistan's assertions that they were entirely indigenous 'freedom fighters', met with considerable skepticism. In the tense atmosphere of the continuing conflict in early July, Nawaz Sharif visited President Clinton in Washington. Following their meeting Clinton and Sharif issued a statement, which affirmed 'concrete steps' for the restoration of the line of control in accordance with the Simla Agreement. Clinton agreed to take 'a personal interest in encouraging an expeditious resumption and intensification" of Indo-Pakistani bilateral efforts, once the sanctity, of the line of control was fully restored.⁴⁵ Defending his position to withdraw from Kargil, Sharif said their action had vindicated our stand that

44 Lahore Declaration signed by Prime Ministers of India and Pakistan on 21 February 1999.

45 Waheguru Pal Singh Sidhu, *In the Shadow of Kargil: Keeping Peace in Nuclear South Asia*, International Peacekeeping, Vol.7, No.4, Winter 2000, pp.189-206.

Kashmir is a nuclear flash point'.⁴⁶ Former foreign minister Sardar Asif Ali called it a 'complete diplomatic surrender'. 'Despite the official Pakistani perception of victory in internationalizing the Kashmir issue in Kargil, the loss of Pakistan's international credibility was immeasurable'.⁴⁷

(f) Agra Summit

General Pervez Musharraf had deposed Nawaz Shareef in a coup detent in October 1999. On the invitation of Indian Prime Minister he visited India in coverage in international media. It was hoped that military government in Pakistan, having all powers in hand without any constitutional and political constraints would be able to solve the chronic crises of Kashmir provided the seriousness of Indian leadership. Despite five hours one-to-one meeting between the two leaders nothing could emerge. Even Agra Declaration or joint communiqué could not be issued presumably on the issue of Kashmir. The only positive result for Pakistan that emerged out of Agra Summit was to highlight the issue at international level and let the world know that Pakistan is serious to settle the dispute by peaceful means. But solution of this chronic issue needs a political will as well as bold initiative on the part of both countries leadership and world community as well.

Once again India and Pakistani troops amassed on the borders and facing eye ball to eye-ball, following December, 2001 terrorist attack on Indian parliament. Following international pressure India withdrew its forces followed by Pakistan in October 2002. The incident was not sparked by simple terrorism but by the half-century struggle over Kashmir that remains a festering store in South Asia. President Pervez Musharraf reiterated that force cannot resolve the Kashmir question and invited Indian Prime Minister for meaningful dialogue on Kashmir.

46 Nation wide broadcast and telecast of Prime Minister, Nawaz Sharif, 12 July 1999.

47 Schafield, p.220.

(V)

Proxy War

From the beginning India collaborated with Sheikh Abdullah's National Conference, which according to Nehru's opinion commanded people's confidence in Jammu and Kashmir. By the passage of time Sheikh Abdullah had also begun to shift emphasis by pressing for greater autonomy within the Indian Union rather than drawing attention to the un-held plebiscite. 'There is no quire with the Government of India over accession; it is over the structure of internal autonomy. One must not forget that it was we who brought Kashmir into India, otherwise Kashmir could never have become part of India'.⁴⁸ In order to capitalize on Abdullah's more favourable stance towards India, Indian government agreed to restore Article 370 giving special status to Kashmir, known as Kashmir accord. Although Kashmir's special status enshrined in article 370 of the Indian constitution was retained, the state was termed 'a constituent unit of the Union of India'.⁴⁹ From an Indian standpoint, the movement for self-determination virtually comes to an end with the 1975 accord.

In September 1986 a number of political parties formed Muslim United Front to contest the election against National Conference in State Assembly elections. The engineered defeat of Muslim *Mutahida Mahaz* marked a watershed in politics of Jammu and Kashmir. Now people had lost faith in the constitutional and political process. The people found their answer in *Jehad* to seek freedom from Indian occupation and decide their own future in accordance with the accepted principles of self-determination enshrined in Security Council resolutions. Afterwards all elections held were boycotted. With the downfall of the communist regimes in Eastern Europe, 1989 marked the real beginning of the insurgency. 'A strike was called for India's Republic Day on 26 January. It was the first of many *hartals* in 1989, which took up

48 Sheikh Abdullah, *Flames of the Chinar*, (New Delhi: 1993), p.165. Quoted in *Kashmir Today*.

49 Schafield, p.80.

one-third of the year's working days'.⁵⁰ From then onward protest demonstrating and strike calls had actually paralyzed the daily normal life in Kashmir; and no government in Jammu and Kashmir succeeded to establish its writ. The independence movement had been started by the Jammu and Kashmir Liberation Front joined by various other *jihadi* groups like *Hizbul Mujahideen*, *Harkatul Ansar*, *Lashkar-i-Tayba*, *Ikhwan-ul-Mujahideen* and *Hizbullah* and a few others, as well. Srinagar, Anantnag, Baramula and Sopore are the towns having strong support and influence of these groups. The Indian government changing the regime in Jammu and Kashmir one by another failed to control the situation. Some 700,000 troops were sent to control the situation but more they used force the movement got momentum. A leading intellectual Khushwant Singh wrote: "Our part of Kashmir has had many elections and many chief ministers. None of the elections were as free and fair as we honour them in other states. Consequently none of the chief minister could be described as popular rulers. They were chosen in Delhi and when found inconvenient, summarily dismissed and the state put under governor's rule".⁵¹

There is gross violation of human rights in Jammu and Kashmir as confirmed by Amnesty in its report,⁵² but Indian government had vested more discretionary powers by enacting TADA (Terrorist and Disruptive Activities (Prevention) Act) 1987 and POTA.⁵³ There is certainly a limit to use of force after which military option fails. It happened in Algeria and Vietnam for example. Moreover, the Kashmir dispute is a drain on Indian resources. Arvind Kala wrote in the *Economic Times*: "It will be more cost effective to let Kashmir secede. Sooner or later, India will have to ponder the imperatives for a settlement acceptable to the Kashmir people".⁵⁴

50 Reeta Chaudhari Tremblay, *Kashmir: The Valley's Political Dynamics*; Contemporary South Asia, March 1995, Vol. IV, No.1, p.81.

51 Khushwant Singh, article reproduced in *Dawn*, Karachi, November, p.30, 1993.

52 Amnesty International, *Tortures and Death in Custody*, January 1995, pp.60-1, quoted in Schafeld, p.170.

53 *Ibid.*, p.171.

54 Quoted in Bhattacharja Ajit, *Kashmir: Wounded Valley*, (New Delhi: 1993), p.234.

The independence movement in Jammu and Kashmir is indigenous having, of course, the moral and diplomatic support of Pakistan. Indian alleged Pakistan the material and financial support without which the movement would have been easier for the Indian army to suppress, which refuted by Pakistani government. General Pervez Musharraf reiterated Pakistan's moral and diplomatic support for the freedom struggle in Kashmir, and called on the international, community to help to put an end to 'state-terrorism' in Kashmir.⁵⁵ After 9/11 and Pakistan's crucial role in combating terrorism, it is imperative for world community at large and particularly USA to come forward in resolving this chronic issue in order to get peace and stability in South Asia.

Conclusion

Kashmir dispute remained unsolved and seemingly unresolved since 1947. The dispute between India and Pakistan combined with a fifty-year struggle by the people for the right of self-determination, has now been inherited by the next and next generation. Ongoing struggle of the people of Jammu and Kashmir is indigenous in nature and India's accusation casting Pakistan in the role of agent provocateur is baseless. India's repressive nature of policy deploying more than seven lack paramilitary troops in Kashmir had further aggravated the situation. India's successive efforts to hold election in Jammu & Kashmir proved futile because of its total boycott by the people on the appeal of All Parties *Hurriat* Conference.

Neither three inconclusive wars between India and Pakistan nor bilateralism could resolve the disputed. Despite Indian government reluctance from any reliance on a third party mediator to solve its regional problems and insisting that the problem in Jammu & Kashmir is bilateral one, but bilateralism over Kashmir failed that is no surprise. Kashmir dispute existed between the two countries for fifty-five years. Both of their history is based on suspicion and deep rooted in the legacy of mistrust. Kashmir issue is entrenched in the psychological and emotional nerve of the people of India and Pakistan. Moreover, the nature of the conflict is of tripartite, as no

55 Irfan Hussain, "A Conflict Neither Side Can Win", *Dawn*, May 26, 2002.

solution is possible without the consent of Kashmiri people. Therefore 'bilateralism provided a relatively frail scaffolding on which place the burden of settling the dispute'.⁵⁶ If the bilateralism is bound in their continued failure, then the remedy lies in the third party mediation to coax one or other country to make a compromise and flexibility in their rigid stand on the issue. Fate of Jammu and Kashmir was already an issue of international concern as it is long outstanding issue on the agenda of UNO. Clearly, a third party role, however effective and benign, can be meaningful as a facilitator under the auspices of UN. India Pakistan and Kashmiri representative must find out an acceptable solution for an enduring peace in South Asia with the backing of international community. Both countries having attained the nuclear status must avoid confrontational approach as the presence of nuclear weapons manifold increases the danger of escalation. Neither India nor Pakistan can afford to leave the Kashmir dispute unresolved indefinitely. Had the issue left unattended too long it could trigger a full-scale war in the shadow of emerging nuclear capabilities in the sub-continent, which might be catastrophic for both countries. Had the Kashmir dispute resolved sooner is better in the interest of the people of the region; ushering a new era of cooperation and mutual trust.

56 Robert G. Wirsing, *India, Pakistan and the Kashmir Dispute...*, (New York: 1994), p.216.