

MANY PATHS, NO DIRECTION

## The Kashmir Question

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*The inherent properties of things are produced by the mode or manner in which they arise. Such properties therefore allow us to verify an institution's exact nature and nascence—Giambattista Vico, New Science (1744:81)*

*Time present and time past, / Are both perhaps in time future —T S Eliot*

In ancient times Kashmir was part of the Maurya Empire (320-220 BC), thereafter passing on to the kingdom of Bactrian Greek King, Menandar, and then to the realm of the great Kushana king, Kaniska. In AD 510, Toraman, the formidable leader of the Huns, overran Kashmir. Buddhist Emperor, Harshabardhana conquered the kingdom in the early seventh century. In the eleventh century Kashmir would have a monarch, Harsha by name, who had left behind a record of systematically emptying the temples and monasteries of their precious gold, silver, and bronze in order to finance his desperate and expensive wars against the rebellious barons.

Muslim immigration and conversion resulted in the installation of a Muslim dynasty in the fourteenth century. 'Islam took over in Kashmir without striking a blow and without looting or persecution' (Kosambi, 1970: 187). 'A long-continued process of conversion to Islam had been resulted in 95 percent of the population becoming Muslim, though they retained many of their old Hindu customs. In the middle-nineteenth century the Hindu ruler of the state found that very large numbers of those people were anxious or willing to return *en bloc* to Hinduism. He sent a deputation to the pundits of Banaras inquiring if this could be done. The pundits refused to countenance any such change of faith and there the matter ended' (Nehru, 1946: 267)

In 1830, the Sikh Raja of Lahore, Ranjit Sing had created a kingdom, nay, an 'empire' rated by a visitor as 'the most wonderful object in the world.' Kashmir was part of Ranjit Sing's domain. The first Sikh War against the British ended in 1846 and Kashmir changed hand—ceded to the British. Though retaining suzerainty over this royal property, the British then sold it to Gulab Sing, the Dogra Raja of Jammu, for an upfront payment of Rs 75 lakhs, and an annual tribute of one horse, twelve shawl goats and three pairs of Cashmere shawls. Thus came into being the Princely State of Jammu and Kashmir, one of the second-tier crown jewels of the British Empire that would descend through Gulab Sing's successors as Maharajas.

### THE MATERIEL CHANGES UNATTENDED

On 22 October 1947 a truck-mounted incursion from the Pakistan side rumbled up the only road into the Kashmir valley. Four days later the Maharaja of Kashmir would sign the Instrument of Kashmir's Accession to India, to which Saikh Mohammad Abdulla extended his support. Indian planes began airlifting troops into the state capital of Srinagar to resist the intruders. From all over northern Pakistan more 'volunteers' poured across the frontier.

On 26 October 1947 Maharaja Hari Sing of Jammu and Kashmir wrote to Lord Mountbatten, the Governor General of India : 'Soldiers in plain clothes and desperados with modern weapons have been allowed [by Pakistan] to infiltrate into the State [Jammu and Kashmir]. ... The wild forces thus let loose on the State are marching on with the aim of capturing Srinagar ... as a first stage to overrun the whole State. The mass infiltration of tribesmen, drawn from distant areas ... coming regularly in motor-trucks fully armed with uptodate weapons, cannot possibly be done without the knowledge of the Government of

Pakistan.’ The Maharaja continued: ‘In spite of repeated appeals made by my Government no attempt has been made to check those raids or to stop them from coming into my State. In fact, both radio and the Press of Pakistan have reported these occurrences. The Pakistan radio even put out the story that a provisional government has been set up in Kashmir. The people of my State, both Muslims and non-Muslims, generally have taken no part at all.’ The Maharaja signed the Instrument of Accession of Jammu and Kashmir into India.

The Governor General of India accepted the Instrument of Accession. With the intention of a peaceful resolution of the conflict with Pakistan, India took the case to the UN Security Council saying, inter alia: ‘Once all the soil of the State [Jammu and Kashmir] had been cleared of the invaders and normal conditions restored, its people will be free to decide their future by the recognized democratic method of plebiscite or referendum which, in order to ensure complete impartiality, might be held under international auspices.’

Resolution 47 (1948) of the Security Council reads : ‘With satisfaction that both India and Pakistan desire that the question of the accession of Jammu and Kashmir to India or Pakistan should be decided through the democratic method of free and impartial plebiscite.’ Its Section A—*Restoration of Peace and Order, Article 1(a)* says : ‘The Government of Pakistan should undertake to use its best efforts (a) To secure the withdrawal from the State of Jammu and Kashmir tribesmen and Pakistani nationals not normally resident therein who have entered the State for the purpose of fighting, and to prevent any intrusion into the State of such elements and any furnishing of material aid to those fighting in the State.’ As for India, it was to ‘reduce its forces in proportion [in step with the Pakistan’s withdrawal] to the minimum strength for support of the civil power in the maintenance of law and order’. ‘The Government of India should (a) When it is established that the tribesmen are withdrawing and that arrangements for the cessation of the fighting have become effective, put into operation a plan for withdrawing their own forces from Jammu and Kashmir and reducing them progressively to the minimum strength required for the support of the civil power in the maintenance of law and order.’

In the event, the invaders did not go away. Resolution of the UN-Commission for India and Pakistan (UN-CIP) adopted on 13 August 1948 recorded a *material change* : ‘As the presence of troops of Pakistan in the territory of the State of Jammu and Kashmir constituted 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 the State.’ It yet remains to be seen happening. The State of Jammu and Kashmir is still threatened day by day.

Furthermore, Pakistan in the 1970s signed a treaty with China demarcating international border. India alleged, in the process part of the territory of Kashmir, at that time under control of Pakistan, was ceded to China. That amounted to another violation—a ‘material change’—of the situation ordered by Security Council through its Resolutions.

In view of these unauthorized unattended material changes—(a) intruders did not vacate the intrusion and (b) an area of the State of Jammu and Kashmir was eroded through the Pakistan-China treaty—neither the status quo be restored nor would the ‘democratic method of plebiscite’ be effected. Under the given circumstances the conventional way of one-day voting on a single issue of ‘either India or Pakistan’ is of no effect, if not immaterial. This is the legal aspect of the story.

The Simla Agreement of 1972 recognized the Line of Control (LoC) in Jammu and Kashmir. Indira Gandhi and Zulfikar Ali Bhutto had a reportedly secret accord to translate the LoC into the legitimate border between the two countries. Pakistan now ignored the Gandhi-Bhutto Agreement as an unequal treaty between the victor and the vanquished of a war that preceded it. So Pakistan refuses to accept the LoC as a mark of international demarcation.

By contrast, India seemed ready to reconcile itself with the partition of Jammu and Kashmir along the LoC, the two parts being included into India and Pakistan respectively. Thus a stalemate has arisen. How to resolve the dispute?

### THE RISE OF KASHMIR

At its historical childhood Kashmir grew up in the empire of Chandra-gupta Mourya, at the moment when the heroes of Alexander the Great were knocking at the door. The messages of ancient Greek civilization, Hinduism, Buddhism, Islam and several other sources had enriched the society of Kashmir since time immemorial.

Since 1947, two remarkably different systems of socio-political existence have flourished on two sides of the Line-of-Control (LoC)—secular in the East, theocratic in the West. It is up to the Kashmir-people alone to make evaluation and judgment on those two political formations. They require reasonable opportunity to observe, experience, and consider the two formations. This is the essence of what Governor General Mount-batten meant by 'reference to the people', and the Security Council as well as India and Pakistan called 'plebiscite.' The Security Council had issued two fundamental resolutions: one, Pakistani troops to be withdrawn from the soil of the State of Jammu and Kashmir, and two, 'All citizens of the State who had left it on accounts of disturbances are invited and are free to return to their homes and exercise their rights as citizens.' That is to say the domain of 'Kashmir' basically refers to the population of the State at the point of the *status quo ante*, as of 26 October 1947. What is at the table is not so much a question over a piece of geographical estate as it is about the concerned *human beings*, the basic rights of the people with a distinct history, culture, and tradition.

The vital point—that Kashmir has to be understood as the home of human beings—seems to be obscure to both parties, oblivious as they are of the history and humanity. But the sanctity of the people's rights cannot be overruled. Kashmir is beyond conceptualization in terms of a particular ethnicity, faith, sect, language or any other divisive category alone. Here is an approach to resolve the ongoing impasse in the light of *justice*.

### A PROPOSAL

India and Pakistan both are signatory to the following motto of the UN Development Programme (UNDP): 'People are the real wealth of a nation'—articulated in the UNDP's first annual *Human Development Report* inspired and edited initially by late Mahbub ul Haq. Human beings are an end in themselves, never to be used as mere means, least of all to score political points. India and Pakistan would therefore appreciate the development of the 'real wealth' of Jammu and Kashmir, that is to say, its people.

In this context it is quite reasonable to propose that India and Pakistan declare a moratorium of all covert and overt hostile activities for the duration, say, twenty years, a space to obliterate the tension of the preceding years of hostilities. They would for the moment respect the LoC as per the mandate of the Tashkent Declaration of 1966 and the Simla Agreement of 1972. The two parts of Jammu and Kashmir along the LoC are to be granted moral authority and provided with required material resources in order to help develop their respective social, economic, and political realms in their own ways.

The people of Jammu and Kashmir will be permitted to move from one side of the LoC to the other for such purpose as family reunion, education, employment, trade or the pure joy of being there. In due time, the system of *temporary residence* of immigrants may be introduced, and then the residence status may be upgraded into *citizenship* under law. Such facilities are normally given in, for example, some countries of Europe and America.

The people of Jammu and Kashmir will have an occasion to observe, explore, compare and reflect on their own the two alternative frames of human existence on the two sides of

LoC. The two-way migration will help reveal the reasoned valuation of the concerned individual, following due deliberation in all fairness and freedom. This procedure will enable him to exercise a genuine choice. Some amount of flexibility in the scheme is warranted. On this consideration, an individual will be allowed to reverse his decision, if necessary, within a certain period of time. This will be indeed a unique structure of plebiscite carried *on foot* so to say, guided by a cool head and a warm heart, following comprehensive reasoned judgment over an adequate period of time. To borrow the words of Nehru in a different occasion, it would be a 'fair and just reference; I can imagine no fairer and juster offer.'

The people of the land of immigration should be protected from a possible burden of additional hardship in the wake of the incoming residents. And all loopholes of any kind of abuse of the system have to be closed. Mindful of these two points, every five years or so, the net number of immigrants (number of immigrants *minus* number of emigrants) will be counted. In case of a positive net immigration it will be compensated by the other country with transfer of land. The quantum of land compensation per net immigrant may be fixed in terms of the per capita arable land and other kinds of land of both countries. It should be an inter-country transaction. The immigrants will not be involved in the transaction anyway, direct or indirect.

Eventually, thereby the LoC would fade away paving the way for a flexible border that would reflect the people's choice. In the place of LoC, there will emerge the LoPC—the Line of People's Choice. □□□

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