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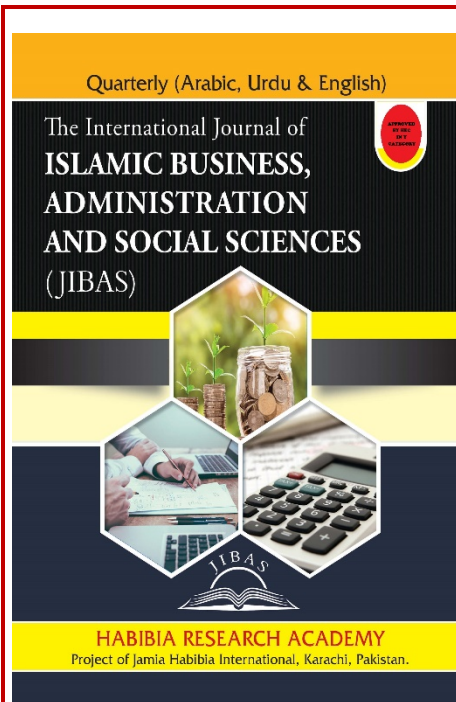
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TOPIC:

KASHMIR DISPUTE: PROSPECTS OF SETTLEMENT (AN ANALYSIS)

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KASHMIR DISPUTE: PROSPECTS OF SETTLEMENT (AN ANALYSIS)*Mamnoon Ahmed Khan,***ABSTRACT:**

Kashmir Dispute is one of the oldest and most complicated issue of the region South Asia. Numerous efforts have been made to dissolve this most miserable and pain staking dillima but still there are no signs for the resolution of this issue. Pakistan and India recognise themselves as the parties of Kashmir Dispute and always tried to resolve it by their means. But they forgot that Kashmiri nation is the most important party in this Dispute. So any decision on Kashmir must include the will and aspirations of Kashmiri People. In my research paper I tried to highlight the options available to resolve this issue. First option is independence. In this option Kashmir should be declared as independent state. Pakistan and India will provide all the assistance needed by Kashmir. The second option is Division. In this option Kashmir will be divided on the basis of Line of Control. The part inside Pakistan goes to Pakistan and the part inside India will go to India. The third option is temporary control of United Nations. In this option Kashmir will be given in the control of UN for any said duration. The final option is Plebiscite. In this option Kashmiri people will be given the right to vote for either to join Pakistan or India or remain independent.

Keywords: *Kashmir Dispute, Pakistan, India, Independence, division, United Nations, Plebiscite*

INTRODUCTION: There are four options for the settlement of Kashmir issue: Independence, Division, Temporary UN control and Plebiscite. Different schemes presented so far have fallen under one or the other category. However, it must be emphasized that several UN efforts, innumerable bilateral discussions and scores of attempts by the interested third parties have failed to yield the results because of lack of agreement between India and Pakistan. Kashmiri people are the inheritors of their land. They must have the right to choose which is best for them. In 1947 Pakistani people have chose their option. Similarly in 1947 Indian people chose their option. Now its time for Kashmiri people to choose their option. In every negotiation on resolution of Kashmir Dispute Pakistan and India become parties and leave

behind the will and aspirations of Kashmiri people. So in every negotiation Kashmiri people must be participated as third party of the dispute.

INDEPENDENCE: One option, which has been in the limelight since the beginning of the current mass movement is the option of independence, sometimes also referred as the "third option". The option envisages that the portion of the state be reconstituted as a sovereign entity, but without an international personality, enjoying free access to and from both India and Pakistan. The premises of entity should be determined through an internationally supervised ascertainment of the wishes of the Kashmiri people on either side of the line of control (LoC). This should be followed by an agreement among India, Pakistan and representatives of the Kashmiri people to move ahead with this formulation.

It has proposed that the sovereignty of the new entity would be guaranteed by New Delhi, Islamabad and appropriate international bodies. The entity, under this scheme of things, would have its own secular, democratic, constitution, as well as its own citizenship, flag and a legislature, which would legislate on all matters other than defence and foreign affairs.

India and Pakistan would be responsible for the defence of the Kashmiri entity, which on its own would maintain police and paramilitary forces for internal law and order purposes. The two countries would work out the financial arrangements of the so-called Kashmiri entity and the so-constituted state would have a currency of its own.

According to this option Kashmiri citizenship would also entitle such citizens to acquire Indian or Pakistani passports depending on which side of the Loc they live on. Alternatively, they could use entity passport subjects to endorsement by India and Pakistan as appropriate.

The option represents a practical framework that could satisfy the interests of the people of Kashmir, India and Pakistan. The option allows for this entity to have open borders with India and Pakistan thus permitting free transit of people, goods and services.

The proposal states that the LoC should remain in place until such time as both India and Pakistan decide to alter it in their mutual interests.

However, it calls upon both the countries to demilitarize the area included in the Kashmiri entity, except to the extent necessary to maintain logistic support for forces outside the state that could not otherwise be effectively supplied.

The option recommends, □Neither India nor Pakistan could place troops on the other side of the Line of Control without the permission of the other State.□ According to the option all displaced persons, including Kashmiri Pundits, who left any portion of the Kashmir entity, shall have the right to return to their homesteads. The supporters of this option says by resolving the principal issue that could lead to armed conflict between India and Pakistan, it would go far towards relaxing political tensions in South Asia. It would offer enormous economic benefits not only to Kashmir but also to India, Pakistan and all of the south Asia region.¹

DIVISION: The second option is the division of Kashmir. Various schemes have been presented. India favours the division of Kashmir along the present Line of Control, which would mean the maintenance of *status quo* with minor adjustments. This is certainly neither acceptable to the people of Kashmir nor to Pakistan. Some Western authors have proposed the division of Kashmir along linguistic lines, whereby the Kashmiri speaking people including the Valley should become the part of Pakistan while the Balti speaking people (who are now part of Pakistan) should join India.² Other have suggested a Trieste type of solution by which the Valley, parts of Jammu and Pakistan part of Kashmir should form an autonomous unit while the other part of state should be merged with India or Pakistan.³ Some other writers have favoured a joint control of Kashmir by India and Pakistan with virtual autonomy in the domestic matters. These proposals aimed at the division of Kashmir are simplistic and ignore the ground realities. The people of Jammu and Kashmir have unequivocally rejected *the defacto partition* and the current mass resistance is its undeniable proof. The ground realities are that the population of Kashmir is deeply polarized along religious lines. The mass resistance in Kashmir has an explicit pro-Pakistan orientation and the last five years have completely changed the

course of history in Kashmir, making any unfair and unjust resolution unacceptable to the people.

TEMPORARY UN CONTROL: Another proposal advanced by some resistance organizations and certain notable persons is that Kashmir should be placed under the UN trusteeship for five or ten years and a plebiscite should take place after the expiry of the specified time period. They argue that it will give a "face-saving" to India and make it easier to resolve the Kashmir question through the "Step by Step" approach.⁴ There are several problem with this approach first of all, it will prolong the agony of the Kashmiri People without really resolving the issue. Secondly, since the UN itself has emerged as an instrument of the Western powers in the post-cold war era, it might promote the Western interests rather than the Kashmiri peoples' interests. The UN role in Somalia and Bosnia has been subordinate to the interests of the Western powers rather than the principals of fair play and justice. Thirdly, India will never agree to any UN initiative as it has done in the past.

PLEBISCITE: The option of plebiscite as enshrined in the UN resolutions on Kashmir has been the final option, originally favoured by both Pakistan and India. The Security Council's resolution of April 21, 1948 proposed a package deal comprising three sections; withdrawal of forces, plebiscite and interim government in Kashmir. Both India and Pakistan were supposed to demilitarise Kashmir; however, India was allowed to retain a minimum force to aid the administration in Kashmir. A plebiscite was to be held under international supervision and its outcome would have determined the fate of Kashmir. Both India and Pakistan raised several options to the plebiscite scheme. Pakistan wanted complete and simultaneous withdrawal by both countries while India wanted that the bulk of its troops should remain in Kashmir. Pakistan also wanted to entrust the UN with complete authority in terms of holding, organizing and supervising the plebiscite while India merely wanted the advice and observation of the UN, not the actual control. After several exhaustive efforts the eminent UN mediator Sir Owen Dixon, in his report submitted to the President of the UN Security Council on September 15, 1950 concluded:

□ In the end I became convinced that India's agreement would never be obtained to demilitarization in any such form, or to provision governing 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. □⁵

Sir Owen Dixon came up with another idea of regional plebiscites rather than an overall plebiscite. His argument was that since Kashmir was not a single unit in geographic, economic and demographic terms, therefore, the areas which were certain to vote for accession to Pakistan should go to Pakistan and the other areas which were certain to vote for India should be allotted to India and the plebiscite should be conducted only in the uncertain areas which in his view were □ the Valley of Kashmir and perhaps some adjacent country. □²⁶⁴ Since both India and Pakistan were unwilling to accept the proposal because of differences over the Valley, this scheme was also shelved.

The common objections raised by a number of observers on the UN resolutions is that they have become obsolete and no longer provide the basis for the resolution of the conflict. This argument is flawed on legal as well as political grounds. The time factor does not invalidate the UN resolutions from the perspective of international law. Ijaz Hussain, an expert on international law observes:

□.the time factor does not on its own render any agreement redundant. Otherwise, all treaties after a certain period would *ipso facto lapse*, destabilizing international relations. Resolutions 242 adopted in 1967 after the six day Arab-Israeli war, even after a lapse of 27 years remains the basic reference point on the future of the occupied territories. Similarly, the Treaty of Utrecht of 1713 under which sovereignty over Gibraltar was transferred from Spain to Great Britain and the 1898 treaty under which Hong Kong was leased to Great Britain by China for 99 years are considered valid.⁶

Politically, the main problem has been the lack of implementation of UN resolution because United Nations has become a tool of American Jewish lobby and Western powers. United Nation is concealing Indian obstinacy by permitting her to deploy 600,000 military and paramilitary forces while forcing Pakistan for an immediate

withdrawal of her forces from Azad Kashmir. Due to this partiality of United Nations the Kashmir issue is lingering unresolved for more than fifty-five years. If UN Security Council handle the Kashmir issue as it has handled Somalia, Bosnia and Iraq issues then the UN resolutions can still form the realistic basis for a negotiated settlement of the Kashmir problem.

CONCLUSION: Kashmir is not a Hindu-Muslim case. It is a political and human problem. We have been made to loose our identity. Indian Muslims were given the chance to determine their fate in 1947. Kahsmiris have never felt that they are a part of India. So we cannot be kept as hostages.

We want the implementation of the UN resolutions no matter, which state the people of Kashmir should be asked to opt for either India or Pakistan. We also support tripartite talks between India, Pakistan and Kashmiris. The princely state, which existed before 1947, all the representatives from all regions of this state should be allowed to discuss in order to reach some amicable solution.

Jammuites and Ladakhis have not joined the Kashmir liberation movement because it is not an Islamic issue. Let the people of Jammu and Ladakh be given the option: if they want to join India we cannot stop them.

If the division of state and the solution on communal lines is the only way, we will oppose it. Still then there is support in some regions of Jammu with predominant Muslim population for the movement.

People have suggested a lot of □solutions□. One professor from California suggests some 35 solutions. The Kashmir Study Group suggested a state within state seeking guarantees from both India and Pakistan and urging both the governments to enter into certain international agreements. The report/suggestions would be thoroughly debated and discussed. Yet no official stance has been taken by us.

On one hand, India is suppressing us and on the other hand we are offered to come to table and to talk within the confines of Indian constitution. This is not possible.

NOTES:

1. Kashmir Study Group: □Kashmir-A Way Forward,□ March, 1999.
2. Joseph E. Schwarzberg, □Kashmir□s Peaceful Resolution□ The Nation, January 7, 1994.
3. Selig S. Harrison, □Autonomy: The way out for Kashmir Quagmire□ the telegraph March 10,1992.
4. See Dr.Mehboob-ul-Haq □UN Trusteeship for Kashmir□ The Muslim December 30,1993; See for a counter-argument Dr.S.M.Qureshi, Trusteeship for Kashmir? No really such a Good Idea, The Muslim January 10, 1994.
5. See the Dixon report in P. L. Lakhanpal (1965).
6. Ibid.
7. See Dr. Ijaz Hussain, □Are UN Resolutions on Kashmir dead? The News, June 5, 1994.

CHAPTER**11**

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