

# **RESOLVING THE KASHMIR CONFLICT FROM AN INTERNATIONAL LAW PERSPECTIVE**

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## **INTRODUCTION**

Although Kashmir has been an integral part of India since the ruler of Kashmir, King Harisingh had signed the instrument of accession with India and not Pakistan on 26<sup>th</sup> October 1947, it is time for a new way of dealing with Kashmir. The issue has been dragging its feet for a long time. This is certainly not because of the advent of the current Government at the Centre. For several decades the Kashmiris have been complaining about killing, torture, violence, and face encounters from the Indian army and Pakistani paramilitary groups. The situation have grown worse over time, for instance during the Srinagar by polls on 9th April 2017 people came out on streets pelting stones. There was stability attained in the valley in 2010, but then in 2011-2012 India lost it again. Today there is an additional challenge in that there is a qualitative change in the nature of separatist violence in Kashmir. In the 1990s the army was in direct confrontation with insurgents and civilian deaths were largely collateral damage, but today ordinary Kashmiris are confronting the army. Similarly, in the past Pakistan was the major force facing and sustaining the insurgency, but today the protests are increasingly coming from the indigenous population. Public attendance in protests, and funerals have grown. There is a new generation that is disillusioned and taking to militancy, including stone pelting. Stone pelters give a variety of justifications for the actions. For example, no student politics are allowed in universities in Kashmir, there is no debate allowed. There is an internet ban. Schools and colleges do not function for months.

The use of power to compel Kashmiris to waive their right to self-determination, the idea of suppressing a legitimate political opinion, criminalising it and linking it with Islam and IS is basically done to change the discourse and narratives by using powerful media as a mouthpiece of the government. People have stepped down on the streets with a political statement asking

the government to resolve the Kashmir issue. They are demanding freedom, a resolution for self-determination and autonomy.

## **DISTURBED PEACE PROCESS**

India alleges that one of the most important components attached to this issue is that of Jihad and the goal to create a Kalifate similar to IS. India intensifies crackdowns on protesters in the name of acting against terrorism. The dispute is posing problems to the current government in India and to the international community. The Security Council has affirmed that the situation in Kashmir is a threat to international peace and security. This threat is the impact of denied self-determination to the people of Kashmir. The acts of violence pursued by the Indian Security Forces and Pakistani paramilitary groups are illegal and against human rights. In 2010, a group of interlocutors were sent to Kashmir by the Centre to study the situation and submit a report. The group was headed by Dr. Radha Kumar, a political analyst. The chief task of the group was to listen to the grievances of the Kashmiris. The group visited every single district and observed that there was anger in every district. Even in a peaceful district, the anger was for various reasons. This revealed that there is a yawning gap in the process of creating peace. Unfortunately the findings of the report were not implemented. None of the government since then looked into the report seriously. The people of Kashmir irrespective of their gender, age, class want a permanent solution to this dispute. Hence dialogue is the only way forward towards restoration of autonomy to the state. The Kashmir problem isn't a question of ideology but a question of humanitarianism and decency. Hence there is a need for an absolute urgent priority to start the peace process. Autonomy is a part of the Indian Constitution. The Centre cannot and should not deny this autonomy to the State.

## **NON-COMPLIANCE WITH UN RESOLUTION**

Within this context it is relevant to turn to the 1948 UN Security Council Resolution. Looking at the backdrop of the Resolution makes it very clear that the aim of this resolution was to conduct a plebiscite in Kashmir, for Kashmiris to decide by themselves to which State they want Kashmir to accede, whether to Government of India or to Government of Pakistan.

Unfortunately the resolution was never followed: mainly because as per the resolution's first condition, the government of Pakistan never ensured the withdrawal of Pakistan nationals and tribesman from the Valley. Since the first condition was not fulfilled by Pakistan, the Government of India refused to withdraw its forces from that State. Several experts are of the opinion that the 1948 resolution cannot be applied in the present circumstances. Settlement of dispute by arbitration and mediation has failed in the past. Arbitration was proposed in 1957 when the UN Security Council tried to secure an agreement between India and Pakistan, but India rejected this proposal. Various mediation attempts such as ceasefires and temporary de-escalation of tensions through mediation offered by the USSR and by the US in 1965 and 1990 respectively have proved to be futile. Even bilateral negotiation and mediation have proved to be completely unsuccessful. Hence, the only possible option available to comprehensively resolve the issue is through the gaze of International law.

## **UPHOLDING THE RIGHT TO SELF-DETERMINATION**

According to the principle of Self-Determination it is the right of every nation to establish its own territorial sovereignty. Article 1(2) of the Charter of the United Nations 1945 states that the purposes of the UN is to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace. All human rights treaties recognize the principle of self-determination. The Common article 1, paragraph 1 of the Covenant on Civil and Political Rights and the International Covenant on Social and Economic and Cultural Rights provides that all people have the right of self-determination, by virtue of that right they freely determine their political states and freely determine their economic, social and cultural development. Hence, the people of Kashmir have the right to self-determination, to decide on their own political future. India is a party to the International Covenant on Civil and Political Rights (ICCPR). Article 6 of the ICCPR clearly prohibits derogation from the right to life even during times of emergency. The ICCPR also prohibits torture and other forms of cruel, inhuman and degrading treatment. Articles 4 and 7 of the ICCPR expressly ban torture, even in times of national emergency or when the security of the country is threatened. The Indian and Pakistani security forces with its violent operations in Kashmir have systematically violated these basis norms of international human rights law.

## **RESTORING PEACE AND SECURITY**

The international community is passing the buck by accepting the conflict as India's internal issue. The International Community and the United Nations have done next to nothing to give Kashmiris their right to self-determination. Less initiative was taken by UN against the massive human rights violations undertaken by Indian security forces in 1990, 2008 and 2010 struggles. Due to this silence over human rights violations, India and Pakistan continued violence on Kashmiri people by enhancing their security forces. This has created frustration among the people. Therefore, there is a need for the international community to remind both India and Pakistan of their crucial responsibility towards maintaining international peace and security if they expect to be duly recognized as global players.

## **PROBABLE SOLUTIONS**

In the light of the above contentions, some possible solutions to the Kashmir issue might help bring lasting peace in the Indian subcontinent. Firstly, by granting the people of Kashmir their Right to self-determination through which they can exercise their right to choose wilfully their successor and independence, and to that effect allowing a plebiscite to take place under the UN supervision and control, Secondly, to form the state into a quasi-independent nation with UN control or a guarded neutrality. The Kashmir issue is not merely a territorial dispute, but it is a dispute on the basis of past rivalries, hatred among Hindus and Muslims, and also a matter of ego for both the countries.

Hence a quasi-independent nation or a guarded neutrality could be a temporary solution to stabilise the atmosphere in Kashmir and to prevent human rights violation and to provide a safe and secured life for Kashmiris. In this respect, the UN can act as a mediator, and finally, to pursue the matter before the International Court of Justice (ICJ). In fact, after the failure of bilateralism, mediation and arbitration, the Vienna convention on law of treaties had proposed judicial settlement as a means of settlement of Kashmir dispute. Judicial decision backed by UN Security Council can help resolve the dispute. A ruling of the ICJ can be binding on both India and Pakistan and all other members of the UN. In that case, if the ICJ gives a ruling in favour of India, then other nations will no longer be in a position to interfere. It will also compel Pakistan and China to vacate the territory of Kashmir under their occupation. Conversely if the

decides the ruling in favour of Pakistan, then it would mean the reverse. However, if the ICJ gives a green signal for a plebiscite to take place, it would mean encouraging the idea of nationalism, democracy, sovereignty, free speech and personal liberty. Hence, a clarity and confirmation of the correct legal position by the ICJ can help alter and resolve this longstanding discourse. UN Security Council can convince both the countries to pursue the matter before the ICJ.

## **HOW CAN INTERNATIONAL LAW RESOLVE THE DISPUTE?**

General principles of international law impose a duty on all states to refrain from acts that may deprive the right of self-determination. Plebiscite and earned sovereignty is the only probable option to restore peace in Kashmir. The Universal Declaration of Human Rights states, “Whereas it is essential if a man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, the human rights should be protected by the rule of law.” Further, the preamble of the Universal Declaration of Human Rights states: ‘Whereas it is essential if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.’ Also, article 1 of the Universal Declaration of Human Rights declares: ‘All human beings are born free and equal in dignity and rights. They are endowed with reasons and conscience and should act towards one another in a spirit of brotherhood.’ All these provisions symbolize that international law is a guardian and guarantor of human rights, peace, liberty and democracy. Hence the people of Kashmir are entitled to their basic right to life, dignity and security in the light of international law.