

The Problem of Kashmir and the Problem in Kashmir: Divergence Demands Convergence

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Abstract

India and Pakistan have fought four wars over Kashmir and have held several rounds of talks to resolve the 57-year-old issue, but without any tangible success. The only progress thus far has been that India has agreed to discuss the issue as part of the composite dialogue process and Pakistan has shown willingness to explore options other than the UN resolutions on Kashmir. Although both India and Pakistan appear trying to breakaway from the past and think afresh on Kashmir, yet both fail to bring about any significant policy shifts. For Pakistan, it still is the ‘problem of Kashmir’, i.e., Kashmir a ‘disputed territory’ and an ‘unfinished agenda’ of Partition; for India, it is the ‘problem in Kashmir’, suggesting that the accession of Kashmir to India is final and complete, and the challenge now remains of addressing cross-border terrorism, and development and grievances of the people of Kashmir. Two such divergent definitions leave no scope for a solution, unless India and Pakistan endeavour to merge the two definitions at a mutually agreed point. The paper looks into the policies of India and Pakistan and fathoms the prospects of a rapprochement on Kashmir. The bus service is a significant step towards merging the diverse positions, but more is required of the two enduring rivals.

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Introduction

The title of the paper has been deliberately chosen to underline the basic difference between India and Pakistan over the Kashmir issue. Pakistan highlights the ‘problem of Kashmir’, defines it as an ‘unfinished agenda’ of Partition, and questions its accession to India on October 26, 1947. Pakistan has consistently called for the implementation of the UN resolutions to determine the status of Kashmir according to the ‘will of the people’. For Pakistan, Kashmir is a ‘disputed territory’ which, on the basis of the Muslim majority principle (two-nation theory),

should not form part of the ‘Hindu majority’ Indian state.

India, on its part, outrightly rejects Pakistan’s stand and considers the accession to be legal, indisputable and final. India’s approach has been to address the ‘problem in Kashmir’ and focus on cross-border-terrorism, unemployment, misgovernance, call for election boycotts by the All-Party Hurriyat Committee (APHC); the fate of the exiled Kashmiri Pandits; and the alienation of the people towards New Delhi.

The paper is divided into four segments. The first focuses on Pakistan’s UN centric Kashmir policy, policy towards Pakistan Occupied Kashmir (POK), and cross-border terrorism in J&K. The second discusses India’s policy towards Kashmir. The third analyses the progress thus far in the peace process initiated in April 2002 and Musharraf’s Kashmir proposal in particular. The last segment illuminates the way forward and prospects for the ongoing rapprochement.

Pakistan’s Kashmir Policy

Pakistan’s Kashmir policy rests on two legs: the UN resolutions and cross-border terrorism. The UN resolutions have gradually become contextually redundant and cross-border terrorism has increasingly become more of a problem for Pakistan than a solution. Pakistan also feels frustrated at not being able to secure the confidence of the Kashmiri people, who reject a merger with Pakistan as a solution.

In order to understand Pakistan’s Kashmir policy, it is essential to analyse the salient features of the UN resolutions and the efficacy of cross-border terrorism as a tool to further Pakistan’s case in Kashmir.

United Nations Security Council (UNSC) Resolutions

In the wake of the October 22, 1947 Pakistani aggression in Kashmir under Major-General Akbar Khan, the Maharaja of Kashmir, Hari Singh, signed the Letter of Accession on October 26, 1947, and having formally informed India, sought Delhi’s help. India referred the case to the United Nations Security Council (UNSC) on January 1, 1948, in the context of the Pakistani aggression.

UN Response

The UNSC president under UN Security Council Resolution (UNSCR) 38 of January 17, 1948, called for direct talks between India and Pakistan.¹ On

January 20, 1948, the UNSC passed Resolution 39 to investigate any ‘dispute or situation’ as a matter of ‘urgency’ and constituted the United Nations Commission on India and Pakistan (UNCIP) to proceed to the spot with ‘dual functions’. One, to “investigate the facts pursuant to Article 34 of the UN Charter” and two, “to exercise, without interrupting the work of the Security Council, any mediatory influence likely to smooth away difficulties.”²

Subsequently, the Security Council adopted Resolution 47 of April 21, 1948, and ‘strongly’ opined that “early restoration of peace and order in Jammu and Kashmir is essential and that India and Pakistan should do their utmost to bring about a cessation of all fighting”, [and] “noting 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.”³

The UNSCR 47 recommended measures to end hostility and create ‘proper conditions’ for “a free and impartial plebiscite to decide whether the State of Jammu and Kashmir is to accede to India or Pakistan.”⁴ It called upon Pakistan to “secure the withdrawal from the State of Jammu and Kashmir of 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.”⁵ The Resolution recommended to India that once the withdrawal by Pakistan has been affected, India in consultation with the UNCIP should draw its own plan for troop withdrawal from Jammu and Kashmir to the “minimum strength required for the support of the civil power in the maintenance of law and order.”⁶ The Resolution also recommended certain directions on how and under what law and order conditions the plebiscite has to be conducted.⁷

A few months later, the UNCIP passed a resolution on August 13, 1948.⁸ The resolution had three parts. Part I called for a ‘ceasefire’, which India implemented from January 1, 1949. Part II made it incumbent upon Pakistani forces, both ‘regular’ and ‘irregular’ to withdraw from the occupied territory and urged India to reduce its troop strength in the area. Part III, now the fulcrum of debate, talked about determining the status of J&K in accordance with the ‘will of the people’.⁹ The A2 section of the Truce Agreement reaffirmed the UNSCR 47 and laid down that “[T]he Government of Pakistan will use its best endeavour to secure the withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistan nationals not normally resident therein who have entered the state for the purpose of fighting.”¹⁰

On the question of the withdrawal of forces from the occupied areas, Pakistan stated that it could not answer on behalf of ‘Azad Kashmir’ (Pakistan’s nomenclature for POK) and raised several objections in this regard.¹¹ The UNCIP finding the response impertinent, concluded, “The Commission observes with regret that the Government of Pakistan has been unable to accept the resolution without attaching certain conditions beyond the compass of this resolution, thereby making impossible an immediate cease-fire and the beginning of fruitful negotiations between the two governments and the Commission to bring about a peaceful and final settlement of the situation.”¹² According to B.L. Sharma, Pakistan was avoiding plebiscite because of the uncontested popularity of Sheikh Abdullah in Kashmir.¹³ Besides, the implementation of Part III was subject to Pakistan’s compliance with Part I and II of the resolution.¹⁴ The UNCIP also gave assurances to India that “the plebiscite proposal shall not be binding if Part I and II of the August 13 resolution were not implemented.”¹⁵ Withdrawal from the ‘occupied territories’ by Pakistan never took place thus putting the resolution in the cold.

In the following decades, the Indo-Pak wars of 1965 and 1971, the breakup of East Pakistan from West Pakistan and the political upheaval in Pakistan after the 1977 military coup put the Kashmir issue on the backburner until 1987, when political developments in Kashmir gave Pakistan an opportunity to interfere. Since then, Pakistan has called for the implementation of the UN resolution and at the same time created disturbances in J&K through a proxy war and by abetting terrorism. In March 2001, UN Secretary General Kofi Annan, on a visit to Pakistan, responded to the UN role in J&K saying:

I call upon both India and Pakistan to retain the spirit of the Lahore declaration. This will require restraint, wisdom and constructive steps from both sides...The UN resolutions that come under Chapter VII of the Charter were self-enforcing, like those related to East Timor and Iraq. The second type of resolutions (Chapter Six) which do not fall in the purview of Chapter Seven needed cooperation of the concerned parties for their implementation...The UN resolutions on Kashmir do not fall in the category of Chapter Seven and hence required cooperation of the concerned parties for their implementation and in this case it is lacking.¹⁶

He further added, “There are Security Council resolutions which are important but they are not self-enforcing...India and Pakistan must come together through dialogue to implement whatever agreements are taken, which the Security Council resolutions could bear up.”¹⁷ He apparently refused an audience with representatives of the All Party Hurriyat Conference, which was criticised by the latter.

India maintains that the resolutions were both time and context-specific. The implementation of the UNCIP resolutions was conditional and subject to Pakistan's compliance with Part I and II. India's compliance was subject to the assurances given by the UNCIP to India that Pakistan would be excluded from all affairs of Jammu and Kashmir; 'Azad J&K Government' would not be recognised, sovereignty of the government of J&K over the entire territory occupied by Pakistan shall not be questioned, and Pakistani troops would be withdrawn completely.¹⁸

Contextual Erosion of the Resolutions

Owing to the changes in the ground situation over the last 50 years, the contextual relevance of the UNCIP resolutions has been completely eroded. In 1963, Pakistan illegally ceded a part of occupied J&K to China. Pakistan also changed the demographic character of POK by pushing in a large number of non-Kashmiris. During Zia-ul Haq's rule, General Pervez Musharraf, then a Brigadier, was assigned the task of suppressing the Shia revolt against the Sunni-dominated administration in the Gilgit region. Musharraf used Pathan tribesmen from NWFP and Afghanistan along with his troops to silence the Shias. In the wake of this operation, hundreds of Shias were butchered and displaced from Gilgit. The operations were widely reported in the *Herald*, a monthly magazine of the daily *Dawn* in its April and May 1990 issues. It is also said that the Wahabi Pakhtuns who raided Gilgit under Musharraf's command were led by none other than Osama bin Laden.¹⁹

According to a *Herald* report of May 1990, "In May 1988, low-intensity political rivalry and sectarian tension ignited into full-scale carnage as thousands of armed tribesmen from outside Gilgit district invaded Gilgit along the Karakoram Highway. Nobody stopped them. They destroyed crops and houses, lynched and burnt people to death in the villages around Gilgit town. The number of dead and injured was put in the hundreds. But numbers alone tell nothing of the savagery of the invading hordes and the chilling impact it has left on these peaceful valleys."²⁰ Experts believe that the mysterious air crash in which General Zia died was an act of sabotage done by a Shia airman accompanying Zia.²¹ Khaled Ahmed also spoke of the involvement of a Shia in the Bhawalpur air crash, but dismissed it on grounds of lack of concrete evidence. But he mentions how Zia sent Deobandi lashkars to attack Gilgit and challenge the historical dominance of the Ismaili and Shia communities. Khaled Ahmed was quoting from a *Dawn* report of December 21, 2002, by K.M. Ahmed, the former Governor of Gilgit Agency. The report said:

In April 1988, armed rioters from outside entered the Gilgit environs. Eleven villages around town were torched, their wooden structures burnt to ashes and valuable goods looted. Around 40 persons were killed. The civil administration did its best with the limited police force in Gilgit (which at least managed to save the town) and when it sought the help under aid to civil power provisions of the law (as the raiders started to move to the outlying villages), this help was denied on various pretexts. It was clear to the Gilgit civil administration that the raiders, who were tribals and mujahideen elements, could not have reached this remote place from Peshawar without someone's blessing. The Frontier Constabulary, whose check-posts dot the Swat-Besham road and the Besham-Gilgit highway, did not act to intercept the raiders.²²

The region of Gilgit and Baltistan in the Northern Areas is governed by the Kashmir Affairs and Northern Areas Affairs (KANA) Division of Islamabad. The local elected body, known as the Northern Areas Legislative Council is virtually powerless in comparison to even a municipal corporation in any other city of Pakistan.²³ Over the years, Pakistan has purposefully transformed the demographic character of Gilgit and Baltistan in the Northern Areas. Abdul Hamid Khan, Chairman of the Balwaristan National Front (BNF) in Gilgit writes:

The Pakistani administration has also been involved in efforts to alter the demographic profile of Pakistan-occupied Gilgit Baltistan, reducing the indigenous people to a minority. In the Gilgit and Skardu areas, large tracts of land have been allotted to non-locals. Other outsiders have purchased substantial stretches of land since they are, by and large, economically better off than the locals. As of January 2001, the old population ratio of 1:4 (non-locals to locals) has been transformed to 3:4. The rapid induction of Punjabi and Pushtun outsiders has created a sense of acute insecurity among the locals. Balwaristan is also [a] deprived region in terms of education and infrastructure, and there is only a negligible presence of daily newspapers, radio or TV stations.²⁴

Pakistan has forced demographic changes through terrorism in the Kashmir valley as well, forcing around 1.25 lakh Kashmiri pundits to flee to Jammu and other parts of India.²⁵ In the October 2004 military reshuffle, the nomination of hardliner General Muhammad Aziz Khan, Chairman Joint Chiefs of Staff, as the president-designate of POK further reflected Pakistan's approach towards POK.²⁶ Its current situation had been foreseen by Gunnar Jarring, President of the Security Council, way back in 1957. After his mission to India and Pakistan he wrote in his report of April 29, 1957, "The Council will, furthermore, be aware of the fact that the implementation of international agreements of an *ad hoc* character, which has not been achieved fairly speedily, may become progressively difficult because the situation with which they were to cope has tended to change."²⁷ Frank Graham, the UNCIP representative, stated in March 1958, "...the execution of the provisions

of the resolution of 1948 might create more serious difficulties than were foreseen at the time the parties agreed to that. Whether the UN representatives would be able to reconstitute the *status quo* which it had obtained ten years ago would seem to be doubtful...”²⁸

Establishment of Bilateralism

Pakistan’s *locus standi* on Kashmir based on UN resolutions was weakened by the 1972 Simla Agreement, which envisaged bilateralism as the basis for all Indo-Pakistan negotiations. Clause 1(i), (ii) and 4(ii) of the Agreement are significant. Clause 1(i) provides, “The principles and purposes of the Charter of the United Nations shall govern the relations between the two countries”.²⁹ Clause 1(ii) mentions, “[t]he two countries are resolved to settle their differences by peaceful means through bilateral negotiations or by any other peaceful means mutually agreed upon between them. Pending the final settlement of any of the problems between the two countries, neither side shall unilaterally alter the situation and both shall prevent the organization, assistance or encouragement of any acts detrimental to the maintenance of peaceful and harmonious relations.”³⁰ Clause 4(ii) says, “In Jammu and Kashmir, the Line of Control resulting from the ceasefire of December 17, 1971 shall be respected by both sides without prejudice to the recognized position of either side. Neither side shall seek to alter it unilaterally, irrespective of mutual differences and legal interpretations...”³¹

Almost three decades later, the Lahore Declaration signed between Atal Bihari Vajpayee and Nawaz Sharif on February 21, 1999, reiterated bilateralism enshrined in the Simla Agreement. The Declaration says that India and Pakistan are “...reiterating the determination of both countries to implement the Simla Agreement in letter and spirit...”³² Similarly, the January 6, 2004, Indo-Pak joint statement also makes similar commitments.³³

Cross-Border Terrorism as a Policy Tool

Since the 1980s, Pakistan-sponsored terrorism has paralysed normal life in J&K. Between 1988 and 2000, the Pakistan-sponsored proxy war in J&K has cost 26,266 lives, out of which 10,310 (40 per cent) were civilians, 3,250 (13 per cent) were security forces and 12,396 (47 per cent) were terrorists.³⁴ As per Indian estimates in J&K, terrorism has claimed 34,000 lives since 1990, including over 12,000 civilians and 18,000 terrorists.³⁵ Between 2001 and November 27, 2004, a total of 11,780 people, including terrorists, security personnel and civilians

have been killed. In 2004, till November 27, 1,709 people lost their lives.³⁶

Trouble began in J&K after reports of ‘electoral fraud’ committed by the ruling National Conference in 1987 created resentment among the people, especially the youth. In the 1980s, J&K witnessed the dismissal of two state governments, those of Farooq Abdullah (1984) and Ghulam Muhammad (1986). In 1986 the Congress party at the Centre allied with the National Conference in J&K and fought the 1987 elections, which were considered to be an ‘electoral fraud’.³⁷ To direct and stoke local resentment towards New Delhi, Pakistan created hundreds of *Tanzeems* not only in POK but also in J&K. The Jammu Kashmir Liberation Front (JKLF), created in 1965, was foremost in launching the tirade against the J&K government and the Centre with support from Pakistan. The Inter-Services Intelligence (ISI) created several outfits to destabilise J&K and these included Hizb-ul Mujahideen (HuM), Lashkar-e-Toiba (LeT) and Harkat-ul Ansar (now known as Jamiat-ul Ansar).³⁸ At present, the terrorist groups operating in J&K include Jaish-e-Mohammad (now known as Khuddam-ul Islam), Lashkar-e-Toiba (now known as Dawat-ul Irshad), Hizbul-Mujahideen (HM), Harkat-ul-Mujahideen (HuM), Al-Umar Mujahideen (AuM), Jammu Kashmir Islamic Front (JKIF), Al-Badr, Jamiat-ul-Mujahideen (JuM) and Dukhtaran-e-Millat (DeM). All these groups stand declared as terrorist organisations under the Prevention of Terrorism Act, 2002.³⁹ The HuM is predominantly a Kashmiri group, whereas the LeT, JeM and the others are predominantly Pakistani.

In May 1999, the Kargil war broke out when Pakistan-trained militants and regular soldiers from the Force Command Northern Areas (FCNA) and 10th Corps, Islamabad intruded 140 miles inside the Line of Control (LoC) and occupied several Indian peaks in J&K. The intrusion was effected by creating four independent groups from four infantry battalions and two companies of the Special Service Group (SSG), already located in FCNA. The operations were eventually supported by the 4 Northern Infantry Battalion, Gilgit; 6 Northern Infantry Battalion, Skardu; 5 Northern Infantry Battalion, Minimarg; and 3 Northern Infantry Battalion, Dansam. During the course of the war in Kargil, arms and ammunition with Pakistani markings, identity cards, uniforms and divisional and battalion patches among other articles, were recovered from the dead.⁴⁰

Besides, the Kargil War, Pakistan-backed hijacking of IC 814 in December 1999, attacks on the J&K Assembly on October 1, 2001, on the Indian Parliament on December 13, 2001, on the military cantonment in Kaluchak, in J&K on May 14, 2002 deteriorated bilateral relations further. In response to the attack on

Parliament, India deployed troops on the border (Operation Parakram) to respond punitively. Eventually, war was averted but not before rupturing bilateral relations further.

International Criticism of Pakistan

Pakistan has been subject to harsh criticism from the international community for its support to terrorist activities in India. On June 10, 2002, in the British Parliament, Foreign Secretary Jack Straw observed:

A number of terrorist organisations including Lashkar-e-Toiba, Jaish-e-Mohammad and Harkat-ul Mujahideen... have been at the forefront of violent activity in the region. India has long charged that such terrorism has had the covert support of successive Pakistani Governments and, in particular, of the main intelligence agency in Pakistan, the Inter-Services Intelligence Directorate - ISID. Her Majesty's Government accepts that there is a clear link between the ISID and those groups... Successive Governments of Pakistan have, through their Inter-Services Intelligence Directorate, encouraged and funded terrorists... to make incursions across the Line of Control as outsiders in that dispute, and to engage in mayhem and terrorism.⁴¹

Condoleezza Rice, now US Secretary for State, on October 30, 2003, remarked, "It is absolutely the case that infrastructure of terrorism has to be dismantled. It is absolutely the case that everybody needs to do more, and Pakistan needs to do more to make sure that there cannot be terrorist acts taken in - from Pakistan or from Kashmir against targets there."⁴²

The former US Ambassador to Pakistan, Nancy Powell, while speaking at the Pakistan American Business Council Meeting on January 23, 2003, said, "The Government of Pakistan must ensure that its pledges are implemented to prevent infiltration against the LoC and end the use of Pakistan as a platform for terrorism."⁴³ On June 7, 2002, Russian President Valdimir Putin also pulled up the Pakistani leadership saying, "We must call upon the leadership of Pakistan in the first place to put an end to the terrorist activities being carried out from its territory in India, in Kashmir and to do everything to ensure that society in Pakistan becomes transparent, democratic, predictable and understandable."⁴⁴ French Foreign Minister Dominique De Vellepin on March 29, 2003, told his Pakistani counterpart that there was a need for the fulfilment of the commitments undertaken by his authorities in regard to the ending of terrorist operations in Kashmir and the strict respect of Line of Control.⁴⁵ The European Union, on June 10, 2002, called upon Pakistan "to take visible, decisive and verifiable steps to seal the Line of Control, stop the supply of militant groups, help restrain the violent activities of these groups

in Kashmir, [and] close the militant training camps on Pakistan's side of the Line of Control.”⁴⁶

Apart from international disapproval of Pakistan's approach in J&K, Pakistan's longstanding claim that people have no desire to live in India and that terrorist acts are nothing but ‘freedom struggle’ was repudiated when a reputed London-based independent market research company, MORI International, conducted a survey that was released on May 31, 2002. The survey showed virtually no support among the local people for the state of J&K being divided on religious or ethnic lines. As per the survey, more than 80 per cent of the population believed that in order to bring peace, economic development of the region (93 per cent), holding of free and fair elections (86 per cent), direct consultation between New Delhi and people of Kashmir (87 per cent), end to militancy (86 per cent) and stopping infiltration across the LoC (88 per cent) was the key. The survey further showed that on the issue of citizenship, 61 per cent of the Kashmiris felt that they would be better off politically and economically as citizens of India and only 6 per cent wanted to be with Pakistan. The survey also showed peoples' disenchantment against terrorist violence in the Valley.⁴⁷

India's position was vindicated when cross-border terrorism as a serious threat to stability was put on the agenda of the composite dialogue process in Male in 1997, but with very little success so far. In the last round of talks held on September 6, 2004, in New Delhi, no progress was made. India talked of ‘cross-border terrorism’ whereas Pakistan talked of ‘human rights’ abuses in J&K.⁴⁸ The divergence in the interpretation of ‘terrorism’ seems to be shaped by the two sides’ larger stand on the Kashmir issue. What India considers as terrorism is labelled by Pakistan as the ‘internal struggle of the Kashmiris’.

India’s Kashmir Policy

In contrast to Pakistan’s stand, India considers the J&K issue as an internal matter and focuses on addressing it internally. India’s thrust has been to accommodate the grievances and demands of the people of J&K within the constitutional framework and deal with the ‘problem in Kashmir’. India’s J&K policy can be explained on the following counts:

Combating Cross-Border Terrorism

Weeding out terrorism is the core of India’s multi-pronged strategy in J&K. It has the following characteristics:

- Directly countering terrorism through security measures undertaken by Jammu & Kashmir Police and security forces;
- Accelerating economic development, improved provision of services and good governance to maintain satisfaction level among the people of J&K;
- Willingness to talk to the people of J&K, especially those who eschew the path of violence; and
- Strengthening the political process through elections at all prescribed levels and encouraging open debate.⁴⁹

India has sought to find solutions to the problems in J&K at the local level. It has adopted a range of measures to offset the impact of terrorism on the people with an emphasis on “planned and balanced regional development, building/strengthening physical and social infrastructure and improving the productive potential of the state”.⁵⁰ Former Deputy Prime Minister L.K. Advani talked to the All-Party Hurriyat Conference (APHC) led by Maulana Abbas Ansari on January 22, 2004, in New Delhi. The two sides concluded that a “step by step approach should lead to resolution of all outstanding issues in J&K.”⁵¹ The APHC also committed to the “enlargement of the dialogue process to cover all regions of J&K and concern of all communities and the Government committed to safeguard the security of all people and prevent violation of their rights.”⁵² The talks led to the release of 43 detainees on March 1, 2003.⁵³

New Delhi offered to hold talks with all those who eschew the path of violence through its interlocutors. K.C. Pant (2001), Ram Jethmalani (Kashmir Committee, 2002) and currently N.N. Vohra (April 2003-till date) visited J&K for talks with peoples’ representatives and others. Apart from meeting state government representatives, Vohra interacted with persons representing a cross-section of organisations, political parties, non-governmental organisations (NGOs), religious and community interests and sub-regional groups, besides eminent citizens.

In a significant step towards checking infiltration of terrorists in J&K, a decision was taken to fence the LoC, which has turned out to be a very effective measure in countering terrorism. According to the Ministry of Home Affairs (MHA) Annual Report 2003-04, on the India-Pakistan border, out of 2,003 km, a length of 1,641 km has already been fenced. Besides, fencing has been done in the Gujarat and Rajasthan sectors, while in Jammu, it should be completed by March 2006.⁵⁴ Applauding the move, Home Minister Shivraj Patil said, “We have built a fence and with proper monitoring by Army and para-military forces, infiltration is down by 60 per cent.”⁵⁵ Former Chief of Army Staff, General N.C. Vij also praised the

measure saying, ‘Infiltration has been reduced to one-tenth of the last year’s (2003) levels...The impact of the 700 km fence in choking infiltration had given a major psychological advantage to the nation.’⁵⁶ However, it must be mentioned that the decline in infiltration is also due to the success of the security forces in counter-insurgency operations in J&K, international pressure on Pakistan after September 11, Pakistan’s domestic compulsions, and the Indo-Pak peace process.

The Centre and the J&K government jointly adopted several other measures also for combating terrorism. These include strengthening border management to check infiltration, pro-active action against terrorists within J&K, gearing up intelligence machinery, greater functional integration through an institutional framework of Operations Groups and Intelligence Groups of the Unified Headquarters (UHQ) at various levels, and improved technology, weapons and equipments for security forces and action as per law against ground supporters of the terrorists. Strengthening of the counter-terrorist grid, strengthening and modernisation of J&K Police, vitalisation of Village Defence Committees, launching of pinpointed counter-terrorist operations based on actionable intelligence, strengthening of security cover for areas inhabited by minorities including Sikhs, and checking infiltration through improved border management have also been undertaken.⁵⁷

Ensuring Effective Governance

One major challenge before New Delhi has been to ensure effective and good governance in J&K. In August 2003, at the eighth Inter-State Council meeting in Srinagar, former Prime Minister Atal Bihari Vajpayee said that there was a need for “an action plan on good governance.”⁵⁸ His formula included the following:

- A comprehensive legal framework that is defended and enforced by an impartial and competent judicial system.
- A framework that would be accountable and open.
- A transparent executive decision-making apparatus.
- A system coupled with a capable, efficient and people-friendly bureaucracy.
- Lastly, a strong civil-society.⁵⁹

He illuminated the changes in the dynamics of social, economic and political forces since the submission of the Sarkaria Commission Report and appreciated the sense of partnership that has emerged between the states and the Centre. He emphasised the need for the Inter-State Council for monitoring the implementation of the action plan both in quantitative and qualitative aspects, and implementing

the 59 recommendations of the Sarkaria Commission as the guiding principles for various central ministries and departments as well as state governments.⁶⁰

According to some independent reports, effective governance requires the following:

- To make power generation a key priority;
- Give more emphasis to primary and vocational education;
- Energise the state civil services, including the judiciary and legal profession;
- Strengthen the state's human rights commission; and
- Rehabilitate Kashmiri Pandits.⁶¹

Amitabh Mattoo, Vice-Chancellor of Jammu University and a Kashmiri pundit himself, lays down four essentials for good governance. First, a strong and stable economic infrastructure that can unleash the entrepreneurial potential of the people of the state as well as generate employment. Second, an accountable, streamlined and people-sensitive administrative machinery. Third, a speedy grievance redressal system that includes an upright and effective judiciary. And fourth, a revival of Kashmir's traditionally tolerant society and its expression in the form of *Kashmiriyat*. All four have been absent in the state for most of the last decade. Only if these are in place can we hope for an economically viable and politically and socially stable Jammu and Kashmir.⁶²

Autonomy

Granting autonomy to J&K has always been a subject of intense debate in India. Autonomy in the literal sense can be defined as freedom to work/legislate independently. By this definition in constitutional terms, autonomy means independent powers to make legislation on various subjects, which is the case with J&K.⁶³ To others, the term 'autonomy' essentially implies "an adjustment in Centre-State relations."⁶⁴ At present, J&K is the only state that has a separate Constitution. Article 370, another subject of debate, was incorporated in the Indian Constitution of India through a Presidential Order titled, "The Constitution (Application to Jammu and Kashmir) Order 1950," to create a link between the Indian Constitution and that of J&K.⁶⁵ In due course, as per the provisions of Article 370 and in concurrence with the state government, a comprehensive order was passed in 1954, titled, "The Constitution Order, 1954" giving more powers to Parliament and has since been amended from time to time. This order can be considered as the 'Constitution of India as Applicable to J&K'.⁶⁶ Over the years,

a number of provisions of the Indian Constitution have been applied to J&K, with certain exceptions and with/without modification, through Article 370. All the fundamental rights guaranteed under the Constitution of India are available to the permanent residents of J&K in terms of the Constitution of J&K. Further, the power of the state legislature to make laws in future or to amend the existing law in force, including the pre-Constitution laws relating to permanent residents and their rights, has been given protection under Article 35 (A) of the Indian Constitution, as applicable to J&K. Such provision is not available to other states.⁶⁷

In 1995, Prime Minister P.V. Narasimha Rao expressed New Delhi's desire to consider autonomy "short of independence" for J&K, which was welcomed by Farooq Abdullah.⁶⁸ As Chairman of the National Conference (NC), Farooq Abdullah called upon the Centre to issue an order under Article 370 (1) (d) to restore the state's autonomy on the lines suggested in the Delhi Agreement of July 24, 1952. The Agreement was endorsed both by Parliament and the J&K Constituent Assembly in August 1952.⁶⁹

In 1996, Prime Minister H.D. Deve Gowda offered J&K "maximum autonomy" in order to persuade Farooq Abdullah to participate in Assembly elections.⁷⁰ Farooq Abdullah as Chief Minister had constituted two committees in 1996 to look into various autonomy proposals. The first was headed by Balraj Puri and the second, initially by Karan Singh and then by Mohiuddin Shah. The first committee, called the State Autonomy Committee (SAC) was mandated to make recommendations vis-à-vis regional autonomy "consistent with the integrity of the State and to promote better involvement and participation of people in different regions for balanced political, economic, educational, social and cultural development, evolving of instrumentalities like local organs of power at all levels and also to suggest changes if required, in the state Constitution."⁷¹

The second committee called the Regional Autonomy Committee (RAC) was asked "to examine and recommend measures for the restoration of autonomy ...consistent with the Instrument of Accession, the Constitutional Application Order 1950, and the Delhi Agreement."⁷² The two reports were submitted to the J&K Assembly in April 1999.

In March 1999, the Delhi Policy Group report titled, *Jammu and Kashmir - An Agenda for the Future*, suggested the following five-point plan for autonomy:

- Restore nomenclature (*Sadar-e-Riyasat* and *Wazir-e-Azam*);
- Grant the state a role in the selection of the Governor;

- Prevent misuse of Article 356 (provisions in case of failure of constitutional machinery in states);
- Give the state services more authority and increase the quota for the state in the All India Services; and
- Appoint a Regional Election Commissioner for the state.

The report suggested that it was necessary to introduce a provision in the Constitution which would provide for a referendum in the state before any major amendment that would affect the state's ties with the Union, becomes a law.⁷³

Another widely debated proposal which drew considerable attention was prepared by Joseph E. Schwartzberg, and merged into the Livingston proposal, titled, *Kashmir - A Way Forward* (September 1999, Larchmont, New York).⁷⁴ The report recommended three alternatives. First, creation of two sovereign Kashmiri entities, one on each side of the LoC, each having its own government, Constitution, and special status, vis-à-vis India and/or Pakistan. Second, a single Kashmiri entity, straddling the LoC, having its government, Constitution, and special status vis-à-vis both India and Pakistan. Third, creation of a Kashmiri entity on the Indian side of the LoC only, again with its own government, Constitution, and special status vis-à-vis the host state.⁷⁵

Democracy

In spite of internal turmoil, democracy has prevailed in J&K since 1951, barring periods when the state had come under President's rule (Article 356). In the 1951 elections, the National Conference won all seats and came to power. Consequently, under Sheikh Mohammad Abdullah in 1951, the Constituent Assembly approved the accession of J&K into the Indian Union and also approved the Delhi agreement of July 1952. Elections for the J&K Assembly were held in 1951, 1962, and 1983. In 1986, the Congress (I) allied with the NC in J&K and contested the controversial state elections of 1987. The 1987 elections were labelled as 'flawed' and 'electoral skullduggery', and highlighted the distrust of New Delhi and the National Conference among the people of the Valley.⁷⁶ The new generation of Kashmiris was resentful of New Delhi's political expediency in J&K and inadequate economic opportunities.⁷⁷ According to Sumit Ganguly, "...members of the Congress (I) regime in New Delhi desired to install a Congress (I) government in Jammu and Kashmir, regardless of the potentially adverse consequences."⁷⁸

Nevertheless, people exercised their franchise in assembly elections in 1996

and 2002 and in the parliamentary elections in 1996, 1998 and 2004. The 2002 Assembly elections brought the Progressive Democratic Party (PDP) to power in alliance with the Congress (I). The average turnout reported in the elections was 44 per cent, a testimony of the existence and resilience of the democratic ethos and peoples' interest in state affairs.⁷⁹ Chief Minister Mufti Muhammad Sayeed's policy of providing the 'healing touch' has been widely appreciated. The decision to release 55 'detainees' appealed to the common man, who saw a sense of deliverance in it.⁸⁰ The PDP government, despite financial crunch, invested in building new roads, bridges, tourist resorts, schools, universities and institutes. Now the common man admits that unlike before, the funds have been reaching those who need them the most.⁸¹

The conduct of municipal elections in January–February 2005, after a gap of 27 years in all 14 districts, is another illustration of the state's democratic success and the peoples' resolve to come out to vote in defiance of the boycott call from terrorist groups and APHC. It also reaffirmed peoples' faith in democracy. The overall voter turnout was between 30–35 per cent. Qazigund, in Anantnag, a disturbed area, recorded 78.9 per cent turnout. Puluwama with 56.6 per cent, Dooru with 65.99 per cent and Jammu with 65 per cent showed much promise for the troubled state. In Srinagar, the terrorist groups boycotted elections and even gunned down several candidates, both before and after the elections. The APHC boycotted the elections. Yet, ignoring all this, people came out to vote and the turnout was recorded at around 20 per cent. Rajouri and Poonch recorded 81 and 76 per cent turnout, respectively.⁸² The positive outcome of these elections was that mainstream parties returned to the democratic fold. People participated to fructify their demands of civic amenities and development. The trend suggests that militancy is losing steam.⁸³ Besides, the victory of different parties in different areas, with no single party sweeping the polls across the state speaks of the vibrancy of democracy. If PDP won in Gandherbal, the home constituency of the Abdullahs, it lost to the NC in Srinagar. The Congress and PDP won in Charar-e-Sharif and the former edged past BJP's 26 seats in Jammu, with 27 seats.⁸⁴ Another striking feature of these elections was the large turnout of women voters. At many places, they even outnumbered their male counterparts.⁸⁵ Peoples' participation in this election gave a strong message – 'freedom can wait but development cannot'.⁸⁶

Economic Development

Economic development of J&K has been another concern for the Centre. As a result, New Delhi made huge investments in infrastructure development, promotion

of trade and industry including tourism, cottage industries and handicrafts, and creating better employment opportunities, especially for the youth. The central government envisaged planned and balanced regional development for building physical, economic and social infrastructure, thereby improving the productivity of J&K. The central assistance besides the state Plan also funds the non-Plan gap. In 2003-2004, the state's annual Plan outlay has been increased to Rs. 2,500 crores.⁸⁷ Several important schemes have also been introduced in the infrastructure sector – railways, power and roads. In May 2002, the NDA government announced a package of over Rs. 6,000 crores for employment, rail and road development, relief and security in J&K,⁸⁸ and again in April 2003, it announced a number of schemes and grants for J&K.⁸⁹

In November 2004, Prime Minister Manmohan Singh visited Jammu and Kashmir to deliver 'peace with dignity' to the people.⁹⁰ The objective was to win 'hearts and minds' and assuage peoples' alienation towards New Delhi. He announced a Rs. 24,000 crore 'Reconstruction Plan for J&K'. Towards addressing grievances and concerns he said, "Our doors are open to anybody who wants to talk to us."⁹¹ However, the most significant step was the announcement of the reduction of troops from south Kashmir, to boost peoples' confidence and also the peace process,⁹² which was welcomed even by Pakistan. Pakistan Foreign Ministry spokesman Masood Khan said, "This is a positive development and a good beginning."⁹³

Indo-Pak Rapprochement: Discussing Kashmir

In May 1997 in Male, Inder Kumar Gujral and Nawaz Sharif initiated the composite dialogue process which created eight baskets of issues (6+2) namely, Jammu and Kashmir, Siachen, Wular Barrage/Tulbul Navigation Project, Sir Creek, Terrorism and Drug Trafficking, Economic and Commercial Cooperation, Peace and Security, and Promotion of Friendly Exchanges in various fields. Under the composite dialogue process, the first round of talks on J&K were held in Islamabad from October 15-17, 1998, though they ended without success. Pakistan's insistence on third-party intervention was rejected by India, but the need to reduce the risk of a conflict by building mutual confidence in the nuclear and conventional fields was reiterated.⁹⁴ In early 1999, Prime Minister Atal Bihari Vajpayee undertook a historic bus trip to Lahore, where he signed the Lahore Declaration with his counterpart Nawaz Sharif on February 21, 1999. Among other issues, the Declaration also said that the two parties "shall intensify their efforts to resolve all issues, including the issue of Jammu and Kashmir."⁹⁵

India's policy decision of 'no talks' in the wake of the Kargil War, the military coup in Pakistan and terrorist attacks on the Indian Parliament, was reversed in July 2001 with Vajpayee inviting Pervez Musharraf for talks in Agra. Unfortunately, in the absence of proper groundwork, disagreement, antagonism and brinkmanship wrecked the initiative with not even a joint declaration being produced.⁹⁶

Renewed Efforts for Peace

In April 2003, Vajpayee again made an offer for talks, which was duly reciprocated by his counterpart, Zafarullah Khan Jamali. This time around the two sides chose to first do the groundwork. As a result, snapped rail, road, air and diplomatic links were restored to boost mutual trust and confidence. The ensuing rapprochement enabled the two sides to resume talks on the eight baskets of issues. The talks were held on July 27-28, 2004, in New Delhi led by Indian Foreign Secretary Shashank and his counterpart Riaz Khokhar. The Pakistan Foreign Secretary termed the talks as "useful" and a "good first step", and Indian External Affairs Minister Natwar Singh described the talks as "positive and concrete".⁹⁷ The joint statement issued on June 28, reaffirmed the "need to promote a stable environment of peace and security."⁹⁸ Although no progress could be made on the bus link between Srinagar and Muzaffarabad, India and Pakistan agreed to take the peace process forward "in an atmosphere free from terrorism and violence."⁹⁹ The two sides also reaffirmed their commitment to the joint press statements of January 6, 2004, in Islamabad. The Foreign Secretaries expressed the hope that the dialogue would lead to a "peaceful settlement of all bilateral issues, including Jammu and Kashmir, to the satisfaction of both sides."¹⁰⁰

Despite the positive tone, differences persisted. India raised the issue of terrorism, whereas Pakistan contended with a call for ending "human rights violations" and troop reduction in the state.¹⁰¹ The failure to agree even on a common 'definition of the problem' shows the complexity of the issue and the challenge it poses. The inability of the two sides to reach a common definition till date remains the primary challenge.

Nevertheless, in an effort to change the political climate that surrounds the issue, the two sides discussed confidence-building measures, such as the bus services between Srinagar and Muzaffarabad, and between Suchetgarh and Sialkot, and the rail link between Munabao and Khokrapar. The Srinagar-Muzaffarabad bus service talks were stalled over the travel documents issue. Pakistan insisted on UN documents, and India proposed to carry passports as travel documents. The second round of talks on December 7-8, 2004, in New Delhi, were again

derailed because of the same reason. This time, Pakistan also demanded that the bus service be kept exclusively for the Kashmiris, whereas India wanted it to be open for all Indians.¹⁰²

Eventually, in February 2005, Natwar Singh and Kursheed Mahmud Kasuri in Islamabad resolved the row over documents and gave the historic bus service a nod. The bus service is likely to start from April 7, 2005. It was agreed that passengers can travel with entry permits, which would basically be their identity cards for travel. Both sides displayed considerable flexibility, with Pakistan discarding the ‘UN document’ stand and India, the ‘passport’ stance. It clearly demonstrates the ability of both sides to make concessions in the light of popular perceptions. There was also a proposal put forward by India to start a bus service between Amritsar and Lahore.¹⁰³ Unfortunately, some parties in Pakistan like the Pakistan Muslim League-Nawaz (PML-N), and Jamaat-e-Islami (JI) fail to appreciate the breakthrough and fear that it would dilute the ‘core’ issue of Kashmir.¹⁰⁴

Musharraf’s Kashmir Proposals

On October 25, 2004 at an *Iftaar* party, General Musharraf articulated his version of the Kashmir solution, primarily for domestic churning. Musharraf called for “identifying “regions” of Kashmir on both sides of the LoC, “demilitarising them”, and granting them the status of “independence” or placing them under a “joint Indo-Pak control”, or a “UN mandate”.¹⁰⁵ He suggested, “Take Kashmir in its entirety. It has seven regions. Two of the regions are in Pakistan and five are in India. In my view, identify a region, whether it is the whole or seven or part, I do not know. Identify the region, demilitarise the region forever and change its status...status can be independence, condominium where there can be a joint control or there can be UN mandate...to be defined by legal people.”¹⁰⁶

Although, Musharraf did not specify the seven regions, yet reports suggest that the seven regions could be the plains including Jammu, foothills up to 7,000 feet, Pir Panjal, the Valley, the great Himalayan Zone, the upper Indus Valley and the Karakoram ranges.¹⁰⁷ Out of these seven regions, five are with India, namely, Ladakh (Ismaili part), Kargil/Dras (Muslim), Poonch (contiguous to Azad Kashmir), Jammu (Muslim-majority districts) and the Valley. The other two are with Pakistan, Pakistan Occupied Kashmir or ‘Azad Kashmir’ as Pakistan refers to it, and the Northern Areas (minus Baltistan).¹⁰⁸

In Pakistan, the Pakistan Peoples’ Party Parliamentarian (PPP) and the

Pakistan Muslim League-Nawaz (PML-N) rejected the proposals. Chaudhary Nisar of the PML-N criticised Musharraf's disregard for the Opposition and accused him of offering unilateral concessions to India on Kashmir. He also said that "had any civilian ruler made such a proposal he/she might have been shown the door immediately."¹⁰⁹ A dismissive PPPP Secretary-General Raja Pervez Ashraf said that Musharraf had put the solidarity and territorial integrity of Pakistan at stake, which demanded his prompt removal in the larger interest of the country. He announced, "The whole nation strongly rejects his Kashmir policy."¹¹⁰

Najam Sethi, editor of the *Friday Times* seemed more inclined towards empathising with Musharraf's move. He argues, "Jihad can no longer be used as a weapon of coercion in the discourse on Kashmir...Pakistan stands to gain more from any 'peace dividend' than India. The respite from long-term warring would dilute Pakistan's obsession with 'national security' and create the political space to develop stable, democratic and civilian institutions. Equally, the economic resources resultant from an end to the arms race could be productively employed in development and poverty alleviation."¹¹¹ On the 'core-non core issue', Sethi suggests that the two sides must de-link them from each other, move simultaneously on all of them, and without expecting the resolution simultaneously on all of them.¹¹² De-linking of issues is what India has always urged. Kursheed Mahmud Kasuri in a statement in Japan said that no progress has been made on Kashmir but for the breakthrough on starting the bus service.¹¹³ He, like his predecessors, fails to de-link Kashmir from other issues and also unfortunately does not consider the bus service as one step closer to a larger understanding on the Kashmir issue and also that it benefits the people who are at the "core" of the core.

Zahid Hussein locates the reasons behind the proposals in Pakistan's compulsions. He wrote that the failure of militancy as a tool, attack on top leaders in the wake of war on terrorism, and a stricter international watch after September 11, forced Pakistan to abandon its old policies and think afresh. It was in Pakistan's national interest to break the Kashmir logjam.¹¹⁴ However, Zahid Hussein's argument that "Musharraf's proposals indicate a welcome step-back from Pakistan's traditional hard-line position of holding a plebiscite under the 1948 UN resolutions..."¹¹⁵ sounds a bit unconvincing. Both, the UN resolutions as well as Musharraf's proposal suggest a division of J&K on religious lines.

New Delhi's Response

The proposals failed to evoke much interest in New Delhi. According to some senior officials, there was nothing new and they were aimed at "extricating" the

Kashmir valley from India. It was labelled as an ‘ambiguous’ effort to convince a restive domestic audience in the POK of Musharraf’s efforts at ‘changing the status quo’.¹¹⁶

Prime Minister Manmohan Singh, initially in New York and then in Srinagar in November 2004 said, “I have made it quite clear that any redrawing of international border is something which is not going to be acceptable to us ... Any proposal which smacks of a further division of our country on the basis of religion is not going to be acceptable to us... Within these two limits we are ready to look into any proposal... [Musharraf’s proposals] are still not clear to us... I do not know what his plan is.”¹¹⁷ Over Pakistan’s labelling of his remarks, as ‘not flexible’, the Prime Minister said, “On the basis of stray words, we cannot say that there is no flexibility. On both sides we should move forward with sincerity.”¹¹⁸

The Bharatiya Janata Party (BJP) on behalf of the National Democratic Alliance (NDA), reacted sharply saying, “Map making has to stop in South Asia. Such attempts would not be acceptable in any disguise. Nor will the NDA accept any proposal that over-rides the will of the Parliament of India.”¹¹⁹ The official reaction from New Delhi was that the proposals could be considered, if given formally. Against New Delhi’s expectation the proposals did not come with Pakistani Prime Minister Shaukat Aziz, in November 2004,¹²⁰ the reason being that the proposals lacked consensus in Pakistan itself.

Both Shaukat Aziz and Khurshid Mahmud Kasuri clarified that the proposals were primarily meant for internal churning. Masood Khan, the Pakistan Foreign Office spokesman said, “Musharraf has not given any proposal for solving Kashmir as is being reported in a section of the press. The President’s ‘proposal’ was meant to invite a debate to resolve the issue. Nothing is final and it is open for alterations and changes.”¹²¹ Musharraf himself weakened the mandate of the proposals while speaking before the elected members of the ‘Northern Areas Legislative Council’ in Rawalpindi. He said, “I did not spell out any solutions to the Kashmiri issue the other day. I had only asked the media to identify the options and start a meaningful debate on them. Pakistan has not given up its principled stance on Kashmir.”¹²²

The challenge for Musharraf is to formulate ideas that first, are endorsed in Pakistan. Solutions, such as plebiscite, which would be widely supported all across Pakistan, will be a non-starter with India, and India’s willingness to convert the LoC into an international border would be immediately rejected by Pakistan. The Pakistani approach of addressing the issue as the ‘problem of Kashmir’ needs

modification so that it converges with India's 'problem in Kashmir' approach. This convergence is *the challenge* before the two countries.

The Way Forward

India and Pakistan still hesitate to make any significant concessions over Kashmir even while they propose to break away from the past. The only progress thus far could be that India has agreed to bring J&K on the agenda of the composite dialogue process and Pakistan has expressed its willingness to explore options other than the UN resolutions. The progress has only been placed on the table and does not promise much beyond the current stage.

However, one significant step forward has been the agreement over the Srinagar-Muzaffarabad bus service. The decision to settle the 'UN document' and 'passport' issues shows that both sides have the capacity to make adjustments. The two discarded options had a linkage with their respective official stands on the status of Kashmir. Many more such mutual concessions would be required from both sides in future talks. It would not be an exaggeration to say that the historic agreement over the bus service is one step forward towards converging the 'problem of Kashmir' and the 'problem in Kashmir' approaches at some mutually agreed position.

The peace process does show mutual willingness to move forward. However, there remains a challenge to convert the willingness into settlements on other issues. The wounds of Kargil and terrorist strikes in J&K prevent India from showing flexibility beyond its stated positions. In such a situation, Pakistan's periodic outbursts of going back to its 'fall back' position on J&K will undoubtedly stymie the rapprochement underway. The ongoing controversy over the Baghliar Dam and Pakistan's decision to approach the World Bank rather than seeking a solution bilaterally, could prove detrimental to the future of the peace process. A sustained peace process with occasional breakthroughs such as the CBMs, bus services, along with Track II interactions may help change the 'mindset' on both sides.

Given India's willingness to discuss the Kashmir issue, Pakistan must be open to discussing proposals such as 'greater autonomy' and an 'integrated Kashmir', to be followed by demilitarisation of the area and free movement of people and trade from the two sides. All concerned parties including the APHC would require moulding their official positions to facilitate solutions that could improve the lives of the people of J&K. The situation demands flexibility by all. Acting on such lines could eventually be a 'win-win' situation for all. The concepts of 'autonomy',

‘integration’ and ‘soft border’ are worth a try. The concept of a ‘linked’ Kashmir (through bus services and trade exchanges) with a ‘soft border’ give Pakistan the satisfaction of changing the *status quo*; to the people of J&K dividends of the ‘linking’ are in the form of trade, family reunions and peaceful backyards; and, to India it provides a solution within the parameters of the Constitution.

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