

A Study on Kashmir Problem and its Solution

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| Received: 13.01.2019 | Accepted: 23.01.2019 | Published: 30.01.2019

DOI: [10.36347/sjahss.2018.v07i01.007](https://doi.org/10.36347/sjahss.2018.v07i01.007)

Abstract

Original Research Article

Kashmir problem is the longest bilateral dispute in the world. The author of article will first enlighten the matter with historical anecdote. The information provided by the author can be authenticated. Both Indian and Pakistani version of Kashmir problem will be discussed here. Complicity of International Court of Justice (ICJ) will also be explained here. The aim of this study is to give information on historical perspective of Kashmir problem and the legal aspect of this debacle. Different kinds of qualitative methods like content analysis and documentary analysis has been taken for the study. Data have been gathered from different secondary sources and reports such as books, journals, newspapers, magazines and related organizations. In this study the researcher has provided some solutions to this dispute.

Keywords: Kashmir problem, Indian, Pakistani, ICJ.

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INTRODUCTION

Kashmir was a princely state of British India. Majority of the inhabitants are Muslims in Kashmir. As per the rule of partition Kashmir belonged to Pakistan because it was a Muslim majority state. The Muslims of that region also wanted to merge with Pakistan. However, the then ruler of Kashmir Maharaja Hari Singh wanted Kashmir to be ceded with India. Pakistan and India fought 3 wars over Kashmir. Pakistan lost 2 and one was ended up with ceasefire agreement. 4849 UN resolution was brought in by the United Nation. The father of the nation of Pakistan Muhammad Ali Jinnah regarded Kashmir as the jugular vein. The Hindus in Kashmir always wanted to be the part of India. In 1947, the then army chief of Pakistan ruled out the possibility of Pakistan getting Kashmir. Irregular forces were used by Pakistani establishment. Historically the current part of Pakistan administered Kashmir was mostly governed by the British. On the other hand, Indian administered Kashmir was mostly governed by the dogra raj put, Mughals and Sikhs. Another historical problem in Kashmir is the clash between Muslims and Kashmiri pundits. This kind of division in Kashmir was propped up by the British raj. British thought when the clash will cross all limits then they can reassert their position strongly. However, the Kashmir problem after the independence was bravely dealt by the Indian politicians. In 1963, Pakistan transferred shakskam valley to China which was the part of Kashmir. The problem is not over yet. Post 1971 Indian troops were heavily involved in Kashmir. There

is a clash ongoing between the local Kashmiri Muslim and Indian army. In 1989, jihad in Kashmir was fully supported, aided and abetted by Pakistani authority. They manipulated the local Kashmiri Muslims to wage war against the Indian state. To tackle that Indian army had to search their houses. A generation of Kashmiri youth has lost their future because of this asymmetrical warfare. From 2004-2007 there was no militancy in Kashmir. Border was calm. Problems again erupted when Peoples party of Pakistan came into the power. General Kiyani and his ilk wanted to flare up the border again to bring back the world's attention on Kashmir. Things went spiral out of control when General Raheel Sharif became the army chief. Indian armed forces decided to surgically attack along the line of control in 2016. At least 20 militants or terrorists were killed in that surgical attack. It was the first time in history that Indian Para commandos crossed the line of control in Kashmir.

Both India and Pakistan have occupied certain parts of undivided Kashmir in 1947 through war. Resolutions approved in the United Nations have never been implemented by either two of the nation.

International law and principles of international Court of justice refer the right to self determination is held by the people fundamentally and not by the government. Beside this Edward L. Deci and Richard M. Ryan developed Self-Determination Theory (SDT) which focus is on supporting natural intrinsic

tendencies, human motivation and personality in an effective and healthy ways [1]. As a meta-theory for framing motivational studies, the SDT “focus on how social and cultural factors facilitate or undermine people’s sense of volition and initiative, in addition to their well-being and the quality of their performance [2]”. It also deals with “individual’s experience of *autonomy, competence, and relatedness* [3].”

Objectives

The general objective of this study is to give information on historical perspective of Kashmir problem and the legal aspect of this debacle.

The specific objectives of the study are follows:

- To discuss both Indian and Pakistani version of Kashmir problems;
- To explain the complicity of ICJ;
- To identify the legal solutions of Kashmir problems;

METHODOLOGY

Qualitative methods like content analysis and documentary analysis has been taken for the study. Data have been gathered from different secondary sources and reports such as books, journals, newspapers, magazines and related organizations and their websites.

RESULTS

Former DG of ISI LT GN Hamid Gul said that if Kashmir could be resolved through court proceedings we would have done it long ago. Legal experts of India and Pakistan failed to find a peaceful solution of this dispute. Indians say Jammu and Kashmir is the integral part of India. Pakistanis say either hold a referendum in Indian administered Kashmir or give Indian administered Kashmir to Pakistan. Few Indians say Kashmir should be independent. There is more than 60% turn out in the provincial election in Kashmir. International Court of Justice (ICJ) did not take the cognizance of the matter at any time. Channel 4 of United Kingdom aired the videos and pictures of human rights violation in Indian administered Kashmir. United Nations failed to take proper steps at that point of time. As India is not the party to the International criminal court the matter was never taken up there by international community. Indians say Pakistan administered Kashmir as Pakistan occupied Kashmir. Pakistanis say Indian administered Kashmir as Indian occupied Kashmir. India’s right wing politicians, bureaucrats and social activists regard Gilgit Baltistan as part of India. However, Gilgit Baltistan is now under sovereign control of Pakistan. From the above discussion it can be drawn that the “so called” Kashmir issue which was merely a territorial issue has now become the talking point of human rights violation. As Kashmir issue is being tackled through diplomatic means it is no longer a cup of tea for lawyers.

What will happen if the above mentioned solutions are devalued by the all stakeholders? It will not be easy for India and Pakistan to accommodate those solutions overtly and covertly. There are unseen walls which will be an obstacle in implementing aforementioned solutions. According to Hussain Haqqani, Pakistan has consistently allowed sentimentality to trump strategic thinking. Much of the Pakistan’s handling of Kashmir has been unstrategic, overwrote and unsophisticated both in the past and the present. He said that coherent strategy and well considered end game can help Pakistan to resolve the Kashmir dispute. He also says that there was lack of political will to reach out Sheikh Abdullah who was a popular leader in Kashmir valley during 1948. More than that Pakistan did not have successful military plan. In 1965 Pakistan sent mercenaries across the line of control. They thought those people will be able to instigate local Kashmiris. However, it backfired. India attacked Pakistan on international border. In Kargil war, Pakistani forces went up the hill and mountain. They challenged the highway linking Srinagar to Leh. Pakistani establishment thought international community will support them. This time also India won heart of international community. Hussain Haqqani believes Pakistan has a strong case on Kashmir. Strategy needs several steps to be thought through.

Step 1- if it does not succeed, what will be the step 2. If it succeeds what will be the step 2. What will be step 3 after that? What will be the end game? According to him, Kashmir is not an emotional subject matter. Pakistan’s approach becomes adhoc in dealing with Kashmir problem.

Now the question arises who will be that third party. India on various occasions confirmed that according to Shimla agreement the existing disputes will be resolved bilaterally. However, on many occasions Pakistan sought interventions from China, USA and UN. UN is not nowadays intervening in the matters of India and Pakistan. USA intervened during the Kargil war of 1999. The criminal matters occurring along the line of control cannot be even taken up by the ICC (International Criminal Court) as India and Pakistan are not the signatory of Rome statute on the basis of which ICC was formed. India also defied the UNMOG (United Nations Military Observer Group). To rein in the blame game and character assassination India and Pakistan should go into the direction of Dialogue. There may be a need for a special bilateral tribunal who will deal with cross-border terrorism and infiltration.

Formation of the proposed Tribunal

- 5 member judge from 5 different countries. They are re-electable if necessary. Their term will be for 3 years. They will be appointed by the International court of Justice. The judges will have the experience of highest court (appellate division) of their respective countries. Two judges will be from

India and Pakistan. Others will be from the country that does not have any vital interest in indo-pak region.

- The judges of this tribunal will have general meeting with the head of the states (India and Pakistan) which will be held in every month.

DISCUSSION

The former US President Mr. Bill Clinton once stated Kashmir dispute as, “the most dangerous place on earth[4]”. Sequel to revival of political struggle of Kashmiri masses in 2010, the former Indian ambassador and lawmaker, Mr Kuldip Nayar said that, despite heavy military deployment of Indian Army in the Occupied Kashmir, India could neither restore peace nor resolve the dispute to the satisfaction of the masses. He stated, “Every now and then there is an incident in the valley to register the people’s discontent [5].”

The reason behind the creation a tribunal is very logical. When an incident occurs along the line of control we see what transpired on India’s and Pakistan’s news channels. The news room of Republic TV (India) and Times Now (India) becomes fish market. There is a need of third party intervention to resolve the disputes between India and Pakistan. There may be a need of joint task force to sort out the matters concerning the line of control. They will be under the control of that proposed tribunal. The joint task force will be headed by two military officers on the rank of Lieutenant General. They will be from both India and Pakistan. The joint task force will submit monthly report to that proposed tribunal. The task force will consist of hundred members from Indian and Pakistan armed forces. Their role will be limited to collect and sharing intelligence. They will also pinpoint the threat which will pose as a danger to the relationship between India and Pakistan.

CONCLUSION

At the end of the day war is not a solution to this bilateral dispute. Kashmir is called “The heaven on earth”. Both India and Pakistan can earn huge amount of money just from the tourism sector. Napoleon said that Army crawls on their bellies. It means there is a need of monetary resources to run an Army. In this respect He emphasized on the Economy. No country can prosper just on the basis of their military strength. India is the second largest economy in the world in terms of PPP (Purchase power parity). If they wage war against Pakistan it will ruin their economy. Pakistan on the other hand is on the verge of economic collapse. In these circumstances, both India and Pakistan should initiate comprehensive dialogue.

Probable Solution of Kashmir Problem

Certain steps can be taken for settle this dispute:

- Applying doctrine of modus Vivendi.

- Reinitiate 4 point formula proposed by former president of Pakistan General Pervez Musharraf.
- Cross-Border trade should be encouraged.
- Rehabilitation centre for militants.
- Tourism between Indian administered Kashmir and Pakistan administered Kashmir should be initiated.
- There should be proper rules of engagement in relation to conduct comprehensive dialogue.

ACKNOWLEDGEMENT

I am grateful to HT Shurovi, former student, Institute of Social Welfare and Research, University of Dhaka, for her inspiration.

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