

Kashmir Issue

Introduction :-

Kashmir a place where heaven touches the earth, is known as the place burning like hell, due to its background that dates back to the British withdrawal from India. The British government announced that the British paramountcy would not be transferred to any government. The government left it to the will of states to decide ^{as per 3rd June plan} either they want to be independent or join any government. The Kashmir issue has been a bone of contention and a source of acrimony between India and Pakistan since Hari Singh opted for accession to India. As a result the people of Kashmir started the **ponch revolt** against his decision, and pashtun tribesmen invaded Kashmir to help the common people, this led Hari Singh to seek Indian assistance, and India took this opportunity to take control over Kashmir. Pakistan has rejected this forced take over, and, both countries have fought three wars on the Kashmir issue. However, the illegal revocation of Articles 370 and 35A in Kashmir by India has added fuel to the fire once again, and the solution to the issue has become a need of the hour. In a nutshell the dispute is rooted in historical and political factors which demand bilateral negotiations for peaceful and sustainable solutions.

"No Asian conflict has proved more deadly, costly or intractable than which continues to divide India and Pakistan over Kashmir"

- Stanley Wolpert

Historical Background:

- Kashmir is the northernmost part of Indo-Pak subcontinent.
- It is land locked between Himalayas, Karakoram and Hindukush.
- Has an area of 84471 sq miles which was biggest of any state in India.
- It has international borders with Tibet, China, Afghanistan gave it a highly strategic importance.
- The Kashmir tragedy began under the Treaty of Amritsar 1846, The British sold the state of Jammu and Kashmir to Gulab Singh, for sum of 7.5 million rupees to recover the losses suffered against Sikhs. The Maharaj maintained an oppressive regime where people faced ruthless laws and heavy taxes. The muslims suffered discrimination in every sphere. With the spread of modern education a demand for basic political rights began in early 1930's. Later on with the development of National ~~congress~~ conference divergence between the Hindu and muslims interest came to the fore. There was a demand for an independent Pakistan which produced a new situation. Pandit Kak and the Maharaj wanted to declare the independence of Jammu and Kashmir. The news of their intention leaked which led Nehru and Gandhi to travel to Kashmir in order to manipulate the Maharaj decision, in which they were successful.

Punch revolt against Hari Singh:

Kashmir should have been joined with Pakistan according to the 3rd June plan, but could not happen due to the vested interest of the incompetent Hari Singh who wanted to rule Kashmir as an independent state with the aid of India. His dream was shattered when VP Menon extracted Kashmir's accession to India out of the Maharaj. This led the

Muslims on the western borders of his state to start the Poonch revolt, which played a crucial role in shaping the Kashmir dispute. Major contributors were dissatisfaction with Hari Singh's rule, economic grievances - non payment of per capita grants for contributors of war, military capabilities - made them a threat.

Stand Still Agreement 12 August 1947:

Pashtun tribesmen entered Kashmir to overthrow the Maharaj Hari Singh to bring an end to his cruelty. Hari Singh sought assistance from India in return signed a stand still agreement which consisted of pre-existing arrangement and services. ~~Add~~ Additionally, it aimed to ensure that no one, either Pakistan or India, would be allowed to enter Kashmir until the decision is pending.

Instrument of accession by Hari Singh:

The stand still agreement was intended to be a temporary measure while the future status of princely state was being decided. But due to the on going slaughter which was estimated to be around 1-2 million people (William Dalrymple), during the time of partition the situation escalated when Pashtun tribesmen invaded Kashmir and fought with the Maharaj's army, winning one-third part of Kashmir, now known as Azad Kashmir. This led to signing of the instrument of accession by Maharaj, officially integrating Jammu and Kashmir into the dominion of India. Pakistan rejected the agreement calling it fraudulent, and both countries fought their first war on Kashmir in 1947. India took the issue to UN, and it has become an international issue.

Kashmir dispute and stances of India and Pakistan:

Stance of India:

- First, India claims that Kashmir is its part, as Maharaj had signed the instrument of accession in the favour of India.
- Secondly, the violation of the stand still agreement by Pakistani backed tribesmen lead to an Indian invasion of Kashmir.
- Third, India has considered it an internal issue and denies third-party mediation in the Kashmir issue.

Stance of Pakistan:

Contrary to that Pakistan claims that Maharaj added the provision in the instrument of accession. The provision was to know the will of the Kashmiri people.

Also India's claim was totally against the 3rd June plan which was based on population. So a plebiscite was necessary.

"We do not want people to win against their will and with the help of armed forces; and, if the people of Jammu and Kashmir state wish to part company with us, they can go their way, and we shall go ours. We want no forced marriages, no forced unions."

- Nehru

According to the resolution of UN a few tribesmen were involved on their own in Kashmir, having no back from Pakistan. It nullifies the claim for violation of stand still agreement. Till now 17 UN resolutions have been passed on Kashmir issue and India still has his invalid claim for Kashmir.

90% of Kashmiri Muslims support self-determination or integration with Pakistan

- The Pakistan Institute of International Affairs (PIIA) 2020
PIIA

Significance of Article 370 and 35A

Article 370 enacted by Indian Constitution provided autonomous status to Jammu and Kashmir. It allowed the state to have its own constitution, flags and laws except in matters of defence, foreign affairs, finance and communication.

Key significance was

- Autonomy which guarded unique Kashmiri identity of people
- Federal Asymmetry
- Honoured the terms of instrument of accession upon which J&K was acceded to India

Article 370 is the only link between the state of Jammu and Kashmir and the rest of India

- Constituent Assembly of J&K

Article 35A empowered the J&K legislature to define permanent residents of the state. It allowed the state to grant special rights and privileges to permanent residents in

- public employment
- Acquisition of immovable property
- Settlement
- Scholarships and welfare

It preserved demographic character of J&K.

prevented outsiders from buying land or settling in the region permanently. Also, reflected the special relationship between Kashmir and the Union of India

Article 35A was a protective wall around the unique cultural and social identity of Jammu and Kashmir

- Justice Haimin Masoodi

Revocation of Article 370 and 35A:

On August 2019 both the articles were revoked. Article 370 was rendered ineffective using clause (3) of the same article which resulted in Article 35A being automatically nullified.

J&K was bifurcated in two territories Jammu and Kashmir and Ladakh. This resulted in

- loss of autonomy
- land and demographic concerns
- Human right concerns

13,000 people, including politicians and activists detained

- HRW 2020

Internet shutdown lasted 213 days, the longest ever in a democracy

- Access Now, 2020

The revocation was unconstitutional, as it requires consent of J&K's Constituent Assembly, which no longer existed.

Article 370 and 35A were not just legal provisions, but symbols to accommodate regional identities. This abrogation altered the political structure of J&K creating legal, social and geo-political turbulences.

Measures taken by Pakistan post August 2019 revocations:

1) Diplomatic downgrade and suspension of ties

- Expelled Indian high commissioner Ajay Bisaria and suspended bilateral trade
- Airspace was closed until mid 2020
- Samjhauta express train services were suspended
- Recalled its ambassador from Delhi

2) Intensive diplomatic outreach and UN engagement

- PM Imran Khan addressed the UN General Assembly in September 2019 stating

"If a conventional war starts between two countries anything could happen. But supposing a country seven times smaller than its neighbour is faced with a choice: either you surrender, or you fight for your freedom. We will fight."

This statement was a wakeup call for the whole world to not take the situation like, as both are nuclear state and a simple spark can ignite the situation resulting in consequences far beyond the borders.

3) Publication and dissemination of dossiers.

- Pakistan initiated in releasing multiple dossiers consisting details about Indian human right abuses and demographic changes which has always been Indian hidden motive.
 - 13000 boys aged 9-18 arrested
 - 117+ alleged extrajudicial killings in staged encounters
 - 3000 people booked under anti-terrorism laws
 - Destruction of 10,000+ homes

- Pakistan's MOFA Dossier

2019-2021

4) Organization of Islamic Cooperation (OIC)

Hosted the 48th OIC council of foreign ministers, resulting in a strong resolution. Secured over 30 statements / resolutions from OIC bodies condemning India's forced ~~revocat~~ revocations. This signified the similar stance of Islamic countries over the Indian hegemonic rule.

5) Amplifying human rights and legal focus

Pakistan also played its role by consistently citing reports by international NGOs and UN.

- Documented patterns of impunity for human rights violation leading to civilian casualties

121 Killings of civilians post 2019 revocations

- OHCHR report

- Highlighted arbitrary detentions, torture and use of pellet guns

1253 eye injuries due to pellet guns

- Amnesty International

6) Media advocacy and diplomatic visits

- Pakistan organized visits for foreign diplomats to the line of control and Azad Kashmir to witness ceasefire violations and meet victims effected.

- launched the "Kashmir Khwareb" digital campaign and also produced documentaries like "Hell in Heaven"

It helped to spread awareness about the issue on a global level, as black out of internet by India government made it difficult for the world to know about the atrocities being faced by people of Indian occupied Kashmir.

7) Kartarpur Corridor initiative (Soft power Contrast)

Opening the Kartarpur Sahib Corridor in November 2019, facilitating visa free access for Indian Sikh pilgrims to a holy shrine in Pakistan conveyed as a "bridge of peace" contrasting India's actions.

100,000 Indian pilgrims utilized the corridor despite pandemic disruptions.

- PSGPC

8) Domestic Symbolism

- Instituted Youm-e-Istehsal on August 5th annually, featuring nation wide protests, parliamentary sessions
- Observed February 5th "Kashmir Solidarity day"
- Renamed Kashmir highway to Srinagar highway in 2020 to express solidarity with the people of Kashmir

Evaluation of Pakistan's Kashmir policy:

1) Pakistan's principle of self-determination

Pakistan's Kashmir policy is anchored in the principles of right to self-determination which is enshrined in UNSC Resolutions

47, 91, 122 - These resolutions call for a fair plebiscite under international supervision.

"people of Kashmir must be allowed to decide their own future"

- Shehbaz Sharif

- Pakistan has actively lobbied international platforms like OIC, which has passed resolution affirming support for Kashmiri right to self-determination.

2) Diplomatic and moral support

Pakistan continues to highlight Indian human right violations in IAK citing international NGOs (mentioned earlier)

"We will never abandon the Kashmiri people in their fight for self-determination"

- Imran Khan

3) Bilateral Engagement and advocacy for mediation

Pakistan has historically advocated for bilateral dialogue under Simla agreement and later under the Lahore declaration (1999).

- 2007 Musharat president — Indian PM manmohan nearly produced a framework agreement involving demilitarization and self governance. The effort collapsed after Musharraf's political downfall.

4) Military strategy and deterrence

Pakistan's military doctrine views Kashmir as the "jugular vein" of Pakistan. The Kargil war 1999 reflects Pakistan's readiness to ~~escalate~~ escalate military when diplomatic options stall.

The 2019 Pulwama - Balakot crises nearly brought the country to war after 40 Indian soldiers were killed by Jaish-e-Mohammed.

LOC ceasefire violations peaked in 2020 with about 5100 incidents

- South Asia Terrorism portal
SATP

5) Building global consensus.

Pakistan aims to build global consensus on the Kashmir issue, emphasizing the need for a peaceful resolution.

Prospects of possible solutions to Kashmir issue between Pakistan and India:

1) Pakistan needs to better its Foreign policy

Currently, India is among the top 5 economies of the world, with a strong foreign policy aiming for its national interest. On the other hand, due to the economic crisis, Pakistan is facing a hard time. Additionally, the flaws in Pakistan's foreign policy make it difficult to ally the world super economies towards itself, which ultimately hinders the efforts of Pakistan to solve the Kashmir dispute.

2) China replacing the USA as a super power

In another scenario, the Kashmir issue can only be resolved with the intervention of a super power. In the present scenario India is an ally of US who uses it against China to halt the Belt and road initiative. ~~For~~ For that matter, China replacing the US as a super power would be beneficial in solving the dispute.

3) Initiation of economic integration between both countries

Creating a mode for economic integration could help build common ground interests and provide foundation for cooperation. Cross-border trade, joint economic projects and shared infrastructure could contribute towards stability, leading to bilateral talks on Kashmir issue.

4) Taking the issue to the International Court of Justice

Almost all the resolutions of the UN on the solution of Kashmir issue have not been accepted by the Indian government.

However, according to Article 65 of the UN, any issue can be referred to the ICJ for legal opinion. As the Israel and Palestine dispute was being referred to the ICJ, the Kashmir issue should also be discussed there.

5) Current ruling government of Hitlerian Modi in India

The extremist government of BJP which had also nullified the Article 370 and 35A shows that they have no interest in solving the matter. Situation can get better with the change of government.

6) The partition option Dixon formula

- Regional partition of Kashmir considering four regions Ladakh, Northern areas and Azad Kashmir splitting Jammu and Kashmir. It was given by UN in 1950. Pakistan agreed but India denied.

7) The Irish model - Good Friday Agreement

It includes provision for a referendum on the constitutional status of Northern Ireland which was able to end a 30 year dispute.

A similar approach could help solve the 70 year dispute, allowing people of Kashmir to express their preferences through a fair and transparent process.

~~Conclusions~~ Critical analysis:

All the previous solutions resolving Kashmir issue involving UNO, status quo options, referendum options and plebiscite options have failed due to stubbornness of India. However Pakistan aims towards a strong foreign policy, efficient and practicable strategies for meaningful bilateral dialogue is inevitable to come for peace in South Asia.

Conclusion:

Situation of Kashmir is complex influenced by history, political and social factors. Over the years Kashmir issue has been a center of attention for both India and Pakistan resulting in multiple wars. Various attempts have been made for its peaceful solution, but a stable resolution is yet to be formed. However, the changing modern world is bound to lay a new foundation. Hence, only a minor compromise from both countries can result in bringing a long awaited peace.