

## **Kashmir issue**

### Outline: Kashmir Issue

#### 1. Introduction:

- History of Kashmir
- The uncertain situation of Kashmir

Thesis Statement: The conflict between Pakistan and India over the Kashmir territory is a longstanding issue in the subcontinent.

#### 2. Contrasting Position of Indian and Pakistan

- (i) India's stance on Kashmir
- (ii) Pakistan response to Indian stance

#### 3. The Role of United Nations to resolve issue

- (i) Proposal by the United Nations
- (ii) Failure of United Nations to implement resolutions

#### 4. Current Situation of Kashmir

- (i) Legal changes by India
  - A. Article 370
  - B. Article 35 (A)
- (ii) Administrative changes
- (iii) Pakistan Response to these Changes

#### 7. Conclusion

Kashmir issue started with the partition of British India in 1947. When it was decided that, those states which are Muslim majority states would join Pakistan and Hindu majority states would join India. And the princely states would join Pakistan or India on the basis of geographical proximity and the will of people. Kashmir was a princely state, headed by Maharaja Hari Singh. The ruler was Sikh and the people of Kashmir were Muslims. The predicament situation aroused when the leader of Kashmir wrote a letter to Indian government for support against tribal incursion and subsequently signed the Instrument of Accession with India. The conflict between Pakistan and India over the Kashmir territory is a longstanding issue in the subcontinent. India and Pakistan has contrasting position on the Kashmir, the unimplemented United Nation

resolutions, the unilateral legal and administrative changes by India in Kashmir, and the ideological and geo-economic significance of Kashmir, hinder to peaceful resolution of the issue.

India claims that Kashmir is the integral part of India and fall under its legal and constitutional jurisdiction. During the partition of British India, when princely states had the autonomy to join either: Pakistan or India. The ruler of Kashmir, Maharaja Hari Singh had signed the Instrument of Accession with India on 26 October 1947 -- a legal document which enabled Kashmir the part of India. The treaty has been signed according to 1947 independence act which allowed the princely states to join any of the country. India has submitted the document of accession in the United Nation. Based on this accession, India claimed that Kashmir is its integral part.

India also raised allegations against Pakistan, that it is an aggressor. According to India, the then ruler of Kashmir, Maharaja Hari Singh wrote a letter to the Governor General of India and asked military assistance against the tribal incursion from Pakistan. India claims that these tribal forces were backed by Pakistan, which invaded Kashmir to take its control. In response, the Indian Government asked Maharaja Hari Singh, to sign the accession treaty with India before providing military aid. Therefore, India claims that after the ruler of Kashmir signed the instrument of accession, India legally deployed the forces to protect the territory. Additionally, Indian government also submitted the letter of Maharaja Hari Singh in the United Nations as evidence to strengthen its position.

Rejecting the claims, that Kashmir is the integral territory of India, in response the Pakistan refers to 3<sup>rd</sup> June plan on the basis of which the territories were divided. According to the plan, in Bengal and Punjab provinces, Hindu majority areas were to join India and Muslim majority areas were to join Pakistan. For the princely states, there were two criteria to guide its accession: The geographical proximity or geographical dependence of state, and the will of people. Pakistan claims that Kashmir is landlocked area and it used Pakistan to reach the sea, it is completely dependent on Pakistan. Additionally, Kashmir is Muslim majority states and the people of Kashmir also aspired to join Pakistan. Therefore, on the basis of 3<sup>rd</sup> June Plan, Pakistan asserts that Kashmir rightfully belongs to it.

Pakistan also rejecting the accusation of India that it act as aggressor in the conflict of Kashmir. Pakistan stated, after independence the first Chief General was General Douglas Gracy, a British officer, who refused the orders of Muhammad Ali Jinnah to send troops to Kashmir for its liberation. General argued that, he rejected the order on the basis of two grounds: First, the army of Pakistan was too small to confront the big Indian army, Second, he was bound by the British army which restricted his involvement in this matter. From the arguments of General Gracy, Pakistan maintains its claim that its regular army did not invade Kashmir, nor did it support the Tribal incursion without the British approval. Additionally, Pakistan asserts that the GB Scouts revolt against Hari Singh in Gilgit Baltistan, to liberate Gilgit from its rule. The same scouts enter into Neelum valley through Astore and, with the support of locals, they liberated some part of Azad and Jammu Kashmir. Moreover, the Mujahedeen from FATA fought in Kashmir with

their own well. FATA was an autonomous region and not under Pakistan control. Therefore, Pakistan was not involved in the liberation of Kashmir.

One of the biggest conundrum....who entered Kashmir to seize it. Maharaja Hari Singh signed the Instrument of Accession on oct-26 1947, and next day India deployed its armed forces in Srinagar. While, Pakistan reportedly sent its troops in mid-November 1947 and the first between Indo-Pak began on Kashmir. Indians assert that Pakistan enter into Kashmir first, fought in the form of Tribal irregulars. Pakistan, however, reject these claims, maintaining that the conflict escalated only after Indian military involvement. This disagreement over the sequence of events remains a core unresolved issue in the decades-long Kashmir conflict.

To resolve the conflict between the two neighbors, the United Nations proposed a series of resolutions. After the involvement of Pakistan Military in Kashmir, Indian unilaterally approached the United Nations. United Nation Security Council presented a solution comprise on Three-Stage plan to address the dispute. Firstly, a ceasefire would be implemented between the two countries. Secondly, there would be a withdrawal of both militaries. And thirdly, referendum (plebiscite) would be held in Kashmir to allow its people to decide whether to join Pakistan or India or remain independent.

Only one resolution of United Nation implemented, the ceasefire took place between the two states. Pakistan was asked for complete evacuation and India for partial evacuation-remaining troops of Indian military would not be weaponized and would act as peacekeeper in the referendum. Pakistan accepted its complete evacuation from Kashmir on one condition that the land which would be evacuated by Pakistan military, would not be seize by Indian military. However, there were three places which were evacuated by Pakistan and seized by Indian military. In its resolution United Nation asked for the referendum in Kashmir, which is partially accepted by Pakistan on two conditions. First, India troops would not enter into Gilgit Baltistan and Azad and Jammu Kashmir. Second, referendum would be held in the presence of under the supervision of Maharaja Hari Singh's scouts would held the referendum. These conditions were not met, and as a result a plebiscite has not been conducted in Kashmir.

In 1950, the United Nation proposed another resolution to resolve the Kashmir dispute. According to resolution 80 of United Nation affirmed that, the final disposition of Kashmir dispute would be determined by the people of Azad and Jammu Kashmir. Moreover, the resolution stated that the military of both countries would be spontaneously withdrawal, the United Nation Peacekeepers would hold the plebiscite in Kashmir.

As a result of forsaken attitude of both countries made the Kashmir issue more complicated and longstanding. However, it leads to a question: why United Nation is failed to implement its resolutions? It can be answered from Chapter 6 of UN Charter which writes that **"Parties to any dispute...shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement..."**(Article 33). Albeit, this is article is not binding until the

consent of both parties; India rejected this article and called it “third-party intervention”, it also claims the Kashmir is its internal matter. Secondly, all the resolution which is presented in the United Nations Security Council has been veto by Russia. In 1962, when a resolution moved in the United Nations Security Council, to make 1949 resolution binding on both states, USSR (Russia) veto the resolution in the support of India, because at that time Pakistan was in the camp of USA against the USSR.

Currently, the dispute became more complex when in 2019, India brought legal and administrative changes in the Kashmir. India revoked article 35 (A) and article 370 of its constitution. According to Article 35(A), Indian citizens were not allowed to purchase land in the Kashmir. And article 370, which defines the special status of Kashmir; these both articles have been provoked by Indian government and divided Kashmir into two administrative units: Kashmir valley and Ladakh. These legal changes took place with the advice of Governor Kashmir to President of India, to revoke the special status of Kashmir through special ordinance. The parliament of India endorsed it and passed from both houses with 2/3<sup>rd</sup> majority.

Additionally, India also brought administrative changes in the valley, more than hundred thousand further troops added to the Indian army in Kashmir which is approximately seven hundred thousand. Moreover, Special Protection Act is aggressively and excessively used by Indian army, on the basis of which they can prison Kashmir people for one year and will not present them in the court. Furthermore, more than 13 thousands Kashmir citizens have been incarcerated including youth, politicians and religious leader (muftis).

Pakistan strongly rejected the constitutional changes. Pakistan asserts that reversal of autonomous status can only be done by constitutional assembly- not by a Governor. Governor can only advise the President of India on Administrative and Financial matters not on legal matters. There are two opinions on these changes: Hot hawks claim that only constituent assembly can bring the constitutional changes, second opinion that any bill or law should be initiated from the elected assembly of Kashmir and it must be passed with 2/3<sup>rd</sup> majority from the House. After that, it will be present in Indian Parliament, if it is passed by 2/3<sup>rd</sup> majority the President can sign the bill. However, when both articles have been revoked at that no elected assembly was existed, there was governor rule in Kashmir. Therefore, all the legal changes made by Indian parliament are illegal and invalid.

The ideological and geo-economic significance of Kashmir hinders the peaceful resolution of the dispute between Pakistan and India. The two different positions of the states and the unimplemented resolutions of the United Nations jeopardize the situation and prolonged the problem. The Kashmir issue is a longstanding issue in the subcontinent which started with the partition of British India. During the partition, all the states were given the right to choose either Pakistan or India. There were two principles, on the basis of which they had to join these countries: geographical dependency and the will of people. However, the problem began when Maharaja Hari Singh went against the will of people and signed Treaty of Accession with India.

Resolving this persistent dispute requires meticulous diplomacy, mutual political will, and above all, the implementation of the United Nations Resolutions to allow people to determine their own future through a fair and impartial process.

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