



## RIGHT TO PEACE IN LIGHT OF THE RECENT INDO PAK TENSION

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### ABSTRACT:

The present paper attempt to light “Right to Peace” in the conflict of Indo-Pakistan war. The issue behind this, to find remedy for the conflict arises due to Jammu and Kashmir. The following questions framed to answer – what are the causative agents? How and when wills this dispute comes to an end? Issues in remedy available? Article 370 of the Indian Constitution drafted special provisions to Jammu and Kashmir why and how this conflict arises historical background? Have there been any legal focus and remedy to maintain peace among Indo Pakistan? Article 15 (1) of UDHR, “Everyone has right to Nationality”. Issues in the remedy frame out the solution for this war.

Key words: Indo-Pakistan, Peace, Kashmir issue, Legal Focus.

### INTRODUCTION:

*“War not only to show between the countries who superior or inferior? Think of the people destroys the suffering life and property its caution to ideology the remedy.”*

The Indo-Pakistan war of 1947-1948, sometimes knows as the first Kashmir war was fought between India and Pakistan over the princely state of Kashmir and Jammu.<sup>1</sup> There are various causative agents for the problem arising between the countries. The Indian government is not stable after Indira Gandhi’s death. Impact of technology and military force inefficient. About 526 princely states, British have been divided but still they formed a separate state Jammu and Kashmir. Issue forbidden to kill the innocent people. The International Day of Peace is dedicated to world peace, and specifically the absence of war and violence, such as might be occasionally by a temporary ceasefire in a combat zone of humanitarian aid access. Is there any along term solution to this conflict? When and how it can be possible? Article 15(1) everyone has right to nationality, so it’s better to decide the people of Jammu and Kashmir whether to rejoin in which country. After 400 years Jammu and Kashmir possibly will become sea in future, the dispute arises between Indo-Pakistan are meaningless. Due to this there is a loss of life and property at the existence of the place.<sup>2</sup> The economy of India is very stable in nature at the point of view India will better cost of war than Pakistan in such sense. India has a stable government to predict war much better than that of Pakistan, the nuclear strategic condition to the tug of cold war in the present

<sup>1</sup> Indian Army's covert operations/ 'surgical strikes' available at <http://indpaedia.com/>, 13.10.2016, 9:03pm.

<sup>2</sup> Ibid



scenario India will be in so called condition.

**HISTORICAL BACKGROUND**

South Asian decolonization paved the way for dispute among this region. After getting independence from British in year 1947, it's divided into two separate nations, the secular nation 'India' and simultaneously Muslim Nation Pakistan.<sup>3</sup>In 1940, there was a Muslim dominated area of British India in hope to create Pakistan as sovereign Muslim state. The state of Jammu and Kashmir bordered between India and Pakistan. On October 20, 1947, supported by many tribes, then Maharaja Hair Singh the king of Jammu and Kashmir approached Dominion of India for military help to protect Jammu and Kashmir from the crisis "Instrument of Accession"<sup>4</sup> duly signed by him. The operation as follows;

It is further specified that: "I accept the matters specified in the schedule hereto as the matters with respect to which the Dominion Legislature may make law for this State".<sup>5</sup>

On November 17, 1957, the instrument of accession confirmed by constituent assembly. Sec. 3 of the Indian constitution "the state of Jammu and Kashmir is considered to be the integral

part of Union of India.<sup>6</sup> After the death of Jawaharlal Nehru in the year 1964, India in its weaker times, Pakistan tried to attack Indian army to capture Jammu and Kashmir from April to September in 1965. In the year 1971,<sup>7</sup> a new nation Bangladesh was formed. Again, a great destruction of property and loss of life i.e. the fourth war India won the 1999 argil against Pakistan.<sup>8</sup>

**CAUSATIVE AGENT:**

There are many reasons for the conflict between India and Pakistan, the agent as follows:

1. Two nation theory: The principle of two nation theory, i.e. Pakistan (consist of East and west Pakistan) and partition of India in 1947. The ideology of the religion is that determining factor in defining the nationality of Indian Muslim was undertaken by Mohammed Ali Jinnah, who termed it has the awakening of Muslim for the creation of Pakistan. It clearly understood that India in means of secularism where as the Pakistan movement pluralist.
2. Instrument of accession: Maharaja Hair Singh ruler of Jammu and Kashmir seeks help from Indian army and instrument of accession was

<sup>3</sup> Ambedkar, B.R. (1946). Pakistan, or Partition of India (2 ed.). AMS Press Inc. p. 5. ISBN 978-0-404-54801-8.

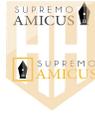
<sup>2</sup> Unspecified author (6 November 2008). "Q&A: Kashmir dispute". BBC News – South Asia. BBC. Retrieved 30 October 2011.

<sup>5</sup> Justice A. S. Anand, *The Constitution of Jammu & Kashmir*, page 67(5th edition, 2006).

<sup>6</sup> Ibid. pg67.

<sup>7</sup> *Time*. 20 December 1971. Retrieved 20 October 2009

<sup>8</sup> V. P. Malik, "Kargil War: Need to learn strategic lessons", *India Tribune*, 26 July 2011.



signed by constitution assembly.<sup>9</sup> Article 370 of Indian constitution drafted special provision to Jammu and Kashmir.<sup>10</sup>

### 3. 1947 – partition

The British partitioned and gave independence of the new domain India and Pakistan.<sup>11</sup> Pakistan precipitated the war a few weeks after the independence by launching a tribal lascar from Wazisitrans, in effort to secure Kashmir.

### 4. War of 1971

A new nation Bangladesh was formed in the year 1971 on 16<sup>th</sup> December in Dhaka.<sup>12</sup> Indian, Bangladeshi and international sources considered the beginning of war to have been operation Cheiz Khan, when Pakistan pre-emptive air strikes.<sup>13</sup>

### 5. War of 1999

Objective of war to destroy the supply of line in India which connects Nh1, Nh1 connects main India to Ladakh and Kashmir, the highway was in a very tragic situation in war.<sup>14</sup> India won the war, and developed grater support in international community.<sup>15</sup>

*policy, Pakistan backed terrorists owing allegiance to the Jaish-e-Mohammed attacked an army installation in Kashmir inflicting heavy casualties. The Indian state's intransigence has only emboldened Pakistan to devise new ways of bleeding India.*

On 18th September (Sunday) 2016, a group of four heavily armed fedayeen attackers belonging to the Masood Azhar-led Jaish-e-Mohammed (JeM) attacked at the headquarters of the 12 Infantry Brigade at Uri. Uri is a town on the river Jhelum located in Baramulla district of Jammu and Kashmir. In this attack the JeM killed 17 army personnel belonging to the 1 Dogra and 6 Bihar Regiments. After a fierce gunfight lasting more than three hours all the four attackers were neutralized.<sup>16</sup> Some of the items had Pakistani markings.<sup>17</sup>

Pakistan rejected any claims of casualties or other damage inflicted as a direct result of the surgical strikes. General Ranbir Singh, the Indian Army DGMO, only stated during his press conference on 29 September that the number of casualties inflicted had been "significant." Most accounts in the Indian media varied as to the number of militants killed. On

## PRESENT SCENARIO:

*In consonance with its Kashmir policy and use of terror as an instrument of state*

<sup>9</sup> Rajiv Malhotra, The Root of India-Pakistan Conflicts available at <http://rajivmalhotra.com/library/articles/root-india-pakistan-conflicts/> 12.10.2016, 4:45pm.

<sup>10</sup> Sumit Ganguly, "Conflict unending: India-Pakistan tensions since 1947"(2001), page 154

<sup>11</sup> Justice A. S. Anand, *The Constitution of Jammu & Kashmir* (5th edition, 2006), page 67

<sup>12</sup> "1971: Pakistan intensifies air raids on India". *BBC News*. 3 December 1971. Retrieved 20 October 2009.

<sup>13</sup> "Indo-Pakistani War of 1971". *Global Security*. Retrieved 20 October 2009.

<sup>14</sup> "Pak quietly names 453 men killed in Kargil war". 18 November 2010. Retrieved 6 April 2013.

<sup>15</sup> "Over 4,000 soldiers killed in Kargil: Sharif". *The Hindu*. Retrieved 17 January 2013.

<sup>16</sup> Kumar, Uri Attak India Responds available at [theloneranger.blogspot.in/2016\\_09\\_01\\_archive.html](http://theloneranger.blogspot.in/2016_09_01_archive.html), 13.10.2016, 8:30pm.

<sup>17</sup> *Ibid*.



October 9, the Indian army said that it had intercepted radio messages of the Pakistan army and claimed that "around 20" Lashkar-e-Taiba militants had been killed, including at least 10 during the surgical strikes and nine [clarification needed] killed at Balnoi (opposite of Poonch).<sup>18</sup>

Afghan desk officers in mid-2010 — effectively putting an end to any hope of tit-for-tat strike.<sup>19</sup>

#### **International Dispute Settlement Mechanism:**

The methods of peaceful settlement of disputes fall into three categories: diplomatic, adjudicative, and institutional methods.<sup>20</sup> Pakistan agreed to simultaneous demilitarization but India chose to ignore it by raising moral and legal issues about the plan. Without India's support the initiative failed.

A legal solution based on **arbitration** was possible in 1957 when UNSC reaffirmed its earlier resolution that require the plebiscite. Gunnar Jarring was appointed by UN to mediator between India and Pakistan. He tried to secure an agreement between India and Pakistan but India again rejected it.

**Rejection of Mediation:** Despite the various conflict resolution prototype and formulas, there have been numerous mediation attempts in the life of the Kashmir conflict, resulting in ceasefires.

India resists the third party involvement and prefers to resolve the Kashmir dispute bilaterally and not under the aegis of any international organization.

Both bilateral negotiation and mediation have been proven almost completely unsuccessful in creating lasting joint understandings between India and Pakistan over Kashmir.<sup>21</sup>

#### **REMEDY AND ITS ISSUE:**

The process for achieving peace is divided in five phases.

##### **Phase 1: Preparing the Ground**

In the first phase the ground has to be prepared which will be done by declaring by the Governments of India and Pakistan their commitment to resolve all conflicts and issues – including the Kashmir problem through peaceful negotiations. Both have to accept the Line of Control (LOC) till the negotiations are concluded.

Very important is that both sides should stop hostile propaganda in the government owned media. In each news in the Pakistan TV a big part is reserved for the Kashmir item. As it is "normal" with news only negative aspects of this conflict are given. The efforts made by different organizations to solve the Kashmir conflict are not brought into notice of the media audience. All leaders of various

Kashmiri groups on both side of the LoC, representing different ethnical, religious

<sup>18</sup> Indian Army's covert operations/ 'surgical strikes' available at <http://indpaedia.com/>, 13.10.2016, 9:03pm.

<sup>19</sup> Uri Attack - Pakistan's Ongoing War Against India, available at <http://kumar-theloneranger.blogspot.in>, 13.10.2016, 9:30pm.

<sup>20</sup> ibid

<sup>21</sup> Right to self-determination only solution to Kashmir dispute available at <http://kashmirvalley.info/un-resolutions/>, 15.10.2016, 11:00am.



and political groups should initiate a dialogue about their views on the future of Kashmir at a feasible time and location.

### **Phase 2: Initial Official Contact**

In the second phase the official contacts have to be initiated by the two foreign secretaries or the foreign ministers to discuss modalities of official and periodical dialogue, which should happen at least once every few weeks irrespective of the state of bilateral relations.

### **Phase 3: Official Dialogue**

It was thought that on the lines of the talks conducted in Islamabad/New Delhi in October/November 1998 should be launched with two components. First component should discuss Kashmir and peace and security issues; the second component other issues. Both sides should commit that at least thrice per year such talks should take place – as it was done 1990. There should be a commitment for the renunciation of violence, support for terrorism and firing across the LoC.

### **Phase 4: Groundwork for Political Breakthrough**

Once adequate progress is made on all fronts in the official dialogue, the Heads of Government should appoint special envoys to prepare for a summit meeting. These Heads should open dialogue with the main opposition parties and groups in their respective countries.

### **Phase 5: Summit Meeting**

Once the preparations are made the Heads of Government of India and

Pakistan should meet. They should specifically explore a political solution to all outstanding conflicts, in particular Jammu and Kashmir, and work out a compromise solution in the interest of the security of India and Pakistan and honor and justice for the Kashmiri people.

### **SUGGESSTION**

High precision surgical strikes across the Line of Control (LoC) targeting the enemy's logistics and infrastructure. This may result in a certain degree of escalation, which is only to be expected. Air-strikes on Pakistani bases responsible for aiding infiltration of terrorists and Pakistani irregulars. In order to explore the possibility of countering Pak-sponsored and backed terror, Indian security agencies must start developing covert action capabilities in Pakistan and elsewhere to effectively strike at Pakistani interests. Options such as covert action cannot be discussed in great detail in blogs and news studios given the. Normal trade and bus and train services between India and Pakistan may also be suspended. This action would be more cosmetic and symbolic. It must be reiterated that should India fail to act 'decisively' **meaning** thereby using the hard power options, India as a state would have failed in discharging its primary role, namely, of protecting and defending its territorial integrity and sovereignty and the international community will cease to take India seriously as a dominant power.

### **CONCLUSION**



It is apparent that India and Pakistan have consistently and shamelessly violated international law in the Kashmir region. Despite these rather apparent violations, both India and Pakistan have emphasized the legal and normative dimensions of their claims to Kashmir. It appears equally evident that lofty arguments on the right of self-determination and state sovereignty are merely subterfuges for India's and Pakistan's selfish regional interests. From India's and Pakistan's actions, we may conclude that in this case international law has had a minimal impact on the regulation of state behavior. It may be that this situation is simply too inextricably linked to national security and too packed with cultural and emotional baggage for international law to have a significant impact on state behavior.

Clearly then, no international legal solution can be imposed on either India or Pakistan. Kargil demonstrated that another possible route, a military solution, would be wrought with immense dangers and would result in unacceptable levels of damage to both nations; a military solution, like any international legal solution, is therefore also unlikely.

Unfortunately, given the historical enmity with which both nations view each other, and the central place that Kashmir holds in that rivalry, any political solution on Kashmir will materialize at only an excruciatingly slow pace, if at all.

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