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JAWAHARLAL NEHRU, JAMMU AND KASHMIR TANGLE AND INDO-PAK RELATIONS

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ABSTRACT:

The issue of Jammu and Kashmir happens to be a bone of contention between India and Pakistan ever since independence and even today. The roots of conflict can be traced back to the era of Jawaharlal Nehru. After India and Pakistan were created with the truncation of the subcontinent on religious lines, there still remained 650 princely states existing within the newly formed independent countries. Although most princely states wanted to be independent, the protests from the restive population of these princely states forced them to join either of the countries. Kashmir, because of its location, could choose either of the countries for joining.

Unable to decide which nation to join, the State of Jammu and Kashmir under Raja Hari Singh chose to remain neutral. However the aggression by the Muslim tribesmen forced him to sign Instrument of Accession with India and sought help from India militarily. India and Pakistan fought the first war over Kashmir in 1947-48. India referred the dispute to the United Nations on 1 January 1948 and in a resolution dated August 13, 1948 the United Nations asked Pakistan to remove its troops from the occupied territories after which India was also to withdraw the bulk of its forces and once this happened, a "free and fair" plebiscite was to be held to allow the Kashmiri people to decide the future. However Pakistan ignored the UN mandate and continued fighting holding on to the portion of the Kashmir under its control. Ever since both the countries fought four wars to sort out the issue however, the issue proved to be unsolvable. This has been creating a lot of friction and unrest not only between these two countries but also in the entire South Asian region as a whole and this is believed to be the nuclear flashpoint in the world. It is highly essential that this issue is solved peacefully and amicably between these two nations for the prevalence of peace in the region.



KEYWORDS: Jammu and Kashmir, UN Security Council, Plebiscite, Raja Hari Singh, UN resolution over Kashmir

INTRODUCTION

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contentious issue to appreciate the complexity of the problem.

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era of Jawaharlal Nehru. Even to this day some politicians in the country blame Jawaharlal Nehru for the stalemate in the Kashmir issue. It is highly essential to trace the origins of this contentious issue to appreciate the complexity

of the problem.

The Indian Independence Act apart from giving freedom to India and Pakistan also freed the princely states from the paramountcy of the British Crown and made them independent entities as per law. However, the statesmanship of the first Deputy Prime Minister India, Sardar Patel, the advice of the last British Governor General, Lord Mountbatten and the pressure of the circumstances made all the Indian States to accede to one of the two dominions namely, Pakistan and India, except three princely states. They were the States of Hyderabad, Junagarh and Jammu and Kashmir. The ruler of Jammu and Kashmir avoided taking a decision. It is on record that the Indian Government's policy had been to refrain from forcing Jammu and Kashmir to accept India. While, Raja Hari Singh, the then ruler of Jammu and Kashmir was vacillating with regard to taking a decision pertaining to acceding his kingdom to either India or Pakistan, 5000 tribesmen from North-Western Frontier Province of Pakistan attacked the State of Jammu and Kashmir and took several towns in the Kingdom into their fold and they were little more than 35 miles from Srinagar, the capital of Jammu and Kashmir. The events were unfolding very fast and the State of Jammu and Kashmir was at the mercy of the aggressors and there was every likelihood of the State falling into the possession of these marauders who are in fact the soldiers of Pakistan in disguise. In such an utter helpless state, the ruler of Jammu and Kashmir sought military help from India for driving out the invaders. It dawned on the mind of the Maharaja that it was legally necessary that Jammu and Kashmir should be acceded to India in case it wanted to seek help from the Indian government. As a result, the Maharaja of Jammu and Kashmir signed the Instrument of Accession on 26 November 1947 and sent the same to India. Lord Mountbatten said that in the reply that his Government had asked him to send on its behalf to the Maharaja accepting his accession of the State of Jammu and Kashmir; he should be allowed to add that this was conditional on the will of the people being ascertained as soon as law and order was restored." This principle was at once accepted and unilaterally proposed by Jawaharlal Nehru.¹ The Instrument of Accession signed by the Maharaja of Jammu and Kashmir was duly accepted by India.

It is a very pertinent question to ask here as to why Jawaharlal Nehru had unilaterally proposed this principle. For this question, there are three possible answers.

Firstly, Lord Mountbatten had urged that unless it was made clear that this accession was not just an act of acquisition, this in itself would trigger a war between India and Pakistan.² Probably, Nehru also subscribed to this view and he did not want a newly independent country like India to go to war with Pakistan and set a bad example.

Secondly, the accession of the State of Jammu Kashmir to India was not only a legal but also political accession in the circumstances that were prevailing during the time. The accession of the State of Jammu and Kashmir into India was done only after consultation with the leader of the formidable political party in the State of Jammu Kashmir namely, Sheikh Abdullah. Jawaharlal Nehru was under a very strong opinion that with a very powerful and influential leader like Sheikh Abdullah on his side, it would not be a problem for winning the support of the people when it comes to "reference to the people" and they would certainly confirm the accession.

Thirdly, Junagarh, had acceded to Pakistan in spite of the fact that it was not geographically contiguous with Pakistan. The ground reality in that State was that while the ruler of the State was a Muslim, the bulk of the subjects were Hindus. The diplomatic correspondence that was made to the Pakistan was told in no uncertain terms that the State must revert to the status quo prior to the accession, before any negotiation could take place. The alternative negotiation was a plebiscite.³ Nehru thought that it would be improper on his part to accept a plebiscite in one case and to refuse in a similar situation namely, Kashmir, where the bulk of the citizens were followers of a religion that was different from that of the ruler

Here arises the veritable question whether the accession of Jammu and Kashmir was valid. It has been argued by many legal experts that the legality of the accession is beyond doubt. On this particular issue, "Mohammed Ali Jinnah has been hoist with his own petard, as it was he who chose, Junagarh, to take a stand on the overriding validity of the ruler's personal decision".⁴

Jammu and Kashmir's legally valid accession was also strengthened by the fact that the leader of the strongest political party in the State of Jammu and Kashmir namely, Sheikh Abdullah had also advised the ruler to accede to India. He advised the then Prime Minister of India, Jawaharlal Nehru to accept the accession of the State of Jammu and Kashmir into India.⁵

Here one point needs discussion. Lord Mountbatten in his letter to the Government of India made a reference that "as soon as the invaders were driven away from the State of Jammu and Kashmir and the law and order was restored in the State, the question of the State's accession should be settled by a reference to the people" makes Kashmir's accession to India provisional? This issue was very aptly settled by Gopalswami Aiyangar and B.N.Rau who are authority on the subject. According to their view, "The accession which took place on 26th October 1947 was both legal and lawful. There could really be no provisional accession. The Instrument of Accession did not contain any conditions and it did not state that the accession was provisional. India had committed itself to a plebiscite; the effect was that if, on the plebiscite being taken, the vote went against accession to India, India would release Kashmir from accession. Upon such release, the accession, which up to that point must be considered valid and effective but as it were, cease."⁶

The tribal invasion that took place on the State of Jammu and Kashmir in fact began on 22nd October 1947. The available evidence says that that the aggressive activities of the tribesmen who were actively supported by the State of Pakistan had in fact began as early as September 6, 1947.⁷ In fact it was the timely help that was given by the Indian Government that protected Srinagar, the capital of the State of Jammu and Kashmir from falling into the hands of the aggressors. This took place only after the Maharaja of Jammu and Kashmir signed the Instrument of Accession with India. However, several square miles of the territory belonging to the State of Jammu and Kashmir went under the occupation of the invaders. The Indian Prime Minister, Jawaharlal Nehru appealed to the Prime Minister of Pakistan on 22 December 1947 to deny to the invaders access to, and use of, Pakistani territory for operations against the State of Jammu and Kashmir and along with it all military and other supplies. As Pakistan was not complying with the request made by the Indian Government, the Indian government decided to lodge a complaint against the State of Pakistan in the Security Council of the United Nations Organisation. On 1st January, 1948, Indian complained to the Security Council against Pakistan under Article 35 of the United Nation's Charter which allows a member of the United Nations Organisation to bring to the attention of Security Council any situation the continuance of which is likely to endanger the maintenance of international peace and security.

The charges that were made against the Pakistan in its complaint to the Security Council were as follows:

1. The invaders were allowed transit by the Pakistani Government across its territory;
2. The invaders were making Pakistani territory the base for the operations against Jammu and Kashmir.
3. The invaders of the State of Jammu and Kashmir also included the Pakistani nationals along with the tribal invaders.
4. The invaders drew much of the war equipment, supplies and transportation from the State of Pakistan and
5. The Pakistan military officers apart from helping the invaders militarily were also guiding and training them in their nefarious activities.

India requested the Security Council to prevail upon Pakistan to stop aiding and assisting the invaders and to call upon the Pakistani nationals to desist from taking any part in the invasion and to deny to the invaders access to and use of its territory operations against Kashmir, military and other supplies and all other kinds of help that will help the invaders to prolong the invasion. According to the Indian view, the assistance which Pakistan was giving to the invaders was "an act of aggression against India".

International Mediation 1949-53

When the Kashmir issue was taken to the Security Council, the issue was enlarged at the request of Pakistan and instead of discussing the aggression of the Pakistani tribesmen into Kashmir, the

Security Council converted it into “the India-Pakistan Question” because the Pakistan wanted to bring the issues of Junagarh and Hyderabad into the purview of the discussion. Apart from that, the Security Council also refused to consider pronouncing Pakistan guilty of aggression and instead sent a Mission-the United Nations Commission for India and Pakistan (UNCIP) for helping in stopping the fighting and in creating conducive conditions for holding an impartial and free plebiscite to decide if the State of Jammu and Kashmir wanted to accede to Pakistan or India. Attention needs to be drawn to the fact here that the focus of the Security Council shifted from the immediate purpose for which the Government of India had made the complaint regarding the stopping of aggression to the long-term task of deciding if the State of Jammu and Kashmir was to accede to Pakistan or India. This happened because Pakistan prevailed upon the majority of the members of the Security Council in accepting its viewpoint that the solution of the problem lies in setting up an interim administration which was impartial in Jammu and Kashmir and holding the plebiscite under the aegis and auspices of the Security Council. As a result of this development, there was deep disillusionment in India and Jawaharlal Nehru on 15 February 1948 said: “Instead of discussing and deciding on a reference in a straightforward manner, the nations of the world sitting in the body got lost in power politics.”⁸

The Commission of United Nations visited the subcontinent and had discussions with the representatives of Pakistan and India and was able to have the agreement of the two governments to two resolutions of 13 August 1948 and 6 January 1949 in three parts; a ceasefire, a truce, and the plebiscite. The first part came into operation from 1 January 1949 and however the other two parts were not be put into operation largely because the two governments did not concur on the interpretation. These differences were also largely because of the fact that the Commission before the agreement of both the governments to the two resolutions, gave assurances which were not being, in the view of the two governments, consistent with one another.

Before an agreement was reached between the two governments on the basic principles which became the 5 January 1949 resolution, conversations were held in New Delhi between the members of the Commission and Jawaharlal Nehru. In a conference on 20 December 1948, the Prime Minister of India told that the invading forces of Pakistan and the Kashmir valley were armed to the teeth and equipped by the Pakistani army and their number ran into tens of thousands. Their very presence in Kashmir even after the demobilization, would be a constant threat to the territory which is under the control of the Indian and Jammu and Kashmir State forces and it is also a deterrent to the return of many of the refugees who have left that part of the State which was under the control of the Pakistani forces and an obstacle to the free expression of opinion regarding the future status of the State by those people who might be opposed to the accession of the State to India. The representative of the United Nations Commission said that it was the intention of the Commission that there should be a large-scale disarmament of these forces, though it would not be possible to facilitate the withdrawal from these territories of the genuine inhabitants of these areas.⁹

The issue was once again discussed between the Prime Minister of India and the members of the United Nations Commission on 22 December 1948. The representative of the United Nations Commission said that the Commission had in mind of disbanding of the forces which were in occupation of the part of the territory of Jammu and Kashmir and disarming it was assumed, would follow. However, Jawaharlal Nehru pointed out that there was difference between disbandment and disarming and both are not one and the same. Jawaharlal Nehru was of the opinion that the presence of such a large number of people even if the regular formations were disbanded, would not be conducive for ensuring either the security of that part of Jammu and Kashmir which is under the control of and Jammu and Kashmir State forces, or the security of those inhabitants of the territories occupied by the invading forces.

In addition to that, Jawaharlal Nehru stated that the question of the re-entry into this territory of those citizens who had left those territories on account of the persisting conflict had to be kept in mind. With a large number of the members of the invading forces under arms, it would be impossible for former inhabitants of these territories who were holding different political view today to enter those territories and therefore be debarred from participating in the ‘free and impartial’ plebiscite.

The United Nations Commission in its third interim report which was presented to the Security Council on 5th December 1949 categorically stated the fact that the ground situation in the State has changed and the resolutions that were passed for resolving the conflict remain the same and that is the root cause of all the problems in the State of Jammu and Kashmir.

Subsequently, the United Nations Representative took the place of the UN Commission to mediate between the two parties. General McNaughton who was named the mediator, failed in his task of resolving the dispute between these two parties because he tended to equate Kashmir and Pakistan as parties to the dispute, a position which was condemned by India and the United Nations Commission for India and Pakistan (UNCIP) did not accept.

Subsequently, Dixon, an eminent Australian jurist was asked to give any suggestions which in his opinion were likely to contribute to the settlement of the issue expeditiously and provide an enduring solution to the dispute. He also failed. He suggested a plan for the partition of the State by means of the plebiscite for some sections areas of the State and it was not acceptable to both the parties. Dixon, however, made one important suggestion. It was that he asked the parties themselves to settle the problem through discussions. It is regrettable that it took the Security Council and the United Nations Representatives appointed by it nearly 30 months to realize the validity of Dixon's suggestion that the issue could be passed on for direct negotiations between the parties. Finally, the Security Council on 27th March 1953 endorsed Dixon's suggestion: "Instead of the United Nations representative continuing to report differences to the Security Council, may the leadership of over 40 crore people, with the goodwill and assistance of the United Nations, join in negotiating and reporting an agreement on Kashmir and thereby light a torch along the difficult path of the people's pilgrimage to peace."¹⁰

Direct Negotiation (1953-56)

Accepting Dr. Graham's suggestion, direct negotiations were arranged between the Prime Ministers of Pakistan and India and the discussions continued for some 4 years from 1953-56; some progress was observed in the direct talks between the leaders of these two nations. The meeting had resulted in considerable goodwill and understanding on both the sides and prepared a conducive environment for further discussions. Both the countries agreed to fix a kind of provisional timetable for holding the plebiscite. It was also decided in the discussions that the Plebiscite Administrator should be appointed by the end of April 1954, but before that, the Governments were to discuss and agree upon certain 'preliminary issues'. For the sake of this purpose it was approved and agreed upon by both the leaders that there should be a committee to assist and advise their respective Prime Ministers. It was also discussed by these leaders that the Plebiscite Administrator, Chester Nimitz who was appointed in March 1950 should be replaced by a person from a small and neutral country. At the end of the year, the committee of officials decided in the meeting held in the month of August at New Delhi to discuss the preliminary issues and submitted their reports to their respective Prime Ministers.¹¹

It is imperative to discuss here the offer that was made by Jawaharlal Nehru, the Prime Minister of India to the Pakistani leaders in 1955 that the international boundary be stabilized at the ceasefire line and that India had no desire to take "the part of Kashmir which is under you"¹² by fighting, but the offer was not accepted by Pakistani leaders.

The direct negotiations between these two countries failed because of an important development which took place in the year 1954. It was in this year that Pakistan concluded bilateral military pact with the United States of America according to which the latter agreed to supply military aid to Pakistan. According to India's view, this agreement between Pakistan and United States of America has changed the context of the discussions. As was pointed out by Jawaharlal Nehru, the Prime Minister of Pakistan himself in an interview to the US News and World Report¹³ stated that the aid that will be provided by the United States of America to Pakistan will make the settlement of the Kashmir issue easier. When the Pakistani Prime Minister said that the aid that will be given by the United States of America provided it with parity with the military forces of India and would help it to capture Kashmir from India, Jawaharlal Nehru wrote to the Prime Minister of Pakistan that it was a very serious matter

and it changed the whole approach to the Kashmir problem. It takes it out from the region of a peaceful approach for a friendly settlement by bringing it under the pressure of arms.¹⁴

International Mediation Again, (1957-64)

The Security Council of the United Nations has not met since the 23rd December 1952 to consider the issue of Kashmir question and have discussion over it. When Pakistan reported to the Security Council that the direct negotiations which were initiated between India and Pakistan to settle the Kashmir issue had failed due to India's refusal to honor its international commitments and asked for a meeting of the Security Council for the settlement of the issue, the Security Council met in January 1957. Pakistan initiated this step because it was under the impression that the international situation was conducive for it to grab Kashmir from India because it would garner the support of the Western powers and in particular Great Britain and the United States of America. At that time, Pakistan had become an ally of United States of America and was quite confident of its support and at the same time India had strained relations with Great Britain because it had criticized British action with regard to Suez Canal crisis as naked aggression. Pakistan making a case out for it in Security Council said that a number of proposals have been formulated to effect the demilitarization of the State of Jammu and Kashmir. All these proposals, without exception, have been accepted by the Government of Pakistan, and all of them, again without exception, have been rejected by the Government of India,"-an important propaganda and to enlist world public opinion in favour of Pakistan. Here it is also highly essential to present Indian representative to Security Council, Krishna Menon's refutation of the argument.¹⁵

Pakistan had made the allegation that eleven proposals were made both by the United Nations authorities as well by the others who were trying to find solution to the intractable Kashmir problem and all the eleven proposals had been accepted by Pakistan and each one of them was rejected by India. Each one of them is considered in Seriatim hereunder.

1. Pakistan stated that at a meeting that was conducted between the representatives of India and Pakistan and which was convened by the United Nations Commission for India and Pakistan in the month of March 1949, it was agreed upon by both Pakistan and India that they would submit their plans for the withdrawal of the forces to the committee and India had not submitted its plan while Pakistan did it.

Indian representative Krishna Menon refuting this allegation and calling it inaccurate said that the Indian delegation informed the Committee that it was unable to respond to the Pakistani delegation by presenting a similarly comprehensive plan and on 28 March 1949, the Government of India presented its plan to the United Nations Commission.

2. While Pakistan had accepted the proposal made by the United Nations Commission for India and Pakistan that any differences that arose because of the interpretations pertaining to the August 13 and January 5 resolutions should be referred to arbitration by Admiral Nimitz, India rejected.

Menon replying to this allegation stated that India did not agree to arbitration because it was asked to arbitrate on questions which are not amenable to arbitration like the question of the disposition of the Azad forces and the determining of the quantum of forces to be kept by India after the bulk of its forces had been withdrawn.

3. Pakistan again alleged that while it had accepted the McNaughton proposals, India did not accept them. It was argued by Menon that the United Nations representative had wrongly equated India and Pakistan-a position which was not acceptable to India because there could not be no parity between the aggressor and the victim of aggression.

4. It was again alleged by Pakistan that while Pakistan had accepted the Sir Owen Dixon's proposals for demilitarization in Kashmir, India had rejected them.

It was contended by Menon that the summary of the proposals was inadequate. Dixon had also said that when Pakistan had crossed the boundary of Kashmir, it was gross violation of international law and secondly, India had been prepared to examine the proposals put forth by him for the sake of compartmental plebiscite, and they were rejected by Pakistan.

5, 6 and 7. It was alleged by Pakistan again that the Commonwealth Prime Ministers had made alternative proposals: like the troops of India and Pakistan which are stationed in Kashmir be replaced by troops from Australia and New Zealand or by a joint force consisting of Pakistani and Indian troops or by the troops which were raised by the Plebiscite Administrator locally and all these proposals were acceptable to Pakistan and India rejected them.

Menon also refuted that and he quoted Nehru that in the course of the conversations that took place between the Prime Minister of India and Prime Ministers of Commonwealth countries, no reference was made by them with regard to the proposal about a Commonwealth force being sent into Kashmir.

8 and 9. Pakistan again stated that both India and Pakistan should agree to arbitration on all points arising from the interpretation of the resolutions of 13 August 1948 and 5 January 1949.

It was contended by Menon that there was no necessity to repeat what had been previously stated on the inappropriateness of arbitration to the subject under discussion.

10. Each one of the proposals that were made by Dr. Frank Graham, "on the subject of demilitarisation" was accepted to Pakistan but was rejected by India.

It was argued by Menon that the facts were exactly the reverse and he further stated that India had accepted and it believed that the demilitarisation should be a single and continuous process; secondly India had also accepted the principle suggested by Graham as a basis for demilitarisation. Apart from that he also stated that India had made several concessions with regard to the number of civil armed forces that should be stationed on the Pakistan side of the line and so on.

11. Pakistan again alleged that while it had accepted the resolution of the Security Council at its meeting on 23 December 1952 urging the Government of India and Pakistan to enter into immediate negotiations under the aegis of the Representative of the United Nations for the sake of reaching an agreement on the number of forces stationed on the inside of the ceasefire line at the end of the demilitarisation, India had rejected the resolution.

Menon again stated that India had rejected the resolution in all fairness and stating the reason he said that India's right and duty to maintain the security of the State had been acknowledged by the United Nations Commission and as a result it was the duty of the Government of India to be the judge of what forces are required for security in the State of Jammu and Kashmir.

However, all the arguments that were made by Menon fell on deaf ears because the majority of the members in the Security Council were already for Pakistan and had made up their minds accordingly in the Security Council. A draft resolution was also introduced in the Security Council which contained a suggestion that the United Nations forces must be stationed in Jammu and Kashmir subsequent to the withdrawal of the forces of India and Pakistan, however it was defeated by a Soviet veto. Subsequently, a resolution was passed by the Security Council that the President of the Security Council must examine with the Governments of Pakistan and India if there were any proposals which are likely to contribute towards the settlement of the dispute. Jarring, the President of the Security Council held discussions with India and Pakistan and submitted his report to the Security Council in April 1957. It was commented in the press that the Jarring report had left the Kashmir situation where it was and it was not accepted by India. India maintained that the procedure of arbitration even on an isolated part of the resolution was inconsistent with the rights and obligations of the Union of India in respect to Jammu and Kashmir was not acceptable to it and further it indirectly gave Pakistan a locus standi on the issue.

However, while the Kashmir situation remained as it was in spite of the report, the report made an important contribution for the better understanding of the Kashmir situation. It was made categorically clear in the report that there was a change in political, economic and strategic factors surrounding the whole of the Kashmir issue and unless the issue is sorted out speedily, it may become progressively more difficult to find a solution to it.

The changed context of the issue of the Kashmir was made clear to the world after the remark made by the United Nations Representative in this report. The report was duly debated in the Security Council of the United Nations between September and December 1957. The Security Council took note

of the point that both parties were still desirous of finding a solution to the problem as was made clear in the Jarring Report and asked Dr. Graham to renew his efforts on bringing the contending parties to the talks. Dr. Graham was the United Nations Representative for India and Pakistan and he made recommendations to both Pakistan and India for implementing the resolutions of the United Nations Commission for India and Pakistan of 13 August 1948 and 5 January 1949 and strive towards a peaceful settlement of the contentious issue. It goes to his credit that he discovered a serious lacuna in the United Nations Commission resolutions which are to be implemented. For example the resolution of 13th August 1948 spoke of the withdrawal of the Pakistani troops in the State of Jammu and Kashmir however the machinery and method of the withdrawal was not specified clearly.

Dr Graham negotiated with India and Pakistan with regard to the problems inherent in the resolutions and put forward five recommendations to both the governments and they were:

1. A renewed declaration which was in tune with the United Nations Resolution of 17 January 1948 and part one of the United Nations Commission on India and Pakistan Resolution according to which the two government should make an earnest appeal to their respective citizens for assisting in the creating and maintaining of a conducive atmosphere which will be favorable for further negotiations and in which they themselves would undertake a solemn pledge to refrain from actions or statements which would aggravate the situation.
2. Reaffirmation of respect for the integrity of the ceasefire line.
3. To conduct a study under the aegis of the United Nations Representative as to how the territory of Jammu and Kashmir should be administered after evacuation by the Pakistani forces, pending a final solution. Likewise, consideration was also to be given for the possibility of stationing of the United Nations troops on the Pakistani side of the borders of Kashmir for increasing the security of the area.
4. Reaching an early agreement between Pakistan and India with regard to the interpretation of the provisions regarding the plebiscite to be conducted as per the United Nations resolutions.
5. There should be a conference between the Prime Ministers of the two countries in early spring or at an earliest possible date.

These recommendations were accepted by Pakistan however they were not acceptable to India. Jawaharlal Nehru giving the reasons for the rejection of these proposals stated "any consideration of this problem which ignores certain basic issues on which they try to put us on the same level as Pakistan-that is the aggressor and the aggressed on the same level-is not agreeable to us and will not be accepted by us."¹⁶

Thus, at the end of 1958, the issue of Kashmir was left to be discussed by direct negotiations between India and Pakistan-a point which had been suggested by Dr. Dixon as early as September 1950 and by Dr. Graham himself on 27 March 1953 when they advised that the initiative be passed onto the parties themselves.

General Ayub Khan established a military dictatorship in Pakistan in October 1958. Jawaharlal Nehru and Ayub Khan had discussions on the Kashmir issue and there was some hope of friendly settlement of outstanding issues, especially Kashmir. There was a frank and friendly exchange of views between these two leaders with regard to Kashmir in an atmosphere of cordiality. However, the hopes raised by these friendly meetings did not last long. Pakistan, 1962, once again took the issue to the United Nations Security Council and the Security Council considered the issue in February, April May and June of 1962. In the year 1962-63, subsequent to the Sino- Indian War, talks were held between the Prime Minister of India and the President of Pakistan largely on account of the pressure that was exercised by the Governments of Great Britain and United States of America. However, these talks proved to be a futile exercise. The failure of the talks between these two nations once again reverted back the issue to the Security Council in 1964. The Security Council confabulations did not culminate in any resolution because there was wide disagreement among the members of the Council on basic issues. It was opined by the members of the Security Council that any imposition of the solution by the Security Council will be futile and impossible. And it was only through direct negotiations between the contending parties that the Kashmir issue had to be tackled.

Mistakes Made by the Government of India and by the Security Council and its Mediators

It is highly essential at this stage to understand the mistakes that were made not only by the Government of India but also by the Security Council and its mediators with regard to the Kashmir issue because this is going to help us understand why the stalemate continued for nearly 18 years from 1947 to 1964 in spite of the best efforts made by India, Pakistan and the United Nations Organization.

The mistakes made by the Government of India were threefold and they were:

1. It was a big mistake on the part of the Government of India to take the issue of Kashmir to the Security Council under Article 34 and 35 of chapter 6 of the United Nations Charter which is entitled "Pacific Settlement of Disputes". India should have in fact taken the issue to the Security Council under Chapter 7 of the United Nations Charter which is very specifically concerned with "Acts of Aggression". India, by invoking Chapter 6 of the UN Charter enabled Pakistan to make charges of genocide against India, instead of pinpointing the issue to Pakistan's aggression against Kashmir.¹⁷

2. The word 'plebiscite' does not occur in earlier communication and India unnecessarily placed itself in a tactically disadvantaged position by adopting the term 'plebiscite'. Lord Mountbatten's letter of 27 October 1947 accepting the accession of the State of Jammu and Kashmir to India expressed a wish: "it is my government's wish that as soon as Law & Order have been restored in Kashmir and its soil cleared of the invaders, the question of the State's accession should be settled by a reference to the people". Likewise, Jawaharlal Nehru's statement that he made to the Constituent Assembly shortly after India and the State of Jammu and Kashmir signed the Instrument of Accession said that the decision must be made by the people of that State" but he did not specify the machinery to be employed as that of a plebiscite.

The accession of the State of Jammu and Kashmir by the Maharaja of the State was very staunchly supported by Sheikh Abdullah, the President of the National Conference, the most influential political party in the State of Jammu Kashmir in 1947. Similarly, in February 1954, the Constituent Assembly of Kashmir ratified the decision. In 1956, the decision which was constitutionally and legally complete was given a formal sanction of the people of Jammu and Kashmir as reflected by the democratically elected Constituent Assembly and it was also considered so by the people of Kashmir. The inclusion of the term 'plebiscite' although conditional has provided an occasion to the critics of India to hold on to it steadfastly while forgetting the conditions that were stipulated to it.

3. When the Government of India came to know that the Security Council was subscribing to the story of Pakistan and was quite reluctant to name it as the aggressor, it was big mistake on the part of Government of India to agree to discuss a whole series of resolutions which put India, the aggressed and Pakistan, the aggressor on the same footing.

All these mistakes happened on the part of India because India was a new nation and was a novice to diplomacy. The Indian leaders were learning the tricks of the trade through experience.

On the other hand, the mistakes that were committed by the United Nations Security Council and its agents cannot be explained as mere amateurishness because they are all seasoned diplomats. They also committed many mistakes with regard to the issue of Jammu and Kashmir and some of them were as follows:

1. It can be understood clearly from the records that majority of the members supported the stand taken by Pakistan and as a result it was partisan. For example while the United Nations Commission for India and Pakistan had definitely stated that the bulk of the Azad Kashmir forces be disbanded and disarmed, speaker after speaker of the Security Council showed undue sympathy to Pakistan on this point of view and pleaded that they be retained in considerable numbers. Similarly, the sovereignty of the State of Jammu and Kashmir and the responsibility of the Government of India for protecting its security and integrity had been recognized by the Commission, however several members of the Security Council time and again brought to the fore the proposal for introducing foreign forces into Kashmir. Again, while the Commission had categorically rejected the idea that India and Pakistan should be treated as equal in status as parties to the dispute, the majority of the members of the

Security Council pleaded for equality. Clearly, then, the members who supported Pakistan were acting so to protect their own national interests.

2. Secondly, Pakistan inflamed the religious feelings and religious sentiments in the Kashmir Valley for attaining success. It very blatantly stated that the bulk of the population was Muslim and hence Kashmir must be given to it. However, it has to be borne in mind that Kashmir was largely a secular State-whose constitution was based on treating the followers of all religions alike. The Security Council hardly gave any consideration to this important aspect.

3. It was established beyond doubt that it was Pakistan which committed aggression in Kashmir in the year 1947 and 1948. In fact it was categorically stated by the UN Representative, Dixon. It was also acknowledged by the United Nations Commission in its report that a material change had taken place in the situation since it was first represented to the Security Council. The Security Council did not sufficiently realize the importance of this fact while it was mediating between the two countries.

4. Finally, the Security Council of the United Nations through its resolutions and by the speeches of several of its members seemed to install a sense of belief in Pakistan that its claims were just and when it could not meet its claims through peaceful negotiations it adopted other methods for achieving its goal. This is one of the biggest mistakes committed by the international mediation. It was encouraging one party's unjustifiable claims and it gave rise to undue hopes. Thus, the President of Pakistan Ayub Khan stated categorically that they would be glad to have a settlement through peaceful means and if they were forced to adopt means other than peaceful, they would resort to it and the blame would ultimately lie at the doorstep of India.

The Indo-Pak War of 1965

The frustration on the part of Pakistan that it could not take Jammu and Kashmir through negotiations made it to resort to war. The aggression was begun by Pakistan on 5th August 1965 and it was partly due to the expectations raised by unwise international mediation. Initially, Pakistan started the massive invasion of Kashmir by guerrillas who were trained and armed by the Pakistani army. Ultimately the Pakistani President Ayub Khan decided to fling his regular army into fight and on 1st September 1965 Pakistani army launched its mighty thrust into Jammu and Kashmir. However, the Pakistani attack was repulsed by the Indian armed forces and on 23rd September, 1965 ceasefire was declared between these two countries and with the help of Soviet Union mediation the leaders of the two countries met at the Soviet city of Tashkent and the Tashkent Declaration was made by these two countries on 10 January 1966. Apart from the other issues that formed part of the Declaration, Jammu and Kashmir issue was also discussed and it was decided and proclaimed in the Declaration that both the countries should reaffirm their obligations under the United Nations Charter not to have recourse to force and to settle the dispute through peaceful means. They considered that the interests of peace in the region and in particular in the Indo-Pak subcontinent and, indeed, the interests of the people of India and Pakistan were not served by the continuance of tension between the two countries. It was against this background that Jammu and Kashmir was discussed and each of the sides set forth its respective positions. The Tashkent agreement did not yield any long-term results for India. The most important gain appeared to be the reaffirmation by Pakistan (along with it) of its obligations under the UN Charter of not to have recourse to force and to settle the dispute through peaceful means. Even this gain had proved to be illusionary when Pakistan declared war on India 3rd December 1971. However, it can be understood that a more permanent gain of this agreement was that international action or quest for international mediation with regard to Kashmir seemed less likely after the Tashkent agreement, in spite of the fact that the Pakistan leaders continue to make statements that they were taking the matter to the Security Council. The whole background of the Tashkent Declaration was an emphasis on bilateral talks to settle all disputes; besides, the Soviet Union was requested by India and Pakistan to witness the Declaration. Accordingly, the Soviet Union was unlikely to encourage Pakistan to go to international forum with regard to the Kashmir issue. Even the United States and Great Britain came to a conclusion that if Pakistan took the issue to the United Nations, they would do no more than to encourage the two parties concerned to reach agreement between them. Another reason is that India

had been repeatedly reiterating that Kashmir is an integral part of India and its accession to India is irrevocable and Kashmir is not negotiable.¹⁸ Because of this stance taken by India international mediation is considered to be futile by the major powers.

Indo-Pak War 1971

Developments in Pakistan from 1969 to 1971 led to the breakaway of East Pakistan from Pakistan and to the emergence of Bangladesh as a sovereign and independent State. These developments resulted in much hostility of Pakistan towards India, culminating in a war with India from 4-16 December 1971. The war ended in the defeat of Pakistan and the Pakistani forces surrendered on 16 December 1971. Peace talks were initiated at Shimla on 20th June 1972 between the Prime Minister of India and the President of Pakistan.

The Shimla agreement paved the way for the diplomatic recognition of Bangladesh by Pakistan. Likewise the ceasefire line of December 17th 1971 was converted into the 'Line of Control (LOC)' between Pakistan and India as per this agreement. It was also agreed by the two countries that neither side shall seek to alter it unilaterally.

According to the settlement, both the nations resolved to settle the differences by peaceful means through 'bilateral negotiations' or by any other peaceful means agreed upon between them. This clause opposed third-party intervention insisted on bilateral mechanism for resolution of issues between India and Pakistan. However, agreement was also not devoid of criticism. Two decisions which were taken by India and incorporated into the Shimla agreement drew a lot of criticism.. There were (i) to return the captured territories across the international border India to Pakistan (ii) to return the 93,000 prisoners of war to Pakistan without taking any written commitment for converting the Line of Control (LOC) to international boundary. Lack of proper border resolution between India and Pakistan is one of the major reasons for the turmoil in Kashmir.

It had ultimately dawn upon Pakistan that it is no match for India on the conventional battlefield and hence it has decided to fight against India covertly. It has been encouraging terrorism on the soil of Jammu and Kashmir by aiding and abetting terrorists, training them and sending them into them to Jammu and Kashmir and is waging a low intensity warfare. This policy of Pakistan has been bleeding India red. Not a day passes in Jammu and Kashmir with some kind of terrorist activity being indulged in. The latest among the series of attacks was the Pulwama attack and India responded by attacking the terrorist bases at Balakot in Pakistan. Thus the issue of Kashmir has proved to be a bone of contention between India and Pakistan for more than seven decades. This intractable problem dodging all solutions should be resolved at the earliest possible for the establishment of peace and tranquility in the South Asian region in general and between India and Pakistan in particular.

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