

## **Resolving the Kashmir Dispute: Blending Realism with Justice**

SYED RIFAAT HUSSAIN

### **INTRODUCTION**

The resumption of India-Pakistan peace dialogue after a hiatus of nearly eighteen months resulting from the Mumbai terrorist attacks, has revived interest in different formulas, proposals and options that have been made from time to time to resolve the Kashmir dispute, the root-cause of “unending conflict” between the two nuclear-armed neighbours. This paper attempts to make a contribution towards this ongoing exploration of feasible ideas by highlighting the relevance of the Difference Principle expounded by John Rawls in his Theory of Justice as a key component of a lasting India-Pakistan peace deal on Kashmir. The paper begins with a brief account of the historical background of the Kashmir dispute, its evolution and a summary of the competing Indian and Pakistani claims to the disputed territory. Section two of the paper provides a descriptive account of the various solutions that have been proposed and the attempts made by India and Pakistan to resolve the Kashmir dispute. The last section of the paper offers a summary of the main tenets of Rawls’s theory of Justice and examines the relevance of the Difference Principle as a guide to finding a just resolution of the Kashmir dispute.

### **SECTION I**

#### **A. Historical Background**

The state of Jammu and Kashmir (J&K), a landlocked territory, lies in northwestern part of Indian subcontinent. It became a disputed territory after the partition of the Indian subcontinent in 1947. Bounded on northeast by the Uygur Autonomous Region of Sinkiang and Tibet (both parts of the Peoples Republic of China), it is surrounded by the Indian states of Himachel Pradesh and Punjab on the South; on the northwest by Afghanistan and on the west by Pakistan.

The territory’s total area is 85,806 square miles (222,236 square km), of which 31, 643 square miles (81, 954 square km) is controlled by India. The modern state of J&K evolved from the Dogra heartland in Jammu, as the home of many different ethnic groups

Syed Rifaat Hussain <rifaathussain@gmail.com> is Professor and Chairman, Department of Defence and Strategic Studies, Quaid-i-Azam, University, Islamabad.

and a diverse set of cultures.<sup>1</sup> In 1834, Ladakh was conquered and incorporated into the state. Baltistan was conquered and annexed by the Dogras in 1840. The Valley of Kashmir joined in 1846, when the British sold it to the Sikh ruler Gulab Singh for 7.5 million rupees. In 1935, Gilgit was leased to the British for 60 years. The British terminated the lease in 1947. Aksai China came under the Chinese control in 1962 following the Sino-Indian War that year. Poonch joined the state in 1936, as the result of a judicial settlement.<sup>2</sup>

The Kashmir Valley's inhabitants were predominantly Muslims, with a small community of Sikhs and Kashmiri Pandits; Jammu had a Dogra Hindu majority with a significant Muslim component; the western strip from Muzaffarabad to Mirpur had a majority of Punjabi Muslims; Gilgit, Skardu, and Kargil were also inhabited by Muslims; and a majority of Ladakh's residents were Lamaistic Buddhists.<sup>3</sup>

At the time of the partition of the Indian subcontinent in 1947 the State of Jammu and Kashmir was one of the 564 princely states that faced the choice of either joining India or Pakistan in accordance with the twin principles of geographical contiguity and self-determination following the lapse of British paramountcy. Although J&K had a Muslim majority (77 percent in the census of 1941), and shared a long border with the new state of Pakistan, the Maharaja refused to opt for Pakistan.

His reticence stemmed both from his desire to remain independent and from agitation by his predominantly Muslim subjects against his brutal rule. Faced with the armed revolt by Muslims from Poonch in June 1947, the Maharaja retaliated with brutal force against them. The revolt then spread to the other areas of Jammu and Kashmir. To stabilise the situation, the Maharaja signed a standstill agreement with the new state of Pakistan. The situation deteriorated during August and September of 1947, as the Kashmiri Muslims openly revolted. Their fellow tribesmen from Pakistan's Northwest Frontier Province joined in this armed insurrection. By late October, 1947, the tribesmen-led rebellion succeeded in capturing several towns, massacred large number of civilians, and advanced within four miles of the capital, Srinagar.

To forestall his imminent overthrow by the advancing rebel troops, the Maharaja requested military aid from India, and approved the annexation of Kashmir to the Indian Union on October 26, 1947. The Indian Government accepted Maharaja's accession, while stipulating that it should ultimately be ratified by popular consultation. India's military intervention on behalf of the besieged Maharaja led to the first India-Pakistan war over Kashmir. India aired the dispute before the United Nations, calling for international intervention in the matter.

After their first war over Kashmir in 1947-48, India and Pakistan signed a cease-fire agreement on January 1, 1949. India and Pakistan went to war over Kashmir again in 1965, and the resulting line of control divided old Jammu and Kashmir into four political units:

<sup>1</sup>Mushtaqur Rahman, *Divided Kashmir: Old Problems, New Opportunities for India, Pakistan, and the Kashmiri People*. (Boulder: Lynne Rienner, 1996), p. 17.

<sup>2</sup>*Ibid.*

<sup>3</sup>*Ibid.*

(1) Ladakh and Jammu and Kashmir Valley (Indian-occupied Kashmir); (2) Azad Kashmir (Pakistan-occupied Kashmir); (3) the Northern Area, administered by Pakistan; and (4) Aksai Chin, controlled by China.<sup>4</sup>

## **B. Indian and Pakistani Perspectives on Kashmir**

The Indian Approach: At the core of Indian position on Kashmir is New Delhi's claim that the decision of the Maharaja Hari Singh to accede to the Indian Union, regardless of its circumstances, is "final and legal and it cannot be disputed." If there is any "unfinished" business of partition it is the requirement that Pakistan relinquish control of that part of Jammu and Kashmir that it illegally occupies. India further maintains that the UN Resolutions calling for the will of the people to be ascertained are no longer tenable because Pakistan has not fulfilled the precondition of withdrawal from the territory it occupied through aggression. New Delhi further maintains that after Pakistan's attempts to alter the *status quo* by force of war in 1965, Islamabad has forfeited the right to invoke the UN Resolutions. The will of the people does not need to be ascertained only through a plebiscite. The problem of Kashmir, according to India, is one of terrorism sponsored by Pakistan. The targets are Muslims in Kashmir, belying Pakistan's argument that it is concerned about the welfare of Muslims in Kashmir. While India wants to resolve all outstanding issues with Pakistan through a process of dialogue, the integrity and sovereignty of India cannot be a matter for discussion.

The Indian policy towards Kashmir operates at three distinct levels: local, bilateral and international. At the local level, the principal Indian goal is to crush the Kashmiri resistance by massive use of force on the one hand and by manipulating the differences among different Kashmiri resistance groups on the other.

At the bilateral Indo-Pakistan level, India, while expressing its willingness to discuss all outstanding issues with Pakistan, has tended to avoid conducting any meaningful dialogue with Pakistan regarding Kashmir that involves a movement away from the stated Indian position that Kashmir is an integral part of India. Although India's principal purpose in maintaining a posture of dialogue with Pakistan is to gain time to consolidate its hold over in Kashmir by pacifying the Kashmiri resistance, independent analysts believe that "already in possession of the larger and most prized section of the state and aware of the difficulty that would face any effort to pry Pakistan loose from the rest," New Delhi would be willing to "accept conversion of the LoC...into a permanent international boundary."<sup>5</sup>

At the international level, Indian policy on Kashmir is primarily aimed at three objectives: deflecting the Pakistani campaign alleging human-rights violations in Kashmir; emphasising that the Simla agreement provides the only viable forum to settle the Kashmir issue; and discrediting the Kashmiri resistance movement as a "terrorist activity" sponsored by Pakistan.

<sup>4</sup>*Ibid.*

<sup>5</sup>Robert G. Wirsing, *India, Pakistan, and the Kashmir Dispute: on Regional Conflict and Its Resolution*. (New York: St. Martin's Press, 1994), p.219-20.

### ***The Pakistani Approach***

Historically, the Government of Pakistan has maintained that J&K has been a disputed territory. The state's accession to India in October 1947 was provisional and executed under the coercive pressure of Indian military presence. The disputed status of J & K is acknowledged in the UN Security Council resolutions of August 13, 1948 and January 5, 1949, to which both Pakistan and India agreed. These resolutions remain fully in force today, and cannot be unilaterally disregarded by either party.<sup>6</sup>

- (1) Talks between India and Pakistan over the future status of J & K should aim to secure the right of self-determination for the Kashmiri people. This right entails a free, fair, and internationally supervised plebiscite, as agreed in the 1948-1949 UN Security Council resolutions.
- (2) The plebiscite should offer the people of Kashmir the choice of permanent accession to either Pakistan or India.
- (3) Talks between India and Pakistan in regard to the future status of J&K should be held in conformity both with the Simla Agreement of July 1972 and the relevant UN Security Council resolutions. An international mediatory role in these talks may be appropriate.

## **SECTION II**

### **A. Proposed Solutions to the Kashmir Dispute**

During the last five and a half decades, a number of solutions have been proposed by analyst to resolve the Kashmir dispute. These possible solutions can be roughly categorised into four major groups, each group expanding on a particular method.<sup>7</sup> These groups are as follows:

#### **1. Plebiscite**

- (a) Hold a plebiscite for the entire state of Jammu and Kashmir under the auspices of the United Nations. The plebiscite should conform to the original commitment between Lord Mountbatten and the Maharaja, which was repeatedly supported by Indian Prime Minister Pandit Jawaharlal Nehru in the wake of Partition.
- (b) Hold a U.N. supervised partial plebiscite in only the Kashmir Vale, and agree to partition the remainder of the state.
- (c) Hold a (limited or comprehensive) plebiscite on some future date under the supervision of neutral and impartial international observers.
- (d) Hold a (limited or comprehensive) plebiscite under the joint supervision of India and Pakistan.

<sup>6</sup>In defence of the continued validity of the UN resolutions on Kashmir see Ijaz Hussain, *Kashmir Dispute: An International Law Perspective*. (Rawalpindi: Services Book Club, 2000), Ch.V.

<sup>7</sup>This categorisation has been suggested by Prevaiz Iqbal Cheema. See Pervaiz Iqbal Cheema, "Solution for Kashmir Dispute?" *Regional Studies* (Autumn 1986), pp. 3-15.

## 2. *Partition*

- (a) Partition the state on the basis of communal composition, apportioning the Muslim majority areas to Pakistan and non-Muslim territory of J&K especially Jammu and Ladakh to India.
- (b) Partition the state along the UN cease-fire line.
- (c) Partition the state along the Line of Control (LoC) with minor adjustments with a view to straighten the border.
- (d) Integrate Azad Kashmir and Baltistan with Pakistan; Jammu and Ladakh with India; and hold a plebiscite in the Kashmir Vale. The UN will govern the plebiscite and its subsequent implementation. Partition the state in congruence with an agreed upon formula, keeping the strategic needs of both Pakistan and India in mind.
- (e) Integrate Azad Kashmir and Baltistan into Pakistan; Jammu and Ladakh into India; and accord independent status to the Kashmir valley, to be guaranteed by India, Pakistan, and the great powers.

## 3. *Independence*

- (a) Award independent status to the entire state of Jammu and Kashmir, to be respected and guaranteed by both regional and global powers.
- (b) Make the Kashmir Vale an independent state, and integrate the rest of the territories with India (Ladakh and Jammu) and Pakistan (Azad Kashmir and Baltistan). International guarantees are necessary for this solution.
- (c) Make both Azad Kashmir and occupied Kashmir UN trust territories. Grant independence after a decade of UN-supervised rule.
- (d) Make only the Kashmir Valley a UN trust territory, and allow Pakistan to integrate Azad Kashmir and Baltistan, giving India defacto control over Jammu and Ladakh.

## 4. *Condominium/Confederation*

- (a) Establish a condominium of both Pakistan and India over the whole of Kashmir, with maximum autonomy for the state. This solution implies joint management of the state's external and defense affairs by India and Pakistan.
- (b) Grant only the Kashmir Valley condominium status, and partition the rest of the state between India and Pakistan.
- (c) Establish a condominium of SAARC (South Asian Association for Regional Cooperation) for either the entire J & K or the Kashmir Valley alone.
- (d) Form a confederation of Pakistan, India and Kashmir, with maximum autonomy to each of the constituent unit.

## **B. Summary of the Major Proposals Advanced since 1947**

What follows is a chronological account of the various proposals put forth to resolve the Kashmir dispute. This account is divided into five phases, each covering ten years. Table One contains a summary of these proposals, categorised by the solution's nature, source, basic principles, status, responses by India, Pakistan and the Kashmiri people and their pros and cons.

### C. Chronological Account of Proposed Solutions

#### *The First Phase: 1947-57*

##### **United Nations Resolution and Owen Dixon's Proposal**

The UN Security Council Resolutions of August 13, 1948 and January 5, 1949, proposed the plebiscite option for settling the Kashmir dispute. These resolutions laid down the principles and procedures for a free and impartial plebiscite under UN auspices. Both India and Pakistan accepted these resolutions but later clashed over the interpretation of various clauses especially those pertaining to the demilitarisation of J&K. In 1950, the Security Council nominated Sir Owen Dixon, as the UN mediator. He attempted to address the Azad Kashmir territory by suggesting that administrative responsibilities be assigned to the local authorities. These district magistrates would be supervised by United Nations officers. India rejected this proposal.

Sir Dixon then suggested establishing a single government for the whole State of Jammu Kashmir during the period of the plebiscite. This coalition government could be composed of the two hitherto hostile parties; a neutral administration by trusted persons outside politics; or an executive constituted of United Nations representatives. Even this alternative was rejected by India and Pakistan.

Stymied by Indian and Pakistani opposition, Sir Owen proposed two alternative plans. The first entails taking a region-by-region plebiscite, allocating each area to either Pakistan or India, according to the vote. One variation on this suggestion was to allot to Pakistan and India those areas for which a regional vote would have a foregone conclusion, limiting the plebiscite to the Valley of Kashmir.

Pakistan objected to this proposal on the ground that India had previously committed to hold a plebiscite in the State of Jammu and Kashmir as a whole. India indicated a willingness to consider a plebiscite, but only one limited to the Kashmir Valley and some adjacent areas. However, Indian suggestions as to the allocation of other territories among Pakistan and India were unworkably biased. Sir Owen recalled that Indian proposals "appeared to me to go much beyond what according to my conception of the situation was reasonable." Pakistan refused to budge from its position, though it was amenable to straight partition if it was given the valley. This, however, was unacceptable to India.

As a last resort, Sir Owen Dixon presented both governments with another proposal which called for a partition of the country and a plebiscite for the Valley. The plebiscite, which would be conducted by an administrative body of United Nations officers, would require complete demilitarisation. Pakistan rejected this proposal.<sup>8</sup>

#### *The Second Phase: 1958-68*

##### **India—Pakistan Statement of Objectives (1963)**

During the second round of Ministerial-level talks held in New Delhi, from January 16-19, 1963, Pakistani Foreign Minister Zulifkar Ali Bhutto and his Indian counterpart, Swaran Singh, signed a joint statement of objectives. According to this

<sup>8</sup>For details, see Josef Korbel, *Danger in Kashmir*. (New Jersey: Princeton University Press, 1966).Chapter Seven.

“secret” joint statement, both sides had agreed to the following points as a basis for potential solution to the Kashmir problem:

1. “To explore political settlement of the Kashmir dispute without prejudice to basic positions of parties.
2. Agree to examine proposals for honourable, equitable and final boundary settlement taking into account:
  - A. India and Pakistan seek delineation of international boundary in Jammu and Kashmir.
  - B. Pakistan delegation urged territorial divisions taking into account composition of population, control of rivers, requirements of defense, and other considerations relevant to the delineation of international boundaries and acceptable to people of state.
  - C. Indian delegation urged that any territorial readjustments necessary on national basis take into account geography, administration, and other considerations and involves least disturbance to life and welfare of people.
3. Disengagement of Indian and Pakistani forces in and around Kashmir is essential part of settlement.
4. Settlement should also embody determination of two peoples live side by side in peace and friendship and to solve all other problems peacefully and to mutual benefit.
5. Ways and means of removing other major irritants and developing practical cooperation between two countries should be considered...<sup>9</sup>
  - D. Delineating an equitable international boundary in Jammu and Kashmir.

Because of the failure of Bhutto-Swaran Singh, this joint statement ultimately proved merely aspirational.

### ***The Tashkent Declaration***

Following the 1965 India-Pakistan war, President General Ayub Khan and Prime Minister Lal Bahadur Shastri were invited to Tashkent, Uzbekistan, by the Soviet government. After protracted negotiations brokered by Moscow, both sides agreed to issue a declaration in January 1966. The Tashkent Declaration did not propose any concrete solution to the Kashmir problem, but merely stated that the “interest of peace in the region and particularly in the Indo-Pakistan sub-continent and indeed the interests of the peoples of India and Pakistan were not served by continuance of tensions between the two countries. It was against this background that Jammu and Kashmir was discussed and each of the sides set forth its respective position.”

### ***Sumit Ganguly Proposal***

Sumit Ganguly, a leading Indian-American scholar, has argued that “any option that fails to recognise the fundamental territorial integrity of India will not meet the test

<sup>9</sup>Louis Smith and Glenn W. LaFantasie (eds.) *Foreign Relations of the United States, 1961-1963*. Vol XIX South Asia. (Washington, United States Government Printing Office, 1996), p. 478.

of political feasibility. No government in India will concede Kashmir, even if it entails continuing losses in blood and treasure...<sup>10</sup> This structural constraint, he points out should not discourage New Delhi from initiating a dialogue process with Islamabad. Such a dialogue has become imperative for both sides as “war could break out, through a combination of misperception and inadvertence.” In the proposed negotiations, India should offer Pakistan a “package of concessions”, “in three areas of contention: Sir Creek, the Wullar Barrage, and the Siachin Glacier,” along with “limited territorial concessions along the LoC in Kashmir.” In return for these concessions, New Delhi would expect Pakistan to end its “active support for the insurgency,” and this would enable the Indian government to start negotiations with the insurgents for a political deal in which “independence” and “merger with Pakistan” will remain non-negotiable.<sup>11</sup>

### ***Selig Harrison’s Proposal: The Trieste Model***

Selig Harrison, a noted American scholar, has suggested that Kashmir under Indian control should be partitioned. Jammu and Ladakh should become part of the Indian union, while the Kashmir valley would be “united with sizable Muslim pockets in Jammu and Ladakh.” India may give to this “new state,” according to Harrison, “far-reaching autonomy as part of a Trieste-type solution,” and in return, Pakistan would “grant the same degree of autonomy to Azad Kashmir. These new entities will be autonomous in all areas except defence, foreign affairs, communication, currency, foreign aid and trade.

Both India and Pakistan would withdraw their armed forces under UN supervision, retaining the right to reintroduce them under specified circumstances. Pakistan would terminate its support of Kashmiri insurgents. The present LoC will become an international border. As in the Trieste settlement, it would be a porous border, with Kashmiris free to travel back and forth without Indian and Pakistani visas. Gilgit, Hunza and Baltistan would remain part of Pakistan, thus retaining Pakistan’s access to China.

As the first step, India would have to split the state, integrating most of Jammu and Ladakh with the Indian Union, while giving special autonomous status to a new state uniting the Kashmir Valley and the sizable Muslim pockets in Jammu and Ladakh. India could then offer to give this new state far-reaching autonomy as part of a Trieste-type solution, under which Pakistan would grant the same degree of autonomy to Azad Kashmir.

Both New Delhi and Islamabad would surrender authority to these new entities, except in the area of defense, foreign affairs, communications, and currency. The new regions would gain the right to conduct independent foreign aid and foreign trade dealings.

This settlement, if accompanied by large-scale economic inputs, would be acceptable to many Liberation Front leaders and a growing number of war-weary Kashmiris. However, India shows no signs of moving in this direction, as its current policy aims to militarily crush the insurgency before pursuing a political solution.

<sup>10</sup> Sumit Ganguly, *The Crisis in Kashmir: Portents of War, Hopes of Peace*. (Harvard: Cambridge University Press, 1997), p. 145.

<sup>11</sup> *Ibid*, p. 148.



New Delhi fears that giving Kashmir special autonomous status would set a precedent for demands by other potentially secessionist states. The controversy over what to do in Kashmir is part of the developing debate over whether the entire Indian federal system should be more decentralised. This debate is directly linked to the sensitive problem of Hindu-Muslim relations in India. Nominally, India is a secular state, but the secular principle is under attack from the Hindu right. Advocates of secularism fear that an autonomous, Muslim-majority Kashmir would end up seeking independence or accession to Pakistan, thus exposing the 90 million Muslims in other parts of India to continuing attack as potential traitors.<sup>12</sup>

### ***The Third Phase: 1969-79***

#### **Simla Agreement**

Following the third India-Pakistan war in 1971, both countries signed the Simla Accord in July 1972. Clause (ii) of the Article VI of the Simla Agreement stated that “In Jammu and Kashmir, the line of control resulting from the cease fire of December 17, 1971, shall be respected by both sides without prejudice to the recognised position of either side. Neither side shall seek to alter it unilaterally, irrespective of mutual differences and legal interpretations. Both sides further undertake to refrain from the threat of the use of force in violation of this line.” Article VI of the Simla Agreement further committed both sides to “discuss further modalities and arrangements for the establishment of durable peace and normalisation of relations, including...a final settlement of Jammu and Kashmir and resumption of diplomatic relations.

### ***The Fourth Phase: 1980-90***

#### **Robert Wirsing’s Proposal for Constructive External Engagement**

Robert Wirsing, a leading American security expert has suggested that the 1948-49 United Nations resolutions possess little relevance in the wake of the upheavals, insurgency, spread of nationalism and Islamic militancy in Kashmir.

The objective conditions that gave legitimacy to the original notions of plebiscite and self-determination have changed, yet neither India nor Pakistan recognises this. Instead, both remain glued to their traditional positions. Meanwhile, since the breakup of the Soviet Union, the Cold War rivalry of super powers has diminished.

These changes now provide an excellent opportunity for international mediation. Given changes in both the internal situation of Kashmir and the external environment, Wirsing suggests that now ‘international pressure’ can be applied ‘more deliberately, consistently and evenhandedly’, to resolve the Kashmir issue.

Wirsing links the international mediators’ ‘evenhandedness’ with ‘regional reconciliation’. Unless all parties in the dispute—Indian, Pakistani and Kashmiri—are willing to show signs of compromise and the spirit of give-and-take, no resolution of the problem is likely. He argues that the Kashmir conflict has had a powerful impact on the relationships of both India and Pakistan with the United States. Most conspicuous over the years, perhaps, has been its impact on Washington’s decisions in regard to arms transfers to the region. From 1947 onward, these transfers could not be made without

<sup>12</sup> Selig S. Harrison, “South Asia and United States: A Chance for a Fresh Start”, *Current History*. Vol. 91, No. 563 (March 1992), p. 102.

factoring in their probable consequences for the region's most bitter territorial rivalry. The conflict has had equally broad impact, however, on a whole range of long-term U.S. policy efforts in the region, including nuclear non-proliferation. A series of crises have threatened, moreover, to escalate into a full-scale war that could, in turn, force the unwilling involvement of the United States. Like its Indian and Pakistani clients, the United States was thus in some respects held hostage to the Kashmir problem. This problem could be neglected, perhaps, but not avoided.<sup>13</sup>

#### ***The Fifth Phase: 1991-2001***

##### **Bhartiya Janata Party's proposal for Kashmir Annexation**

Radical demographic change has been proposed by the Bhartiya Janata Party (BJP) in India and many other Hindu nationalist organisations as a solution to the Kashmir problem. Specifically, the BJP has called for the revocation of Article 370 of the Indian Constitution. Article 370 gives special status to Kashmir among the Indian states; non-Kashmiris may neither seek residence nor purchase property in Kashmir. By abrogating such restrictions and opening Kashmir to Hindu and Sikh settlement, India could transform Kashmir into a Hindu-Sikh majority state. The 1998 BJP manifesto not only clearly stated that India's "sovereignty over the whole of Jammu and Kashmir" was unequivocal, but also committed the BJP to seize control of all areas that were "under foreign occupations".<sup>14</sup>

##### **The Jammu and Kashmir Liberation Front's Proposal for an Independent Kashmir**

According to the JKLF,<sup>15</sup> a Pakistan-based Kashmiri Organisation, a single solution of the Kashmir issue is at once the most peaceful, practicable, equitable, legitimate, democratic and permanent. The JKLF proposes to re-unite the divided Jammu-Kashmir State and make it an independent country, with a democratic, federal and non-communal system of government. The country would maintain a neutral foreign policy modeled after Switzerland's, aiming toward maintaining friendly relations with both India and Pakistan. After 15 years, there would be a referendum under UN (or IKC) auspices. This referendum could determine whether the State will retain its independence forever, or if it instead becomes part of India or Pakistan. A popular verdict will be accepted by all concerned quarters as a legitimate final settlement, and will therefore be most faithfully implemented.

An eleven member committee called International Kashmir Committee (IKC) includes one member each from the 5 permanent members of the UNSC; one nominated by UN Secretary General; two members nominated by the Non-Aligned Movement (NAM); one by Organisation of Islamic Conference (OIC); and one member each from Germany and Japan. The IKC will be responsible for implementing the solution formula in co-operation with the governments of India and Pakistan; each of the State's three parts; and all of the Kashmiri political parties. The formula's implementation will be carried out in five phases.

<sup>13</sup>Robert G. Wirsing, *India, Pakistan, and the Kashmir Dispute*. (New York: St. Martin's press, 1994), p. 237.

<sup>14</sup>Mushtaqur Rahman, *Divided Kashmir: Old Problems, New Opportunities for India, Pakistan, and Kashmiri People*. (London Lynne Rienner publishers, 1996), p. 164.

<sup>15</sup>Dr Haider Hijazi, *JKLF Formula to Solve Kashmir Issue*. (Rawalpindi, 1992).

*The first phase:* will finalise the plan's details, discussing it through individual contacts and collective sittings with the governments of India, Pakistan, Kashmir's three parts, and all political parties and militant groups. The agreement will then be signed by all these stakeholders and registered with the United Nations. An agreement about the security and the safety of the frontiers of the State will also be signed and registered with the UN.

*The second phase:* will entail simultaneous withdrawal from the State by all civil personnel and armed forces of both India and Pakistan, as well as all non-Kashmiri militants.

*The third phase:* includes the disarming of Kashmiri militants, and repatriation of those Kashmiris who fled their homes and migrated elsewhere. Those who left between 1947 and 1989-90 will have to choose whether to return to Kashmir permanently or remain in the country where they have been since their migration from Kashmir.

*The fourth phase:* will begin the State's re-unification. This phase entails opening intra-state borders closed since 1949; forming an interim National Government and those for each of Kashmir's 5 provinces (Kashmir Valley, Jammu, Ladakh, Azad Kashmir and Gilgit-Baltistan); appointing a Constitutional Committee, framing an interim constitution, electing the National Assembly (House of Representatives) and the Upper House (House of Notables), as well as the provincial assemblies/councils under the interim government. General elections should be held after every 5 years or when decided by the government.

*The fifth and the final phase* will be the referendum to determine whether Kashmir should retain its independence or become part of India or Pakistan. It will be held 15 years after re-unification, under the auspices of the UN or IKC. Its resulting legitimacy will ensure that the popular verdict will be accepted as the final settlement and faithfully implemented.

### **The Kashmir American Council Proposal for a U.S. Brokered Tripartite Dialogue**

The Kashmir-American Council, a Washington-based organisation comprising largely of Kashmiri-Americans with pro-Pakistan leanings, has proposed an active U.S. mediation role in Kashmir. It suggests a dialogue among four parties: the U.S., Pakistan, India, and the 'Kashmiri People'.

As a first step, the area must be demilitarised. Indian and Pakistani troops must revert to their respective positions 'on the borders outside Kashmir'. A small police force must remain, but only in order to supervise the cease-fire line under UN observers. The proposal also advocates that, given India's violation of human rights in Kashmir, the U.S. should use its effective veto to stop the inflow of IMF and World Bank consortium funds to India.<sup>16</sup>

### **Asia Society Proposal for Shared Responsibility**

Asia society, an American think-tank based in New York, has floated the idea of India and Pakistan 'sharing responsibility' on the resolution of the Kashmir crisis. This framework suggests that India should give special status to Kashmir, as a step to build

<sup>16</sup>Saeed Shafqat (ed.) *Contemporary Issues in Pakistan Studies*. (Lahore: Azad Enterprises, 1998), p. 193.

trust between the populations of ‘both parts of Kashmir’ (India and Pakistan), as well as to stop external support to the Kashmiri militants. The Line of Control would then be converted into an international boundary between India and Pakistan. Building upon this framework in a rather optimistic fashion, it has proposed a ‘South Asia House’—a scheme of comprehensive cooperation between the countries of the subcontinent, perhaps leading to a confederation that would include Kashmir.

The society envisages a role for the international community. In particular, the U.S. and Russia could individually or jointly make efforts to bring India and Pakistan closer in resolving the issue. Through seminars, conferences, and by tabling resolutions in the United Nations, the international community can sensitize populations the world over to the need to seek solutions of the problem in Kashmir.<sup>17</sup> Although the Kashmir issue is bilateral, the international salience of the issue can no longer be ignored.

### **Divided Kashmir Proposal by Mushtaq Ur Rehman**

A leading Pakistani-American scholar has proposed to resolve the Kashmir dispute by dividing the state of Jammu and Kashmir following the precedence of the 1960 Indus Waters Treaty, which was based on a clear principle of division.

The Indus River originates in Tibet, crosses the Himalayas and cuts through Jammu and Kashmir in a northwest direction and flows through Ladakh. In this section, the proposed division of the Indus Basin runs diagonally from Chenab to Karakorum Pass.

The Jhelum river originates near Vernag Spring, not far from Zojila Pass. Below Kishinganga Junction, it forms the boundary between Jammu and Kashmir and the districts of Hazara and Rawalpindi. The basin of the Jhelum would fall within the exclusive domain of Pakistan.

The source of the Chenab is on the southern flank of the main Himalayan chain, about 150 miles south of Leh. In general, the river flows parallel to the Indus to the northwest, then turns southwest and passes through the extreme southern corner of Jammu and Kashmir to Pakistan. Below Akhnur, the river splits into smaller channels that could form the dividing line. Bilateral negotiations could amicably divide the Chenab Basin and address the question of Muslim majority districts in the area.

To resolve the continuing conflict, a revolutionary reformation of policies acceptable to all involved parties—India, Pakistan, and the Kashmiri people—must be developed. An alternative based on dividing the river system to mirror the water appropriation in the Indus Waters Treaty could be a real solution. Like the Indus Waters Treaty itself, a resolution for settling the political status of Jammu and Kashmir would likely find broad support in the international community. It would also mark a bold step toward normalised relations, and provide hope for a better future for the entire region.<sup>18</sup>

### **Kashmir Study Group (KSG) Proposal for Kashmir Entity based on Kashmiriyat**

A leading Kashmiri-American businessman, Farooq Kathwari, set up a Kashmir Study Group comprising leading American scholars, policy experts, and a retired Ambassador to explore ideas for a solution to the Kashmir problem. The KSG then

<sup>17</sup>*Ibid.* p. 192.

<sup>18</sup>Mushtaqur Rahman, *op. cit.*; p. 161.

visited India and Pakistan to engage in an extensive series of talks about the Kashmir dispute with leading individuals in several urban centres and with many sets of expertise, including backgrounds in government, politics, military, diplomacy, scholarship, journalism, business, and non-governmental organisations. After their visits to both India and Pakistan, KSG published its report in 1997. In September 1999 it published an expanded version of this report titled “Kashmir: A Way Forward.” These two reports argued that the best way to ensure progress towards the resolution of the Kashmir dispute was to reconstitute J & K on the basis of Kashmiriyat—the cultural traditions of Kashmir. The extent of the reconstituted<sup>19</sup> Kashmir would reflect the wishes of the residents of the parts of the former state of Jammu and Kashmir. “The portion of the State to be so reconstituted shall be determined through an internationally supervised ascertainment of the wishes of the Kashmiri people on either side of the Line of Control.” The implementation of KSG proposals would require the pursuit of following goals:

- Free access of a reconstituted Kashmir to and from both India and Pakistan, consisting of:
  - Freedom of individual movement, and
  - Free transit of people, goods, and services across residual Pakistani and Indian boundaries within Kashmir (e.g., the “Line of Control”) subject to tripartite arrangements.
- Demilitarisation of the area of the reconstituted Kashmir, except to the extent necessary for Pakistan and India to:
  - “maintain logistic support for forces outside the [reconstituted] State that could not otherwise be effectively supplied”, and
  - along either side of the LOC, “until such time as both India and Pakistan decided to alter it in their mutual interest”, but
  - “Neither India nor Pakistan could place troops on the other side of the Line of Control without the permission of the other state.”
- Pakistan and India would share “responsibility for the defense (external security) of the Kashmiri entity.”
- The reconstituted Kashmir “would itself maintain police and gendarme forces for internal law and order (internal security) purposes.”<sup>20</sup>

### **Sovereignty Association Proposal by Ayesha Jalal**

Ayesha Jalal<sup>21</sup> has suggested a sovereignty association within a political framework for a reunified and independent Kashmir. This option aims to address the fear and interest of both India and Pakistan as rival powers. For such an association to succeed, India and Pakistan would have to agree to extend the right of self-determination to all Kashmiris—Muslim, Hindu, and Buddhist. Plebiscites or referenda would be held

<sup>19</sup>The proposed reconstituted entity of Kashmir, in its essential features, would resemble the autonomous region of Andorra—the principality between France and Spain. The dispute between France and Spain over Andorra started in 803 AD and the solution was arrived in 1993.

<sup>20</sup>*Kashmir: A Way Forward, September 1999*. (Washington: Kashmir Study Group, 1999).

<sup>21</sup>Ayesha Jalal as quoted in Mushtaqur Rahman, *op. cit.* p. 165.

throughout Jammu and Kashmir, including Ladakh, to determine whether the people in that particular area wish to remain with India; choose independence; or seek a possible union with Azad Kashmir, which would not be included in the first round of voting. Jalal proposes that Indian and Pakistani troops be withdrawn, transforming Kashmir into a demilitarised zone with both countries guaranteeing its territorial integrity. The terms of a sovereignty association might allow India to maintain a limited military presence in Ladakh, and Pakistan at the Afghan border, in order to meet the strategic concerns of each country about potential threats emanating from outside the South Asian region.

### **Independent States Proposal by Raju Thomas**

Raju Thomas has proposed the creation of several independent states in South Asia delineated along ethnic and religious demarcations. As in Western Europe, countries of South Asia could share natural resources, defense, and economies, governed by treaties. Within a zone of autonomous states, including several states in Kashmir, the central government of India or Pakistan would deal only with defense, foreign affairs, communications, and currency.<sup>22</sup>

### **Partition Combined with Limited Plebiscite and UN Trusteeship Proposal by Pervaiz Iqbal Cheema**

A leading Pakistani scholar, Pervaiz Iqbal Cheema,<sup>23</sup> has proposed that the most feasible solution of the problem seems to be a combination of partition, limited plebiscite and UN trusteeship. Given the region's demographics, Azad Kashmir and Baltistan should stay with Pakistan, while Jammu and Ladakh should go to India. The Kashmir valley should be put under UN trusteeship for at least a decade to prepare the Valley for eventual plebiscite. Cheema argues that the UN Trusteeship Council should decide when the plebiscite would be held. However, there should a mandated time lag of at least one decade from the time the Valley is handed over the UN.

### **The Lahore Declaration**

In response to an invitation by the Prime Minister of Pakistan, Mr Muhammad Nawaz Sharif, the Prime Minister of India, Atal Behari Vajpayee, visited Pakistan from 20-21 February, 1999, on the inaugural run of the Delhi-Lahore bus service.

The two leaders held discussions on the entire range of bilateral relations, regional cooperation within SAARC, and issues of international concern. The two Prime Ministers ultimately signed the Lahore Declaration embodying their shared vision of peace and stability between their countries and of progress and prosperity for their peoples. The Lahore Declaration provided the following:

“Sharing a vision of peace and stability between their countries, and of progress and prosperity for their peoples;

Convinced that durable peace and development of harmonious relations and friendly cooperation will serve the vital interests of the people of the two countries, enabling them to devote their energies for a better future;

<sup>22</sup> Raju Thomas as quoted in Mushtaqur Rahman, *op. cit.* pp. 165–66.

<sup>23</sup> Pervaiz Iqbal Cheema, *op. cit.* p. 12.

Recognising that the nuclear dimension of the security environment of the two countries add to their responsibility for avoidance of conflict between the two countries;

Committed to the principles and purposes of the Charter of the United Nations, and the universally accepted principles of peaceful co-existence;

Reiterating the determination of both countries to implementing the proliferation;

Convinced of the importance of mutually agreed confidence building measures for improving the security environment;

Recalling their agreement of 23 September 1998, that an environment of peace and security is in the supreme national interest of both sides and that the resolution of all outstanding issues, including Jammu and Kashmir, is essential for this purpose;

Have agreed that their respective Governments:

- (1) Shall intensify their efforts to resolve all issues, including the issue of Jammu and Kashmir.
- (2) Shall refrain from intervention and interference in each other's internal affairs.
- (3) Shall intensify their compositior and integrated dialogue process for an early and positive outcome of the agreed bilateral agenda.
- (4) Shall take immediate steps for reducing the risk of accidental or unauthorised use of nuclear weapons and discuss concepts and doctrines with a view to elaborating measures for confidence building in the nuclear and conventional fields, aimed at prevention of conflict.

### **The Andorra Model**

The Andorra proposal involves creating an autonomous region like the principality of Andorra between France and Spain with India and Pakistan jointly guaranteeing autonomy. The dispute between France and Spain over the region started in 803 AD and the solution was arrived in 1993. The Andorra proposal relies on India and Pakistan overseeing the defence of the Kashmiri entity and jointly working out its funding.

### **The Aaland Islands Model**

With a population of 26,000 and the total land area of 1,552 Square kilometers the Aaland Islands took on an international dimension when, on a British initiative, the issue of their autonomy was brought before the League of Nations in Geneva in 1921. The Islands, together with Finland, belonged to Sweden until 1809, at which time Sweden, after losing a war with Russia, was forced to relinquish Finland, together with Aaland, to the victor.

Following the disintegration of the Czarist Empire in 1917, the Alanders launched a struggle for reunion with Sweden but the newborn state of Finland refused to give up part of its territory. In 1921, the League decided that the Åland Islands should belong to Finland but have autonomy that would guarantee their Swedish language and heritage. Ten states guaranteed the demilitarisation and neutralisation of the islands.

With their autonomy backed by international guarantees, they have been used a model for resolving minority conflicts throughout the world. The Åland Islands have legislative powers in such areas as social and health care, the environment, trade and industry, culture and education, transport, postal services, policing, radio and TV broadcasting and local government, but relatively little authority to levy taxes The

autonomy of the Åland Islands is enshrined in the Finnish Constitution (Article 120) in accordance with the Åland Autonomy Act, which has been passed by the Finnish parliament and may only be amended or revised by a joint decision of the Finnish parliament and the parliament of the Åland Islands. This means that each of the two parties can veto any changes it does not accept. The concept of the Åland Islands' autonomy is not based on the decentralisation of power but on an agreement of shared powers established with the help and under the auspices of an international institution, i.e. the League of Nations.

### **The Irish Model**

The Irish peace process based on the April 1998 Good Friday Agreement signed between the United Kingdom of Britain and the Republic of Ireland and eight political parties of Northern Ireland have been posited as a relevant model for resolving the Kashmir dispute.<sup>24</sup> The fundamental problem in Northern Ireland has been the violent thwarting of the desire of the Catholic nationalist minority living in six of its counties to seek union with the Republic of Ireland. The Protestant majority wants these areas to continue as part of the UK. The Good Friday Agreement brokered with the assistance of former US Senator Robert Mitchell offers the first tentative step on a long road to a complete and durable peace among the contending parties.<sup>25</sup> It has been suggested that the Irish model provides peer learning in at least two ways. One, it offers an analogy of structured and sustained course of dialogue/negotiation process supported by well-defined mechanisms—three strands—functioning quite satisfactorily. And, two, the resolution of the conflict is based on certain principles that may have some usefulness in determining the final settlement of the Kashmir conflict.<sup>26</sup> The similarities suggested between the Irish model and the Kashmir conflict include the following: The similarities include in governability of the territory; alienation of the population; rigged polls; question of sovereignty; discriminatory practices followed by the state; and use of oppressive laws allowing use of force with impunity.<sup>27</sup>

### **The Chenab Formula**

This plan envisages the division of Kashmir along the line of the River Chenab. According to the 'Chenab Formula', Pakistan may consider 'Doaba', a

<sup>24</sup>For an excellent comprehensive discussion of the potential applicability of the Irish model to the Kashmir conflict see Shaheen Akhter, "Irish Model and Kashmir Conflict: Search for a New Paradigm for Peace in South Asia," *Regional Studies*, Quarterly (Summer 2004).

<sup>25</sup>The area of Northern Ireland is just over 14,000 square km, with a population of over 1.6 million and is only 20 miles at the nearest point from Britain. Over 50 percent of the population is comprised of Protestants who wish to remain part of the United Kingdom and just under 50 percent are Roman Catholics (23) who wish to join the predominantly Catholic 3.5 million in the Republic of Ireland

The Island of Ireland is divided into the independent Republic of Ireland and the province of Northern Ireland, or Ulster, which is part of the United Kingdom. Northern Ireland had originally nine counties of which six comprise the present day-Northern Ireland. The other three, predominantly Catholic, became part of Ireland on its partition in 1920. The southern region subsequently cut all ties with Britain, becoming the independent Republic of Ireland in 1949. However, the six counties of Northern Ireland remained a part of the United Kingdom. Ulster's partition from the remaining 26 counties of Ireland in 1921 has caused conflict throughout the history of the region. See Shaheen Akhter, *Ibid.*

<sup>26</sup>*Ibid.*

<sup>27</sup>*Ibid.*



narrow strip of land between Chenab and Ravi in the suburbs of Shakargarh, stretching up to Chhamb, Dhodha and Rajwari districts as international border. Even the town of Kargil might go to India under this 'give and take' but from Kargil upward, India will have to agree to give territory to Pakistan," the sources claimed.<sup>28</sup> Most of the districts in Jammu and on the left bank of the Chenab are Hindu majority in the state of Jammu and Kashmir while in most of the districts on the western side of the Chenab, the Muslim are predominant. The 'Chenab formula' was for the first time discussed between India and Pakistan in 1962-63, but the negotiations could not make any headway. According to former foreign secretary Niaz A. Naik, the proposal had been discussed during the unofficial efforts to normalise relations between Islamabad and New Delhi, known as track-II diplomacy, and Indian Prime Minister Atal Behari Vajpayee "had also evinced interest in it". The Chenab formula attracted lot of attention in May 2003 when AJK Prime Minister Sardar Skiandar Hayat called upon India and Pakistan to seriously consider the division of J&K with River Chenab marking the boundary. Arguing that 'this is not a new theory, nor am I the first one to have floated it' he expressed the hope that "India and Pakistan will give a serious consideration to this proposal to end the sufferings of the Kashmiris in particular and of their own people in general and thus materialise the long cherished hope of durable peace in the region."<sup>29</sup>

#### **President Musharraf's Proposal for Demilitarisation of Seven Zones**

Addressing a group of newspaper editors at an Iftar dinner in Islamabad on October 25, 2004, President General Pervez Musharraf called for a national debate on new options for the Kashmir dispute. The necessity for this debate stemmed from the fact that demands for conversion of LoC into an international border and plebiscite were not acceptable to Pakistan and India respectively. To break the deadlock he suggested that identification of various zones of the disputed territory needs to be carried out followed by their demilitarisation and a determination of their status. He identified the following seven regions for this purpose. Two regions—Azad Kashmir and Northern areas—are under the control of Pakistan whereas five regions are under Indian control. The first part comprises Jammu, Sambha and Katwa where Hindus are in majority. The second part also comprises Jammu but the areas include Dodha, Phirkuch and Rajawri where Muslim population is in majority which includes Gujars, Sidhans and Rajas who are also associated with Azad Kashmir. The third part is the area of Kashmir Valley which also has Muslim majority. The fourth part is Kargil which has Shia and Balti population in majority and the fifth area is Ladakh and adjoining areas where Buddhists live.<sup>30</sup> President Musharraf further said that it was imperative that the linguistic, ethnic, religious, geographic, political and other aspects of these seven regions should be reviewed and a peaceful solution to the problem found. President Musharraf's call for open discussion on Kashmir was termed by the Pakistani Opposition parties as a "roll-back" and it was dismissed by India as unacceptable as it envisaged redrawing of the

<sup>28</sup>:"Pakistan toying with Chenab Formula," *The Tribune* (June 23, 2001).

<sup>29</sup>:"Sikandar defends Chenab Formula," *Dawn* May 23, 2003.

<sup>30</sup>Javed Rana, "Let UN oversee seven part Kashmir," *The Nation* (October 26, 2004)

territorial map in J & K.<sup>31</sup> President Musharraf's proposal for the creation of seven demilitarised zones in J & K was consistent with his earlier attempts to help create the much needed negotiating space for India and Pakistan that would allow them to move beyond their stated positions on Kashmir. In this context it is worth recalling that in a remarkable reversal of Islamabad's verbal strategy on Kashmir, President Pervez Musharraf publicly stated on December 17, 2003 that even though "we are for United Nations Security resolutions...now we have left that aside." To mollify New Delhi's concerns relating to the issue of alleged "cross-border" infiltration from Pakistan, President Musharraf categorically pledged in a joint statement issued in Islamabad following his meeting with the Indian Prime Minister, Atal Behari Vajpayee on January 6, 2004 that "he will not permit any territory under Pakistan's control to be used to support terrorism in any manner."<sup>32</sup> By dropping its longstanding demand for a UN-mandated plebiscite over divided Kashmir and by assuring New Delhi that Islamabad would not encourage violent activity in the Indian-held Kashmir, President Musharraf went a long way to help create much needed political space for New Delhi to have a substantive engagement with Islamabad on the Kashmir dispute.

As indicated by the above account of the various proposals and attempts aimed at resolving the Kashmir dispute, there is no dearth of ideas on how to resolve the Kashmir dispute. Based either on analogical reasoning or historical experience of conflict-resolution attempts involving other situations, most of these proposals emphasise the need for transforming the dynamics of India-Pakistan conflict from a zero-sum competition over Kashmir to a positive sum situation in which both sides would gain from a settlement of the dispute. It is in this context of the challenge of reframing of Indian and Pakistan positions on the Kashmir dispute that Rawls's advocacy of the Difference principle as a way of dealing with issues arising out of distributive justice in asymmetric conflicts like Kashmir becomes centrally relevant. The next section looks at some of the ways in which pursuit of Difference principle as a guide by India and Pakistan can help them evolve an approach to the Kashmir dispute in which benefits of peace-dividend will not only accrue to them but more importantly to the Kashmiris as well.

### SECTION III

#### A. Rawl's Theory

Justice, according to John Rawls, "is the first virtue of social institutions."<sup>33</sup> Its "primary subject" is "the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the

<sup>31</sup>Making a suo motu statement in Indian Parliament on foreign policy related issues, Prime Minister Manmohan Singh said during his meeting with Pakistan President Pervez Musharraf in New York in September, 2004 they had agreed that "possible options for a peaceful, negotiated settlement of the J and K issue should be explored in a sincere spirit and a purposeful manner.

"I made it clear to President Musharraf that while we are willing to look at various options, we would not agree to any redrawing of boundaries, or another partition of the country," Singh said. "No Redrawing of Border: PM," *Press Trust of India* December 21, 2004.

<sup>32</sup>For the text of the January 6 Joint Statement see <http://in.news.yahoo.com/040106/137/2ar3r.html>

<sup>33</sup>John Rawls, *A Theory of Justice*. (Massachusetts: Harvard University Press, 1971), p. 3.

division of advantages from social cooperation.”<sup>34</sup> The central problem for a theory of justice is to identify the principles by which the basic structure of society can be appraised.<sup>35</sup>

Rawls attempts to resolve the problem of inequality by conceiving of the principles of justice as being drawn up by individuals in an “original position” of perfect equality, where a “veil of ignorance” operates to prevent them from maximising their own future positions by manipulating the terms of the social contract to their own advantage. What principles of social organisation would individuals choose in the original position? Rawls hypothesises two fundamental principles of justice that would get incorporated in the social contract. These are the general principles of maximum liberty and equal opportunity:

- (1) Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.
- (2) Social and income equalities are to be arranged so that they are both:
  - (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and
  - (b) attached to the offices and positions open to all under conditions of fair equality of opportunity (p. 302).

Rawls regards the first rule of maximum liberty as lexically superior to the second, and within the second rule, he holds 2b, the fair opportunity principle, to be lexically superior to 2a, the difference principle. Rawls argues that the adoption of these rules by individuals in the original position is the logical consequence of their deliberations aimed at the formation of a single society dedicated to the common good.

These principles form the bedrock of Rawls’s “general conception” of justice defined as a situation in which “all social primary goods—liberty and opportunity, income and wealth, and the bases of self-respect—are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favoured.”<sup>36</sup> Rawls regards society as a “cooperative venture for mutual advantage.”<sup>37</sup> Society is “typically marked by a conflict as well as by an identity of interests.” There is an identity of interests since everyone shares an interest in having access to the various goods that social activity can provide. At the same time, people’s claims to these scarce goods may conflict. Principles are thus needed to for choosing among the various social arrangements which will fairly distribute the benefits and burdens of social life.<sup>38</sup> Rawls argues that based on the choices of individuals in the original position, the two principles of Equal liberty and the Difference principle will not only provide the “lexical ordering” of the principles of justice but also offer the most fundamental moral standards for their social institutions. Equal liberty will normally be inviolable and the Difference Principle

<sup>34</sup>*Ibid.*, p. 7.

<sup>35</sup>As he points out the principles of social justice “regulate the choice of a political constitution and the main elements of the economic and social system. The justice of a social scheme depends essentially on how fundamental rights and duties are assigned and on the economic opportunities and social conditions in the various sectors of the society.” *Ibid.*

<sup>36</sup>*Ibid.* pp. 302-3.

<sup>37</sup>*Ibid.* p. 4.

<sup>38</sup>*Ibid.*, p. 5.

cannot be sacrificed for the sake of greater efficiency.<sup>39</sup> According to Rawls, these principles of justice have several attractions. First, the Difference principle provides a determinate solution to the distributional problem—the *bete noire* of liberal welfare economics.<sup>40</sup> Second, since everyone's well-being depends upon a scheme of cooperation without which no one could have a satisfactory life, adherence to a social arrangement capable of generating allegiance from all persons will be in everyone's interest. Third, adherence to these principles of justice will minimise the "strain of commitment" in comparison with other sorts of moral principles. That is, while moral choices may always require a degree of personal fortitude on the part of the individuals those who adhere to these principles within the framework of just institutions, will have relatively less difficulty in putting their beliefs into action.

What is the relevance of these Rawlsian principles for resolving the Kashmir dispute? There are several features of the Kashmir dispute which make it a promising case for the application of Rawls's theory. The first is the centrality of the issue of justice underpinning the dispute. As noted by Sumantra Bose:

"The popular uprising for self-determination in Indian-administered Jammu and Kashmir has been caused by...the denial of democracy by the Indian state to its Kashmir citizens in the post-colonial period. Kashmiris rose in rebellion not because Muslims are constitutionally incapable of loyalty to a secular state, but because they saw no hope of redressal within the Indian state's institutional framework to the gross, consistent and systematic pattern of abuse of their rights as citizens and as human beings...For Kashmiris, Indian democracy and its institution is truly the God that failed and failed disastrously...the reason why they (Kashmiri Muslims) seem so insistent on freedom—which means, above all, freedom from Indian rule—is the conviction born of their experiences that their collective will for democratic, responsible and accountable government is incompatible with their presently coerced—as opposed to voluntary and freely consenting—status as integral part of India".<sup>41</sup>

The eruption of the armed uprising in the Kashmir Valley in 1989 marked the culmination of Kashmiri protest against years of injustice, repression and denial of their democratic rights by New Delhi. Any workable solution to the Kashmir dispute, thus, must address itself to the deep sense of injury felt by Kashmiris' due to prolonged Indian state-oppression. All previous attempts to resolve the dispute have miserably failed principally because they either excluded the Kashmiris as key stake holders in a settlement (1972 Simla Agreement being the prime example) or visualised settlements that were perceived as unjust by them. This is as much true of the UN Resolutions on

<sup>39</sup>*Ibid*, pp. 302-3.

<sup>40</sup>As he states: "This principle removes the indeterminateness of the principle of efficiency by singling out a particular position from which the social and economic inequalities of the structure are to be judged. Assuming the framework of institutions required by equal liberty and fair equality of opportunity, the higher expectations of those better situated are just if and only if they works as part of a scheme which improves the expectations of the least advantaged members of society. The intuitive idea is that the social order is not to establish and secure the more attractive prospects of those better off unless doing so is to the advantage of those less fortunate." *Ibid*, p. 75.

<sup>41</sup>Sumantra Bose, *The Challenge in Kashmir: Democracy, Self-determination and a Just Peace*. (New Delhi: Sage Publications, 1997), p. 115 and 9.

Kashmir as it is true of the many other proposals that have been put forth to resolve the dispute. While acknowledging their right to self-determination, the UN Resolutions unduly limited this right to a choice between India and Pakistan. The absence of the third option of Kashmir becoming a sovereign entity has had the unfortunate consequence of enabling both India and Pakistan to present the Kashmir question as an “entitlement issue”<sup>42</sup> before the world. India-Pakistan quarrel over Kashmir as an entitlement issue has distorted its essential character as a normative issue involving the ideal of self-determination.

Second, given the fact that Kashmiris’ are the most disadvantaged party to the dispute, their individual and collective rights in a future India-Pakistan peace deal can only be safeguarded if they are approached from the difference principle of Rawlsian theory. The difference principle requires that the least advantaged gain at least something as the more advantaged gain. In order for this to happen, the most advantaged obviously cannot be taking from the least advantaged for then the latter would lose not gain. This means that for all parties to the dispute to gain, they must seek a solution in which there is high regard for the interests of both Self and Other. The collective rational choice for all parties to the conflict—India, Pakistan and the Kashmiris—is to reach the win-win outcome through mutual cooperation. Here it may be argued that since Kashmir dispute is inherently an asymmetric<sup>43</sup> triangular conflict in which there is imbalance of power between India, the top dog, Pakistan, the middle dog, and Kashmiris, the underdog, no “win-win” outcomes are possible as resolving the conflict is not in the interest of the top dog power. Such reasoning ignores the fact that, while harder to resolve, asymmetric conflicts do impose significant costs on all parties. As pointed out by Hugh Miall:

“It is oppressive to be an oppressor, even if not so oppressive as to be oppressed. There are costs for the top dogs in sustaining themselves in power and keeping the underdogs down. In severe asymmetric conflicts the cost of the relationship becomes unbearable for both sides. This then opens the possibility for conflict resolution through a shift from the existing structure of relationships to one another.”<sup>44</sup>

Commenting on the costs of Kashmir conflict to India, *The Economist* wrote:

Kashmir has less self-government than any other Indian state. But depriving Kashmiris of political power has not obviously benefited the rest of the country: it has tied down hundreds of thousands of soldiers in an expensive occupation, turned many Kashmiris into potential traitors and damaged India’s reputation for political decency. If India is to regain Kashmiris’ loyalty and the rest of the world’s respect, it needs to give the state the autonomy that Jawaharlal Nehru, India’s greatest Kashmiri, long time ago promised.”<sup>45</sup>

<sup>42</sup>For an excellent discussion of Indian and Pakistan claims to Kashmir as an entitlement issue, that is, over original right to territory see Robert Wirsing, *India, Pakistan and the Kashmir Dispute: On Regional Conflict and Its Resolution*. (New York: St. Martin’s Press, 1994), ch. 1.

<sup>43</sup>In asymmetric conflicts, the root of the conflict lies not in particular issues or interests that may divide the parties, but in the very structure of who they are and the relationship between them. In such conflicts the structure is such that the top dog always wins, the underdog always loses. The only way to resolve the conflict is to change the structure of unbalanced relationships into peaceful and dynamic one.

<sup>44</sup>Hugh Miall, Oliver Ramsbotham, Tom Woodhouse, *Contemporary Conflict Resolution: The Prevention, Management and Transformation of Deadly Conflicts*. (London: Polity Press, 2000), p. 12.

<sup>45</sup>“The Kashmiris’ case,” *The Economist*. May 20, 1995.

These internal costs relating to governance problems for India pale into insignificance when one contemplates the devastation that would ensue from an India-Pakistan conflict over Kashmir turning nuclear. According to one estimate a limited counter-value nuclear exchange between the two countries could result in twelve million deaths.<sup>46</sup> The advent of nuclear weapons in South Asia not only has given both India and Pakistan a shared stake in war-avoidance over Kashmir but has also imposed a common obligation on them to avoid violent conflict behaviour marked by threats, coercion and destructive attacks against each other.<sup>47</sup>

The third factor that makes Rawlsian principles so promising for the Kashmir dispute is the stability value of the difference principle. "A system", according to Rawls, "is in equilibrium...when it has reached a state that persists indefinitely over time." A stable equilibrium exists when the system returns to its original state after external forces have impinged upon it, and it is unstable if these forces succeed in changing it permanently. Given Rawls's analysis of the least or most disadvantaged, one can ask how stable or unstable the equilibrium of a Kashmir settlement would be with regard to the distribution of advantages or disadvantages amongst all the parties. If pursued in earnest, the difference principle (providing that the least advantaged gain as a result of gain to the most advantaged) would serve as a stabilising force since all cases of gains for the most advantaged will concomitantly yield benefits for the least advantaged as well. If a settlement based on the difference principle can be stable in terms of gains for every body, then the obverse condition of a decline, wherein any loss to the least advantaged is matched by some loss to the most advantaged, should also have some stability value. This has been termed as "negative difference principle" by Midlarsky to reflect the negative sum of both losses in contrast to the positive sum of the Rawlsian statement."<sup>48</sup> The operation of the "negative difference principle" would cushion an agreed settlement against risks of failure as losses would accrue not only to the least advantaged but also to the most advantaged as well. The setting up of a formal mechanism for the institutionalisation of common losses would be a vital component for underwriting the stability of the settlement.

And finally, underlying principles of Rawlsian theory of justice have acquired a special significance for Kashmir dispute as issues of entitlement to and distribution of water resources between India, Pakistan and the state of Jammu and Kashmir become "securitised". Due to increase in water stress in India and Pakistan, the 1960 Indus Water

<sup>46</sup>The Natural Resource Defense Council estimate cited in Dr. Zulifqar Khan, "India Pakistan Nuclear Rivalry: Perceptions, Misperceptions and Mutual Deterrence," IPRI Paper No. 9 (Islamabad: IPRI, 2005), p. 36

<sup>47</sup>The January 6, 2004 joint statement signed by Pakistani President General Pervez Musharraf and the Prime Minister of India Atal Bihari Vajpayee during the SARRC Summit in Islamabad noted that "...in order to take forward and sustain the dialogue process, violence, hostility and terrorism must be prevented." It further said that "President Musharraf reassured Prime Minister Vajpayee the he will not permit any territory under Pakistan's control to be used to support terrorism in any manner." For complete text see *The News* (Islamabad) January 7, 2004.

<sup>48</sup>Manus I. Midlarsky, "Balance of Power as a "Just" Historical System," *Polity*. Vol. xvi, No. 2 (Winter 1983), p. 185. Viewing the negative difference principle as a condition for stability in domestic life, Midlarsky states: "Both sectors move in the same direction and a common fate or destiny is perceived throughout society. A strong destabilising condition develops, on the other hand, where the sectors move dissynchronously, where the most advantaged gain either at the expense of the least advantaged, or push forward without any gain at all to the least advantaged." *Ibid*.

Treaty has come under strain. The looming crisis of water scarcity in the subcontinent necessitates finding viable resource distribution principles. Here consideration of their water needs on the basis of the difference principle could be of immense help. Commenting on the need for standards of equity required in such matters of natural resource distribution as water, Charles R. Beitz says:

“...the resource distribution principle would function in international society as the difference principle functions in domestic society. It provides assurance to persons in resource-poor societies that their adverse fate will not prevent them from realising economic conditions sufficient to support just social institutions and to protect human rights guaranteed by the principles for individuals. In the absence of this assurance, these nations might resort to war as a means of securing the resources necessary to establish domestic justice, and it is not obvious that wars fought for this purpose would be unjust.”<sup>49</sup>

If nuclear-armed India and Pakistan have to avert the horrifying prospect of future water wars between them, then it is imperative that they find a fair formula that allows them to secure fair conditions for the development of their respective national schemes to deal with the critical problem of water scarcity. Rawlsian theory of justice which regards society as a “cooperative venture for mutual advantage” based on the difference principle offers them a way out of this bleak scenario.

<sup>49</sup>Charles R. Beitz, *Political Theory and International Relations*. (Princeton, New Jersey: Princeton University Press, 1979), pp. 141-142.

*Summary of the Proposed Solutions for Kashmir Dispute (1947–2005)*

Period	Source	Nature of Solution	Basic Principles	Status	Responses			Comments	
					India	Pakistan	Kashmiris	Pros	Cons
1947-57	Sir Owen Dixon's proposal	Hold Plebiscite in Jammu and Kashmir	Kashmir belongs neither to India nor to Pakistan, rather it belong to Kashmiris.	Awaiting implementation (World wary of self-determination)	India accepted, but later renegeed.	Favoured option, officially committed to pursuing it.	Supported by majority of Kashmiris, now including APHC	<ul style="list-style-type: none"> <li>- Values self-determination</li> <li>- Puts Kashmiris at the centre</li> <li>- Enjoys UN legitimacy</li> <li>- Practicable esp. in its regional form.</li> <li>- Goes beyond status quo</li> </ul>	<ul style="list-style-type: none"> <li>- Rejected in the past.</li> <li>- Does not allow third option</li> <li>- Ignores the ethnic, linguistic and religious complexity of the J &amp; K</li> </ul>
1958-1968	India-Pakistan Statement of Objectives (1963)	Political, peaceful settlement	Equitable, honourable and final boundary settlement	Abandoned	Agreed	Agreed	Excluded	<ul style="list-style-type: none"> <li>- Consensus statement</li> <li>- Addresses Indian and Pakistani concerns</li> </ul>	<ul style="list-style-type: none"> <li>- Does not address present-day realities</li> <li>- Excludes Kashmiris</li> <li>- Suffers from the stigma of secrecy</li> </ul>
	Tashkent Declaration (1966)	Status Quo	Status Quo	Overtaken by events	Agreed	Agreed	Excluded	<ul style="list-style-type: none"> <li>- Brokered by third party.</li> <li>- Addresses Indian and Pakistani concerns</li> </ul>	<ul style="list-style-type: none"> <li>- Devoid of practical steps.</li> <li>- Out of step with current realities</li> </ul>
	Sumit Ganguly's proposal, first offered by Indian Prime Minister Lal Bahadur Shastri After Tashkent Declaration	Status Quo	Convert line of control into recognised international boundary between India and Pakistan.	Possible solution; under consideration	Favoured	Rejected	Rejected	<ul style="list-style-type: none"> <li>- Enjoys global support.</li> <li>- Accepts ground reality as truth</li> <li>- Avoids disruptive change</li> </ul>	<ul style="list-style-type: none"> <li>- Violates self-determination</li> <li>- Divides Kashmiris</li> <li>- Not acceptable to Pakistan</li> <li>- Has not worked in the past.</li> <li>- Equates reality with truth</li> </ul>



	Selig Harrison's Proposal discussed between President Ayub and Prime Minister Nehru in 1964.	A Trieste Solution	In Italy and the Former Yugoslavia, residents of Trieste were given free access to the other side. The same solution was suggested for Kashmir, while giving a special autonomous status to the region. Defence, foreign affairs, communication and currency would be controlled by both India and Pakistan, leaving Kashmir independent in all other matters.	Possible solution; under consideration	Fall-back option	Opposes	Opposes	<ul style="list-style-type: none"> <li>- Enjoys international support.</li> <li>- Seeks to transform the dynamics of Kashmir conflict</li> <li>- Offers incremental rather than abrupt change.</li> <li>- Has a people-centric perspective</li> </ul>	<ul style="list-style-type: none"> <li>- Ignores the end goals of the Kashmiri freedom movement.</li> <li>- Suffers from a flawed analogy.</li> <li>- Puts too much confidence in CBMs to deliver peace</li> </ul>
1969-1979	Simla Agreement	Status-quo pending final solution	Bilateral approach, including mutually acceptable forms of mediation.	Possible solution; under consideration	Favoured, with narrow interpretation	Favoured, with broad interpretation	Indifferent	<ul style="list-style-type: none"> <li>- Provides a framework for achieving progress.</li> <li>- Forbids use of force.</li> <li>- Has int. support</li> </ul>	<ul style="list-style-type: none"> <li>- Contested Indian and Pakistani interpretations.</li> <li>- Excludes Kashmiris.</li> <li>- Treats J &amp; K as a bilateral issue</li> </ul>
1980-1990	Robert Wirsing's proposal	International mediation	Apply international pressure more deliberately, consistently, and impartially in order to resolve the dispute.	Possible solution until recently	Strongly opposed	Favoured	Divided; some segments support, while others oppose	<ul style="list-style-type: none"> <li>- Seeks global involvement.</li> <li>- Has advantages of third party mediation.</li> <li>- Focuses attention on Kashmir as a trouble spot</li> </ul>	<ul style="list-style-type: none"> <li>- Assumes third parties are neutral players.</li> <li>- Opposed by India.</li> <li>- Takes the initiative away from Kashmiri's.</li> <li>- Gets Kashmir tangled in global power dynamics</li> </ul>

*Continued—*

*Summary of the Proposed Solutions for Kashmir Dispute*

Period	Source	Nature of Solution	Basic Principles	Status	Responses			Comments	
					India	Pakistan	Kashmiris	Pros	Cons
1991-2001	Proposal of BJP & other Hindu Nationalist movements	Demographic change in Kashmir	Opening Kashmir to Hindu and Sikh settlement to transform Kashmir into a Hindu-Sikh majority state.	Internationally rejected	Divided; some segments support, while others oppose	Strongly opposed	Strongly opposed	-Favours settlement of J & K on Indian terms. -Transforms current dynamics of Kashmir conflict by creating new facts on ground	-Totally unacceptable to Pakistan and majority of Kashmiris. -Puts Pakistan at an extreme disadvantage. -Legitimises Indian hegemony over Kashmir
	Jammu & Kashmir Liberation Front (JKLF)	Independent Kashmir	Recognition of fully independent and democratic state of Jammu and Kashmir	Remains a possibility	Strongly opposed	Strongly opposed	Divided; some segments support, while others oppose	-Puts Kashmiris at the centre stage. -Broadens the scope of existing binary options. -Unhinges Kashmir from India-Pakistan stranglehold.	-Opposed by both India and Pakistan. -Marred by partisan advocacy. -Contested option.
	The Kashmir American Council	Active US mediation	Initiate step by step peace process through US-supervised negotiations	Possible solution; under consideration	Strongly opposed	Strongly favoured	Favoured, with reservations	-Incremental approach. -U.S.-brokered deal. -Advantages of third party involvement	-Opposed by India. -US not a neutral party. -After 9/11 US credibility as honest-broker severely undermined

Period	Source	Nature of Solution	Basic Principles	Status	Responses			Comments	
					India	Pakistan	Kashmiris	Pros	Cons
	Raju Thomas's proposal	Create several Independent states	Create several independent states in South Asia, along ethnic and religious lines	Not valid; threatens to further enhance ethnic violence	Strongly opposed	Strongly opposed	Favoured, with reservations	-Treats South Asia as a potential security community -Cognizant of the linguistic, cultural, ethnic and religious diversity of the region and that of J & K	-Too idealistic -Understates the force of integral nationalism in the region. -Will encounter opposition from India and Pakistan. -No clear road map for achieving stated goals.
	Pervaiz Iqbal Cheema's proposal	Combination of partition, limited plebiscite and UN-trusteeship	Azad Kashmir and Baltistan stay with Pakistan; Jammu and Ladakh with India and Kashmir valley should be put under UN trustee-ship for a decade or more until a final plebiscite.	Possible solution; under consideration	Opposed	Opposed	Mostly opposed	-Takes a practical view of the situation. -Seeks tripartite division of J & K along religious, cultural and ethnic lines.	-Opposed by India. -Not favoured by most Kashmiris. -Variation on Dixon proposal – faces the same problems.
	Kashmir Study Group	Shared sovereignty	Trilateral Discussions	Widely discusses	Opposed	Flexible	Favoured with reservations	-Taken seriously by India, Pakistan and the Kashmiris. -Takes into account the ground realities of the Kashmir situation and also the national interest of India and Pakistan. -Pedaled by a Kashmiri-American. -Promotes Kashmiriyat	-Opposed by extremist Hindu parties in India. -Tainted by its American origins. -Falls short of full sovereignty for the Kashmiris. -Is opposed by vocal sections in India and Pakistan

Period	Source	Nature of Solution	Basic Principles	Status	Responses			Comments	
					India	Pakistan	Kashmiris	Pros	Cons
	Ayesha Jalal	Create a Sovereignty Association	A sovereignty association within a political framework for a unified and independent Kashmir would accommodate the fears and interests of the two main regional powers.	Unlikely	Opposed	Unconvinced	Unconvinced, though some segments demand unification and independence	-Seeks to change the status quo by changing thought patterns.	-Too idealistic -ignores ground realities. -Ignores the force of Pakistani, Indian and Kashmiri nationalisms.
	Mushtaq ur Rahman	Divided Kashmir	Indus Water Treaty as a model	Hotly discussed	Acceptable as a fall-back position	Acceptable as a fall-back position	Unacceptable	-Builds on past experience. -Guards economic interests of India and Pakistan. -Has greater chance of acceptance for its logical appeal	-Legitimises the status quo. -Ignores self-determination and issues of justice. -Treats J & K as a real estate issue and ignores its human and cultural dimensions
	Lahore Declaration (1999)	Negotiated settlement	Bilateral discussion	Hotly discussed	Acceptable as a viable solution	Agreeable, with reservations	Excluded	-Builds on past experience. -Calls for a negotiated settlement through dialogue	-Opposed by right wing parties in Pakistan. -No clear road map
	The Andorra Model	India-Pakistan Condominium	Bilateral discussion	In circulation among American circles	Might be acceptable as an alternative to Independent Kashmir	Agreeable as fall back position	Excluded	-India-Pakistan joint control. -Satisfying for both.	-Variant on maximum autonomy and likely to be opposed by leading Kashmiri groups. -Flawed analogy between Andorra and J & K

Period	Source	Nature of Solution	Basic Principles	Status	Responses			Comments	
					India	Pakistan	Kashmiris	Pros	Cons
2001-2005	The Chenab Formula	Division of J & K	Bilateral discussions	Discussed during Track II (Niaz A Naik- R.K Mishra Talks	Might be acceptable to Pakistan	Opposed by India	Excluded	-Addresses the water issues. -Rationalised division of Kashmir on religious basis	-Opposed by India. -Legitimises status quo. -Narrow focus -Ignores larger dimensions of the problem
	The Musharraf Proposal	Division and demilitarisation on geographical basis	Bilateral discussions	Hotly debated in Pakistan	Acceptable to Pakistan	Rejected by India	Mixed reaction from Kashmiri groups	-Unfreezes the status quo. -Marks a shift in Pakistani thinking on the Kashmir issue. -Departure from stated positions	-Opposed by India. Opposed by religious parties in Pakistan. -No clear road map. -Variation on Dixon proposal
	The Aaland Islands Model	Demilitarisation, limited autonomy	International involvement and guarantees	Seldom discussed	Not acceptable to Pakistan	Offered to Kashmiris as part of autonomy formulas	Mixed reaction from Kashmiri groups. Majority not in favour.	-Stabilises the status quo; -Seeks international involvement;	-Opposed by Pakistan; -Flawed analogy with Kashmir due to differences in size, history, ethnicity and India-Pakistan stakes; Presumes global willingness to help.
	The Good Friday Agreement (Irish Model)	Sustained and structured dialogue process	Popular consent and self-determination	Hotly discussed	As a possible option	Widely discussed	Widely discussed without outright rejection	-Centrality of self-determination; -Third party mediation; -Ignores the fact that Kashmir is an international conflict while Ireland is essentially an internal issue of unification.	-Conflicts with stated Indian position on Kashmir; -Presupposes institutionalised and structured dialogue process between India, Pakistan and the Kashmiri's which is not there.

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