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**From Legalism to Realism in Kashmir:  
Internationalising the Line of Control**

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# From Legalism to Realism in Kashmir Internationalising the Line of Control

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In 2002, Kashmir once again virtually led the two countries, India and Pakistan, to another war. And this time the fear was that it could even escalate into a nuclear war. Had it not been for the enormous pressure built upon both the states by the international community, most notably the United States, the matters could have gone out of hand. But the problem of deep distrust with which both the states seem to be congenitally afflicted still remains. Drawing upon historical sources and current politics, the article explores the recognition of the line of control that separates India controlled parts of Jammu and Kashmir from the areas under Pakistani control as a possible solution to this vexed issue.

## THE BACKDROP

In 1996, following the parliamentary and assembly elections held in the state of Jammu and Kashmir, in June and September, respectively, notwithstanding conflicting reports about their fairness,<sup>2</sup> it seemed that that round too had gone in

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<sup>2</sup> Two kinds of views were expressed in the Indian press after the parliamentary election held in June 1996, one, that the election was a farce as the security forces had coerced the people to vote, and two, that there was spontaneous response on the part of the people to participate in the election which was reflected in the turn out of voters, though small. Representing the first view were Harinder Baweja, 'Voting Under Coercion,' *India Today* (New Delhi), 15 June 1996, pp. 68-70; and Shiraz Sidhva, 'Guns and Votes: A Loss of Credibility,' *Frontline* (Madras), 14 June 1996, pp. 122-25. Representing the second view were Pravin Swami, 'A Surprise in Kashmir: The Myth of Coercion at Large,' *ibid.*, pp. 114-20; Aarati Dhar, 'A Vote for Peace,' *The Hindu* (New Delhi), 9 June 1996; and Prem Shankar Jha, 'A New Start in Kashmir,' *ibid.*, 16 June 1996. The assessment of the then Chief Election Commissioner of India, T.N. Seshan, was: 'I cannot unequivocally say there was no coercion.... Given various factors, including the neighbouring country's determination to disrupt the elections, we have conducted as good an election under the circumstances.' He said that some voters could have charged the security forces with

favour of India. Actually it was after a gap of nine years that the assembly elections were held in the state. Ever since independence it was the third time that Pakistan seemed to lose out to India in its effort to wrest the valley from the latter.<sup>3</sup> On earlier occasions, in 1947 and 1965, these efforts were military in nature but from the late eighties onwards there was a change in tactics. Through overt intervention Pakistan had created a state of insurgency and waged a low cost low intensity undeclared war through a band of terrorists trained by its intelligence agency, the Inter Services Intelligence (ISI).<sup>4</sup> The strategy was to make things difficult for India and it was expected that under unabated pressure India's nerves would eventually wreck. When that stage would be reached then at that point through the expedience of an international conference the fate of Kashmir would be decided. Whatever be the outcome of that international conference, it would at least change the status quo, and any change in the status quo whatsoever would be to Pakistan's relative advantage.

It was against this background that the elections of 1996 seemed to make India somewhat hopeful about the better days to come. There were indeed some visible improvements in the ground realities and tourist flow, though limited, restarted. But as things stand now all these hopes have been proved to be momentary. The state is preparing for its next assembly election in September 2002 but in the mean time so many things have gone wrong that one wonders whether the elections would actually alter those realities for the better. In the first place, the India-Pakistan relationship has touched its nadir once again. Ever since May 1998, both the nations have formally gone nuclear. But that probably did not do all that harm for even after that they have sat across the table to discuss matters of mutual concern. Actually things were improving as was reflected in the Indo-Pak Summit of 1999. But the hope that was created by Prime Minister Atal Behari Vajpayee's visit to Pakistan in February 1999 and the signing of the Lahore Declaration on the 21<sup>st</sup> of the month was dashed to the ground by Pakistan's Kargil adventure of May 1999. Then there was further intensification of Jehadi terrorism, evidently sponsored by the ISI, which culminated in the most dramatic and daring assault on the parliament of India on 13 December 2001. To India's advantage was the intervening momentous development of the terrorist attack of September 11, 2001, which put Pakistan under tremendous pressure, particularly from the United States,

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'coercing' them to cast their ballot in fear of retribution from the militants. See *Times of India* (New Delhi), 5 June 1996. After the assembly elections held in September 1996 there was not much of a controversy about the fairness of the poll and all except the All Party Hurriyat Conference (APHC), which opposed the poll, seemed to accept the verdict that went in favour of the National Conference led by Farooq Abdullah.

<sup>3</sup> The five-member American study team that visited India and Pakistan during March-May 1997 under the auspices of the U.S.-based Kashmir Study Group seemed to corroborate this impression. Kashmir Study Group, *1947-1997: The Kashmir Dispute at Fifty: Charting Paths to Peace: Report on the Visit of an Independent Study Team to India and Pakistan* (New York, September 1997), pp. 7-8.

<sup>4</sup> Between 1988 and 1998 there were about 39,000 Pakistan-sponsored terrorist incidents in J&K compared to only 5,000 in the rest of the world. B. Raman, 'Pakistan-Sponsored Terrorism in J&K,' *South Asian Analysis Group*, Paper No. 192 (<http://www.saag.org/papers2/paper192.htm>).

virtually making it commit itself to desist from aiding and abetting international terrorism that included its activities in Kashmir. President Pervez Musharraf's nation wide broadcast on 12 January 2002 marked a significant departure from what the Pakistani state thought and did for Islamic Jihadis heretofore. How far are these commitments real and how far are they in response to an existing reality, and therefore, temporary, only time would say. But would they solve the Kashmir problem—is the moot question.

Essentially the problem of Kashmir has two closely inter-related causes which the restoration of democratic process or the withdrawal of Pakistan for the time being would not be able to eradicate though they may make the Indian government complacent at this point of time. If 'normal times' return, the problem would remain dormant but as soon as the political goings would get tough, which is bound to happen periodically in a competitive plural democracy, tough would get the going. All complications emanating from those sources would again raise their heads.

These two causes are: one, the legal status of Kashmir as was to be determined according to the instrument of Transfer of Power, and two, the political question of governing Kashmir through normal politico-administrative procedures or through some special constitutional device. Closely related to the first was the issue whether the problem could be settled through negotiations between India and Pakistan alone or through the involvement of the United Nations, or, what has been happening of late through the involvement of the United States.

#### THE LEGAL QUESTION: A REINTERPRETATION

To recapitulate the legal question, the original sin was committed by the Maharaja of Kashmir, Hari Singh, who procrastinated in making up his mind as to which state, India or Pakistan, should he accede to which he was required to do as per the instrument of Transfer of Power.<sup>5</sup> If one dispassionately goes by the logic of partition and analyses the way other states like Hyderabad and Junagarh were incorporated into India then one would have to agree that Jammu and Kashmir, at least the valley which was predominantly Muslim, should have gone to Pakistan.<sup>6</sup> It was not only a Muslim-majority state, it also fulfilled all other qualifications laid down to facilitate a choice in favour of Pakistan, namely, contiguity, communication links and economic interdependence. What prevented that from

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<sup>5</sup> It has, however, been argued that the Maharaja was taking his time so as to ascertain the will of his people before the process was overtaken by the Pakistani invasion. See Prem Shankar Jha, *Kashmir 1947: Rival Versions of History* (Delhi: OUP, 1996), pp. 2-3. The British historian Alastair Lamb has argued that even before the instrument of accession was signed the Indian troops had landed in Kashmir. Alastair Lamb, *Kashmir: A Disputed Legacy, 1884-1990* (Hertsfordbury: Roxford, 1991).

<sup>6</sup> Theoretically both India and Pakistan have subscribed to double standards in respect of accession of princely states. Following the logic of its action in Hyderabad and Junagarh India should not have minded the Pakistani action in sending raiders to Kashmir. Similarly, in the perspective of its demographic logic in Kashmir Pakistan should not have questioned Indian moves in Hyderabad and Junagarh. See Eqbal Ahmad, 'A Kashmiri Solution for Kashmir,' *Himal South Asia* (Kathmandu), 9(8), November-December 1996, p. 19.

happening was Maharaja's decision not to do so coupled with Jawaharlal Nehru's emotional attachment to the state as he happened to be a Kashmiri Pandit.<sup>7</sup>

There was indeed a strategic dimension too, which Nehru as a foreign policy expert must not have overlooked. Just prior to his acceptance of the accession of Kashmir he had sent a telegram to the British Prime Minister Clement Attlee, which read:

We have received urgent appeal of assistance from Kashmir Government. We would be disposed to give favourable consideration to such request from any friendly State. Kashmir's Northern frontiers, as you are aware, run in common with those of three countries, Afghanistan, the Union of Soviet Socialist Republics and China. Security of Kashmir, which must depend upon control of internal tranquillity and existence of stable Government, is vital to security of India especially since part of Southern boundary of Kashmir and India are common. Helping Kashmir, therefore, is an obligation of national interest to India. We are giving urgent consideration to question as to what assistance we can give to State to defend it.

It should be made clear that question of aiding Kashmir in this emergency is not designed in any way to influence the State to accede to India. Our view which we have repeatedly made public is that the question of accession in any disputed territory or State must be decided in accordance with wishes of people and we adhere to this view. It is quite clear, however, that no free expression of will of people of Kashmir is possible if external aggression succeeds in imperilling integrity of its territory.<sup>8</sup>

It is generally believed in India that behind India's Kashmir policy there is the broad rationale of India's nation-building ideal of 'one nation' upon which the entire freedom movement was built. On the same ground its conflict with Pakistan, a state based on the Muslim League's two-nation theory, is explained. As an extension of the argument it is alleged that Pakistan's quest for nationhood would remain incomplete so long as it failed to incorporate Kashmir in its territory for the existence of a Muslim-majority province in India makes a mockery of its two-nation theory. The argument is of doubtful validity for then the very creation of Pakistan should have been objected to and should have been actually prevented at any political cost, which Mahatma Gandhi had suggested. He went to the extent of pleading for the name of Mohammad Ali Jinnah as the prime minister of the

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<sup>7</sup> It is said that Sardar Vallabhbhai Patel, the Minister of States, to whom goes largely the credit of inclusion of princely states in India, most notably Hyderabad and Junagarh, had virtually written off Kashmir following the logic of the partition. It was Nehru who had some kind of a 'pathological' passion for Kashmir to which reference was made by Lord Mountbatten in one of his official reports. See M.J. Akbar, *Kashmir: Behind the Vale* (New Delhi: Viking/Penguin, 1991), p. 95.

<sup>8</sup> Dharendra Sharma, ed., *India's Commitment of Kashmir (Political Analysis with Documents)* (New Delhi: Philosophy and Social Action Publication, 1994), p. 35.

undivided India just to avoid partition of the country. The nation-building logic is the post-facto explanation of an essentially legal dispute.<sup>9</sup>

When the princely states were offered the option of either merging into India or Pakistan all of them were not necessarily influenced by these one-nation/two-nation considerations. The princes were mere mortals as was expected of them and wanted the best out of a bad bargain. For Kashmir's Hari Singh the choice was neither a Hindu-majority India nor a Muslim-majority Pakistan. He simply wanted to retain his independence. Similar was the case with the Muslim Nawab of Bhopal. His fate, however, was sealed because of the geographical handicap of his state. The princely state of Travancore not only proclaimed its decision to remain independent, it went to the extent of signing a trade agreement with Mohammad Ali Jinnah. Maharaja Hanwant Singh of the Hindu-majority state of Jodhpur had virtually made up his mind to accede to Pakistan.<sup>10</sup>

But the legal question was overtaken when Pakistan committed the first illegal act by violating the instrument of Transfer of Power. It invaded Kashmir to incite an internal Muslim rebellion against the Hindu Maharaja probably on the line of the Indian action in Hyderabad. India contributed to this illegality of Pakistan by agreeing to hold a plebiscite to decide about the political fate of Kashmir although the Maharaja had signed the instrument of accession on 26 October 1947 in favour of India. For reasons easily explainable but otherwise politically short-sighted (the popularity of Sheikh Abdullah in the state and his pro-India posture) both Lord Mountbatten and Jawaharlal Nehru unsuccessfully converted that legally complete accession into a conditional one. In his letter to the Maharaja dated 27 October 1947 Mountbatten wrote that 'my Government have decided to accept the accession of Kashmir State to the Dominion of India. Consistently with their policy that in the case of any State *where the issue of accession has been the subject of dispute*, the question of accession should be decided in accordance with the wishes of the people of the State, it is my Government's wish that as soon as law and order have been restored in Kashmir and her soil cleared of the invader the question of the *State's accession should be settled by a reference to the people.*'<sup>11</sup> On the same day Nehru sent a telegram to Liaquat Ali Khan, the Prime Minister of Pakistan, stating, *inter alia*, that 'our view which we have repeatedly made public is that *the question of accession in any disputed territory or State* must be decided in accordance with the wishes of people and we adhere to this view.'<sup>12</sup> The italicised

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<sup>9</sup> For a critical evaluation of Nehru's Kashmir policy in all its dimensions, see Subrata K. Mitra, 'Nehru's Policy towards Kashmir: Bringing Politics Back Again,' in Justus Richter and Christian Wagner, eds., *Regional Security, Ethnicity and Governance: The Challenges for South Asia* (New Delhi: Manohar, 1998), pp. 32-48.

<sup>10</sup> Akbar, *Kashmir*, pp. 99-100.

<sup>11</sup> For the text of the letter, see Sharma, *India's Commitment to Kashmir*, pp. 35-36. Emphasis added. According to a recent study, the British did not want the entire J&K to go to India. The partition of the state between India and Pakistan was what it wanted. C. Dasgupta, *War and Diplomacy in Kashmir* (New Delhi: Sage, 2002).

<sup>12</sup> Excerpts of the telegram in *ibid.*, p. 36. Emphasis added. This pledge was reiterated by Nehru in his telegram to Liaquat Ali Khan on 3 November 1947.

phrases above show that these expressions were neither Pakistan's nor UN's creation but they were India's own creation.

Following this it was once again Pakistan's turn to contribute to the intractable character of the conflict. It failed to grab the opportunity and settle the problem once and for all by not adhering to the UN resolutions. The Resolution 47 (21 April 1948), which provided for the plebiscite, expected from Pakistan a total withdrawal of all Pakistanis from Kashmir. 'When it is established to the satisfaction of the [UN] Commission ... that the tribesmen [from Pakistan] are withdrawing and that arrangements for the cessation of the fighting have become effective, [India should] put into operation in consultation with the Commission a plan for withdrawing their own forces from Jammu and Kashmir and reducing them progressively to the minimum strength required for the support of the civil power in the maintenance of law and order.'<sup>13</sup> The primary responsibility, therefore, rested with Pakistan to withdraw its troops but it did not oblige. Naturally, the UN resolutions could not be implemented nor the plebiscite held. A decade later, Gunnar Jarring, the UN Representative opined that the passage of time and the changing circumstances had rendered the UN resolutions obsolete.<sup>14</sup>

India followed a different logic to underscore the irrelevance of the plebiscite formula. On 27 October 1950, the General Council of the National Conference adopted a resolution recommending the convening of a Constituent Assembly for the purpose of determining the 'future shape and affiliations of the State of Jammu and Kashmir.' The Constituent Assembly consisting of 75 members was elected in 1950 by a universal adult franchise and the constitution that was adopted declared the State of Jammu and Kashmir to be 'an integral part of India.' It may, however, be noted that in the election, all the nominations filed by the opposition were rejected.<sup>15</sup> Whatever be the case, the government of India expressed the view that as the democratic process followed for the election of the legislative assembly of the state proved that the people had accepted to remain within the Union of India the UN resolutions on plebiscite 'had become obsolete and were no longer binding on India.'<sup>16</sup> It was forgotten that the disputed territory was entire J&K while the Constituent Assembly and the Legislative Assembly in question were elected only by the people of India-controlled part and not those in the Pakistan-controlled part. It is obvious that from the very beginning India had reconciled itself to the reality of a divided J&K, a point to which we would come back later in the paper.

The Indo-Pak war of 1965, which Pakistan initiated to capture Kashmir once again underlined its lack of respect for the UN resolutions. In 1972, the UN

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<sup>13</sup> Resolution 47 (1948) on the India-Pakistan question submitted jointly by the Representatives for Belgium, Canada, China, Colombia, the United Kingdom and the United States of America and adopted by the Security Council at its 286<sup>th</sup> meeting held on 21 April 1948. (Document No. S/726, dated 21<sup>st</sup> April 1948.) Text in *ibid.*, pp. 4-8.

<sup>14</sup> See B.G. Verghese, 'Kashmir: Freedom and Its Discontents,' *Hindustan Times* (New Delhi), 24 June 2000.

<sup>15</sup> Arun Joshi, 'A Long History of Rigged Elections,' *Hindustan Times* (New Delhi), 19 May 2002.

<sup>16</sup> Report of the Security Council, 16 July 1963-15 July 1964. G.A.O.R.: XIX Session, Supplement No. 2 (A/5802), p. 88.

resolutions got superseded when both India and Pakistan signed the Simla Agreement, which laid down that the problem of Kashmir would be solved bilaterally through peaceful means and the Line of Control (LOC) would be the de-facto boundary between the two countries.<sup>17</sup> It must, however, be understood here that the Simla Agreement did not address itself to the legal question of sovereign right over Kashmir; it merely eliminated the role of external powers in the controversy.<sup>18</sup>

The very fact that the LOC was accepted as the de-facto boundary till the fate of Kashmir—both the Indian as well as the Pakistani parts—was finally decided through negotiations ipso facto acknowledged the legal controversy over title in respect of the state although India continued to claim that the accession was complete and as such irrevocable. Otherwise how could one explain that India, that too a victor in the war of 1971, should have agreed to a situation in which a part of its sovereign territory could continue to remain in the indefinite occupation of an ‘enemy’ nation.<sup>19</sup> Remember that all Indian maps show the entire J&K as part of India and the Government of India does not use, whenever there is any reference to Kashmir, any other phrase than that the state is an integral part of India which is just not negotiable. Did not the Government of India agree to negotiate the subject? The fact of the matter, therefore, is that the legal question of title over Kashmir is still open and as such is very much negotiable and should, therefore, remain so on the Indo-Pak agenda.

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<sup>17</sup> Clause 4(ii) of the Simla Agreement read: ‘In Jammu and Kashmir the line of control resulting from the cease-fire of 17 December 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 or the use of force in violation of this line.’ For the full text of the Agreement, see D.D. Khanna and Kishore Kumar, *Dialogue of the Deaf: The India-Pakistan Divide* (New Delhi: Konark, 1992), pp. 194-95.

<sup>18</sup> This, however, has been the Indian interpretation. Pakistan never subscribed to this. During the ratification debate in the Pakistan National Assembly immediately after the signing of the Agreement Zulfikar Ali Bhutto categorically stated that Pakistan’s Kashmir policy was not at all compromised; on the contrary, he had reactivated the Kashmir question. He clarified that Pakistan was not debarred from raising the issue at the UN for the UN Charter took precedence over any bilateral agreement. See V.P. Dutt, *India’s Foreign Policy* (New Delhi: Vani, 1984), p. 159. It may be relevant here to note that there are evidences of India too trying to register the support of external powers on Kashmir related matters. In February 1992, when the Jammu and Kashmir Liberation Front (JKLF) planned to send thousands of its volunteers to cross over the LOC (Pakistan did not permit it) the Government of India took into confidence the five permanent members of the UN Security Council through their respective ambassadors in New Delhi in way of seeking their good offices to defuse the crisis. For details, see Partha S. Ghosh, ‘Playing with Brinkmanship,’ *Financial Express* (New Delhi), 16 February 1992.

<sup>19</sup> It is argued that under superpower pressure the borders of West Pakistan (including POK) could not be altered. Anatoly Dobrynin, the Soviet Ambassador to the United States for 20 years, however, writes that it was India itself, which refrained from attacking West Pakistan during the Bangladesh war. This was communicated to the United States by the Soviets to considerable relief of the former. See Anatoly Dobrynin, *In Confidence* (New York: Times Book, 1995), pp. 142-43.

## THE POLITICAL QUESTION: WHY SPECIAL STATUS?

Like the legal question the political question too was not adequately addressed by India. Even after the state had duly acceded to India it was not treated the way other princely states were treated. Nor is it treated even now the way other states of the Indian Union are treated. No wonder that some states are now asking for the same status like that of the J&K. In Tamil Nadu the D.M.K. president and the former chief minister M. Karunanidhi virtually threatened that if the status given to Kashmir was not granted to other states 'we may have to meet the situation where there will be several Kashmirs.'<sup>20</sup>

Kashmir had its separate Constituent Assembly, which drafted its own constitution and the inclusion of the state in the Indian Union had to be approved by its Legislative Assembly. Although there are some other states in India which too have special rights as provided by the Constitution of India (Articles 371A to 371I) yet Article 370, which deals with Kashmir, is qualitatively different. Even after a half-a-century of J&K's accession to India the title of the article continues to be: 'Temporary provisions with respect to the State of Jammu and Kashmir'. Only the word 'transitional' was deleted from the original title with effect from 1 December 1963 through an amendment.

As a result even now the National Conference (NC) talks about the Nehru-Sheikh Abdullah agreement (better known as the Delhi Agreement) of June 1952, which had underwritten the special status.<sup>21</sup> On 26 June 2000, the J&K Assembly passed a resolution to go back to the status quo of 1952. Leading the debate on behalf of the ruling NC, Farooq Abdullah, the Chief Minister of the state and the President of the party, strongly reiterated the pledge that he had made to the people of the state during the September 1996 assembly elections that if elected his party would restore the pre-1953 status. He said that it was this sort of denial of rights that had pushed Jinnah to demand partition of India. He clarified that the accession of his state to the Indian Union was complete but that did not mean that the Indian state should not honour its commitment to the autonomy of J&K enshrined in the so-called Delhi Agreement. Earlier also Abdullah had asked Prime Minister Narasimha Rao to consider promulgation of a Presidential Order under Article 370(1)(2) to restore autonomy to J&K in terms of that agreement. But the government was not willing to go beyond the Indira Gandhi-Sheikh Abdullah

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<sup>20</sup> *Times of India*, 30 January 1996.

<sup>21</sup> There was no formal agreement. There were discussions between Nehru and Sheikh Abdullah following which both made statements to the Indian parliament and Kashmir assembly respectively about the outcome of the talks. Although this so-called Agreement mentioned that the state would enjoy autonomy barring three subjects, namely, foreign affairs, defence and communication, since it also mentioned that all the erstwhile princely states acceding to India retained these subjects to start with, underlined the impermanence of the autonomy which the NC talks about. For a summary of the Agreement, see Saifuddin Soz, ed., *Why Autonomy to Kashmir?* (New Delhi: India Centre of Asian Studies, 1995), pp. 140-42. See also the autobiography of Sheikh Abdullah, *Flames of the Chinar: An Autobiography* (Abridged, translated from Urdu and introduced by Kushwant Singh) (New Delhi: Penguin, 1993), p. 116.

agreement of 1975.<sup>22</sup> As the demand was not heeded the party had stayed away from the parliamentary elections held in June 1996. It may be argued that it was actually the fear of the gun of the militants that influenced the NC's decision not to participate for after seeing that the Indian state was powerful enough to conduct the polls even in the teeth of violent provocations from the terrorists the party mellowed its position. Even without extracting any commitment from the Indian government with regard to the Delhi Agreement the party participated in the assembly elections held only two months later, in September 1996.

It may be surmised that had the NC failed to make it to power in September 1996 there was every likelihood of its revamping the autonomy demand more seriously immediately afterwards. Autonomy, read in the context of NC politics has a special meaning in the valley, which should not be overlooked.<sup>23</sup> In the present phase, the immediate provocation to take up the issue could be the NDA government's move to rope in the All Party Hurriyat Conference (APHC) to the negotiating table to the considerable discomfiture of the NC. Even the newly anointed chief of the party, Omar Abdullah, Farooq Abdullah's son and the high-profile Minister of State for External Affairs in Vajpayee's Council of Ministers, has started harping the same tune. There is no reason that the Vajpayee government would oblige the NC. On 4 July 2000 the Vajpayee cabinet had unanimously rejected the demand and the same policy would continue.<sup>24</sup> The politics of Kashmir is a game of checkers between the central government and the NC. In the absence of any political space left for the opposition the central government has become virtually a hostage to the NC's manoeuvring. NC knows that quite well. Just by shouting from the rooftops that the accession of Kashmir to India is final it takes any government in New Delhi, whether it is the NDA or the Congress or the United Front, for a ride. If at all there is the slightest indication that the central government is trying to create a political space for the forces opposed to the NC the latter rakes up the autonomy issue causing shivers to New Delhi for it has larger implications. The failure of the Indian state in Kashmir is neither diplomatic nor military. It is political.

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<sup>22</sup> M.K. Narayan, 'How Free is My Valley: Needed a New Look at Kashmir,' *Asian Age* (New Delhi), 25 December 1995. See also, Navneeta Chadha Behera, 'J&K (&L &D &G...): Making and Unmaking Identities,' *Himal South Asia* (Kathmandu), 9(8), November-December 1996, p. 29. For the text of the so-called Indira Gandhi-Sheikh Abdullah accord of 1975, actually signed by Mirza Afzal Beg and G. Parthasarathi, see M.L. Kotru, *The Kashmir Story* (New Delhi: Government of India, Ministry of External Affairs, n.d.), pp. 81-82.

<sup>23</sup> I recall here one of my earlier impressions in this regard made in the aftermath of the 1983 assembly elections. Had the NC lost that election there was possibility of plebiscite demand again raised. See Partha S. Ghosh and Indra Ghosh, 'Some Reflections on Kashmir Politics,' *Mainstream* (New Delhi), 9 July 1983, pp. 31-33.

<sup>24</sup> The demand for autonomy was on the cards for quite some time though. After winning the September 1996 assembly elections, Farooq Abdullah, with the approval of his cabinet constituted on 29 November 1996 a nine-member committee to examine and recommend measures for the restoration of autonomy. A 184-page report of the committee was released in April 1999. Originally Dr. Karan Singh was the chairman of the committee but on his resignation on 31 July 1997, Ghulam Mohi-ud-din Shah, PWD Minister in the Abdullah cabinet, became its chairman.

## LACK OF NATIONAL CONSENSUS

The question of special status is ever shrouded in political controversy. According to Sheikh Abdullah even Nehru had misgivings about it and had some sympathy with Jammu's Praja Parishad and the Bharatiya Jana Sangh, both of which were in favour of full merger of the state to the Indian Union. But on account of the UN's possible adverse reaction to it and the Hindu communal overtone in the demand Nehru did not support the move.<sup>25</sup> At the moment there is no national consensus in the country on the question. Although the ruling Bharatiya Janata Party (BJP) is ever critical of it and so is the opposition Congress, there are elements within the ruling NDA coalition that are in favour of continuation of Article 370 and even more powers to J&K. Even the BJP now seems to be in favour of more powers to the state without of course tampering with the special status clause enshrined in the Article 370. The Indian Muslim position on the matter is somewhat ambivalent. The Kashmiri Muslims are a separate ethnic group and other Indian Muslims have little to do with them. On the contrary they feel that it is for these Kashmiris who are better looked after than them that the Indian Muslims earn a bad name as anti-national. Incidentally, the only person who opposed the granting of special status to J&K during the Constituent Assembly debates was Maulana Hasrat Mohani, a prominent non-Kashmiri Indian Muslim.<sup>26</sup>

Over the years there has been considerable erosion in the autonomy element contained in the Article 370. This has been recounted by none other than the BJP itself. The National Executive Meeting of the party held at Bangalore on 17 June 1993 noted the following;

The permit system for the entry of the Indian people into the state and similar permit system for the state people going to other parts of the country have been abolished.

Jurisdiction of the Supreme Court of India, Jurisdiction of the Election Commission of India, and the Jurisdiction of the Auditor General of India have also been extended to J&K.

There has been financial integration, which resulted in flow of more central assistance to the state.

Customs duty which is imposed for import of foreign goods, was abolished as it was against the spirit of oneness of the country.

There has been integration of the services and many people of the state have found place in the Indian Administrative Service (I.A.S.), the Indian Police Service (I.P.S.), the Indian Foreign Service (I.F.S.) and other cadres and many officers from outside the state got opportunity to serve in this state like other parts of the country.

The system of nomination of members from the state to the Lok Sabha (the Lower House of Parliament) has been replaced by direct elections like other parts of the country.

<sup>25</sup> Abdullah, *Flames of Chinar*, p. 118; Chadha, 'J&K,' p. 29.

<sup>26</sup> Maroof Raza, *Wars and No Peace over Kashmir* (New Delhi: Lancer, 1996), pp. 20-21.

The nomenclature of the Sadar-e-Riyasat and that of the Prime Minister have been changed to Governor and the Chief Minister, respectively, as is the case in other states.<sup>27</sup>

Article 356 of the Indian Constitution has been extended to J&K also. (The article, which is even otherwise controversial, empowers the centre to declare Governor's Rule in the state.)

Over 50 central labour laws have been extended to the state.

By constantly harping upon the special status clause the BJP while in the opposition seemingly wanted to prevent any retardation of the process. Of course, it attributed all this to the 'supreme sacrifice' of its founder, Syama Prasad Mookerjee, and said that 'going back to 1952-53 means retarding of all these steps.'<sup>28</sup> The party regretted that 'though Article 370 was intended to be temporary and transient, and that though earlier even Pandit Nehru had apologetically spoken of its "gradual erosion," the present [Rao] government has now chosen to refer to it as a "solemn commitment" to the people of Kashmir.... It creates a psychological barrier between Kashmir and the rest of India. It gives indirect legitimacy to the two-nation theory.'<sup>29</sup> It also gives a handle to Pakistan to argue that India has been able to retain Kashmir only by granting it a special status.<sup>30</sup>

All this, however, had its roots in the pre-independence Kashmir politics. The Indian National Congress had accepted the role of Kashmiris as an autonomous political group and the relationship between the Congress and the NC was one of active cooperation. When Jinnah tried to woo the Kashmiri Muslims and sell his two-nation theory Sheikh Abdullah vehemently denounced it and virtually chased the Muslim League leader out of the valley. There was so much of unity of purpose between the two organisations that both Mahatma Gandhi and Pandit Nehru felt that there was no need of having a Congress organization in the state. It was on account of this legacy that when Kashmir acceded to India the NC was allowed to play a major role in working out the details of the merger. The fact that Kashmir was given a special status underlined the point that its people were treated somewhat differently from those belonging to other states although there were similar demands from several other areas at the time of independence.<sup>31</sup>

<sup>27</sup> The autonomy resolution passed on 26 June 2000 asked for the restoration of these nomenclatures.

<sup>28</sup> Bharatiya Janata Party Publication No. 129 (New Delhi, n.d.), p. 4. It may be noted that a railway project was conceived some time ago to link Srinagar with Jammu. The Jammu-Udhampur section was not merely an essential component of the Jammu-Srinagar rail link, but it assumed significance as Udhampur was the headquarters of the Indian Army's Northern Command and also a major business and trade centre. *Times of India*, 15 February 1994.

<sup>29</sup> Bharatiya Janata Party, *National Executive Meeting, 13, 14 and 15 March 1992, Sarnath, Varanasi* (New Delhi), p. 10. See also, Jagmohan, 'Autonomy for Kashmir,' *Hindustan Times*, 14, 15 and 16 August 1996. Jagmohan, now a BJP MP and a cabinet minister in the Vajpayee government, was earlier the Governor of J&K.

<sup>30</sup> Raza, *Wars and No Peace Over Kashmir*, p. 21.

<sup>31</sup> The Akalis in Punjab, the Naga National Council in Nagaland, the United Mizo Freedom Organisation in Mizoram, the All Assam Tribes and Races Federation in the then united Assam, etc. had all demanded special status in the Indian Union, if not total independence. For details, see Partha S. Ghosh, 'Ethnic Conflict and Conflict Management: The Indian

This understanding, however, came under strain before long. Under the shadow of a growing rift between India and Pakistan, which got entangled in the larger Cold War question and the US strategic interests in the region Sheikh Abdullah toyed with the idea of an independent Kashmir. He even broached the subject with the Americans. This was not appreciated by New Delhi. Sheikh Abdullah was put in prison for his anti-national activities and an alternative NC leadership was created which could be more amenable to the influence of the centre. Till 1965, when the Congress organization was set up in Kashmir, NC under the leadership of Bakshi Gulam Mohammad enjoyed an associate status of the Indian National Congress.

The challenge for the Indian state, therefore, should be as to how to do away with the special status to the extent that every now and then the leaders from the state do not talk of going back to the 1952 situation. At the administrative level there is a constant intrusion into the state's special status but at the political level there is ever a hesitation to withdraw the deal. Importance of autonomy for the constituent states of a federation cannot be overemphasized but the level of autonomy should be uniform; there should not be any first-among-the-equals.

#### INDIAN EQUIVOCATION?

On the face of provocative action on the part of Kashmiri militants and their Pakistani supporters, India often comes across as willing to strike but afraid to wound. Indian behaviour can perhaps be attributed to a sense of guilt on the Kashmir issue which is reflected in its handling of both the legal and the political issues. It is also reflected in the somewhat unnecessary pampering of the state. It is the Union finances that provide the entire funds for the state's five-year plans and also for a substantial part of the non-plan expenditure. As per India's planned outlay for 1994-95 the largest recipient of financial allocation of Rs. 45.62 billion was Uttar Pradesh with a population of 150 million. That means that the per capita allocation was Rs. 304.13. Compared to this J&K received Rs. 9.5 billion for a population of eight million, a per capita allocation of Rs. 1187.5. This was higher than any other state in the Indian Union. The state was the least taxed by the Central government compared to other states and 78 per cent of its total receipts were financed by New Delhi.<sup>32</sup> According to the Reserve Bank of India the per capita central assistance for 1994-95 was Rs. 3,010 for J&K as against Rs. 190 for Bihar, Rs. 305 for Tamil Nadu, Rs. 385 for Rajasthan and Rs. 341 for U.P. In the case of J&K, 90 per cent of this assistance was in the shape of grants and 10 per cent as loans; while for the above mentioned four states it was 30 per cent grants and 70 per cent loans. Likewise the per capita non-plan grants for J&K in the same year was Rs. 720 while it was 72 for Bihar, Rs. 23 for Tamil Nadu, Rs. 81 for Rajasthan and Rs. 23 for U.P.<sup>33</sup> The partiality shown in favour of J&K is reflected in the plan allocation for 2002-03 as well. In spite of the objection of the Planning

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Case,' *ICES Pamphlet Series 2* (Kandy, Sri Lanka: International Centre for Ethnic Studies, 1996), pp. 5-10.

<sup>32</sup> Raza, *Wars and No Peace Over Kashmir*, p. 100.

<sup>33</sup> Jagmohan, 'Nuts and Bolts of Operational Reality,' *Hindustan Times*, 16 August 1996.

Commission of India and the Finance Ministry the Prime Minister personally intervened to allocate whatever Farooq Abdullah had demanded, that is, Rs. 22 billion. It may be noted that in 2001-02 the central allocation was of Rs. 20.5 billion but the state could spend Rs. 17 billion only.<sup>34</sup>

There allegedly is an intra-regional angle too to this central partiality. Since it is the valley of Kashmir, which is essentially the bone of contention between India and Pakistan, it may be compared with the rest of Jammu and Kashmir state, most notably the Jammu region. It is the complaint of the people of Jammu that most of the central aid is consumed by the developmental projects of the valley although the population ratio between the valley and Jammu is more or less the same. It is 51.95 per cent to 45.83 per cent.<sup>35</sup> In 1994-95, the sales tax collection from Jammu amounted to Rs. 770 million; the valley's share was only Rs. 120 million. Income Tax collection was almost zero in the valley, though normal in Jammu. Ram Sahai, the president of the Jammu Chamber of Commerce, said: 'It is almost as though we are being penalized for being loyal to India, while those who subvert the country are rewarded.'<sup>36</sup> A 1988 study revealed that while more than 95 per cent of the valley's villages were electrified Jammu's share was in the tune of 70 per cent.<sup>37</sup> Against this background it is not surprising to note why the 26 June 2000 resolution of the J&K state assembly for autonomy found no support either in Jammu or in Ladakh. On the contrary, they vehemently opposed it.

It may not, however, be fully correct to see the economic problem of J&K in regional terms. While Srinagar and Jammu districts are relatively developed than the rest of the state the hilly districts in all the three regions of Kashmir, Jammu and Ladakh are underdeveloped. Actually, according to one study, the 'intra-regional dualism has become strong. Geographical, resource endowments and technological factors constitute the basic causes of the intra-regional variations. Secondary and tertiary economic activities are mainly concentrated in Srinagar and Jammu districts. Growth impulses are weak or even absent in other districts. The maximum labour force is dependent on primary activities. Long winter months in the Kashmir region and some sub-regions in Jammu hinder not only early maturity of crops but cause large scale seasonal unemployment.'<sup>38</sup> Moreover, it must not be overlooked that during the decade-old militancy in the valley considerable economic activity has shifted from the valley to Jammu, which is reflected in its growing construction industry. In contrast, the apparent prosperity of the valley

<sup>34</sup> *The Hindu*, 15 June 2002.

<sup>35</sup> Calculated from the population estimates of 1991. For detailed district-wise estimates of population, see Jammu and Kashmir Government, Planning and Development Department, *Digest of Statistics 1993-93* (Srinagar, 1995), p. 4.

<sup>36</sup> M.D. Nalapat, 'A Misstep on the Brink of Victory,' *Times of India*, 1 January 1996. For some other opinions on the same line expressed by Jammu people, see B.S. Jamwal, 'The Cry of Jammu,' *ibid.*, 3 April 1996; Hari Om, 'The Reality in J&K,' *The Hindu*, 15 February 1996. 'Astonishingly,' writes Jamwal, 'the talks concerning J&K are confined to the Central leaders on the one hand and the valley leaders including militants on the other. As if Jammu and Ladakh were non-existent or not a part of J&K.'

<sup>37</sup> Raza, *Wars and No Peace Over Kashmir*, p. 100.

<sup>38</sup> M.L. Misri and M.S. Bhat, *Poverty, Planning and Economic Change in Jammu and Kashmir* (New Delhi: Vikas, 1994), pp. 42-46.

could be an optical illusion. One scholar has argued that the presence of the security forces has strengthened the petty bourgeoisie. Small traders and shopkeepers have directly benefited from this hugely expanded market resulting in new shops and booming construction industry.<sup>39</sup>

#### A HOLISTIC VIEW

The two points—legal and political—made above cannot be read individually. They are parts of a composite problem and, therefore, require a composite policy response. At the core of the problem is the efficacy of the instrument of accession itself, which India does not seem to have fully internalised even after half a century of Kashmir's accession to India. The fact that the government has to regularly announce that the accession was final and that J&K is an integral part of India speak of the disputed nature of the claim.

The problem of Kashmir is ethnic, demographic, communal, secular, federal, strategic, international, and South Asian regional, all rolled into one. Avoiding to address the basic question of accession would only complicate matters further though there might be occasional respites. The fact that there is a near nuclear parity between India and Pakistan presents two diametrically opposite scenarios. According to one school this would prevent a total military showdown as it happened during the Kargil conflict while the other school, largely represented by American strategic thinkers, argues that the conflict between India and Pakistan may escalate into a nuclear war, which was actually feared in the first half of 2002. Neither of the scenarios is desirable.

Absence of war does not mean peace. Ever since the beginning of the Cold War in the forties till its end in 1990 the United States and the Soviet Union never confronted each other on any war front but still their relations created so much of an atmosphere of suspicion that the whole world suffocated. Indo-Pak conflict too, at the centre of which is Kashmir, is a cancer in the body politic of South Asian regionalism and unless this cancer is treated the future of the South Asian Association for Regional Cooperation (SAARC) can at best serve as a meeting point but never as a vehicle of growth for the region. At a time when the world economy is fast getting regionalized the South Asian regionalism can lag behind only at its own cost. Is it not a pity that when the region is the world's poorest,<sup>40</sup> its children so much undernourished, and in the development index its constituents are almost near the bottom, the two leading nations of the region are bogged down in an everlasting territorial dispute.

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<sup>39</sup> Reeta Chowdhari Tremblay, 'Kashmir Conflict: Secessionist Movement, Mobilization and Political Institutions (Review Article),' *Pacific Affairs* (Vancouver), 74(4), Winter 2001-02, p. 571.

<sup>40</sup> According to the World Bank, South Asia is the poorest region in the world, even poorer than the sub-Saharan Africa. In 1990, almost 59 per cent of the South Asian population consumed less than \$30 a month in terms of purchasing power parity. The equivalent share of the population was 53 per cent in sub-Saharan Africa (28 per cent in Latin America and 15 per cent in East Asia). *The Hindu*, 24 June 1996.

## THE PLEBISCITE OPTION: A PROBABLE BLUEPRINT

Having identified the problem between India and Pakistan to have its most essential element in the dispute over Kashmir and that of the latter in the instrument of accession together with its antecedents and fallouts the bull has to be caught by its horns. Theoretically there cannot be any dispute over the assumption that people anywhere have their inherent right to choose their political future and this rule equally applies to the people of the undivided J&K, the position that Pakistan upholds so seriously. If so, let us see how such a plebiscite can be organized.

Two points are to be made clear at the outset. One, the plebiscite has to be held in the entire J&K as was ruled by the Maharaja of Kashmir, Hari Singh. And two, neither India nor Pakistan has any role to play in this plebiscite. It has to be conducted by a third party acceptable to both India and Pakistan. For the sake of developing an argument let us suggest that the third party is SAARC to which both India and Pakistan belong. Since Bhutan is not a democracy we exclude it from this exercise. Similarly, since the Maldives are a single-party democracy we exclude that too. We are now left with only three, Bangladesh, Nepal and Sri Lanka, all democracies and all having friendly relations with both India and Pakistan. In the best traditions of democracy and fair elections let these states appoint an election commission to conduct the plebiscite.

Again, for the sake of developing the idea further a tentative blueprint of this plebiscite plan is presented below.

There would be an adult franchise in the entire former princely state of J&K in which voters would be given a choice to either vote for India or Pakistan.

All Kashmiri Hindus of the valley, who were on the voters list till they had to leave the state in early nineties for security reasons, would also vote through postal ballots, if necessary.

Considering the fact that a momentous decision is being taken by the voters, and that too when all may not vote, a simple majority formula would not be enough. The winning side, therefore, must get at least 65 per cent of all votes cast.

Prior to the election there should be a two-year interim regime during which the authority of China, India and Pakistan would cease to be operative in their respective areas and these authorities would devolve upon the SAARC consisting of Bangladesh, Bhutan, the Maldives, Nepal and Sri Lanka. Law and order would be the responsibility of the trust administration and strict vigil would have to be there to prevent infiltrations from across the border of this reunited J&K.

During the trusteeship there would be complete freedom of speech and expression. The official Indian or Pakistani media would not publish or broadcast anything against each other but can certainly highlight what they have done to their respective areas under control so as to influence the people of Kashmir to make up their minds.

To ensure that the economies of the concerned areas do not suffer, the old economic links with external places would be maintained and accordingly traders

from J&K would be allowed to visit different countries including India and Pakistan and vice versa.

For all practical purposes the borders between the Chinese, Indian and Pakistani parts would be lifted. Kashmiri Hindus who fled away from the valley would be rehabilitated and their lost real estates restored to them.

The result of the plebiscite as announced by the trust government would be final and binding upon all the concerned parties. It would be implemented within twelve months from the date of the result.

#### DOUBTFUL EFFICACY

From the blueprint drawn above it is evident that there are enormous difficulties in holding a plebiscite. That too whatever has been conceived above is just a fraction of practical bottlenecks. The idea here is to sensitise the champions of the plebiscite formula about the enormity of the problem of its implementation. Let alone India, even Pakistan, and for that matter China, would not agree to it. It is one thing to harp on the plebiscite solution at international diplomatic forums but quite another when its nuts and bolts have to be put in place. No country in the region knows it better than Pakistan itself which could not create a conducive situation for a plebiscite in the late forties which the UN had prescribed and India too was not averse.

It is doubtful whether a plebiscite formula would be welcome even in the Pakistan Occupied Kashmir (POK).<sup>41</sup> From the trends in the POK politics it is obvious that there are acute tensions between the pro-independence factions on the one hand and those who support the merger of Kashmir to Pakistan on the other. In the aftermath of the assembly elections of June 1996 in which the Abdul Qayyum's Muslim Conference was routed these fissures widened. Prior to the election several nomination papers were rejected on the ground that the candidates had refused to sign declarations pledging absolute faith in the 'ideology of Pakistan' and in the ideology of 'accession' of 'Azad Kashmir' to Pakistan. This brought to the fore the political controversy over the question of POK's status in Pakistan. Two points are relevant in this connection—one, the political status of 'Azad Kashmir,' and two, that of the northern areas. So far as 'Azad Kashmir' is concerned it is not treated as other four states of Pakistan. Constitutionally it is not an integral part of Pakistan and its status would be finally decided after the dispute with India is settled. As such, there was the insistence of candidates not to sign the above-mentioned pledge.<sup>42</sup> The parties, which refused to sign the pledge, were, among others, the so-called 'nationalist' groups like Jammu and Kashmir National Liberation Front (JKLF), National Awami Party, National Democratic Party and the National Students Federation. The JKLF, the oldest and the most powerful in this lot, expressed its opposition to the election. Its leader, Amanullah Khan, said that he

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<sup>41</sup> For a brief but useful description of the constitutional position of the POK in the Pakistani set-up, see Syed Talat Hussain, 'A Rubber Stamp in Azad Kashmir,' *Himal South Asia* (Kathmandu), 9(8), November-December 1996, p. 21.

<sup>42</sup> *The Hindu*, 5 June 1996.

would oppose the assembly elections ‘tooth and nail’ the way he opposed the parliamentary elections in the Indian part. He accused both India and Pakistan for the then state of affairs and said that had the two countries wanted, the issue could have been resolved.<sup>43</sup>

The Government of Pakistan administers the Northern Areas. But the ‘Azad Kashmir’ authorities have often wanted to extend their control to this territory as well. The argument is that the Northern Areas was a part of the original principality of J&K in 1947. Some time ago the Judiciary of ‘Azad Kashmir’ had decided that the Northern Areas could be regarded as an integral part of ‘Azad Kashmir.’

The problem is that just like India’s Jammu and Kashmir, Pakistan’s ‘Azad Kashmir’ is also equally integrated to Pakistan’s politics. During Benazir Bhutto’s rule, the rivalry between the Pakistan People’s Party (PPP) and the Muslim Conference (MC) was very sharp. She had absolutely no trust in the MC leader Abdul Qayyum Khan who was allegedly close to the military high command. Although Abdul Qayyum Khan said that ‘we should not forget that Azad Kashmir was formed on the basis of its accession to Pakistan,’ his earlier statement in Washington in mid-1995 that he was ready to accept polls on the Indian side of Kashmir as a device to discover authoritative interlocutors for the ultimate negotiations<sup>44</sup> attracted criticisms as an opportunist who spoke with a forked tongue—at one level arguing that ‘Azad Kashmir’ was part of Pakistan while at another pledging for the ‘third option.’ Now that Pakistan is ruled by the military, the politics of ‘Azad Kashmir’ is muted.

The Line of Control separating the two Kashmirs has gained so much acceptability in both India and Pakistan that it has virtually become an international border. No wonder that when a few years ago the noted Indian journalist, B.G. Verghese, talked of a condominium of India and Pakistan to rule a federally united Kashmir there was no taker of that otherwise humane formula either in India or in Pakistan. Similarly, when the Pakistan High Commissioner to India, Riaz Khokar, suggested to his government that let his mission be authorized to grant visas to Indian Kashmiris to visit ‘Azad Kashmir’ it was turned down by the Interior Ministry on the ground that the High Commission might be taken for a ride by the Indian intelligence agency.<sup>45</sup>

So much of political vested interests have been created on both sides of the LOC that it is doubtful whether they themselves would be interested in the plebiscite. Leave alone the Jammu Hindus or the Ladakhi Buddhists, even the Gujjars and Shias of the valley are most unlikely to be interested in a plebiscite. That leaves only the Sunnis of the valley and those of the POK who could be interested in the exercise. But even among them, so far as the Sunnis of the valley are concerned, the NC, the Congress, the Janata Dal, and several other political outfits have unequivocally announced that Kashmir’s accession to India is final and irrevocable. How can they, therefore, suddenly show an interest in the plebiscite? After his victory from Anantnag in the 1996 parliamentary election the Janata Dal

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<sup>43</sup> *Times of India*, 13 June 1996.

<sup>44</sup> M.B. Naqvi, ‘Polls of Uncertainty,’ *Sunday Times of India*, 7 April 1996.

<sup>45</sup> *Times of India*, 22 June 1996.

MP, Maqbool Dar, said: 'It [militancy] was a lava which has exploded. People are now fed up with militants. Don't drag Pakistan into the issue now. Kashmir will always be a part of India.'<sup>46</sup> Of course, if a choice is given to the people of the valley, and also of those of the POK, there is the possibility that a majority of them might prefer total independence to joining either India or Pakistan. But given the strategic location and the topography of the region, which is not conducive to industrial development, it is not a correct prescription for it would complicate the question of regional security further.

Then there is the question of return of the Kashmiri Hindus to the valley for unless they return the vote has no moral sanctity and the Kashmiriyat has no meaning. But it is doubtful whether there would be such a situation in the foreseeable future when the Hindus would return. Ever since the early phase of Sheikh Abdullah's regime there have been efforts to provide economic benefits to the valley's Muslims at the cost of the Hindus, may be not with that intention in mind. Abdullah's land reforms were indeed progressive in their orientation. But in effect they benefited the Muslim peasantry at the cost of the Hindu landlords. No wonder that his popularity swelled overnight. In the present phase, the question is that of the Hindu evacuee properties, which are changing to Muslim hands at much cheaper price. A return of peace in the valley that would create conducive situation for the Hindus to return may not be in the interest of the emerging Muslim middle class in the valley.<sup>47</sup> Although the J&K government prepared a blueprint for the return of the Hindu migrants it remained a dead letter,<sup>48</sup> primarily, of course, on account of continued violence in the valley.

#### TERRORISM AND INTERNATIONAL ISLAM

The legal question of title over Kashmir and the views of the Kashmiris themselves on their fates, however, have been overshadowed by other factors many of which have to do with the phenomena of international terrorism, a resurgent and militant Islam and strategic importance of the region. Two developments in the seventies contributed significantly to escalation of tensions in Kashmir. One, the power and influence gained by some of the Middle Eastern states on account of steep rise in the price of crude oil, and two, the Soviet intervention in Afghanistan in 1979. To complicate matters were the collapse and dismemberment of the Soviet Union in early nineties and the emergence of several resource-rich, yet politically underdeveloped, Muslim states in the Central Asian region as independent nations.

Towards the middle of the 1980s Pakistan's covert involvement in the affairs of Kashmir started. It was directly linked to the political turmoil and violence that the

<sup>46</sup> Quoted by Gurumukh Singh, 'Mountains of Dispute,' *Sunday Times of India*, 23 June 1996.

<sup>47</sup> Author's interview with the Late Moulvi Iftekhhar, a noted Shia political leader and a member of the Farooq Abdullah cabinet, in June 1995 in New Delhi.

<sup>48</sup> Government of Jammu and Kashmir, 'Return of Migrants: Interim Report of Sub-Committee,' Srinagar, 24 July 1997. According to the report, the estimated number of Hindu migrant families was 50,000. The number of structures gutted/damaged was around 18,400 of which 4,862 houses were totally gutted. See p. 8 of the report.

Indian state of Punjab then was witnessing. Following the Operation Blue Star at the Golden Temple of Amritsar in 1984 there was large-scale disaffection among the Sikhs, which often resulted in indiscriminate arrest of Sikh youths by the Punjab police for interrogation and other kinds of unauthorized torture. Pakistan took advantage of the situation and made room for the reception of these disaffected youth on its soil for their training in armed rebellion against the Indian state. These trainings became part of a wider operation run by Pakistan's intelligence agency, the Inter Services Intelligence (ISI), primarily meant for the training of the Afghan *mujahedeens* (freedom fighters).

It was almost during the same time that Kashmir politics witnessed tremors of sorts. The NC of Kashmir and the Congress at the centre for their narrow political interests and on wrong political calculations did not allow the Muslim United Front (MUF) to have their rightful share of seats in the state assembly by rigging the elections that were held in 1987. Having lost faith in the democratic system many of the members of the MUF gradually were lured to extra-constitutional means to express their grievances. It was against this background that international Islam also started playing its role in a bigger way. Large-scale contributions poured in from Saudi Arabia and other Islam conscious countries like Iran to both Sunni and Shia religious organizations and political parties such as the Jamaat-i-Islami for opening up schools to teach children Arabic, Persian and Urdu and train them in Islamic values. By 1990 there were more than hundred such schools, which had produced about 150,000 students trained in orthodox Islamic values. The two trends in Kashmir, namely, political disaffection of the Kashmiri youth with the system, and a growing involvement of international Islam in the socio-political life of the state, got intricately mixed. As a result, the political movement in Kashmir assumed an Islamic character replacing the secular *Kashmiriyat*. The temptation for Pakistan to settle its score with India for the latter's role in the creation of Bangladesh became irresistible.

Increasingly, terrorism in Kashmir got internationalized which was evident from the sophistication of the operations, the undrying source of their funding and the actual arrest of terrorists belonging to other nationalities by the Indian security forces. The U.S.-based human rights organization, Human Rights Watch, which was ever critical of the Indian state for its human rights record in Kashmir, noted in its 1995 report that 'kidnappings, indiscriminate use of explosives, including car and letter bombs, in which the civilians were the principal victims, appeared to be the work of Islamic groups whose leadership included Afghans and other non-Kashmiris....<sup>49</sup> Even some Chechnian rebels were killed in encounters.<sup>50</sup> Following the Taliban's victory in Kabul there was clear evidence of the involvement of Afghan Islamists in Kashmir. An expatriate Pakistani journalist puts it aptly: 'In Kashmir we originally had a freedom movement against Indian occupation. This struggle for self-determination was hijacked by Islamists who turned it into a Jihad. Al-Qaeda and the Taliban have many faces: organizations such as Lashkar-e-Tayba, Harkat-ul-Mujahideen, Jaish-e-Muhammad, Sepah-e-Sahaba etc. These

<sup>49</sup> Quoted by O.N. Dhar, 'No Longer a Kashmiri Insurgency,' *The Hindu*, 18 January 1996.

<sup>50</sup> *Asian Age*, 8 June 1996.

groups disappear only to appear in another form and under a new name. Pakistani Islamists are convinced that Al-Qaeda will remerge in Kashmir.<sup>51</sup> Incidentally, the Valley observed a strike in the last week of September 2001 in support of Osama bin Laden although the APHC had just passed a resolution supporting Pervez Musharraf's stand against Al Qaeda.<sup>52</sup>

#### ISSUE OF HUMAN RIGHTS

The alleged human rights violations in the valley by the Indian security forces have always been on the international agenda. If the Indian state is obliged to deal with the problem of militancy in the state with all the power at its disposal, then some violations of human rights at times are inevitably to happen. But that is no excuse. Several Indian and international human rights organizations are seized with the issue. According to official Indian count, between 1990 and 1996, about 25,000 people were killed in the valley two-thirds of whom were killed by the Indian security forces. Kashmiris put the figure at 50,000.<sup>53</sup> Even the High Court orders on *habeas corpus* petitions were allegedly flouted.<sup>54</sup> Earlier, even the Amnesty International was not permitted to visit the valley as in the Government of India's reckoning the organization followed a 'political agenda.'<sup>55</sup> But then the former chairman of the National Human Rights Commission of India, Ranganath Misra, wrote to the then Prime Minister, P.V. Narasimha Rao, to allow the Amnesty to visit Kashmir. To allay the apprehension of the government he suggested that the members of the Commission would accompany the AI so that 'we can guarantee that facts are reported correctly.'<sup>56</sup> The Government of J&K has set up a State Human Rights Commission. The Amnesty International and foreign journalists are now allowed to freely report on Kashmir by visiting the valley.

During the last two-three years some glaring human rights violations were recorded. According to a press report, by early 2001 there were as many as 2,174 cases of missing people from the custody of security forces and the police in the state. Of this, only 76 cases were registered and one among them prosecuted.<sup>57</sup> On 9 March 2001, the *Kashmir Times* began serializing a report on 'Human Rights Violations in Jammu and Kashmir,' written by Prof. Kamal Mitra Chenoy of Delhi's Jawaharlal Nehru University on behalf of a working group on Kashmir comprising, besides he himself, Ambrose Pinto and Zafar Iqbal Manhas. The group

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<sup>51</sup> Tashbih Sayyed, 'The Kashmir Dilemma,' made available to the members of the 'Friends of Asiapeace' in February 2002. <asiapeace@yahoo.com> Sayyed was head of Pakistan TV until forced to flee the country. Now a U.S. citizen, he is editor of the weekly *Pakistan Today* published from California.

<sup>52</sup> Prabhu Ghate, 'Kashmir: The Dirty War,' *Economic and Political Weekly* (Mumbai), 26 January 2002, p. 318.

<sup>53</sup> K. Balagopal, 'Kashmir: Self-determination, Communalism and Democratic Rights,' *Economic and Political Weekly* (Bombay), 2 November 1996, p. 2916.

<sup>54</sup> Ravi Nair, 'After Him, the Deluge,' *Himal South Asia*, 9(8), November-December 1996, pp. 35-36.

<sup>55</sup> *The Hindu*, 7 September 1996.

<sup>56</sup> *Times of India*, 27 March 1996.

<sup>57</sup> *The Hindu*, 27 February 2001.

was set up at the behest of the Kashmir Foundation for Peace and Development Studies, Srinagar. In September 2001 the Andhra Pradesh Civil Liberties Committee, Human Rights Forum, Organisation for Protection of Democratic Rights, People's Democratic Forum and the People's Union for Democratic Rights (PUDR) published a 60-page report, *Grim Realities of Life, Death and Survival in Jammu and Kashmir*. The report was based on inquiries by an 11-member team, which undertook a tour of the state from 22 to 31 May 2001. It documented the sad plight of the state's human rights commission and documented cases of vengeance killings by the security forces, their use of human shields, rape and molestation of women, custodial killings, fake encounters and torture.<sup>58</sup> According to figures supplied by the APHC, which must be taken with a pinch of salt, the total number of civilians killed between October 1996 and August 2001 were 7,990. Of these, 1,070 were allegedly killed in custody. Besides, there were 3,098 houses burnt or blasted and 302 raped. All these figures totalled up to 75 per cent more than the official estimates for the same period. The AI put the total number of disappeared at 1,100.<sup>59</sup>

In 2002, all conscientious Indians were shocked by the Chittisinghpura DNA case goof-up. The event tells us what all can be possible in the convoluted milieu of Kashmir. Following the Chittisinghpura massacre of some Sikhs in Kashmir's Anantnag district, in a joint police-army operation in March 2000 five allegedly Lashkar-e-Taiba terrorists were killed. But the local Muslim community alleged that the killed persons were their relatives who had nothing to do with the Lashkar. When the protests mounted, under growing public pressure the J&K government ordered for the exhumation of the bodies for the DNA test. The idea was to prove once for all that they were Lashkar men and not local youths. But when exhumed, five families identified the charred and decomposed bodies as those of their relatives who had gone missing after the Chittisinghpura incident. The J&K government, however, insisted, and rightly so, that no action would be taken against the security personnel until DNA testing conclusively proved the identity of the five bodies. Following this the DNA samples were collected from the bodies and from their eight relatives and sent in April 2000 to the Centre for DNA Fingerprinting and Diagnostics, Hyderabad, an autonomous institute under the Department of Science and Technology of the Government of India. To ensure that the tests would prove negative, the officials apparently tampered with the relatives' DNA samples. Naturally the samples did not match but they exposed a massive cover-up operation in which even the samples taken from females were submitted as those of men.<sup>60</sup>

It is the violation of human rights in the valley by the Indian state that figures prominently in an average Pakistani's mind. The fact that the victims of these violations happen to be Muslims establishes an emotional chord with the people of Kashmir. The following is a representative sample of such sentiments:

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<sup>58</sup> A.G. Noorani, 'Human Rights in Kashmir,' *Economic and Political Weekly* (Mumbai), 23 March 2002, p. 1082.

<sup>59</sup> Ghate, 'Kashmir: The Dirty War,' pp. 314-15.

<sup>60</sup> *Times of India*, 8 March 2002.

India has launched a ruthless campaign of terror and repression against the people of Kashmir who are fighting for the right of self-determination. Equipped with massive arbitrary powers to use lethal force and granted protection from persecution, the Indian army and para-military forces have been indulging in massive human rights abuses in the occupied Kashmir.... The number of Indian troops operating in the state of Jammu and Kashmir, which was 150,000 in 1990, has now shot up to 600,000.... Kashmir has acquired the distinction of having heaviest deployment of troops in the world, the ratio being one soldier to every three Kashmiris.<sup>61</sup>

The Government of Pakistan finds it easy to exploit such popular sentiments to further its designs in Kashmir.

#### STRATEGIC IMPERATIVE AND INDO-PAK DIVIDE

After the restoration of the political process in Kashmir following the assembly elections of September 1996 there was an anxiety amongst the Indian security forces that by taking advantage of the lull in the situation the ISI might suddenly gear up its activities to topple the regime to bring the situation back to square one. It was for this reason that they were opposed to the revival of the Mughal Road, which was supposed to open up the much-needed all-season alternative route to the Kashmir valley. The existing Jammu-Srinagar highway is often closed to traffic in winter on account of snow and landslides. But since the new road would have passed through areas too close to the Line of Control it was opposed.

In spite of serious disagreement, India and Pakistan did sit across the table a number of times to discuss Kashmir. The major point of disagreement that came in the way of useful dialogue, however, was that while India agreed to discuss all outstanding issues including Kashmir, Pakistan insisted that it should be Kashmir first and all other issues later. It was Pakistan's fear that under the garb of all issues India always diluted the primacy of the Kashmir question. The recent phase of discussion, which can be traced to March 1997 when the two sides met at the Foreign Secretaries level after a lapse of more than three years underlined the same dichotomy. By the end of 1997 three more meetings took place but the result was nil. The conferees essentially fought over modalities of talk only and not on the substantive issue of Kashmir. A Japanese scholar aptly characterized the relationship between the two countries as having graduated from 'cool' to 'cold'.<sup>62</sup>

In May 1998, both India and Pakistan conducted several nuclear tests and in effect formally declared themselves as nuclear powers. For Kashmir issue per se

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<sup>61</sup> Shaheena Akhtar, 'Human Rights Violations in Indian Held Kashmir,' in K.F. Yusuf, ed., *Perspectives on Kashmir* (Islamabad: Pakistan Forum, 1994), pp. 159-60.

<sup>62</sup> Kyoko Inoue, 'India-Pakistan Relations: The Heightened Confrontation after the Military Coup in Pakistan,' in Shuji Uchikawa, ed., *Pakistan's Crisis: Political and Economic Analysis* (Tokyo: Institute of Developing Economies, 2000), pp. 40-41.

this development had little meaning but it shook the world community according to which Kashmir being the flash point the danger was now of a nuclear showdown. The process of dialogue between India and Pakistan continued and it seemed India was in a conciliatory mood. Informally it agreed to prioritise the agenda, the so-called '2+6'. The two issues were: (1) peace and security, including confidence building measures, and (2) Jammu and Kashmir. The other six issues were: (1) Siachin, (2) Wullar barrage project and Tulbul navigation project, (3) Sir Creek, (4) terrorism and drug trafficking, (5) economic and commercial cooperation, and (6) promotion of friendly exchanges at various fields. The Lahore Declaration of 21 February 1999 underwrote this mechanism. But even before the ink of the declaration could dry Pakistan unleashed its Kargil adventure in May 1999 resulting in an armed confrontation between the two countries.

It is difficult to explain why Pakistan went for this adventure when things were improving beyond imagination. Did Nawaz Sharif know about the Kargil plan when he met Vajpayee? Or, is it that the army kept him in dark about the adventure to torpedo the peace process which was not going to help the army any way? It is true that the armed forces were kept off the peace process. In a way, therefore, the Kargil adventure was essentially a part of the power struggle between Sharif and the army. For India the writings on the wall were clear—so long as the army called the shots in Pakistan's politics there could not be a negotiated settlement of the Kashmir issue. The *raison d'être* of the Pakistan army was Pakistan's enmity with India at the core of which was Kashmir. As such, any solution of the problem would rob it of its pre-eminence in the country's life.

But army's political power being the reality of Pakistan India had to eventually reconcile itself to dealing with Pervez Musharraf. It was only by the beginning of 2001, more than a year after Musharraf took over in October 1999 that Vajpayee showed his willingness to invite the general to India to discuss matters of mutual concern. In July 2001, a summit took place in the historic Indian city of Agra but nothing really came out of it. It was already clear that gap between the two countries was on the predictable line as Musharraf harped on the centrality of Kashmir, which he said was not addressed by the Lahore Declaration.<sup>63</sup> Following the failure of the Agra summit India's position gradually hardened. The issue became now that in any talk with Pakistan the first item on the agenda would be cross-border terrorism followed by Kashmir. For Pakistan it was the other way round. When the two nations were caught in this quagmire, the momentous event of nine-eleven shook the world. For India it provided an opportunity to let the world know that what India had been saying for years meant enormous sense. Jehadi terrorism was a global threat in which Kashmir was one of its major theatres. India's advantage was to Pakistan's disadvantage. It was under tremendous pressure from the United States to mend its ways and come out with concrete policies to leash the jihadis on its soil. In the meantime terrorist activities went unabated in Kashmir and on 13 December 2001 the most sensational attack on the parliament of India took place. India raised its noise level and as a result international pressure on Musharraf further mounted. On 12 January 2002 the general delivered his historic address to

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<sup>63</sup> See Musharraf's interview in the *Asian Age*, 7 and 8 April 2001.

the nation in which he promised to tackle the problem of Islamic fundamentalism with an iron hand and did indeed take some effective steps. But on the Indian charge of cross-border terrorism there was no clear-cut commitment, nor was there any let up in the rhetoric about Kashmir. He even ridiculed the expression 'cross-border'. In an interview to *The Hindu* on 31 March 2002, he claimed to have made it clear to Vajpayee that 'there is nothing going on across the border and it is not a border, it is a line of control and there is no terrorism, there is a freedom struggle going on there.'<sup>64</sup>

Out of exasperation and taking advantage of the post nine-eleven mood India decided to escalate the tension by amassing its forces along the Indo-Pak border so as to draw the global attention to the problem that terrorism in Kashmir posed and that it could not be tolerated any more. As expected, global concern went out of bounds and there was a flurry of diplomatic activities between New Delhi and Washington on the one hand and between Islamabad and Washington on the other. Other Western countries too contributed to the process to thwart any outbreak of war. It is needless to say that the fear of a nuclear war was in the back of everybody's mind. The concern was not only about the death and destruction caused by any such showdown, however limited, the real anxiety was that it could hit at the core of non-proliferation and at the unwritten commitment of all nuclear nations not to use the weapon. One Indian nuclear scientist by drawing America's own conceptual failure in this regard—he referred to the Pentagon's 'Nuclear Posture Review' document—wondered whether the psychological barrier thus broken could ever be rebuilt. He wrote:

In India tactical nuclear artillery has presumably not yet been assembled let alone deployed, despite the inclusion of sub-kiloton devices in the Pokhran tests. Now is the time to firmly oppose their production, no matter how strong the military argument for their use in the battlefield. The Indian Nuclear Doctrine declares a No-First-Use policy and claims that the sole purpose of our nuclear arsenal is to deter the other side by the threat of unacceptable retaliatory damage. Such deterrence does not require battlefield nuclear weapons... It is best not to cross the *Lakshman Rekha* separating nuclear weapons from conventional arms. Whatever military advantage tactical sub-kiloton weapons may offer, it is not worth the price of destroying the time-tested psychological barrier blocking the road to nuclear holocaust.<sup>65</sup>

#### INTERNATIONAL RESPONSE

From available evidence it appears that if a situation can be created when the Pakistanis are made to agree to the LOC as the formal border between India and Pakistan in Kashmir all concerned foreign powers would put their stamps of

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<sup>64</sup> *The Hindu*, 1 April 2002.

<sup>65</sup> R. Rajaraman, 'Ban Battlefield Nuclear Weapons,' *The Hindu*, 22 April 2002.

acceptance. While the U.S. approval to this situation is more or less clear from their diplomatic posturing during the Kargil conflict, and much more so after the nine-eleven, there were earlier evidences too to this effect. It was as early as in 1963 that a memorandum from Robert W. Komer of the National Security Council Staff to President John F. Kennedy, dated 26 January 1963, noted: ‘We simply doubt Indians would ever give up the Vale... Therefore, we’ve worked out a *partition* scheme which we’re prepared to throw into the breach if talks seem about to break down. It is quite pro-Indian.’<sup>66</sup>

Viewed from the point of view of international security, the question of Kashmir could not be viewed in isolation nor could it remain a matter of merely India and Pakistan’s concern. Its proximity to Afghanistan, which is the gateway to Central Asian republics in which both India and Pakistan had economic stakes particularly in tapping their natural gas made it a volatile region. Since any escalation of tension there could bring in many other interested parties into the fray the guardians of international security could ill afford indifference to the region. It is against this background that the plebiscite formula lost its shine. It did not evoke much interest in the international community. Most of the countries expressed their hope that the problem of Kashmir could be solved as per the provisions of the Simla Agreement, which meant that the LOC should not be violated and other details could be worked out through peaceful negotiations. China was particularly disinterested in the plebiscite for it would have raked up its border dispute with India, which it was not keen to pursue given its policy of normalization of relations with India. Conceptually, China’s position on the theory of self-determination was that it was a ‘fraudulent measure being used by the developed nations to intervene improperly in the affairs of other countries.’<sup>67</sup> Obviously, the theory applied to Kashmir as well. During his visit to Pakistan in December 1996 the Chinese President Jiang Zemin expressed his country’s preference for a ‘temporary shelving’ of the Kashmir issue. He gave vent to the Chinese thinking by proposing a ‘proper handling’ of the ‘existing disputes’ in a ‘spirit of seeking common ground while setting aside differences.’<sup>68</sup>

The United States, which amongst the external powers mattered the most, was also in favour of a bilateral settlement through talks. Without compromising on its established position that Kashmir was a disputed territory and with keeping in view its economic and strategic interests in the region, in which both India and Pakistan

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<sup>66</sup> Louis J. Smith, ed., *Foreign Relations of the United States, 1961-63: South Asia* (Washington, D.C.: United States Government Printing Office, 1996), p. 486. The document supposed to have contained a map showing the partition but it remained classified.

<sup>67</sup> The Chinese representative’s statement at the 52<sup>nd</sup> session of the UN Human Rights Commission at Geneva, 23 March 1996. *Asian Age*, 24 May 1996.

<sup>68</sup> *The Hindu*, 3 December 1996. The then opposition BJP leader Atal Behari Vajpayee had expressed the same sentiments earlier. He suggested ‘freezing’ the Kashmir issue for 10 years and developing Indo-Pak relations in trade and other fields during the period. He said that ‘such an arrangement has been done to some extent with China. This can be done with Pakistan too’ and if the latter ‘agrees to the proposal, I can prevail up on my party on the matter.’ *Ibid.*, 3 September 1996. That Vajpayee was serious was proved by his subsequent Lahore Declaration.

figured prominently, the position of the U.S. government was that both the countries should settle the dispute amicably for there was the possibility of its escalation into a nuclear confrontation. Also in the back of its mind was the fact that more the tension grew between India and Pakistan the Sino-Pak alliance would be strengthened to the detriment of overall American interest in the region. Its policy, therefore, was one of blow hot blow cold so as to keep both India and Pakistan in good humour by making conciliatory gestures to them alternatively.

There was, however, one important element in the U.S. policy, which should not be overlooked. It viewed the people of Kashmir as a party to the ultimate dialogue and resolution of the conflict. Expressing his satisfaction with the parliamentary elections in J&K in June 1996, Frank Wisner, the then U.S. ambassador to India, said in an address delivered on 10 July 1996 at Pakistan's Command and Staff College in Quetta: 'No effort to end the conflict in the State will succeed until all concerned acknowledge that after nearly 50 years, there are certain fundamental realities that will not be changed. Acceptance of reality as it exists may provide a useful point of departure when serious discussion of the State's future begins, at the governmental level between India and Pakistan, and in talks between the Indian government and Kashmiri interlocutors, and one day between Kashmiris. No thoughtful Indian I speak with argues that the reality of partition should be ignored or reversed.'<sup>69</sup> The United States did not subscribe to either a plebiscite solution to the problem, nor the one through an international conference, which Pakistan had suggested.<sup>70</sup> Like the United States, other Western nations were also for a dialogue between India and Pakistan to resolve the dispute.<sup>71</sup>

Following the nine-eleven and the brinkmanship between India and Pakistan thereafter the United States was in a critical dilemma. It put considerable amount of pressure on Musharraf to leash the jihadis on the Pakistani soil but could not make India sufficiently happy. While India argued that Pakistan was giving only lip service, America felt that Musharraf strategy at home needed more time to show results. So far as the fate of Kashmir was concerned the expectations of India and Pakistan from the United States were diametrically opposite. Pakistan, having failed to change the objective reality in Kashmir ever since 1947, was happy that time probably had come to internationalise the issue under the American auspices. Moreover, it knew that making promises was one thing but to implement them was another. A poll conducted by the famous Pakistani newsmagazine *Herald* in January 2002 revealed that the support for jihad in Kashmir was widespread. Although only 4 per cent found Kashmir as a 'pressing problem' compared to unemployment, chances of Indo-Pak war, inflation, and poverty, which accounted for 31, 21, 15 and 9 per cent, respectively, as many as 64 cent of the respondents supported jihad in Kashmir in response to a pointed question.<sup>72</sup> For India the time

<sup>69</sup> Ibid., 12 July 1996.

<sup>70</sup> Ibid., 6 October 1996.

<sup>71</sup> Sundeep Waslekar, 'Changing Western Perceptions of Kashmir,' *Mainstream* (New Delhi), 34(44), 5 October 1996, pp. 15-16. See also *Asian Age*, 27 July and 25 October 1996.

<sup>72</sup> The details of the poll were published in *Times of India*, 17 February 2002.

was in its favour to put an end to Pakistan's adventurism in Kashmir and would not have minded if America could put a stamp of legitimacy to the LOC as the de jure border between the two states in Kashmir. But it did not welcome the idea that America and Britain were considering putting international armed monitors on the LOC to maintain its sanctity. It explained that the terrain was too difficult for them to grapple with and only Indians and Pakistanis could do that.<sup>73</sup> In effect it meant that India would not allow any extra-regional power to interfere with its age-old security doctrine.<sup>74</sup>

#### WORLD MUSLIM OPINION

So far as the global Muslim reaction to the Kashmir dispute was concerned it could be divided into four components although there was a popular belief among many that on every dispute having an 'Islamic' content there was a monolithic Muslim response. These components were—the Organization of Islamic Conference (OIC), Muslim states in general, Muslim states of South Asia and the Islamic movements. The OIC has a membership of 51 members of which Uganda is a Muslim minority state. At one point India was invited to participate in the OIC deliberations but due to Pakistan's opposition it could not do so. Two of OIC members, Turkey and Senegal, though Muslim majority, are constitutionally secular. By Muslim states we mean those states, which are Muslim majority and declare themselves as Muslim states, but not necessarily as Islamic states. The examples are Egypt, Indonesia, Iran, Malaysia and Saudi Arabia. In South Asia two states are Muslim states other than Pakistan, namely, Bangladesh and the Maldives. By Islamic movements we refer to such organizations as Ikhwan Brothers (Egypt), the Islamic Dawa Organization (Libya), the Salvation Front (Algeria), the Taliban (Afghanistan), the Al-Qaida (Afghanistan and Pakistan), and a host of militant organizations operating in several parts of the world, most notably in Kashmir, Chechnia, Central Asia, Europe and America.

The OIC's position on Kashmir was one in tune with Pakistan, but limited only to passing resolutions. It mentioned about human rights violations by Indian security forces and about Kashmiris' right to self-determination but often diluted its positions by referring to both UN resolutions and Simla Agreement at one go. Its commitment to the cause of Kashmir remained verbal and unlike the Palestinian cause no resources were ever allocated to promote it.<sup>75</sup> So far as the Muslim states in general were concerned there was no uniform pattern. Some were supportive of the Pakistani view like Saudi Arabia and generally the countries belonging to the Gulf Cooperation Council while some were supportive of the Indian view like Syria and Algeria. Egypt maintained a neutral position and so did Iran, at least lately. According to one report published in 1996, 63.2 of the Indonesian business

<sup>73</sup> India's National Security Adviser Brajesh Mishra's discussions with Vladimir Putin in *Times of India*, 7 June 2002.

<sup>74</sup> For an analysis of India's strategic doctrine, see Partha S. Ghosh, *Cooperation and Conflict in South Asia* (New Delhi: Manohar, 1989).

<sup>75</sup> Mohammad el-Sayed Selim, 'The Muslim World and the Kashmir Issue,' *Bulletin of Himalayan Research and Cultural Foundation* (New Delhi), 1(2), Summer 1996, pp. 7-9.

leaders and 55.6 of their Malaysian counterparts, both Muslim majority countries, voted for Kashmir as part of India.<sup>76</sup> The policies of the Muslim states kept changing depending upon the prevailing texture of their bilateral relationships with India and Pakistan, respectively. In South Asia, the Maldives is in general pro-India while Bangladesh maintains cautious neutrality. Both plead for peaceful settlement of the dispute through bilateral negotiations. During the 52<sup>nd</sup> session of the UN Human Rights Commission held in Geneva in March 1996 Pakistan tried to convince the Muslim nations to move a resolution to condemn India for its human rights violations in Kashmir but it did not succeed.<sup>77</sup>

The Islamist movements are by and large pro-Pakistan and view the Kashmir problem as a Hindu-Muslim issue in which their natural sympathy lies with the Kashmiri Muslims. It is up to the latter to choose between Pakistan or an independent existence. There was, however, at least one exception to this rule. Adel Hussain, the Secretary-General of Al-Amal (Labour) Party of Egypt, which otherwise supported the cause of most militant Islamic movements in Egypt, argued that it would be strategically short-sighted to compare India with Israel. He was referring to a statement of Jamaat-i-Islami of Pakistan. He suggested that the Islamists should work out an alliance with the Hindus and tap India's technological know-how to deal with the West. He advocated a peaceful solution to the Kashmir problem within this framework.<sup>78</sup>

Among the expatriate Muslims mostly located in Britain and America it was not easy to gauge their reaction to the Kashmir problem. But in the aftermath of the MORI poll (discussed below) there was one such poll conducted by the Manchester *Guardian* and the ICM amongst the Muslim community of Britain. The latter had about two million Muslims of which 700,000 were of Pakistani origin, 300,000 of Bangladeshi origin, 240,000 of Indian origin and about 600,000 from various other countries. The poll results showed that of the 500 people interviewed, 34 per cent supported an independent status for J&K, and an equal number supported its merger with Pakistan. Seven per cent were undecided and two per cent voted for its remaining with India. Commenting on the poll, Shabir Choudhury, the head of the JKLF's central diplomatic bureau, said that it confirmed the strong pro-independence sentiment of the Kashmiris, which both India and Pakistan had been suppressing.<sup>79</sup>

#### GAUGING THE KASHMIRI MOOD

Although both India and Pakistan claim to have the majority support among Kashmir's Muslims there is hardly any scientifically arrived means to corroborate these claims. India refers to the results of the parliamentary and assembly elections held in the state over the years in support of its claim. Pakistan can do that at an

<sup>76</sup> *Times of India*, 13 November 1996.

<sup>77</sup> *The Hindu*, 29 March 1996. For a detailed report on the conference, see Sharad K. Soni, 'United Nations Commission on Human Rights (52<sup>nd</sup> Session)', *Bulletin of Himalayan Research and Cultural Foundation* (New Delhi), 1(2), Summer 1996, pp. 30-38.

<sup>78</sup> Selim, 'The Muslim World and the Kashmir Issue,' p. 10.

<sup>79</sup> *The Hindu*, 18 June 2002.

even lesser scale insofar its part of J&K and the Northern Areas are concerned. India's claim, however, becomes controversial since there is a widespread feeling that its elections are rigged to install that party only which is supposed to uphold J&K's accession to the Indian Union. That means it is the NC. Any party of doubtful loyalty is either kept off the electoral process or is made to lose.

There are, however, indirect ways of feeling Kashmir's political pulse. This is possible by measuring the level of popular participation in the elections held so far. Till 1972 it was virtually a one-party system in the valley as the NC ran uncontested. The general election held in 1971 for the first time assumed significance for Kashmir because in that election the Jamat-i-Islami decided to join the fray. In the assembly election of 1972 there was, therefore, a contest. The Jamaat participated particularly to tell the world that religion and politics could not be separated. Its performance was not great, though it won a few seats. In the aftermath of the election it alleged that the elections had been rigged. During the Emergency (1975-77) the Jamaat was banned, which was lifted after the Janata Party came to power in 1977.<sup>80</sup>

The 1977 elections were free and fair and there was a proper contest. The point to be noted is that in all the elections, up to 1987, allegations of rigging notwithstanding (barring 1977), turnout of voters was in the range of 60 to 70 per cent.<sup>81</sup> But following the insurgency of 1989 it has dwindled to such an extent that it has lost its credibility to a large extent. In the latest 1999 general election, even Abdullah's assembly constituency of Ganderbal registered only 10 per cent polling. The entire parliamentary constituency of Srinagar registered only 11 per cent of polling. Ever since the insurgency, the Election Commission of India has organized four elections in J&K, namely, 1996 parliamentary and assembly elections, 1998 parliamentary election, and the 1999 parliamentary election, and in all of them it had to enlist the assistance of security forces and the surrendered-insurgents. Is it not in violation of the Election Commission's own stance elsewhere where the presence of even police in large numbers had made it to declare the elections null and void?<sup>82</sup>

So far as the Pakistan Occupied Kashmir is concerned the democratic record of Pakistan is even more skewed. It was only in 1970, 23 years after independence, that the so-called 'Azad' (liberated) Kashmir was granted adult franchise. Still, its political status remained unclear in normally understood constitutional terms. According to Section 56 of the 1974 constitution, the Pakistan government could dismiss any elected government in Azad Kashmir even if it commanded the majority in the provincial assembly. The status of the Northern Areas was even worse. It was granted adult franchise in as late as 1994. Till then the area had no

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<sup>80</sup> Yoginder Sikand, 'The Emergence and Development of the Jamaat-i-Islami of Jammu and Kashmir (1940s-1990)', *Modern Asian Studies* (London), 36(3), 2002, p. 742.

<sup>81</sup> Tremblay, 'Kashmir Conflict,' p. 573.

<sup>82</sup> In June 1981, the Chief Election Commissioner nullified the by-elections of two constituencies in Garhwal (then in U.P., now in Uttaranchal) on the ground that he had received reports from his officers that there were large presence of Haryana police there. A.G. Noorani, 'One-Horse Race,' *Hindustan Times* (New Delhi), 28 May 2002.

elected representative either in the local assembly or in the National Assembly.<sup>83</sup> But even after 1994 the political rights there are cosmetic. The Pakistani bureaucracy has the real power and the assembly is subordinate to it. The chief secretary, who is invariably a Punjabi or a Pathan, is all-powerful, and the chief executive of the Northern Area is the federal government's Minister for Kashmir Affairs. According to Major Hussain Shah, a retired army officer who head the nationalist Muttahid Qaumi Party: 'Nobody has loved Pakistan more than the people of Gilgit-Baltistan. But our rulers are tyrants. The East Pakistanis were the most patriotic Pakistanis but they were driven away. That is what is being done to us. I salute India. Even though a Kashmiri can become prime minister, no non-Kashmiri can become chief minister of J&K. But in the Northern Areas, an outsider is our chief executive. In Pakistan they like to say Farooq Abdullah is a puppet chief minister. But Pakistan is not even prepared to let us be puppets.'<sup>84</sup> According to the editor of the Gilgit-based weekly, *Naqqara*, Ali Mardan, 'if the government continues to ignore the grievances of the Northern Areas it could even end up facing an armed struggle.'<sup>85</sup>

Against this background, together with the relative lack of communication between J&K and the rest of the world because of the insurgency situation in the Indian part of the state and the Pakistani government's reluctance to allow foreign visitors to travel to 'Azad Kashmir' and the Northern Areas, it is extremely difficult to gauge the popular sentiments there. It is only of late that a somewhat scientifically conducted poll has taken place in the Indian part of Kashmir the results of which tend to suggest that the broad sentiments prevailing in the valley are in favour of a peaceful settlement of the dispute through dialogue between India and Pakistan.

#### THE MORI POLL

The U.K.-based Market and Opinion Research International (MORI) conducted the poll at the behest of Lord Eric Avebury, a British human rights activist who has the record of supporting almost all separatist movements around the world including the one in Kashmir. The Facts Worldwide, an affiliate company of MORI, conducted the fieldwork in India between 20 and 28 April 2002. In all, 850 face-to-face interviews were conducted with people aged 16+ across 55 localities within J&K. This comprised 22 locations in Jammu city, 20 in Srinagar city and 6 in the urban areas of Leh, as well as in 3 villages around Jammu and 4 villages around Srinagar. Quotas were set by gender, religion and locality, according to 1981 census data for the region. A random selection procedure was used to select the individual respondents.<sup>86</sup>

For the purposes of this paper one should concentrate upon the opinion as was expressed in the valley, and not what was said in Jammu or Ladakh, although the

<sup>83</sup> Navneeta Chadha Behera, 'Kashmir: Lessons of History,' *The Hindu*, 22 January 2002.

<sup>84</sup> Siddharth Varadarajan's despatch from Gilgit in the *Times of India*, 26 March 2002.

<sup>85</sup> Ibid.

<sup>86</sup> *MORI Poll Digest* (London), 31 May 2002: <http://www.mori.com/polls/2002/kashmir.shtml>.

findings were not always segmented that way. From whatever one can cull from this perspective the findings would be as follows.<sup>87</sup>

76 per cent were opposed to war between India and Pakistan to find a solution for the Kashmir problem.

52 per cent believed that the correct way to bring about peace was through democratic elections.

65 per cent believed that it was difficult to hold democratic elections as long as violence continued.

More than 50 per cent agreed with the view that ‘a new political party was needed to bring about a permanent solution in Kashmir.’ (Manoj Joshi, a senior correspondent of the *Times of India*, wrote: ‘Support for the National Conference is at 18 per cent and for the Hurriyat at 22 per cent. The figures could be skewed because the polling was done in and around urban centres. The Congress with 29 per cent of respondents’ support and Shabbir Shah’s J&K Democratic Freedom Party—16 per cent—displayed a surprising reservoir of strength. The Hizbul Mujahideen found favour with 11 per cent and the jihadi groups just 9 per cent support from the respondents.)<sup>88</sup>

76 per cent believed that ‘the unique cultural identity of Jammu and Kashmir—Kashmiriyat—should be preserved in any long-term solution.

90 per cent believed that the border between the Indian part of Kashmir and the Pakistan Occupied Kashmir should be opened for trade and cultural exchanges.

Over 90 per cent believed that the Indian security forces should scale down their operations in the valley to bring peace.

64 per cent believed that there were *widespread* human rights violations by the security forces.

A mere 2 per cent believed that the human rights violations by militant groups were *widespread*; 33 per cent believed that they were occasional.

As noted above, as the MORI data were not stratified region-wise it was not possible to have a clear access to the political pulse of the valley. What one could infer from the above details was that there was no room for euphoria as a section of the Indian press seemed to reflect.<sup>89</sup> Probably the circumspection shown by the Vajpayee administration was more in tune with the reality—it did not comment on the poll at all. On the negative side of the spectrum, so far as India was concerned, was the fact that people did not approve of the actions of the Indian security forces, that they did not have so much hatred for the militants, that they accepted anti-India and pro-independence forces as legitimate political formations and that they were in favour of opening the border between the two Kashmirs. On the positive side was their disapproval of war as a means to settle the Kashmir problem and the resumption of true democratic process through free and fair elections allowing all political forces a fair chance to participate in the process. In essence the problem

<sup>87</sup> Based on information supplied in *ibid.*

<sup>88</sup> Manoj Joshi, ‘The Mori Message: Silver Lining in Kashmir’s Cloud,’ *Times of India*, 10 June 2002. Joshi, however, did not supply any regional stratification. The MORI report as available on the Internet did not mention these figures at all.

<sup>89</sup> For example, see Prem Shankar Jha, ‘Kashmir’s Longing,’ *Hindustan Times* (New Delhi), 7 June 2002.

was expected to remain where it was. The free and fair elections could not be possible without the participation of anti-India and pro-independence political forces and the latter could not participate because they would not swear by the Constitution of India, as per the statutory requirement.

#### QUESTION OF NEUTRAL ELECTION COMMISSION

In early 2002 the All Party Hurriyat Conference floated an interesting idea to identify the true representatives of the Kashmiri people in both the Kashmirs who could discuss the future of Kashmir in any future talks involving both India and Pakistan. It suggested that there should be a free three-stage election conducted by an independent commission consisting of six members. The two co-chairpersons of the commission would be Tapan Kumar Bose, an Indian national and the director of the Kathmandu-based South Asia Forum for Human Rights, and Sajjad Ali Shah, a former chief justice of Pakistan. The other four members were to be Ved Bhasin, editor of the *Kashmir Times* of Jammu, Zafar Mehdi, a faculty member of the Kashmir University in Srinagar, Sadiq Wahid Raja, a Ph. D. candidate from the Harvard University, and Khurshid, a retired judge from the POK. The first stage of the election would be held in the valley, second in Jammu and Ladakh and the third in the Pakistan Occupied Kashmir. The elections were supposed to be held under international supervision.<sup>90</sup> Expectedly, neither India nor Pakistan found the idea worth considering for it indirectly suggested the possibility of creating an independent Kashmir. The Indian press grossly misunderstood it as if the J&K assembly elections were being suggested under this independent commission. Even Farooq Abdullah and Omar Abdullah ridiculed it for denigrating the Election Commission of India. One could quarrel with the nitty-gritty of the mechanism suggested, but it was certainly not 'outlandish' as even a liberal newspaper like *The Hindu* characterized.<sup>91</sup> One could argue, as one human rights activist and Kashmir watcher did:

Already this move has received endorsement from the HM [Harkat-ul-Mujahideen], as well as leaders like Shabir Shah. In contrast the jihadis as well as National Conference and other pro-Indian formations are opposing this. India's Election Commission which may have conducted fair elections elsewhere has besmirched its reputation in J and K (and Nagaland) by getting carried away by 'national interest' considerations and repeatedly legitimising rigged elections. Therefore, any attempt to crush this autonomous election carries risks for the Indian government since it would pit a democratic manifestation by a people against a government's militaristic policy. This is the strongest evidence of a change at the ground level, which places politics over the gun, and self-determination over the moth-eaten autonomy/plebiscite paradigm.<sup>92</sup>

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<sup>90</sup> *The Hindu*, 2 and 13 February 2002. Gautam Navalakha, 'Kashmir: Putting Politics in Command,' *Economic and Political Weekly* (Mumbai), 16 February 2002, p. 610.

<sup>91</sup> Editorial, 'An Outlandish Move,' *The Hindu*, 14 February 2002.

<sup>92</sup> Navalakha, 'Kashmir: Putting Politics in Command,' p. 610.

## PREPARING FOR THE ASSEMBLY ELECTIONS OF 2002

The end of the five-year term of the J&K assembly elected in September 1996 warrants an election in September 2002 at the earliest. Considering the fact that much would depend on its outcome provided all democratic forces join the process Vajpayee promised a free and fair election, which in a way suggested that the earlier ones were of relatively less credence. There were two major challenges for the government, one administrative and the other political. The administrative challenge included the massive task of revising the electoral rolls and the issue of photo identity cards to the voters to prevent bogus voting, both of which were time consuming affairs. The political challenge primarily was how to convince forces opposed to Farooq Abdullah, most notably the Hurriyat Conference, to join the fray. Though some of the rebel leaders of the Hurriyat were willing to join the process the mainstream Hurriyat refused to oblige. There was some hope that since Farooq Abdullah had passed on his mantle to his son and he himself might join the centre resulting in his absence from the state scene it could encourage his opponents to reconsider their premises. But the assassination of Abdul Gani Lone in May 2002 complicated the scene. Lone was known to be a moderate within the Hurriyat fold and some analysts suggested that the killing was done by the hardliners, probably with Pakistan's prodding, to discourage anybody to participate in the election. Government of India probably convinced itself with this line of thinking and on 9 June 2002 arrested the former Hurriyat chairman, Syed Ali Shah Geelani, a known hardliner and the leader of the Jamaat-i-Islami, to mean that it meant business. Soon after his arrest, Geelani's multiple links with the ISI were flashed. The problem, however, remained. If the elections were held without the participation of political forces opposed to the National Conference the electoral verdict would not have much political meaning.

## CONCLUSION: LOC, THE SOLUTION

Given the intractability of the problem and the practical difficulties in organizing a plebiscite it seems that sooner India and Pakistan agreed to declare LOC as the *de jure* border between them in Kashmir the better for all. Otherwise the mud would be even more stirred and increasingly the Indian position would be hardened in favour of recovery of the POK. There were straws in the wind pointing to that direction. A statement of the Ministry of External Affairs declared: 'The State of Jammu and Kashmir is an integral part of the Indian Union. The only issue concerning Pakistan, with regard to the State of Jammu and Kashmir, related to the vacation of Pakistan from those areas of the State, which are under its illegal and forcible occupation. India is committed to the resolution of this issue in accordance with the Simla Agreement.'<sup>93</sup> After the Kargil war India's posture hardened and other than Farooq Abdullah no one talked any more of agreeing to the LOC as a de

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<sup>93</sup> *The Hindu*, 3 May 1996.

jure border. Even Farooq Abdullah talked with a forked tongue by asking India to cross over the LOC to destroy the terrorist camps there.

Notwithstanding such evidences about India's hardening posture about the POK it could be argued that India might not be averse to the formal declaration of the LOC as a permanent international border between the two neighbours. We have noted above that it was as early as the early fifties that India had virtually reconciled itself to the division of Kashmir along the line of actual control there when it agreed to the Constitution of J&K, which was meant for the Indian part of J&K only. During the Simla negotiations, according to P.N. Dhar, who was in the Indian delegation, Zulfikar Ali Bhutto, the Pakistani Prime Minister, had informally agreed to Indira Gandhi's suggestion to declare the LOC as the international border but he needed time to convince his countrymen and that is why it could not be so included in the agreement.<sup>94</sup> Dhar's Pakistani counterparts, however, refuted this view.<sup>95</sup> Moreover, as we have noted above, immediately after returning to Pakistan Bhutto clarified that there was no dilution of Pakistan's avowed Kashmir policy. In the want of Indian and Pakistani archival documents on the subject the debate has to be frozen there.

During Rajiv Gandhi's time also there seemed to be willingness on the part of India to recognize the LOC as the de jure border and probably Pakistan too was in a mood to agree. Barbara Crossette, an American correspondent who happened to be with Rajiv Gandhi hours before he was assassinated, quoted the Indian leader as saying: 'But I know who could have solved these problems with us—General Zia. We were close to finalizing agreement on Kashmir, we had the maps and everything was ready to sign. And then he [Zia] was killed.'<sup>96</sup>

Besides accepting the LOC as the de jure border what is also needed is to demarcate the boundary on the Siachin glacier. The present LOC terminates at the point NJ 9842 on the Soltore ridge. This is essentially the old ceasefire line as agreed upon in Karachi in 1949 and was never defined northwards beyond NJ 9842. The Siachin problem was virtually solved during Rajiv Gandhi's time but probably considering its negative impact on Congress votes in the 1989 elections he became lukewarm.<sup>97</sup>

Other than the LOC solution no concrete idea has ever emerged.<sup>98</sup> The idea of an undivided, independent and neutralized Kashmir is not a feasible solution. So is the idea of giving the valley to Pakistan on a platter. No Indian government worth its salt can afford to do that. I wish it could, for that would have led to the demise of Pakistan army's pre-eminence in Pakistan's political life, which India always

<sup>94</sup> P.N. Dhar, 'LoC as Border: Bhutto's Deal with Mrs. Gandhi,' *Times of India*, 4 April 1995.

<sup>95</sup> Abdul Sattar, 'Remembering Shimla,' *The Hindu*, 13, 14 and 15 July 1995.

<sup>96</sup> *New York Times*, 22 May 1991.

<sup>97</sup> Maroof Raza, 'India-Pakistan Ties on a New Course,' *Times of India*, 12 June 1996.

<sup>98</sup> Although, according to a Pakistani writer, there is a constituency in Pakistan for dividing the Indian part of Kashmir along the Chenab river as most of the people living north of the river are Muslims while most of the people living south of it are non-Muslims. Samina Yasmeen, 'Kashmir: The Discourse in Pakistan,' *Economic and Political Weekly* (Mumbai), 16 February 2002, p. 612.

wanted. But to think in such long-term perspective one needs statesmen, not politicians, which unfortunately few countries can boast of having, and India is no exception. In the given reality no option is available other than formalizing the LOC as the border.