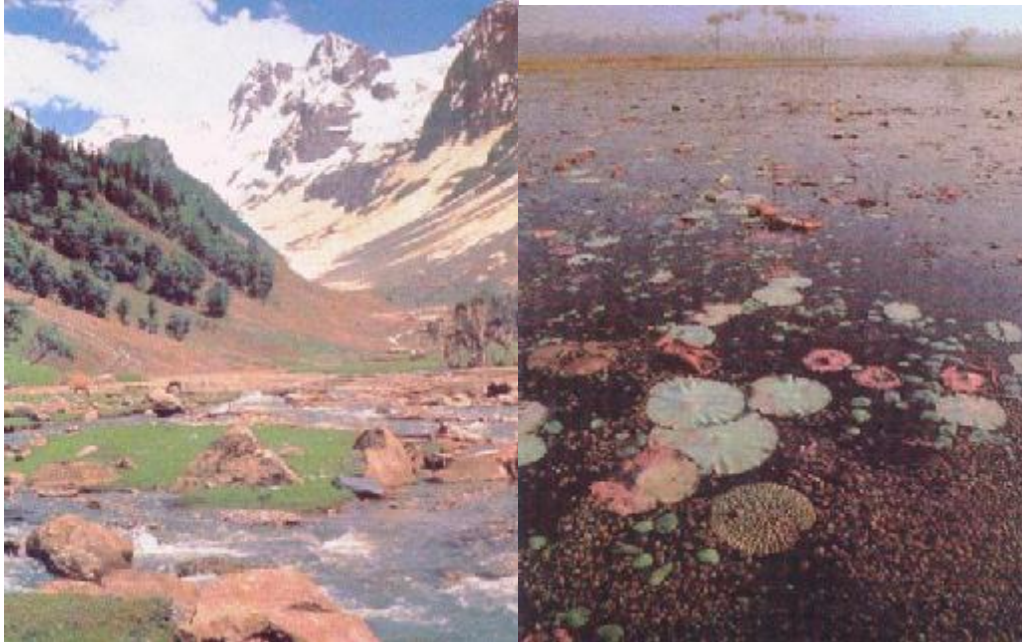


THE KASHMIR STORY

by M. L. Kotru





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1 CHAPTER I - PREFACE

Many books have been written on Kashmir, about its people, the so-called rights and wrongs. Lately Pakistan has mounted a vigorous propaganda campaign, more virulent than its past efforts, to win support for its nefarious designs on the State. It is trying to achieve through a malicious propaganda campaign in various international fora, what it could not secure on the battlefield through three successive wars. Now it talks of UN resolutions on Kashmir. It conveniently wants to hide from the world that it was the one which ignored that part of the UN resolution which wanted Pakistani troops to withdraw from the territory of Jammu and Kashmir it has illegally and by force occupied. It describes Jammu and Kashmir as Indian-occupied territory, trying to equate the aggressor and the aggrieved. India's presence in Jammu and Kashmir was under legitimate auspices because the then ruler of Kashmir decided to accede to India. Pakistan says that the ruler merged the State with India against the wishes of the people. Here again history tells us that Pakistan tried to force the Maharaja's hand by first sending tribals and later its own troops into Kashmir. Both let loose terror in the occupied areas, which united the people of the State against Pakistan and in favor of India. Pakistan would like to draw a curtain on this and other parts of history.

The truth is that the secular- minded people of Kashmir of their own free will shared the same faith in the principles of secularism and democracy that India had to offer as against the fundamentalist two-nation (Hindu and Muslim) principle on which Pakistan was founded. Pakistan talks of self-determination in the State ... in that part of the State that has been with India for more than 46 years legitimately, unlike the illegitimate occupation of so-called "Azad Kashmir" by Pakistan. Pakistan is shedding crocodile tears about the absence of human rights in Kashmir whereas the truth is it has denied human rights all these years to the people of Pak-occupied Kashmir. The truth must be told, the facts must be brought to light, relevant history must be recalled and Pak perfidy exposed. This is not a whitewash job. The book will attempt to project facts and facts alone and also underline the grievances of the Kashmiri people. Yes, they do have grievances and it is the business of the Government of India to redress them. So one believes, it is not the business of Pakistan or any other country to say "do it or else?". India can look after its territory and its people. Otherwise democracy here could not have survived all these years unlike in Pakistan.

2 CHAPTER II - JAMMU AND KASHMIR - THE BACKGROUND

Jammu and Kashmir has three distinct components - Hindu majority Jammu, Buddhist dominated Ladakh in the North and predominantly Muslim populated Valley, besides what is under Pakistan occupation. Pakistan's eyes are set on Kashmir on the pernicious two-nation theory. Never mind the fact that despite partition of the sub-continent into India and Pakistan in 1947 by the British, India still has the world's second largest Muslim population, around 120 million, next only to that of Indonesia.

It is a fact of history that Hindus, Muslims, Sikhs and Buddhists have lived in peace and amity in the State for centuries. When the rest of the subcontinent was up in flames, lit by the communal torch, it was Kashmir which stood out of the circle of holocaust, a "shining example", in Mahatma Gandhi's words of "secularism". Not a drop of blood was shed in Kashmir while thousands perished in communal fury all around.

The State had been ruled by the Mughals, followed by Afghans, Sikhs and finally the Hindu Dogras. The Sikh ruler Maharaja Ranjit Singh entrusted the principality of Jammu and adjacent areas to Gulab Singh, his Dogra General. Gulab Singh brought large areas including Ladakh, Zanskar, Gilgit and Baltistan under his control. The latter was succeeded as Maharaja by Ranbir Singh. And Ranbir Singh was succeeded by Maharaja Pratap Singh whose reign opened a new chapter in the history of modern Kashmir. The British wanted a strong government to tackle the socio-economic problems of the frontier State. In 1889, Maharaja Pratap Singh was deprived of his administrative authority which was to be handled by a Council of Regency under the control of a British Resident. The Maharaja undertook a tour of the frontier post up to Gurez and beyond and issued orders for immediate redress of the grievances of the people inhabiting these areas. With improvement on all the fronts, the British again restored full powers to the Maharaja in 1921.

The consolidation of Dogra rule in Jammu and Kashmir coincided with the strengthening of the Indian freedom movement under Mahatma Gandhi's leadership. The freedom struggle was soon to find an echo in several princely States and nowhere with more ardor than in Kashmir. By 1931, anti-Dogra sentiment in the State had struck solid roots with Sheikh Mohammad Abdullah and some others, including the Mirwaiz Maulvi Yusuf Shah, the Muslim high priest of the Valley, in the lead. The Maulvi, it soon transpired, was accepting a monthly stipend from the Maharaja and this, among many other factors, forced Sheikh Abdullah to steer away from Muslim communal politics as symbolized by the then Muslim Conference. By the mid-1930s Sheikh Abdullah had moved to a secular base and formed the National Conference, comprising Hindus, Muslims and Sikhs. The National Conference inevitably found itself drawn towards the Indian National Congress and thus was the foundation laid of an abiding friendship between Sheikh Mohammad Abdullah, Jawaharlal Nehru and Mahatma Gandhi.

Mohammed Ali Jinnah, the founder of Pakistan, tried hard to woo the Sheikh and indeed visited Srinagar on a couple of occasions only to be rebuffed by the National Conference. Jinnah's known arrogance did not help him either. He dismissed his best bet in the Valley, Maulvi Mirwaiz Yusuf Shah, as a "rotten egg", as Sheikh Abdullah recalls in his autobiography "Aatish-e-Chinar". The Sheikh again recalls the supreme contempt which Jinnah had for the Kashmiri people. According to Sheikh Abdullah, when a National Conference activist, Ali Mohammad Tariq, asked Jinnah soon after the partition of the sub-continent whether the future of Kashmir would be decided by the people of Kashmir, he was stunned by Jinnah's riposte: "Let the people go to hell." The people of the so-called Azad Kashmir have known ever since how much their Pakistani benefactors have cared for them.

At the dawn of independence when the great see-saw about the future of the princely states was on, Sheikh Abdullah was still in jail and was released only when the Dogra Maharaja saw himself slipping into a mire. With Pakistani tribals, aided and abetted by the Pakistani army, commanded by Major General Akbar Khan, invaded the Valley, Sheikh Abdullah had just been out of the Maharaja's jail. The Pakistan Army's active involvement in and following the tribal raids of 1947 and infiltration of raiders supported by the Pakistan army into Kashmir before the outbreak of the 1965 conflict is acknowledged by one of the highly regarded Pakistani Generals, Lt. Gen. Gul Hasan Khan, in his memoirs and by Altaf

Gohar in his biography of Field Marshal Ayub Khan. With the Maharaja still undecided about his future course of action, Sheikh Abdullah and his National Conference organized a volunteer corps, unarmed for the most part, to defend the Valley. The volunteers, drawn from all communities, were asked to protect the life, property, honor and dignity of the Kashmiri people. Luckily for Kashmir, the tribal invaders did not move as fast as they could have. They accorded a higher priority to rape, arson and loot. Of this later.



Destruction by raiders.

Contrary to what Pakistan has been saying about its role then, it had sent a special emissary to Kashmir to try and persuade the Maharaja to accede to Pakistan. The emissary failed in his mission. Consequently, Pakistan, in total disregard of the Standstill Agreement it had signed with the Maharaja, cut off its supplies of essential commodities such as salt and petrol; it also stopped its supply of currency notes and small coins to the Imperial Bank in Kashmir. Since the roads joining Kashmir to the rest of India ran through Pakistan, things became more critical despite the protest lodged by the Maharaja. That was only the beginning.



Church in Baramulla desecrated by raiders.

Pakistan now sent tribal hordes from the North West Frontier Province (NWFP) to browbeat the Kashmiris. Muzaffarabad, now capital of the so-called Azad Kashmir, was over-run in a day or so. But the tribals were more interested in rape and loot and that is perhaps what saved Kashmir in the end. The situation in Srinagar became tense. The Maharaja rallied his small army in an attempt to defend the State. In her book, "Halfway to Freedom", Margaret Bourke-White describes the plunder by the raiders:

"Their buses and trucks, loaded with booty, arrived every other day and took more Pathans to Kashmir. Ostensibly they went to liberate their Kashmiri Muslim brothers, but their primary objective was riot and loot. In this they made no distinction between Hindus, Sikhs and Muslims."

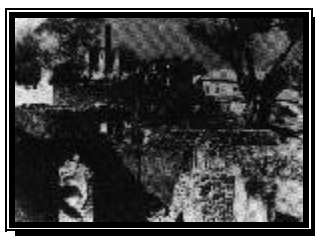
"The raiders advanced into Baramulla, the biggest commercial center of the region with a population then of 11,000, until they were only an hour away from Srinagar. For the next three days they were engaged in massive plunder, rioting and rape. No one was spared. Even members of the St. Joseph's Mission Hospital were brutally massacred." This tribal invasion was no accident, according to Sheikh Abdullah. It was a diversionary tactic created by the newly formed State of Pakistan. "The withdrawal of British forces from the tribal belt had left these people without any livelihood. The ruler of Pakistan feared that these lawless people may proceed to plunder Peshawar and other big cities of Pakistan. They were, therefore, asked to

proceed to Kashmir, having been assured of their bounty through plunder of the countryside. Pakistani leaders were hoping to reap a double benefit: getting rid of the tribals and bringing Kashmiris to their knees.



Wooden buildings burn fiercely during a raid.

When the tribals refused to budge from Baramulla, Abdul Qayyum Khan, an NWFP Pathan leader, sent their religious leader, Pir Manti, to persuade them to advance towards Srinagar," the Sheikh



The town of Pattan in Kashmir - after a raid.

wrote. According to confirmed reports as described by Sheikh Abdullah in his autobiography, Pakistan agents in Srinagar city decided to destroy all the bridges so that if the Indian Army was despatched, its movement could be sabotaged. National Conference volunteers were posted at the bridges and Hindus and Muslims alike were prepared to guard their national honor, having heard



Sheikh Abdullah addressing a rally at Lal Chowk in Srinagar.

about the atrocities inflicted on innocents by the rival people. The ruler's appeals to Pakistan were of no avail. The raiders caused havoc in different parts of Kashmir. The Kashmir state troops were incapable of offering effective resistance to the raiders and the threat to the Valley became grave. Unable to prevent the raiders from committing large-scale killings, loot and arson, the Maharaja requested the Government of India on October 26, 1947 that the State of Jammu and Kashmir be allowed to accede to India.

An appeal for help was also simultaneously received by the Government of India from the National Conference which was the largest popular organization in Kashmir and which had fought for the people's rights and agitated for the freedom of Kashmir from the Maharaja's rule. The National Conference also supported the request for the State's accession to India. To those who question Sheikh Abdullah's credentials one need only quote President Ayub Khan of Pakistan who had just then received the Kashmiri leader in May 1964. He had this to say: "Sheikh Abdullah is a lion hearted leader." And Allama

Iqbal, whom Pakistan hails as its philosopher poet, said: "Sheikh Ahdullah wiped the fear of the tyrant from the hearts of the people of Kashmir." The Instrument of Accession was accepted the next day by the Governor General of India, Lord Mountbatten. The first contingent of the Indian Army flew into Srinagar on October 27, to repulse the invaders.

3 CHAPTER III - THE ACCESSION

When the Maharaja of Kashmir executed the Instrument of Accession to India and Lord Mountbatten, the then Governor General of India, accepted the Instrument, the whole of Jammu and Kashmir became an integral part of India, legally and constitutionally.

On the eve of independence there were more than 560 Princely States which were semi-independent and which were protected by the United Kingdom by the doctrine of paramountcy. This meant that the King of England was the paramount lord as far as these Princes were concerned and in return for the fealty pledged by them, the King Emperor gave them protection. When the Indian Independence Act was passed by the British Parliament, British power was transferred to the people of India as far as British India was concerned and Britain put an end to paramountcy, leaving it to the Princes to arrive at such arrangements as they thought proper with the Governments of India and Pakistan. It is necessary to record all this in some detail to refute Pakistan's allegation that Kashmir's accession to India by the Maharaja was not legal. At the time of Partition, Pakistan was a new State which came into existence, but the present Government of India was the successor government to the Government of the United Kingdom. It was provided that it was open to every princely State to accede either to India or to Pakistan. The law did not provide that the Instrument of Accession could be conditional. Once the accession was accepted (as it was done in Kashmir by the Governor General of India Lord Mountbatten), the particular Princely State became an integral part of one or the other of the two Dominions.

Significantly, there was no provision for consulting the people of the Princely state concerned. Nor was there any provision that the accession had to be ratified by ascertaining the wishes of the people of the acceding State. Several Princely States acceded under this law to India or Pakistan. It was never suggested that these accessions were, in any way, incomplete or require some action to be taken before they became conclusive. The partition of India was confined to British India alone and in drawing the lines of the frontier, the question of Muslim majority provinces on North West and Eastern India was taken into consideration only with regard to British India. There was no question whatsoever of taking into account the religious complexion of the population of any Princely States. Whether a Princely State should accede to India or Pakistan was left to the choice of the ruler of that State Pakistan's proposition that the State of Jammu and Kashmir, by reason of its large Muslim majority and of the fact that Pakistan came into existence as a Muslim State, should naturally form part of Pakistan, is not tenable. This is wholly wrong in view of the legal and constitutional position.

3.1 CABINET MISSION MEMORANDUM

The British Government had made it quite clear that partition was only of British India and that this principle did not apply to those States such as Kashmir and several hundred others, which were ruled by Indian Princes. The British Government's announcements of 3 June, 1947 said: "His Majesty's Government wish to make it clear that the decisions announced (about partition) relate only to British India and that their policy towards Indian States contained in the Cabinet Mission Memorandum of 12 May, 1946, remains unchanged."

The Cabinet Mission's Memorandum said: "His Majesty's Government will cease to exercise power of paramountcy. This means that the rights of the States, which flow from their relationship to the Crown, will no longer exist and that all the rights surrendered by the State to the paramount power will return to the States. Political arrangements between the States on the one side and the British Crown will thus be brought to an end. The void will have to be filled either by the States entering into a federal relationship with the successor government or governments in British India or, failing this, entering into particular political arrangements with it or them."

The provision for accession made in the Government of India Act of 1935, as adapted under the Independence Act of 1947, says: "An Indian State shall be deemed to have acceded to the Dominion if the Governor General has signified the acceptance of an Instrument of accession executed by the Ruler

thereof." None of the provisions of these Acts which created the Dominions of India and Pakistan can be questioned by India, Pakistan or the United Kingdom which were parties to the agreement.

It was entirely for the ruler of Jammu and Kashmir to decide, taking all factors into consideration - the factors of contiguity, of communications, of economics and others - whether it would be beneficial for the State to be part of one Dominion or the other. The question of religion did not come into play at all. The people of the Princely States, particularly Kashmir, although they suffered from many other disabilities and infirmities, did not suffer the disastrous consequences of religious hatred or intolerance. Hence, where is the substance in the contention that the accession of Jammu and Kashmir was not complete and absolute because the people of that State had not been given opportunity to express their choice? In fact, the people of the State have had successive elections in which, of their own free will, they elected 75 members to the State Assembly. Only recently, elections could not be held because of terrorist activities engineered by Pakistan.

Did not Pakistan recognize the Government of the Maharaja of Jammu and Kashmir? Did it not enter into a Standstill Agreement with him by the exchange of telegrams on August 12 and 16, 1947? International law does not require that the party to an agreement should look behind a recognized government with whom it contracts to see that the Agreement had been arrived to by prior consultations with the people. In fact, the accession was also supported by the National Conference, the largest political party in Kashmir. To quote Sheikh Abdullah who was then leader of the National Conference.

"When the raiders were fast approaching Srinagar, we could think of only one way to save the State from total annihilation: asking for help from a friendly neighbor. The representatives of the National Conference, therefore, flew to Delhi to seek help from the Government of India but the absence of any constitutional ties between our State and India made it impossible for her to render any effective assistance in meeting the aggression...since people's representatives themselves sought an alliance, the Government of India showed readiness to accept it. Legally, the Instrument of Accession had to be signed by the ruler of the State. This the Maharaja did."

The Governor General, Lord Mountbatten, accepted the Instrument of Accession the next day on October 27, 1947. The Prime Minister of India wrote to the Prime Minister of Pakistan on December 22, 1947, requesting Pakistan not to give aid or assistance to the raiders and not to prolong the struggle. The Prime Minister of Pakistan replied eight days later thus: "As regards the charges of aid and assistance, the Pakistan Government emphatically repudiate them. On the contrary, the Pakistan Government have continued to do all in their power to discourage the tribal movements by all means short of war."

3.2 COMPLAINT TO THE SECURITY COUNCIL

India approached the Security Council on January 1, 1948, and said: "Such a situation now exists between India and Pakistan owing to the aid which invaders, consisting of nationals of Pakistan and of tribesmen from the territory immediately adjoining Pakistan on the North West, are drawing from Pakistan for operations against Jammu and Kashmir, a State which has acceded to the dominion of India and is part of India... The Government of India request the Security Council to call upon Pakistan to put an end immediately to the giving of such assistance which is an act of aggression against India."

It is necessary to note that India was the complainant before the Security Council, and that India complained of aggression by Pakistan. On January 15, 1948, the Foreign Minister of Pakistan again emphatically denied that the Pakistan Government was giving aid and assistance to the invaders or had committed any act of aggression against India. On the contrary, the Foreign Minister stated his government had continued to do all in its power to discourage the tribal movement by all means, short of war. He stated that all allegations made by the Indian Government that the Pakistan Government was affording aid and assistance to the tribal forces, or that these forces had bases in Pakistan territory or were being trained by the Pakistan Army, were utterly unconfirmed. Pakistan never contended that India had no right to be there.

In India's view, this categorical denial by Pakistan of being behind the tribal raid is the most important and significant aspect of the whole Kashmir issue. It is significant that, at that stage, Pakistan never tried

to justify its presence in Kashmir or to claim any right to be there. Pakistan was quite aware of the fact that its presence in Kashmir was contrary to International Law and was fully conscious of the illegality of its action. That is why Pakistan could not admit its presence in Kashmir and that is why there was a total and straight denial of its presence.

3.3 ACCESSION LEGAL

Thus, the plea later put forward that Pakistan went to Kashmir in support of a liberation movement is clearly an after thought designed to create a false moral justification for its invasion of Kashmir. This was not mere equivocation but a deliberate falsehood.

The State's accession to India has never been challenged by the UN Commission for India and Pakistan or the Security Council. As early as 4 February, 1948, the US Representative in the Security Council declared: "External sovereignty of Jammu and Kashmir is no longer under the control of the Maharaja. With the accession of Jammu and Kashmir to India, this foreign sovereignty went over to India and is exercised by India and that is how India happens to be here as a petitioner."

Similarly, the representative of the USSR said at the 765th meeting of the Security Council: "The question of Kashmir has been settled by the people of Kashmir themselves. They decided that Kashmir is an integral part of the Republic of India."

The legal adviser to the UN Commission came to the conclusion that the State's accession was legal and could not be questioned. This fact was further recognized by the UN Commission in its report submitted to the UN in defining its resolutions of 13 August, 1948, and 5 January, 1949. Both these resolutions were accepted by India and Pakistan.

4 CHAPTER IV - OBSOLETE RESOLUTIONS

The UN Commission resolutions have become obsolete. This view was expressed by the UN Commission itself as far back as 1949, and has been reiterated by Dr. Jarring and Dr. Graham, both UN representatives. Passage of time, change of circumstances, and Pakistan's repeated and continuing violations, have ruled out all possibility of implementing them.

Pakistan tried to impose a military solution by launching a war against India in 1965. The pattern was familiar. Massive infiltration was followed by invasion of Indian territory on September 1, 1965.



Pakistani POWs of the 1965 conflict.

A cease-fire came about after a 22-day war with India in possession of large tracts of Pakistan's territory. An agreement was signed at Tashkent between India and Pakistan on January 10, 1966 with both countries agreeing to withdraw to the international border and the cease-fire line in Jammu and Kashmir.

Pakistan imposed yet another war in 1971 invading India on December 3. It again failed in its objective despite millions of East Pakistanis being brutally exterminated by the Pakistan Army. East Pakistan became an independent country. As many as 93,000 Pakistani soldiers surrendered to the Indian Army and after 16 days of war, the Indian Army was once again in possession of Pakistani territory in the Western Sector. After the war, bilateral talks were held in June/July 1972. Under the terms of this Agreement, the two countries undertook to resolve all differences bilaterally. Pakistan, through its commitment in the Agreement agreed to shift once for all the Kashmir question from the UN to the bilateral plane.

For meaningful dialogue Pakistan was expected to create the right climate. Instead, after a few years Pakistan began its familiar game again by supporting terrorism in Punjab and Kashmir. This, to say the least, was in utter disregard of the Shimla Accord, apart from being unfriendly and provocative in the extreme.



Gen. A. A. Niazi of Pakistan surrenders to Gen. J. S. Aurora of India, after the liberation of Bangladesh.

4.1 SELF-DETERMINATION

The other favorite argument put forward by Pakistan is of self-determination. It has tried to elicit world support on the plea that the people of Jammu and Kashmir have been denied the right of self-determination.

India fully subscribes to the principle of self-determination. It can be operative only when one is dealing with a nation as a whole, and the context in which it can be applicable is the context of conquest or of foreign domination or of colonial exploitation. It could lead to dangerous consequences if the expression

were extended to apply to an integral part of any country or sections of its population or to enable such integrated part or sections of the population to secede. The principle of self-determination cannot and must not be applied to bring about the fragmentation of a country or its people.



Massacre in East Pakistan.

History tells us that the United States fought a bloody civil war to prevent the whole of the South of the Union from seceding and constituting itself into an independent country. A large majority of the people of that part of the United States were opposed to Abraham Lincoln and his policies and they wanted the freedom to refuse to emancipate the slaves, and yet the United States government, very rightly and properly, refused to break up the country by permitting a part of it to secede.

4.2 REACTIONARY THESIS

Pakistan's thesis is a reactionary and obscurantist one. The thesis of self-determination which Pakistan advocates, has been used in the recent past by colonialists and neo-colonialists for the disruption of newly emergent states. Pakistan would have the hands of the clock set backwards and would go back to the days when countries permitted only one religion and persecuted those who followed another faith.

India has already exercised the right of self-determination through a Constituent Assembly of elected representatives, in which the people of Jammu and Kashmir participated. The Indian people gave to themselves a Constitution which has been in force for over four decades. Under the constitution, ten general elections based on universal adult suffrage have been held.

In order to draw up a Constitution for internal administration of the State, within the larger framework of the Constitution of India, the people of Jammu and Kashmir elected representatives on the basis of universal franchise thus giving a practical demonstration of the exercise of their right of self-determination.

The state's Constituent Assembly drew up a democratic constitution under which the people of the state enjoy political freedom and civil liberties. General elections in the state have been held under the supervision of the Election Commission of India except in the last few years when, because of continued terrorist activities, the State Assembly has had to be suspended.

One cannot resist the temptation of asking Pakistan a few pertinent questions. Did Pakistan permit the people of Princely States in Pakistan to exercise the right of self-determination after the ruler acceded to Pakistan? As was disclosed in the West Pakistan High Court a few years ago, the accession of Bahawalpur had been forced on the ruler of the State. The Khan of Kalat revolted against accession and

was arrested and detained in 1958. In neither case was the principle of self-determination applied. When Pakistan purchased, mark the word "purchased", the territory of Gwadar from the Sultan of Muscat, what happened to Pakistan's solicitous regard for the people's right to self-determination? No opportunity was given to the people of Gwadar to say whether in the second half of the twentieth century they wished to be bought like chattel.

Pakistan's harping on self-determination today, against the principles of the UN Charter on self-determination which are meant to apply to colonial territories and not to integral parts of countries, is only a cover for territorial ambitions.

As far as the UN resolutions on Kashmir were concerned, two UN mediators had warned that they were getting obsolete. The report by the president of the Security Council, Gunnar Jarring, warned: "The implementation of international agreements of an ad hoc character which has not been achieved fairly speedily, may become progressively more difficult because the situation with which they were to cope has indeed to change." That was said on April 29, 1957.

The very last report by a UN mediator was that of Dr. Frank Graham's dated 28 March, 1958. It referred to a major clause regarding mutual troops withdrawal and said that "the execution of the provisions of the resolution of 1948 might create more serious difficulties than were foreseen at the time the parties agreed to that. Whether the UN representative would be able to reconstitute the status quo which had obtained 10 years ago, would seem to be doubtful." Thirty-six years have elapsed since.

It also needs to be recalled why Pakistan insists on a solution as per the nearly half-century old UN resolutions and why it is untenable. Pakistan did at no time observe the resolutions, either in spirit or letter. It has its own interpretation of the UN resolutions to offer, even when the self-same resolutions give a lie to the Pakistani view. Take Pakistan-occupied Kashmir for instance. If there has to be a plebiscite it will be confined only to the Indian parts of Jammu and Kashmir. Not the Pakistan-occupied territories. And there again the only choice the Kashmiris have is to choose between Pakistan and India.

And yet as late as January 29, 1994, the Jammu and Kashmir Liberation Front (JKLF) leader, Amanullah Khan, speaking in Muzaffarabad, tartly reminded Pakistan Prime Minister Benazir Bhutto that Pakistan's persistent rejection of the third option of independence for Kashmir is "tantamount to denying the very right of self-determination" Pakistan has been harping about a right which, he asserted, cannot be "limited, conditioned or circumscribed". But Pakistan's espousal of the right to self-determination has always been self-servingly conditional and circumscribed.

Apart from other provisions, one has only to read para 6 of the Plebiscite Resolution to realize that it is incapable of enforcement. The para provides for the return of State citizens who left it on account of the disturbances of 1947.

The resolution of August 13, 1948, provided that "pending a final solution, the territory evacuated by Pakistani troops will be administered by the local authorities under the surveillance of the Commission". Pakistan has planted a "State" there in breach of this provision. We shall talk about it in the next chapter.

5 CHAPTER V - PAKISTAN-OCCUPIED-KASHMIR, TASHKENT & THE SHIMLA AGREEMENT

Pakistan's espousal of the right to self-determination has been conditional and circumscribed. It is demanded of the part of Kashmir which escaped its occupation but not its depredations. The right of self-determination is not recognized for Pakistan-occupied Kashmir (POK).

The Azad Jammu and Kashmir Interim Constitution Act 1974 obliges all leaders from the President down and all legislators to swear loyalty to the cause of accession of the state of Jammu and Kashmir to Pakistan." Islam is the State religion (Article 3). The President and Prime Minister must be Muslim. The right of freedom of association is restricted. Article 7(2) says: No person or political party in Azad Jammu and Kashmir shall be permitted to propagate against or take part in activities prejudicial or detrimental to the ideology of the State's accession to Pakistan.

The Constitution was imposed on POK by the former Prime Minister Z.A. Bhutto. Pakistan conveniently ignored the fact that it is only in temporary charge of those areas under its occupation. In its view it is the rest of the State which is disputed territory not that part which it had grabbed.

Pakistan resents the expression Pakistan-occupied Kashmir but freely talks of Indian-occupied Kashmir. Taking the UN resolutions by which Pakistan swears it would be clear that while the legality of the accession of the State of Jammu and Kashmir to India was consistently and explicitly accepted in those resolutions the expression Pakistan-occupied Kashmir is derived from these very documents.

Let us take a close look at what the Security Council did. On January 20, 1948 the Security Council set up a three-member Commission. On April 21 1948 the Council not only expanded its membership to five but laid down the details of a plebiscitary solution. A Plebiscite Administrator was to be nominated by the UN Secretary General. Para 10(b) said: The Plebiscite Administrator acting as an officer of the State of Jammu and Kashmir should have authority to nominate his assistants and to draft regulations governing the plebiscite. Such nominees should be formally appointed and such draft resolutions should be formally promulgated by the State of Jammu and Kashmir."

This is clear recognition of the legality of Kashmir's accession to India, India's external sovereignty over the State and the legal authority of the Government of the State. Hence the formal induction of the Plebiscite Administrator was to be made by the State Government although he was to be nominated by the UN Secretary General. On August 13 1948 the UN Commission for India and Pakistan (UNCIP) adopted a resolution embodying its proposals for a settlement. India accepted it; Pakistan did not. On December 11,1948 the UNCIP offered proposals in amplification of the first to provide for a plebiscite. Both sides accepted it. They were formally embodied in its resolution of January 5 1949.

While the tribesmen from Pakistan and Pakistan's troops were to be withdrawn completely. India was to withdraw only the bulk of its forces retaining some "to assist local authorities in the observance of law and order". That was not the only asymmetry. The existence of the Government of the State of Jammu and Kashmir was explicitly recognized and so indeed was the State's accession to India and assumption of external sovereignty. Accordingly the resolution provided that the government of the State of Jammu and Kashmir will safeguard law and order and that human and political rights will be respected.

5.1 SHARP CONTRAST

For the other part of the State the resolution said: "Pending a final solution the territory evacuated by the Pakistani troops will be administered by the local authorities under the surveillance of the commission. This is in sharp contrast to the clear recognition of the State Government acting under the Government of India in respect of external relations. No surveillance was provided for this part of the State.

In utter disregard of the UN resolutions by which it swears, Pakistan imposed a new regime on POK on June 21 1952. Rules of Business were presented on October 28. Rule 5 said: The President of Azad Kashmir Government shall hold office during the pleasure of the All Jammu and Kashmir Muslim Conference duly recognized as such by the Government of Pakistan in the Ministry of Kashmir Affairs.

The Ministry's Joint Secretary could attend meetings of the Council of Ministers and tender advice on any matter under discussion. What are the legal implications of such a set-up on POK which has existed for over four decades in flagrant breach of the UNCIP's resolution?

The legality of Jammu and Kashmir's accession to India was incontestable. Even so, India had agreed to a plebiscite in 1948. But among the prime causes which have rendered a plebiscite impossible is Pakistan's annexation of POK. Its refusal to withdraw its forces from the occupied territory and its policies towards the rest of the State. The war of 1965 showed amply that Pakistan tried to grab the rest of the State at its chosen forum, the battlefield, and failed. There was a cease-fire followed by the Tashkent Declaration.

It is pertinent to recall that Clause (iii) of the Declaration recorded thus: The Prime Minister of India and the President of Pakistan have agreed that relations between India and Pakistan shall be based on the principle of non-interference in the internal affairs of each other. And Clause (iv) said: The Prime Minister of India and the President of Pakistan have agreed that both sides will discourage any propaganda directed against the other country and will encourage propaganda which promotes the development of friendly relations between the two countries.

5.2 SHIMLA AGREEMENT

What did Pakistan do? Six years after this it launched another war and it once again failed in its objective to grab Kashmir by force. There was a meeting between the Prime Minister of India and the President of Pakistan at Shimla and the talks resulted in the Shimla Agreement. A look at the first six clauses of the Agreement reproduced below juxtaposed with the ground realities would show how Pakistan has violated all these provisions.



The Prime Minister of India and the President of Pakistan signing the Shimla Agreement.

Clauses (i) to (vi) of the Shimla Agreement are as follows:

- (i) That the principles and purposes of the charter of the United Nations shall govern the relations between the two countries.
- (ii) That the two countries are resolved to settle their differences by peaceful means through bilateral negotiations or any other peaceful means mutually agreed upon between them. Pending the final settlement of any of the problems between the two countries neither side shall unilaterally alter the situation and both shall prevent the organization, assistance or encouragement of any acts detrimental to the maintenance of peaceful and harmonious relations.
- (iii) That the prerequisite for reconciliation good neighborliness and durable peace between them is a commitment by both the countries to peaceful co- existence respect for each other's territorial integrity and sovereignty and non- interference in each other's internal affairs on the basis of equality and mutual benefit.
- (iv) That the basic issues and causes of conflict which have bedeviled the relations between the two countries for the last 25 years shall be resolved by peaceful means.

(v) That they shall always respect each others national unity, territorial integrity, political independence and sovereign equality.

(vi) That in accordance with the charter of the United Nations they will refrain from the threat or use of force against the territorial integrity or political independence of each other.

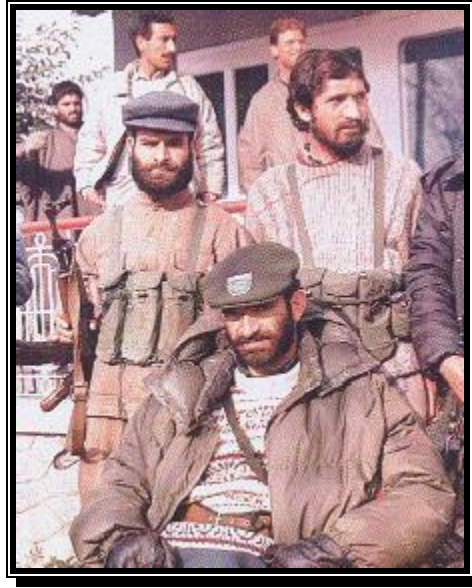
5.3 COVERT OPERATION

Pakistan ignored the Tashkent Declaration and has violated almost all the six clauses listed above of the Shimla Agreement to which it was a signatory. It has mounted a low cost covert operation in Jammu and Kashmir. The POK has served as a launching pad for this aggression. POK is firmly riveted to Pakistan's control through the Azad Jammu and Kashmir Council. It is presided over by the Prime Minister of Pakistan and comprises his five nominees the President and Prime Minister of POK and six representatives of the POK Assembly elected by proportional representation. Politically POK is a replica of Pakistan: Basic Democracy of Ayub Khan and Gen. Zia's Martial Law. In December 1993 the blasphemy laws of Pakistan were extended to the POK. The northern parts of the State have been dismembered from the POK and their status as part of the state questioned. They are ruled directly through a chief executive Lt. Gen. Mohammed Shafiq, appointed by Islamabad with a 26-member Northern Areas Council. The people have never seen elections or enjoyed human rights.

In contrast to the government in Srinagar the regime in Muzaffarabad (POK capital) is one set up by Pakistan in territory it has occupied not acquired by law.

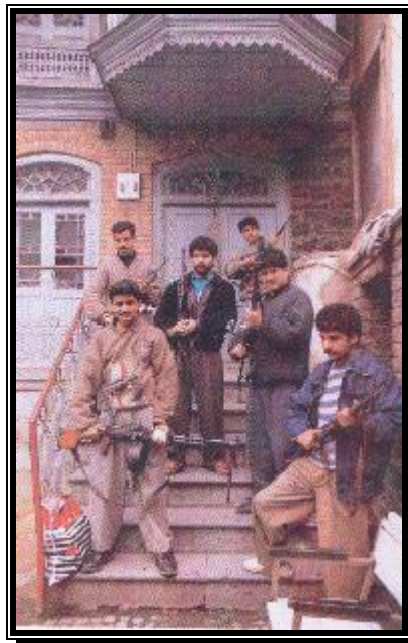
6 CHAPTER VI - PAKISTAN'S SUPPORT TO TERRORISM

For the last about five years, Pakistan has been waging a low intensity proxy war in Jammu and Kashmir. Backed by official support from Pakistan there has been a well-organized and consistent



Terrorists leader with bodyguards.

Pakistani plan to subvert the authority of the Jammu and Kashmir Government, create chaos inspire terrorism, fan the flames of disruption and secessionism, subvert the loyalties of the people, kill and kidnap, organize murders and mayhem, whip up communal passions, raise the cry of "jihad" and open the floodgates of Islamic fundamentalism with international linkages. A number of "Jihad



Well armed terrorists in Kashmir.

Conferences", rallies and demonstrations have been held in Pakistan and Pakistan-occupied Kashmir to express solidarity with the Kashmir terrorists.

The plans are hatched in Pakistan and executed through Pakistani agents provocateur and such Kashmiri young men who have been lured, bribed, trapped or coerced, motivated or misguided into becoming militants. Pakistan Army Rangers and the Pakistan Inter-Services Intelligence (ISI) with its field units have been conducting and directing the programs of subversion. Pakistan has been training and arming the militants, providing funds, affording refuge and safe havens to the militants, as also setting up rapid communication systems. Backing the militants is a well orchestrated multi-media propaganda campaign with twin objectives: beamed to the militants in the Kashmir Valley the purpose is to stoke the fires of militancy and keep secessionism alive; in the international arena the intention is to damage the image of India.

Kashmiri youth are taken surreptitiously across the line of control to Pakistan occupied Kashmir and to Pakistan. There they are trained for subversion, equipped with weapons as also indoctrinated. Thereafter, they are infiltrated back into Jammu and Kashmir. The Pakistan Army often provides covering fire for such infiltrators across the line of control.

Before the newly-recruited militants are sent to POK or Pakistan they are given code names to conceal their identity or they are provided with fake identity cards to cover them up as government employees. They are usually picked up in small batches from predetermined places and escorted to the line of control on foot and thereon to some transit camps.



Terrorists at a hide-out in Kashmir.

In the transit Camps, motivational films are screened, copies of the Holy Quran are distributed and religious and fanatical songs with anti-India strains are sung. From the transit camps the recruits are moved to the training centers. Usually they are taken blindfolded or in fully covered trucks to make sure that they can neither identify the training sites nor the roads leading to them.

Motivation is an essential part of the training. Firebrand ulemas acting as coordinators and Mujahideen leaders are invited to speak to the recruits exhorting them to jihad. On the conclusion of the training the militants are returned to the transit camps. Once again they travel blindfolded or in covered trucks. Each trainee is given assorted weapons at the staging areas. Finally they are taken back to the line of control. The Pakistan ISI guides help the militants in finding their way through forests and mountain passes through which runs the line of control from where they can be collected later.

6.1 TRAINING CAMPS

Nevertheless it is always hazardous crossing the line of control. The militants are apprehended by the Indian security forces. A number of them have been killed while crossing the line. Some of those apprehended make confessions or provide revealing information under interrogation. But still many sneak across the undulating thickly-forested terrain. To train and indoctrinate the militants Pakistan has set up

training centers located in (rebel-held) Afghanistan close to the Pak-Afghan border. Over 105 such training camps - 48 in Pakistan, 49 in POK and eight on the Pak- Afghan border - have come to the notice of Indian authorities. Pakistan has been running more than 50 transit camps either in Pakistan itself or in POK to hold the trainees before they are dispersed to various training centers.

Training is imparted by Pakistani instructors or by those of the Kashmiri militants who have graduated after intensive training. The training covers subjects like subversion and sabotage use of explosives, techniques of destroying vital installations like railway lines, bridges, oil tankers, power houses etc. To toughen the militants and give them "battle inoculation", some trainees are sent to the Pak-Afghanistan border under the banner of Harkat-e- Mujahideen where they are made to fight in simulated battle conditions. Some of the selected militants are primed for a longer period and are intended to attain greater competence in the methods of guerrilla warfare, laying of land mines, handling of remote control devices with special emphasis on extensive use of improvised explosive devices and wireless communication. Operating sensitive high-frequency wireless communication sets is another item of specialized training.

The pattern of arms training has been changing. Earlier the elementary training for seven to ten days included introduction to AK-47 rifles, Chinese pistols, rocket launchers use of light machine guns and explosives. Techniques of ambushing concealment reconnaissance and intelligence gathering were also covered. Included in this program was indoctrination for armed struggle. This was achieved through lectures and video films.

Training at the centers is now handled entirely by the Pakistan Army and the ISI. Multiple training programs, dovetailing basic arms training with long duration specialized schedules, have been organized. There are extended training courses of two to twelve weeks incorporating the use of sophisticated heavy weapons including rocket launchers, MMG/LMG/AK-47/56/74, sniper rifles, mortars, remote control devices anti-personnel and anti-tank mines. The operation and control of high explosives, anti-aircraft guns, heavy machine guns, etc., are also included in the schedule. Courses in rock climbing mountaineering survival in jungles as also mock exercises for border crossing including first aid and paramedical training are conducted. Video cassette films on commando operations are screened at the training centers. Simultaneously, the Pakistani army has been imparting wireless communication training (Morse and computer-based data mode) for four to twelve weeks to ensure that trained staff is available to maintain direct links between the Kashmir militants and the Pakistan authorities.

6.2 ARMS SUPPLY: PROGRESSIVE INCREASE

Recently, the training schedule was further streamlined and extended for selected groups from six months to a year. Selected young militants are taken to Pakistan Army camps along the line of control where they are trained for over six months through intensive firing exercises. In some makeshift training camps inside Pakistan stress is laid on the practical handling of explosive devices. Emphasis is now laid on achieving tough physical standards and the development of leadership qualities. Educated militant youth, preferably with scientific and technical background are imparted specialized and prolonged training. The use of new weapons including SVD Dragrov sniper rifles, 12.7 mm heavy machine guns and 82 mm mortars is taught.



Arms Bazaar in Pakistan.

Pakistani-supplied arms and weapons seized every now and then on the border and the line of control as also obtained from the hideouts of militants provide tangible evidence of the Pakistan hand. The seizure of weapons recorded year after year shows a progressive increase in their supply. These arms are procured partly from Pakistan Army and intelligence establishments; siphoned off from the supplies Pakistan received for the Mujahideen in Afghanistan; and a few from the arms bazaars in the North West Frontier Province.

Pakistan has been training thousands of Kashmiri terrorists, supplying arms and ammunition to them, providing financial assistance as also monetary inducements to the trainees. Couriers and guides have been provided by Pakistan. Necessary support facilities like office accommodation, telephones, wireless communications safe havens have also been made available. This has been confirmed and cross checked with various militants who have been captured by the Indian security forces.

The present situation in Kashmir has been created by Pakistan's support to terrorism. This support to religion-based terrorism is not only an attempt to unilaterally alter the status quo on the ground but also to undermine India's secular fabric. Pakistan's denial of its involvement is not convincing. In 1948 Pakistan denied that it was sending tribals and armed people into Kashmir. The Security Council resolution of August 1948 documented the Pakistan aggression when it stated: "The presence of troops of Pakistan in the territory of the State of Jammu and Kashmir constitutes a material change in the situation since it was represented by the government of Pakistan before the Security Council. Pakistan had then too asserted that disturbances in the valley were the result of an internal uprising.

6.3 OVERWHELMING EVIDENCE

In 1965, Pakistan similarly denied that it had sent armed infiltrators. The arson sabotage and killings by the infiltrators were again attributed by Pakistan to internal uprising in Kashmir. It persisted with this charade before the Security Council even though the UN Military Observer Group for India and Pakistan and independent observers documented that massive infiltration of armed personnel had taken place. Subsequently the Pakistani leaders themselves boasted of having sent in the infiltrators. Today Pakistan is once again denying involvement with terrorism. In the face of the overwhelming evidence of overt and covert support, and the history of Pakistan's past deceptions in this regard, there can be no genuine takers for the Pakistani propaganda line.

7 CHAPTER VII - THE IRRELEVANCE OF THE TWO-NATION THEORY

The genesis of Pakistan's interference in Jammu and Kashmir lies in its claims that India was partitioned on the basis of religion and therefore the Muslim majority state of Jammu and Kashmir should be part of Pakistan. This pernicious "two nation" theory based on religious bigotry was thrown into the dustbin of history several decades ago.

The majority population of erstwhile East Pakistan seceded in 1971 despite commonalty of religion. Sectarian and ethnic riots between Sindhis, Punjabis, Pathans, Mohajirs or Muslim migrants from India are endemic in Pakistan. Pakistan refuses to accept the approximately 200,000 co-religionist "Bihari Muslims" currently in Bangladesh who have always considered themselves to be citizens of Pakistan.

In the partition of India, therefore, all that happened was that some Muslim majority areas of British India took the character of a separate political entity. The Indian States were left free to decide. The founder of Pakistan, Mohammed Ali Jinnah, had said on June 17, 1947 that the rulers of the States had the right to decide on accession. The ruler of Jammu and Kashmir chose to accede to India.

7.1 PAKISTAN'S TERRITORIAL AMBITIONS

Pakistan's harping on self-determination today, against the principles advocated by the founders of Pakistan, against the UN Charter principles of self-determination which are meant to apply to colonial territories and not to integral parts of countries, and several decades after the issue has been settled, are only a cover for its territorial ambitions. The principles being espoused by Pakistan pose several dangers to several countries in the world where multi-ethnic and multi-religious societies co-exist. Pakistan's adventurist posture on Kashmir is also an attempt to externalize its internal crises characterized by sectarian riots, daily killings of Muslims, narco-terrorism, proliferation of weapons, drug addiction, unstable power equations at central and provincial levels, a rising crime rate including daily murders, abductions and violence. Pakistan has no locus standi in Jammu and Kashmir. It has no right to demand at a conference table what it tried illegally, and in violation of the UN Charter, to secure at its own chosen forum, the battlefield, and lost.

In a diverse country like India, disaffection and discontent are not uncommon. Indian democracy has the necessary resilience to accommodate genuine grievances within the framework of its Constitution, sovereignty, unity and integrity. The situation is capable of a solution within this framework in Kashmir. The government is willing to accommodate the legitimate political demands of the Kashmiri people. However, the Pakistani-sponsored terrorists have terrorized the population and are hindering any political dialogue. Anybody who tries to initiate a dialogue is silenced. It is this terrorism, and the kidnappings and killings of innocent people by terrorists, that constitute the real violation of human rights in Jammu and Kashmir. The State agencies which are attempting to maintain law and order have acted with much greater restraint than has been the case with many other governments in similar situations. The Government of Pakistan, for instance, used its Air Force to bomb its own citizens in Baluchistan in 1973 and tackled that situation at an estimated cost of 8,500 civilian and 3,000 military lives.

Jammu and Kashmir is an integral part of India. Pakistan's covert and overt actions, instigating terrorism and mounting propaganda against India, will not change the situation.

8 CHAPTER VIII - HUMAN RIGHTS IN JAMMU AND KASHMIR

Pakistan's unrelenting offensive against India has been conducted on two fronts ... sponsoring terrorism in India and conducting a worldwide propagand campaign. In the context of Jammu and Kashmir, the propagand disseminated by Pakistan has concentrated on alleged violations of the Human Rights of the Kashmiris by the Indian Government and its security forces.

The first and foremost Human Right is the right to life, And it is the bounden duty of any State to take necessary action to safeguard the life, property and dignity of its people. In the context of Kashmir it is essential to examine who is responsible for the creation of an environment where human rights can be violated. After all the Indian security forces have been present in the State of Jammu and Kashmir since 1947 and never was any hint of any human rights violations of the people voiced. On the contrary the presence of the Indian security forces state has been a source of assurance to the people of a state that has been subjected to repeated aggression by Pakistan. The people of Jammu and Kashmir, including those of the Valley refused to be duped by Pakistan's blandishments in the three wars with Pakistan- eloquent testimony to the people's faith in the Indian security forces and the Indian polity.

What then is the new element that has been introduced that has triggered off the whole debate on the question of Human Rights in Jammu and Kashmir? The answer has been given by International Human Rights organizations such as Amnesty International and Asia Watch who have had to acknowledge the pervasive presence of terrorism in the Valley and have documented the depredations of the terrorists.

The Vienna Declaration passed at the end of the World Human Rights Conference in 1993, the resolution adopted by the Third Committee of the UN General Assembly also in 1993, the Resolution 1993/48 adopted by the Commission on Human Rights, all stress the need for the international community to combat terrorism and condemn terrorist activities as a gross violation of Human Rights.

The real question that needs addressing is the continuous assault on democratic institutions perpetrated by the armed terrorists in Jammu and Kashmir acting at the behest of Pakistan.



Terrorists in training.

In his book "Future of political violence" General Richard Clutterbuck states "... The ultimate civil right, however, is the right to live. A violent minority, whatever its politics, has no right to kill, and no claim to such a right must ever be allowed to override the right of the majority to live in peace.. ". It is precisely this right that the a violent minority has arrogated to itself in the State of Jammu and Kashmir.

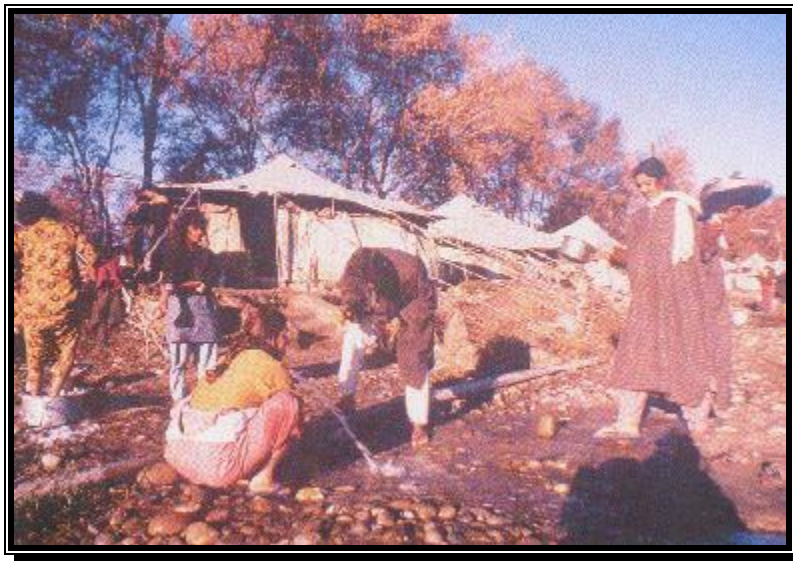
The pillars of a free democratic society are the judiciary, the press and free political activity.



Terrorists in training.

The Indian press has been lauded internationally for its freedom. Freedom of expression is a norm in Indian society, jealously guarded by the representatives of the Fourth estate. In fact Amnesty itself has acknowledged that a great deal of its information has been culled from the Indian media. But muzzling and manipulating the press has been a regular practice followed by the terrorists in the Valley. Prominent media personalities have been killed. Details of the repression of the media by the terrorists are given in a separate chapter.

An independent judiciary has been one of the hallmarks of Indian democracy. It has been a champion of Human Rights. At the height of the forcible armed occupation of the Hazratbal Shrine by armed militants in late 1993, it was the Indian Supreme Court that ordered the Government to provide sustenance to the people inside the shrine. The independence of the Indian judiciary has been lauded world wide ... and it is the representatives of this institution who have been targeted by the terrorists.

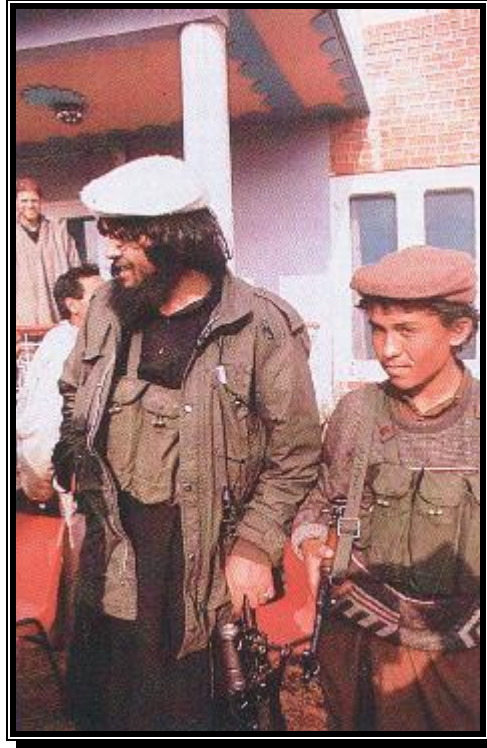


Refugee camp for Kashmiri Pandits in Jammu.

There has been targeted killing of political leaders and workers, including former legislators of the State. Three top political leaders, Maulvi Mohd. Farooq, Chairman of the Awami Action Committee, (May 21, 1990), Abdul Jabbar, a former Minister (April 18, 1990) and Maulana Masoodi, State level National Conference leader (December 1990) were gunned down by terrorists. Many former legislators of the Congress and the National Conference have fallen victims to militants' bullets. Prominent citizens and opinion makers have been selectively eliminated to prevent any scope for dissent against the activities of the terrorists.

The minority community of Hindus has been selectively targeted leading to an exodus from the Valley. Countless civilians, including Muslims, have been raped tortured and killed for being " informers" or for refusing to join the ranks of the militants or to assist them. The oppression of civilians by the terrorists has heightened as disenchantment with the latter's activities has increased.

A sustained effort has been made by the terrorists to change the very tolerant character of Islam practiced for centuries in the Valley. The Islam being introduced by the terrorists throws acid on women who do not wear the "burqa", an all encompassing robe. 400 schools have been destroyed and education disrupted so that children are "freed" from the mainstream and turned into rabid fundamentalists, particularly by the pro-Pakistan groups like the Hezb-ul-Mujaheddin.



Foreign mercenaries in Kashmir.

As disenchantment with militancy grows in the Valley and on occasion the people of the Valley have voiced their opposition to acts of terrorism, Pakistan has begun to send in armed foreign mercenaries to re-inforce the "Jehad".

Humanitarian institutions such as hospitals in the Valley have been subjected to intimidation with doctors being threatened; hospital premises being used to hide weapons; doctors and nurses being kidnapped and killed in order to compel obedience to the terrorists' diktats. The situation has forced many reputable medical practitioners to leave the Valley and to seek employment elsewhere.

8.1 SUBVERSION OF DEMOCRACY

An assessment of the Human Rights situation in the State of Jammu and Kashmir must take the involvement of Pakistan in providing sanctuary, arms and training and finance to terrorists to operate in Indian territory as its starting point since, having created a situation of armed terrorism and subversion of the democratic polity, Pakistan now seeks to exploit the resulting situation by raising the bogey of Human Rights.

Lord Howe speaking in the British House of Lords on the question of human rights observed "... the important question of human rights ... is an inevitable and legitimate question for societies such as our own that are struggling with the uneven balance between, on the one hand, the forces and agencies of Government charged with the uncomfortable duty of upholding the rule of law- all of whose decisions are open to challenge, open to appeal, open to debate . . . and on the other hand terrorists who are subject to no such constraints; they act as self appointed prosecutors, self appointed judges, self appointed jury and self appointed executioners.."

Democracy, with its concomitant principles of freedom of expression and faith is the surest protector of human rights. Dwelling on human rights, when the very institutions which can guarantee human rights are the target of terrorism spawned and supported from across a State's borders, is self destructive. It diverts attention from what should be the primary focus - the preservation of the human rights of all citizens, not only a gun wielding minority.

The Government of India is extremely conscious of the need to protect the human rights of all its citizens.

When India became free in August 1947 it gave itself a representative Government, chosen on the basis of adult suffrage. Its Constitution drew inspiration from the French and American Constitutions while retaining the best of British Conventions which ensure the rights to Freedom and Liberty. It inherited a judicial system from the British, which is based on natural justice and the principles of jurisprudence.

India, has been in the forefront of the struggle against colonialism and apartheid. It is a signatory to the Universal Declaration on Human Rights, and has acceded to the two International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights in 1979. In fact the Indian constitution guarantees almost the entire gamut of Civil and Political Rights, and the Directive Principles of State Policy, which form a part of the Constitution, require the Government to promote social and economic rights.

Strange then that India should come under criticism for alleged violations of Human Rights.

No one disputes the fact that at times, faced with the violence perpetrated by the terrorists, some violations have been caused by the security forces also. The question arises have the excesses been condoned? What are the safety valves? The institutions of democracy - the legislature, the judiciary and the press - have played a vital role, in putting a break on the executive and ensuring the Human Rights are not violated with impunity. The Parliament of India and the State Legislatures keep the Executive under close scrutiny. India has an independent Judiciary and a free Press. Alleged excesses have been exposed in the Press, and taken up by the Legislatures and in some cases followed up suo-moto by the Judiciary. In the recent past, the country has also seen the emergence of many non-Government organizations, which have taken up the cause of Human Rights. And more importantly a National Human Right Commission was set up recently.

The Indian Security Forces have had to fight the terrorists, particularly in Jammu and Kashmir, under very difficult conditions with grave danger to their lives. Whenever they are under pressure, the terrorists resort to a deliberate disinformation campaign making all types of wild allegations against the Security Forces, to demoralize them and deflect the thrust of their operations.

One of the allegations leveled against India is that the Armed Forces (Special Powers) Act and the Terrorists and Disruptive Activities (Prevention) Act confers immunity on the Security Forces for "anything done or purported to be done" under the Act. Such conclusions are grossly irrational. The special powers conferred on the members of the Armed Forces do not keep them out of the purview of the law of the land. They are accountable for their actions.

All allegations against the security forces are investigated fully and pursued vigorously. Most of the allegations made against the Security Forces have been found to be inaccurate, highly exaggerated and fallacious. Punitive action has been taken whenever proved to be true. Despite the fact that over 700 security force personnel have lost their lives in encounters, grenade attacks and mine explosions, action has been taken against 174 personnel of the Security Forces. The punishment ranged from imprisonment upto 10 years, dismissal from service, suspension and forfeiture of seniority.

Because of orchestrated propaganda, an impression has gained currency that the Government of India is not seriously concerned about the violation of Human Rights. This is not true, and the impression needs to be dispelled. A National Human Rights Commission was established through an ordinance, and later confirmed by an Act of Parliament in 1993. The Human Rights Bill provides for the setting up of Human Rights Commission at State levels too.

The National Human Rights Commission has come into being with a former Chief Justice of the Supreme Court of India as its Chairman. The Commission has also taken cognizance of the recent events in the Valley, and has invited information about the violent incidents in such sensitive spots like Bijbehara.

Allegations of Human Rights violations have been leveled against India by Pakistan to gain international support in its proxy war against India. The method followed is simple. Whenever they are under pressure, the terrorists in Jammu & Kashmir resort to a deliberate disinformation campaign, making all types of wild allegations against the Security Forces. Besides the threats of killing, extortion and kidnapping, the terrorists often browbeat the ordinary citizens, into making bizarre allegations. Based on the stories inspired by the terrorists and also on a few occasions when Security Forces may have overstepped their limits many Human Rights organizations have published exaggerated reports of alleged excesses. The reports published in the local Press in the Valley under threat of militants are fed to agencies across the border who use it in their anti-India campaign. They are also used by international Human Rights organizations.

In Kashmir alone action has been taken against 174 officers and men of the Security Forces. They include imprisonment upto 10 years for 67 members of the Security Forces, (ii) dismissals, removal from service, or compulsory retirement for 16 personnel (iii) reduction in rank or loss of seniority for 7, (iv) other departmental penalties for 44 personnel and (v) suspensions and arrests pending enquiry for 36 personnel.

But while the institutions of Indian democracy make the government apparatus answerable for human rights violations, is there any similar mechanism for controlling the terrorists? Debating the human rights issue without answering this pertinent question will remain a futile exercise devoid of any relevance to the conditions in Jammu and Kashmir.

9 CHAPTER IX - MEDIA IN THE KASHMIR VALLEY

The Press in the valley is at the mercy of the militants. Correspondents of national dailies who tried to be objective have been beaten up and driven out of Kashmir. Any journalist who does not faithfully report the utterances of the leaders of the various militant outfits, almost all of it propaganda, has to face their wrath.

One of the popular Urdu dailies published from Srinagar, the Aftab, decided to close down on September 10, 1993, following a directive from Jamait-Ul- Mujahideen, a pro-Pakistan outfit, asking the editor of the paper to appear before it within one week.

Earlier, on August 31, 1993 the house of the founder editor of the paper, Sanaullah Butt, was gutted. The surmise is that the fire which destroyed the one-storeyed house of the editor in Soura was the handiwork of the militant group which had summoned him.

During recent times, other papers have come under militant attack, the common allegation being that they have been writing "anti-movement" reports. The problem is that different groups perceive "anti-movement" in different ways. For instance, there was a spate of incidents after one group, the Jammu and Kashmir Liberation Front, was credited with having issued a statement substituting "self rule" for "independence" as the goal of the movement in the Valley.

When the report was published, the chief of Mahaz-e-Islami, Inayatullah Andrabi, issued a statement condemning it in strong terms. The statement was published in the Srinagar Times which earned the wrath of the Jammu and Kashmir Students Liberation Front which imposed a ban on the paper; the Srinagar Times suspended publication forthwith (August 28 1993). The coordination committee of working journalists met in Srinagar and decided not to publish controversial statements issued by rival militant organizations. Following the decision the Urdu daily Al Safa did not publish the statement sent to it by Andrabi. The result was that the office of Al Safa was attacked on August 30. The militants ransacked the press and broke the furniture the television and telephone.

Earlier in August the militant organizations had also banned Greater Kashmir the only English daily published from the Valley for writing an "anti- movement" report. The paper resumed publication after 12 days. The Srinagar Times resumed publication on September 11, 1993.

One of the early victims in the print media was the editor of the Urdu daily Al Safa. A highly respected person the editor Mohammed Shaban Vakil, was shot dead in his office on April 23, 1991. A powerful explosion damaged the printing press of the daily Aftab on November 4, 1990. The other victim of militant anger was Srinagar Times edited by Sofi Ghulam Mohammed. An explosion took place at the Dal Gate residence of the editor on October 2, 1990.

Al safra voiced the problems faced by the media in Srinagar when it said: "During the last four years militancy has affected all shades of public life in the Valley. The Press had also to see ups and downs during these years. At times journalists had to hear unbecoming treatment at the hands of the government and at times militant outfits burnt copies of newspapers broke the furniture and humiliated journalists... Local newspapers and correspondents have had to suffer more at the hands of those other than the government. Publication of newspapers has been banned at will and their copies burnt by militants... statements about clashes between different militant outfits have been a source of great anxiety for local journalists. If the length of the statement of one organization exceeded that of the other outfit the paper had to hear the onslaught. The profession of journalism has been tied in chains and anybody who tries to break the chains could be sentenced to death."

9.1 ASSASSINATIONS

The targets of attack are not only newspapers in Srinagar but also other media. The newsrooms of All India Radio and Doordarshan are under constant threat. The casual newsreaders of the electronic media have been asked to dissociate themselves from voicing the programs and reading the bulletins. An assistant news editor of All India Radio in Srinagar was beaten up by militants and the assistant news editor of the Television station was abducted and released a week later after a thorough drubbing The

news staff have still not forgotten that the director of Doordarshan (Television) in Srinagar, Lassa Koul, was killed by the militants in February 1990. This was followed by the killing of an assistant director of the State Information Department (SID), P. N. Handoo, and the SID joint director, Syed Ghulam Nabi.

Several correspondents representing national newspapers left Srinagar in early 1990. Some of the correspondents are now operating from Jammu and some have returned to their headquarters with their papers deciding not to post a permanent correspondent in the militant dictated atmosphere in Kashmir. Following the murder of Lassa Koul the news rooms of All India Radio and Doordarshan were shifted to New Delhi and Jammu respectively in 1990; the newsrooms shifted back to Srinagar only in 1993.

Newspapers published from Jammu and elsewhere and correspondents posted in the State have also suffered at the hands of the militants at one time or another. For a time the entry into the Valley of the Jammu-based papers Excelsior and Kashmir Times was banned by the Hizbul Mujahideen. Sunday the weekly published from Calcutta was the target of militant ire for sometime and one of its correspondents was banned from entering the Valley. So was the correspondent of the Indian Express. For a while the Wahadat-e-Islami prohibited the entry of the BBC bureau chief in India, Mark Tully, into the Valley.

9.2 DOCTORED REPORTS

Hizbul Mujahideen one of the militant outfits has directed that statements of Kashmiri leaders like Dr. Farooq Abdullah and Ghulam Rasool Kar should not be published. The militants have also directed the Press that no suggestion should be made in the media that the Kashmir issue could be settled through negotiations. When newspapers sought to disregard the code explanations were called for and bans were imposed.

The language Press in the Valley is the focus of attention of the militants. Facing the gun, it has little choice except to publish distorted and exaggerated stories. Stringers controlled by the militants put out colorful and doctored reports which are a travesty of the truth. The people in the Valley who would rather believe what is printed in the local Press rather than the news put out by All India Radio and Doordarshan get worked up by the provocative militant- inspired writings and often come out in the streets to stage protest demonstrations. The foreign media which often has a problem understanding the nuances and background then project the demonstrations as a reflection of the spontaneous support of the people for the militants and secession. This is the chain reaction sought to be achieved. The diabolical hand of Pakistan is behind this orchestrated campaign against India. Disinformation, false reports and rumors are floated by militants and these are forced on the local media. This is for instance what happened in 1991 when charges of excesses, atrocities, torture, arson, rape and loot were hurled against the Army which had been called out to aid civil power in Kashmir in Kunan - Poshpora.

The Army not wanting its honor and dignity sullied, complained to the Press Council of India and asked for an independent, impartial enquiry. The Press Council appointed a committee which went to Kashmir, visited the various sites of action and interviewed a large number of people - villagers, men and women, police and medical officers, judicial and administrative officers, journalists and Army personnel of all ranks. After its investigation the committee produced an extensive well-documented report in June 1991.

The conclusion of the committee was that the assumption that the security forces had been given a free hand to "wreak vengeance on a rebellious and anti- national population is totally unsubstantiated". The committee concluded that "all things considered" the Indian Army had "emerged with honor". The committee investigated a number of media stories presenting "human right excesses against the Indian Army in Kashmir" and found them "grossly exaggerated and invented". Thus the committee remarked that human rights activists and organizations "must continue their watchdog role in Kashmir but they need to be more cautious about publicizing their findings". The committee warned that for some militant groups in Kashmir "it is a jihad with martyrdom awaiting those who lose their lives. And they have two weapons guns and words. With the gun they threaten the physical existence of the opponents while their propaganda is aimed at the minds of men".

9.3 PRESS EXASPERATED

Some newspapers have had the courage on occasion to write boldly. The Urdu daily Al Safa of Srinagar, commenting on the destruction of schools, colleges and professional teaching institutions by the pro-Pakistan militant organizations, questioned (in the December 11 1990 issue) whether the government of Pakistan would reconstruct the schools, offices, bridges, hospitals and other national assets which had been destroyed by their agents? Also quoting the Pakistani Press the paper said that thousands of villages in Pakistan were without electricity and in the interior of the Sindh province roads barely existed.

An indication of the exasperation of the Press in Srinagar is provided by the statement issued by the Kashmir Editors Conference on November 14, 1992, which said that the members of the Conference unanimously decided not to entertain "uncalled for and purposeless" bans imposed by militant organizations on the publication of newspapers in the Kashmir Valley. The decision to defy the ban was taken at an extraordinary meeting of the Conference following the reported ban on the daily, Aftab, imposed by one of the militant organizations. The Conference decided that if a ban is imposed on any newspaper it will be considered a ban on the publication of all newspapers associated with the Conference.

The Press Council of India appointed a Committee in December 1993 to examine the threats faced by the media. After visiting the Valley and holding extensive discussions with the media persons and officials, the Committee concluded that there was an overwhelming fear of the militants over all sections of society. The press and the electronic media are under constant threat of bans arson violence abductions of employees and their families bomb attacks and killings. The Committee recommended better security arrangements and action against erring newspapers.

It is true that the Press has to guard its freedom zealously and should brook no interference from the government in a democracy. A subservient Press will sound the death-knell of democracy. But in a situation as it prevails in the Valley when the militant organizations are forcing newspapers to toe their line at the point of a gun where is the freedom of the Press and who is to guarantee it?

10 CHAPTER X - THE TIDE AGAINST MILITANCY

One should not get the impression that despite Pakistan's proxy war the entire population of the Valley or even a majority of them are sympathetic to the militants. The demonstrations against the dastardly deeds of the various militant groups clearly show that the tide is turning; fear is gradually being replaced by angry outbursts against militants.

A spontaneous public protest was first witnessed in March 1990 when the gory killing of a popular political leader Mir Ghulam Mustafa took place. People held massive rallies in the Chadura Assembly constituency of Badgam raising anti-militant and anti-Pakistan slogans.

Such resentment gathered pace in 1991 when from February to December that year, on 25 occasions local citizens staged demonstrations against militant violence inter-gang clashes of militants killing of local youth, extortion of money and attempted bank breaks, timber-looting by militants and grenade attacks and bomb explosions. The popular protests were marked by people taking out processions and strikes.

Following the killing of a Muslim Janbaz Force (MJF) militant Nazir Ahmed Shah by the Hizbul Mujhideen (HUM) militants, 600 local people of Lassipora Kupwara demonstrated on February 10, 1991, raising anti-Pakistan and pro- India slogans. When a young man was killed by HUM militants at Batmaloo Srinagar on April 30, 1991, more than 200 people of the area took out a slogan- shouting protest procession.

Shops and establishments in Lal Chowk, Srinagar, remained closed in protest against a grenade attack by militants at Goakadal (November 18, 1991). Four citizens had lost their lives and 20 others were wounded. It was generally believed that the blast was caused by HUM. Again the killing of Ghulam Mohammed Butt by the militants at Chawalgam, Anantnag, resulted in shops remaining closed and transport being suspended on November 30, 1991.

On the same day in different areas some more angry protests were witnessed. Local shopkeepers observed a "hartal" in protest against killing of a local Muslim by militants at Bijbehara, Anantnag. Again, following the kidnapping of a youth by the Al Umar militants, shopkeepers pulled down their shutters and 3000 people held a demonstration at Alamgari Bazar, Srinagar. On December 14, 1991, a large number of villagers of Wagooke, Baramula, took out an angry procession expressing resentment against the atrocities committed by the militants. Two days later in Kalantra, also Baramula, the villagers overpowered two Al Barq militants, Jamshed and Ezer, when they were found extorting money. Their arms were snatched away and they were given a severe beating.

The voices of protest became more strident in 1992. There were about 50 instances of open protests and demonstrations by villagers, women and city- dwellers against violence perpetrated by militants; injuries caused to women, violent, inter-gang battles, abductions, rapes, misuse of mosques and the killing of Shia Muslims.

Following the slaying of several pro-Jammu and Kashmir Liberation Front (JKLF) and pro-independence overground leaders and those who had surrendered to the security forces by the pro-Pakistani militants at Anantnag during March 1992, a number of militants fled to Jammu. The brutal killings generated resentment among the people. Muslim women in large numbers (March 15-17, 1992) demonstrated against the killing of innocent people. During a public protest meeting (Anantnag March 17, 1992) burqa clad women delivered angry speeches alleging that 300 women had been raped by militants during February-March 1992.

10.1 RAPE BY MILITANTS

When on March 31, 1992 militants of HUM abducted an area commander of the Al Jihad Force and shot at five members of his family at Sultanpura Badgam (the brother and sister of the "Commander" succumbed to their injuries while three other members of the family including the mother were seriously wounded), considerable local wrath was witnessed against militancy.

When three members of a Hindu family were killed at Srinagar on April 1 1992, after the housewife and her teenage daughter had been gang raped, there was such indignation and revulsion that 5000 local citizens staged a protest demonstration as also enforced a two-day local hartal at Habbakadal, Srinagar. In sympathy with this, 2000 college girls held a demonstration at the Women's College, Kothibagh, Srinagar, and later took out a protest procession.

There have been a number of demonstrations, protests and agitation, particularly by women against the molestation of girls and the raping of women by militants. More than 300 women of Batmaloo, Srinagar, took out a procession against the activities of militants (April 10, 1992). Five days later when a married woman Khatjee, wife of Ghulam Qadir Sofi, was abducted by militants, the local people mounted a sit-in strike at Babademb, Srinagar. Again in the wake of the abduction of a woman by some militants at Chakla Baramula, an armed clash took place between two rival militant groups in which three villagers were killed and fifteen wounded. Later the villagers caught hold of three militants, shaved their heads, blackened their faces and paraded them through the village (May 12, 1992). Following the rape of a Muslim girl by three militants and her subsequent attempt to commit suicide (Baramula June 6, 1992), more than 600 locals gathered, raising anti-Pakistan and anti-militancy slogans.

Three thousand angry men marched raising condemnatory slogans against militancy when a young boy Ghulam Mohideen was kidnapped by the militants at Anantnag on April 10, 1992. On that day there were angry slogans raised at Rainawari, Srinagar, and about a 100 women took part in a procession at Ziarat Batmaloo.

10.2 ATTACK ON SHIAS

Similarly, there were protest marches by the Shia Muslims at Badgam. A Shia Muslim, Mohammed Yunis Yaloom, was shot dead by militants at Sumbal, Baramula. The local Shias resented the killing and closed their shops in protest on November 4, 1992. Local citizens of Shopian, Pulwama, came out on the streets raising anti-militancy slogans (May 20, 1992) when the body of a local Muslim, Hassan Mir, resident of Arigam, was found hanging from an electric pole. Hassan Mir along with his son were kidnapped two days earlier following the rescue of his abducted daughter from the militants by the security forces.

When clashes took place between gun-wielding rival militant groups resulting in the death of innocent people and the destruction of property the local population showed their anger and resentment through slogan shouting demonstrations. Such incidents were recorded at Noorpora, Pulwama (May 20, 1992); Sopore, Baramula (May 29, 1992); Pattar, Baramula (September 5, 1992); Khanwari, Srinagar (December 9, 1992).

Following an explosion in a taxi when four Muslims including a woman were killed and the driver was seriously injured the locals at Phlipora, Anantnag, demonstrated against the militants on October 13, 1992. Again, when a grenade exploded on the road at Soura, Srinagar, wounding 14 persons, including four women, the local residents organized an anti-militant demonstration (November 2, 1992).

The people are also angered by the systematic damage done to educational institutions by the militants. Muslim fundamentalist militant groups have gone about destroying school and college buildings as also kidnapping school boys and girls for forcible indoctrination recruitment to militant groups or for obtaining ransom money. Except the Islamic fundamentalist educational institutions, schools and colleges have remained the prime targets of the militants. Five graduate colleges one professional institution, 79 primary schools, 81 middle schools, 63 high schools and 23 higher secondary schools have been destroyed by the militants. In addition, 240 other educational institutions have been damaged. Christian missionary schools at Srinagar and Baramula have been subjected to repeated bomb attacks.

Militants have entered school campuses, interfered with the administration of schools attacked libraries and harassed girl students. This has resulted in heavy dropouts. During 1991-92, dropout rate of boys was 44 per cent and of girls 50 per cent. This has resulted in resentment which was voiced when militants entered a school at Hajan in Bandipur (May 20, 1992) and tried to pull out a student, Ghulam Nabi, from his class. All the students of the school came out of their classes and pelted stones on the militants.

The strain of militancy on the economy social order and law and order has taken a heavy toll of the average Kashmiri's self-confidence. He is beginning to crack. It is a question of time before the people's resentment against militants who have interfered with their daily chores often depriving them of their livelihood turns to fury. And when that happens, the militants will be truly on the run.

11 CHAPTER XI - PAKISTAN KEEPS THE BOOTY AND SHARES SOME

In retrospect one must confess that constant resort to double-think and double-speak by Pakistani propaganda mills has immense capacity to confuse. It becomes necessary to repeat therefore that Pakistan's long professed concern for the right of self-determination for the Kashmiri people is mere camouflage. The fact is that Pakistan covets the land that is Jammu and Kashmir and not its people. This becomes evident when you look back and see how blatantly Pakistan has flouted the UN Security Council resolutions it now chooses to swear by, concerning the determination of the will of the people of Kashmir. Not only did Pakistan not vacate the territories occupied by it, in disregard of the self-same resolutions, as a consequence of its first invasion of the State, it went a step further. It virtually annexed the occupied territories. It did not stop just at creating a fictitious State of Azad (POK) Kashmir; it went much further. It ceded parts of the State of Jammu and Kashmir, namely Gilgit, Skardu and Baltistan among others and redefined these as the Northern Territories administered directly by Islamabad.

When some people from POK protested against this gross violation of the State's territorial integrity they were asked to shut up. It doesn't end there. The arbitrary takeover by Pakistan of these territories was challenged in the High Court of POK and even the court felt impelled to declare Gilgit, Skardu, Baltistan etc. as part of POK. There were public protests even in these so-called territories as well as in POK but the Government in Islamabad ignored the protests as well as the court verdict.

And to think of it, the so-called Northern Territories are stretched across a 60000 km. landmass with a population of 900000. Not content with this the Pakistan Government chose to make a goodwill gesture to China by ceding another 5180 km. of the Northern Territories to it to facilitate the construction of the Karakoram highway. And China already had under its occupation another 37550 sq. kilometers of the state's territory in the region. Thus China has come to occupy 42730 kilometers of the state of Jammu and Kashmir, thanks mainly to Pakistan's "generosity".

Then given the Pakistan-imposed constitution of Pakistan Occupied Kashmir, the people inhabiting the area have no right to opt out of Pakistan even if they wanted to. Which means that they have no right to decide their own future, the very right which it demands for the rest of the population of Jammu and Kashmir. Besides, who is to decide for the 900,000, who, having been declared residents of Northern Territories of Pakistan, have as per the Pakistani diktat ceased to be citizens of Jammu and Kashmir. To go by the Pakistani logic they have already decided their future like their "brethren" in POK.

Contrast this with the extra-ordinary care taken by India to protect the Kashmiri identity. The founding fathers of the Indian republic, sitting as the Constituent Assembly of the Union, inserted a special provision (Article 370) in the Federal Constitution conferring special rights on the people of the State. This was in addition to the constitution which elected representatives of the Kashmiri people gave to themselves within the framework of the Indian Constitution. Minor aberrations apart, the Union of India has respected the uniqueness of Kashmir, a State of the Union which had a distinct history of its own. In the words of India's first Prime Minister Jawaharlal Nehru (Lok Sabha, June 26, 1952): "Do not think you are dealing with a part of Uttar-Pradesh, Bihar or Gujarat. You are dealing with an area historically and geographically and in all manner of things with a certain background Real integration comes of the mind and heart and not of some clause which you may impose on other people."

11.1 COLONISATION OF POK

And mind you this is not something unique to the Indian federation. Take the United States of America. What stirs a Californian or a Texan may leave a New Yorker or Bostonian completely unmoved. Yet such was the concern that the Indian leadership of the day had for what is generally described as the Kashmiri identity. To retain that identity the Indian Government scrupulously honored a law (enforced by the Dogra Maharajas of the State) which forbade any non- Kashmiri, someone not born or a resident of the State, from acquiring immovable property of any kind in the State. This was done to ensure that the demographic character of the State is not altered. The law exists and is enforced even today.

Contrast this with the virtual colonization of Pakistan Occupied Kashmir and also of the so-called Northern Areas of Pakistan.

It speaks well of the Indian polity that notwithstanding the odd noise made occasionally by one political party or another about the abrogation of Article 370 (conferring special rights on the State) of the Indian Constitution, the leadership of the country has stood firmly by this commitment. Initially the State's accession to the Union was limited to Defense, Foreign Affairs, Communication and applied only specified parts of the federal Constitution to the State. Other subjects and other Constitutional provisions could be extended only with the concurrence of the State Government. It's likely, though, that in some cases there may be a feeling that the concurrence was obtained without proper consultation with the State government. But that is more an exception than the rule. What's important is that the system did by and large work to the satisfaction of the Union and the State Governments. Given India's awareness of the sensitivities of the people of Jammu and Kashmir it is not unlikely that leaders in New Delhi and those in the State have been periodically endeavoring to set the record straight by removing some discrepancies that may have crept into the Constitutional relationship between the Union and the State. That's the way democracies function, not by diktat but by mutual consultation.

The people of the State have participated in the general elections along with the rest of the country. And like in some parts of the country it must be conceded that there were some instances of malpractice. Even in mature democracies electoral malpractice do occur. But this does not mean that people should abandon the democratic process and resort to arms to seek redressal of grievances genuine or imagined.

What has Pakistan offered to the people living in the territory occupied by it except an enactment which has virtually reduced the people living there to the level of virtual serfs. Flouting the UN resolutions it now flaunts at anyone who cares to listen, the then leader of Pakistan Zulfiqar Ali Bhutto virtually annexed the POK with one stroke of his pen. The Azad Jammu and Kashmir Act of 1974, to repeat, declared (Article 3) Islam to be the state religion of POK, forbade activities prejudicial or detrimental to the ideology of the State's accession to Pakistan (Article 7), disqualified non-Muslims from election to the Presidency and prescribed in the oath of office the pledge "to remain loyal to the country and the cause of accession of the State of Jammu and Kashmir to Pakistan". Then it proceeded to set up a State Council for POK named and controlled by Islamabad. And this was not a provisional regime. It was a declaration proclaiming POK as an integral part of Pakistan. It is a regime installed by Pakistan, riveted firmly to its administrative apparatus and committed to exist as one of its integral parts.

With that enactment, depriving the people of Pakistan occupied territory in Jammu and Kashmir of all their democratic rights Pakistan has forfeited the right to tom-tom its concern for people's right to self-determination.

11.2 THE COMMUNAL PERFDY

Earlier on we had spoken of the various distinct units that form the State of Jammu and Kashmir - some predominantly Hindu, some predominantly Muslim and some predominantly Buddhist. To go by the Pakistan - ordained constitution for Pak-Occupied Kashmir, no non-Muslim has a say in determining the future of Jammu and Kashmir. Pakistan's sole interest thus would appear to be to somehow, by hook or by crook, get hold of the Valley, to convince itself that the two-nation theory (Muslim and Hindu) is still valid. Thus you find the Pakistanis, a half century and three wars after the partitioning of the sub-continent, seeking to further their interests by fomenting an armed insurgency. They tend to forget the fact that India has the second largest Muslim population in the world. So far as Indian Muslims are concerned they surely don't look up to Pakistan as their protector. If they have problems at home so have other segments of Indian society. Even in relation to its Muslim population - given its size, you cannot call it a minority- India has a better record than Pakistan. The atrocities being committed even today, on Muslims who migrated to Pakistan in 1947, are heart-rending. And nowhere in Pakistan is this epidemic more rampant than in Sindh, home to the founder of Pakistan, M. A. Jinnah, the present Prime Minister Ms. Benazir Bhutto and her father Zulfiqar Ali Bhutto.

Pakistani concern for the Muslim brethren in Kashmir is at best an effort to hoodwink the gullible, to confuse the Muslim world and arouse the sympathy of the do-gooders who would stake their all in the name of self-determination or human rights. Listen to this one from Qaid-e-Azam Mohammed Ali Jinnah, the founder of Pakistan, just days before the dawn of independence in the sub- continent. Said he on June 17, 1947: "Constitutionally and legally the Indian (princely) States will be independent sovereign states on the termination of (British) paramountcy and they will be free to decide for themselves to adopt any course they like - accede to India or Pakistan or decide to remain independent. But this right belonged to the ruler. We do not wish to interfere with the internal affairs of any state, for that is a matter primarily to be resolved between the rulers and the peoples of the states." Not one word about the rights of the people.

11.3 SHARP CONTRAST

In sharp contrast stood the resolution passed on June 15, 1947 by the All India Congress Committee. It said: The people of the (Princely) States must have a dominating voice in any decision regarding them. Had the proposition been accepted by Jinnah all three non-acceding states then - Kashmir, Junagadh on India's western coast, and Hyderabad - would have had a plebiscite. No, Jinnah would have none of that. He sought Jodhpur's accession and accepted Junagadh's if only to harass the Indians.

Opportunity beckoned Jinnah again, six days after Kashmir's accession on October 26, 1947. Lord Louis Mountbatten, the last Viceroy and Governor General, went to Lahore on November 1 and put forth a written proposal offering a plebiscite in all the three states.

Mountbatten recorded Jinnah's rejection of the idea of a plebiscite. "It was redundant and undesirable to have a plebiscite when it was quite clear that the states should go according to their majority population, and if we (India) would give him the accession of Kashmir he would offer Junagadh direct to India?"

The truth is that Jinnah was then unsure of the outcome of a plebiscite in Kashmir. He told one of the pre-eminent Pakistani leaders of the day, Mian Iftikharuddin that he wanted to keep Hyderabad as a thorn in India's side.

So, when you look back at this period of history the conclusion is obvious. Jinnah, the astute man that he was, knew that even in an ordinary opinion poll, forget a full-fledged plebiscite in Kashmir then, the result could have gone against him. What followed was a natural corollary - the attack by Pakistan on the Valley, the accession of the state to India fully backed up by its people, India complaining to the UN against Pakistani aggression, the UN Security Council and UNCIP resolution laying down the ground rules for a plebiscite, Pakistan reneging on all the commitments made by it et-al.

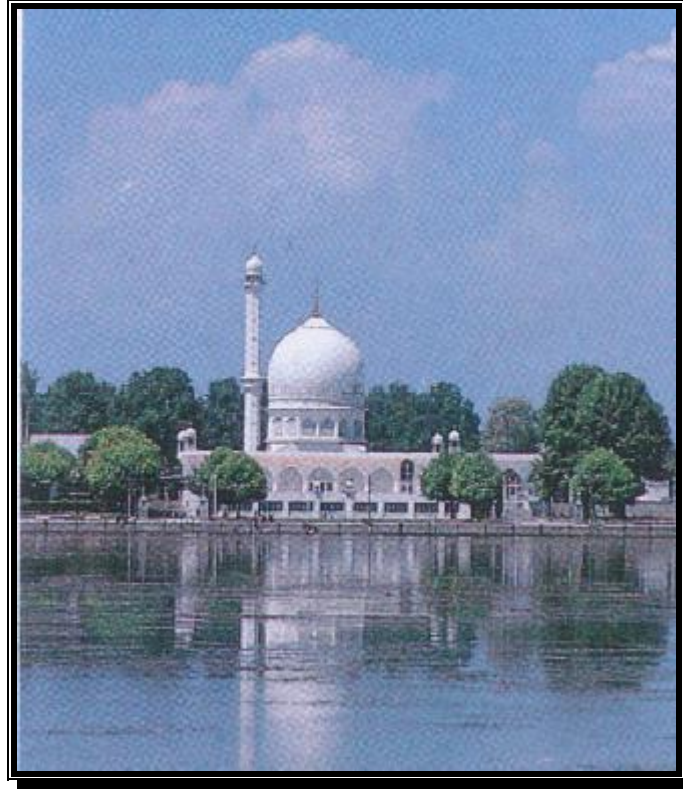
Two further wars and two agreements later- both committing the two countries to resolve their problems bilaterally ... Pakistan has now chosen to harp on resolutions that have lost their relevance.

As the futility of the insurgency unleashed by it becomes evident, Pakistan, predictably is becoming ever more desperate to keep the issue alive. That's how you have this sudden Pakistani concern for human rights violations in Kashmir. There have undoubtedly been, as we said before, some cases of excesses by the Indian security forces which have occurred when they faced armed militants. But action has been taken to identify and punish the offenders.

11.4 HAZRATBAL - THE LITMUS TEST

What Pakistan forgets to mention is that it is the one which has inflicted the hardships of the past four years on the Kashmiri people by sending in trained and well armed terrorists into the state. No state can countenance such brazen violation of its unity and integrity and if laymen get caught in the crossfire between the militants and the security forces they have to thank Pakistan for it.

Nothing brings out the Indian commitment to democracy and democratic values as strikingly as its handling of the seizure of Kashmir's holiest shrine Hazratbal by Pakistani-backed terrorists in 1993. It was a diabolical plan whose purpose was to tarnish India's image by trying to provoke Indian security forces to react and force their way into the Shrine. In the event the raising of a month- long cordon around the Shrine complex broke the will of the armed men inside and led them to surrender themselves to the security forces.



The Hazratbal Shrine.

Picture Courtesy: J & K Tourism

Here again one saw Indian democracy in action. When a group of lawyers moved the Kashmir High Court seeking food and medical attention for the terrorists inside the Shrine the court readily granted the prayer and the state administration was equally prompt in carrying out the court directive. Thus, for days on end, food was carried to the extremists and doctors allowed to get into the Shrine complex to tend to the sick who, as it turned out, were largely lay men and women and some children held captive inside by the terrorists.

Such things can happen only in living, vibrant democracies. And democracies do not have to stage plebiscites at the drop of someone else's hat just to counter baseless charges like the Indian state having let loose a reign of terror in the State. The capacity to be just and fair is the hallmark of a democracy and the inclination to be unjust makes for what Pakistan has been trying to sell all these past nearly live decades.

12 CHAPTER XII - CONCLUSIONS

The State of Jammu and Kashmir has historically been renowned for its tradition of harmonious co-existence between Kashmiris of different faiths and religions. A land of great beauty and a hospitable and cheerful people, it is today in the grip of violence - a violence garbed in fundamentalist hues alien to its people. For as long as one looks back in history, the State has remained free of communal tension. The canker of communalism skirted past the State even in the worst days of Hindu- Muslim tension that gripped the country before and after independence. But lately, Pakistan, never tired of creating problems for India and never for a moment having the welfare of the people in mind, has been fanning the flames of communalism in this once tranquil State through its agent provocateurs. It has succeeded to the extent of driving out most of the Hindu population in the Valley and destroying the very Kashmiri identity that India has sought to preserve. The deliberate targeting of the minorities, and any who spoke against terrorism, has led to an exodus of both Hindus and Muslims from the Valley. Since 1990 nearly 250,000 Hindus and 50,000 Muslims have sought refuge in Jammu, New Delhi and other parts of the country where they had relatives or had business interests or means of employment.



Refugee camp for Kashmiri Pandits in Jammu.

One is bound to wonder what has led to this great tragedy in Kashmir. True, like in any functioning democracy, there have been genuine grievances of the people of Jammu and Kashmir which may not have been adequately addressed. Administrative and political lapses and indifference may have created resentment. But, since Independence, the Indian polity has reserved a special place for Kashmir enshrined in the Indian Constitution. Since 1947, successive Governments have accorded priority to developmental activities, set up industries, educational institutions, hospitals and encouraged the growth of Kashmiri arts and crafts and tourism. Jammu and Kashmir has been the pride of India and the Kashmiri people reciprocated this sentiment and in the three wars that Pakistan thrust upon India, they thwarted Pakistan's designs.

What has led to the violence witnessed in the State today? Despite Pakistan's protestations to the contrary there is an irrefutable body of evidence collected by Indian and foreign analysts, that clearly lays the onus for the violence on Pakistan. Manipulation of the grievances, perceived or otherwise, and the religious beliefs of a peoples, to encourage them to undertake an armed insurgency does not conform to good neighborly behavior and is a blatant flouting of the principles agreed to by Pakistan when it signed the Shimla Agreement. How would Pakistan have dealt with similar violence? History shows that Pakistan used its armed forces to ruthlessly crush any opposition to its rule in Baluchistan. In Sindh, the Pakistan army is engaged in "Operation Clean Up". A country that has had a tradition of military dictatorship is ill-placed to talk about how a secular democracy like India should deal with the aspirations and problems of its people.

Pakistan's record in Pakistan Occupied Kashmir has been infinitely worse. The parts of Kashmir it is occupying and has annexed have been subjected to gross misrule and a total and consistent denial of democracy. Nearly forty seven years after its creation, Pakistan has not accorded the right of adult franchise or any representation in the National Parliament or State Assembly to the peoples of the so-called Northern Areas. And one can hardly wish away the fact that Pakistan has ceded a part of Kashmir occupied by it, to China. What moral, legal or any other right authorized Pakistan to do so? And with what right does it today claim to be a champion of the Kashmiri people?

12.1 VACATION OF TERRITORY BY PAKISTAN

A solution to the ills that plague the State of Jammu and Kashmir today is imperative. The resolution of the problem does not lie in the various formulae espoused by different quarters - some well intentioned, some mischievous. A pre-requisite to ending the turmoil in the Valley is the cessation of Pakistan's sponsorship of terrorism in Jammu and Kashmir and the restoration of the democratic secular political process that has been bequeathed to the Indian polity by its founding fathers. Pakistan, if it wishes the welfare of the people of Kashmir should vacate the territory of India that it occupies today and allow the Indian ethos of co-existence to blossom in the whole State of Jammu and Kashmir. This would also allow the recommencement of the developmental activities in the State that have been rudely interrupted by Pakistan sponsored terrorism.

Pakistan needs to rid itself of the delusion that it can wear down India through its machinations. Pakistan ought to realize that it cannot achieve through a proxy war what it failed to achieve through three successive wars: to grab this side of Kashmir as it has done in the case of the territory it is at present occupying. One ought to keep in mind that unlike Pakistan, India's presence in Kashmir initially was after completion of the necessary legal processes which were later sanctified through the Constituent Assembly and successive elections.

The dignity of the Indian state would never allow it to compromise with any dilution of its integrity. India has kept the doors open to a dialogue with Pakistan, despite the latter's obduracy. But the offer of a dialogue should not in any way lead Pakistan into believing that India and its people do not have the innate strength and resilience to confront any territorial ambitions that Pakistan may nurture in Jammu and Kashmir.

Pakistan ought to realize that the contours of a solution in 1994 will necessarily be different than those that were envisaged in 1948-49 given Pakistan's concept of selective self-determination. Neither plebiscite nor independence can now be contemplated. It is not beyond the wit of man to devise a solution which satisfies the aspirations of the people within the Indian Union, and redresses the wrongs, if any, they have suffered.

12.2 BILATERALISM

Pakistan would do well to recall the joint statement issued by the All Parties Conference in New Delhi on March 7, 1990, which stressed both the "inalienable bond" between the people of Kashmir and the people in the rest of the country as well as the terms which "guaranteed complete protection of their cultural and religious identity and full expression of their aspiration". It added that all the political parties of India stand by these assurances. This is the will of the people. This is the will of India.

The UN Resolutions, which Pakistan did nothing to observe or implement, have thus ruled themselves out as a basis for any future dialogue between the two countries. The Shimla Agreement by all accounts offers the only viable basis for the two neighboring countries to resume any kind of a meaningful discussion of all bilateral problems. In fact the same spirit of bilateralism largely informs the India-Pakistan accord signed in Tashkent on January 10, 1966 by Prime Minister Lal Bahadur Shastri and Field Marshal Ayub Khan, the then military dictator of Pakistan. Also of interest to the reader should be the constant dialogue which New Delhi has had with the Kashmiri leaders to review and to strengthen the ties binding the State with the rest of the Union.