

Kashmir dispute and its solutions

BY JUSTICE RAJA AFRASIAB KHAN

On 15th August 1947, two independent countries "India and Pakistan" were born on the basis of "Two Nation Theory". On the very first day of their freedom, a dispute about the future of the State of Jammu and Kashmir arose between Pakistan and India. The State is inhabited by an absolute majority of the Muslims. However, the Hindu ruler Maharaja Harri Singh under the active influence and immense pressure of last British Governor General Lord Mountbatten, Mahatma Gandhi and Pundit Jawahar Lal Nehru is stated to have acceded the State to India on the 26th October 1947. Nevertheless, it is proved beyond any shadow of doubt that the said ruler did not at all accede the State to India, nor he could do so as he was on his way from Srinagar to Jammu and he reached his destination at the mid of night on the said date. In fact, the accession is wholly based on fraud, forgery and misrepresentation.

This phenomenon of accession could not be better explained than by an English renowned author Alastair Lamb as he has done in his monumental work *Incomplete Partition: The Genesis of the Kashmir Dispute (1947-1948)* at page 178. At the same page of his book Alastair Lamb has also quoted and relied upon another. American author Stanely Wolpert from his book *Nehru: a Tryst with Destiny*. Both the quotations are as follows. "Whatever the difference of opinion between Nehru and Patel might have been, they did not surface to any significant degree at the morning meeting of the Defense Committee on 26 October. Here it was agreed that it would be best if the Maharaja of Kashmir's signature to an Instrument of Accession be obtained before the Indian troops went in to Srinagar airfield. As such a signature had not been obtained, and was unlikely to be obtained, on 26 October, it would be expedient to create a set of circumstances, which made it look as if it had been obtained, a kind of document laundering.... Both the white paper and V. P. Menon's narrative have served to back up this ruse".

Stanley Wolpert's tale. In *Nehru: a Tryst with Destiny*, on pages 416 and 417 Wolpert relates the story of the signing of the Instrument of Accession. The Instrument of Accession, according to Wolpert, was only signed by Maharaja Sir Harri Singh after the Indian troops had assumed control of the Jammu and

The position which existed in the State of Jammu and Kashmir on 15-8-1947 shall be restored and both India and Pakistan shall automatically step into the shoes of British rulers.

Kashmir 27/7/04

Pakistan approached the world body with a compliant. The Security Council in a resolution held that the elections being held by India in Kashmir could not be a substitute to Plebiscite to be held by UNO. In this way, the result of the said elections were wholly nullified by the UNO.

With this short back ground, now I proceed to give the following various options for a just solutions of the Jammu and Kashmir dispute:

1. The people of the State of Jammu and Kashmir in a fair and just plebiscite under the supervision of UNO shall decide either to accede to India or Pakistan.

Explanation: the Plebiscite shall be completed phase wise, of course, with the free consent and will of the people.

i. In the first stage, people of Azad Kashmir, (ii) Gilgit and Baltistan (Northern Areas) shall participate in the referendum.

iii: In the second stage, Plebiscite shall be arranged in Kashmir valley, Kargil, Poonch, Riasi, Rajori, Nowshera namely up to the areas of River Chenab.

iv. In the last and the third phase, the plebiscite

cally become a part of Pakistan.

3. The People of Pakistan and Azad Kashmir should make tremendous economic, democratic and constitutional progress so as to give positive incentives to the people of Occupied Kashmir to step up and enhance their efforts to liberate themselves from Indian yoke of enslavement for joining Pakistan.

The state of Jammu and Kashmir shall be partitioned on the basis of Two Nation Theory as has already been done in case of Punjab, Bengal and Assam.

Both India amid Pakistan shall withdraw their armed forces from the State of Jammu and Kashmir. In this way, the people in an atmosphere of peace and tranquillity shall themselves be responsible to find out a solution, which should be acceptable to all of them.

6. The State of Jammu and Kashmir shall be entrusted to UNO for 10 to 15 years, which shall run its affairs. After the expiry of the period, the opinion of the people shall be ascertained through fair and free elections.

7. Some people do hold a firm view that an equitable solution to the dispute lies only in declaring the State of Jammu and Kashmir as an Independent State.

8. There is yet another lobby who holds the opinion that there should be a confederation amongst India, Pakistan and free Jammu and Kashmir State.

9. Indian armed forces should be withdrawn from cities/towns/villages as another confidence building measure.

10. Local elections shall be held under the joint control of Muzaffarabad and Srinagar administration. In the result, a common government may be formed with a view to finding a just and sustainable solution to the dispute.

11. A joint reference may be sent to the joint sitting of Supreme Court of Pakistan and Supreme Court of India with a request to give their opinion or to find out a solution acceptable to the people of Jammu and Kashmir.

12. Big powers of the world should be requested jointly to act as facilitators between India and Pakistan for the settlement of the Kashmir dispute.

13. The position, which existed in the State of Jammu and Kashmir on 15-08-1947, shall be restored and the result shall be that India and Pakistan both

This phenomenon of accession could not be explained than by an English renowned author Alastair Lamb as he has done in his monumental work *Incomplete Partition: The Genesis of the Kashmir Dispute (1947-1948)* at page 178. At the same page of his book Alastair Lamb has also quoted and relied upon another. American author Stanely Wolpert from his book *Nehru: a Tryst with Destiny*. Both the quotations are as follows. "Whatever the difference of opinion between Nehru and Patel might have been, they did not surface to any significant degree at the morning meeting of the Defense Committee on 26 October. Here it was agreed that it would be best if the Maharaja of Kashmir's signature to an Instrument of Accession be obtained before the Indian troops went in to Srinagar airfield. As such a signature had not been obtained, and was unlikely to be obtained, on 26 October, it would be expedient to create a set of circumstances, which made it look as if it had been obtained, a kind of document laundering... Both the white paper and V. P. Menon's narrative have served to back up this ruse".

Stanley Wolpert's tale. In *Nehru: a Tryst with Destiny*, on pages 416 and 417 Wolpert relates the story of the signing of the Instrument of Accession. The Instrument of Accession, according to Wolpert, was only signed by Maharaja Sir Harri Singh after the Indian troops had assumed control of the Jammu and Kashmir State's summer capital, Srinagar.

On the basis of the above references it can safely be held that there has been no instrument of accession ever executed by the ruler of the State in favour of India. The document, on the face of it, is based on forgery and fraud. In other words, the said document does not exist in the eyes of International law. Also, the Security Council after thoroughly hearing India and Pakistan, ruled unequivocally, on 13th August, 1948, that people of the State of Jammu and Kashmir were the true Sovereign and in that they had the inherent right to decide about the future of their State in a just and fair Plebiscite to be held under the supervision of UNO. India, despite its total failure before the world forum continued to strengthen its position on ground by holding farcical elections in the State of Jammu and Kashmir. To stem the tide,

shoes of British rulers.

Kashmir 27/7/04

Pakistan approached the world body with a compliant. The Security Council in a resolution held that the elections being held by India in Kashmir could not be a substitute to Plebiscite to be held by UNO. In this way, the result of the said elections were wholly nullified by the UNO.

With this short back ground, now I proceed to give the following various options for a just solutions of the Jammu and Kashmir dispute:

1. The people of the State of Jammu and Kashmir in a fair and just plebiscite under the supervision of UNO shall decide either to accede to India or Pakistan.

Explanation: the Plebiscite shall be completed phase wise, of course, with the free consent and will of the people.

i. In the first stage, people of Azad Kashmir, (ii) Gilgit and Baltistan (Northern Areas) shall participate in the referendum.

iii: In the second stage, Plebiscite shall be arranged in Kashmir valley, Kargil, Poonch, Riasi, Rajori, Nowshera namely up to the areas of River Chenab.

iv. In the last and the third phase, the plebiscite shall take place in Jammu, Kathua, Ladakh and other areas. In this way the Plebiscite. shall be held in a peaceful atmosphere without any disturbance whatsoever.

(Note: More than two million displaced persons from Jammu, Poonch, Riasi, Rajori and Nowshera shall have the right to poll their votes in the said Plebiscite.)

2. In case India decides not to take part in the Plebiscite, Pakistan shall be at liberty to conduct the referendum *ex parte* and, in that event, more than two million displaced persons from occupied part of the State of Jammu and Kashmir, people of Azad Kashmir, Gilgit and Baltistan will poll their votes to show whether they are ready to join India or Pakistan. If the opinion of the people is in favour of Pakistan then the entire state of Jammu and Kashmir shall automati-

cally be transferred to Pakistan. After the expiry of the period, the opinion of the people shall be ascertained through fair and free elections.

7. Some people do hold a firm view that an equitable solution to the dispute lies only in declaring the State of Jammu and Kashmir as an Independent State.

8. There is yet another lobby who holds the opinion that there should be a confederation amongst India, Pakistan and free Jammu and Kashmir State.

9. Indian armed forces should be withdrawn from cities/towns/villages as another confidence building measure.

10. Local elections shall be held under the joint control of Muzaffarabad and Srinagar administration. In the result, a common government may be formed with a view to finding a just and sustainable solution to the dispute.

11. A joint reference may be sent to the joint sitting of Supreme Court of Pakistan and Supreme Court of India with a request to give their opinion or to find out a solution acceptable to the people of Jammu and Kashmir.

12. Big powers of the world should be requested jointly to act as facilitators between India and Pakistan for the settlement of the Kashmir dispute.

13. The position, which existed in the State of Jammu and Kashmir on 15-08-1947, shall be restored and the result shall be that India and Pakistan both shall automatically step into the shoes of the British rulers. From this position, India and Pakistan shall proceed afresh to find out a just and fair solution to the lingering dispute of Jammu and Kashmir State.

14. India and Pakistan shall file a reference in the International Court of Justice for giving its opinion for the just and sustainable solution to the Kashmir dispute.

15. In any case Pakistan must institute a complaint against India in the International Court of Justice for erecting an iron fence in Occupied Kashmir. Reliance in this behalf may be placed on the recent ruling of the court having been given by it against similarly raised iron fence in Occupied Palestine. A unanimous resolution dated 24th January 1957 adopted by UNO may also be usefully relied upon.

The writer is a former Judge, Supreme Court of Pakistan