**Merits of India-Pakistan Peace initiative and merits of Kashmir case**

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April 12, 2021

Peace between India and Pakistan is a UN Charter obligation and good neighbourly relations between India and Pakistan remain a common purpose of the leadership of the two countries. A direct war or a subterranean proxy at the end of the day have their sell by date. The common interest in peace, progress and development of the people surges as a priority.

It is a welcome sign (as reported) that the military leadership in Pakistan and the National Security Advisor in India have started writing a preface for the road map. National Security Advisor of India Ajit Doval has served in Kashmir and he may have associated himself with activities, which may attract a criminal and civil liability. The people of Kashmir do not have any such grievance against Army Chief of Pakistan General Bajwa. He has raised their hopes that Kashmir flows in his blood. There is no reason to disbelieve him. This statement however, has its own difficulties under the UN template on Kashmir.

We havesupported peace at the Third Global Structures Convocation on “Human Rights, Global Governance and Strengthening the United Nations” in February 1994 in Washington. JKCHR addressed an appeal to the Assembly urging it, to assist India and Pakistan, in stopping to invoke the enemy image of each other, so that the two countries could unlock their men and material, otherwise locked to respond to an inherent threat and divert the freed resources to development, health, education, elimination of hunger and peace projects.

Appeal also asked the Assembly to take regard of the fact that India has insulated Kashmir from outside world and that UN should re-orient its priorities to accomplish its unfinished agenda in conflict zones, like Kashmir. The two countries have short listed eight issues in 1997 that remain outstanding and Kashmir remains one of them.

UN SC has agreed to let India and Pakistan engage bilaterally provided that the result is ‘consistent with the principles of UN Charter”. Bilateral efforts are not infinite and it is time for the article 103 of UN Charter to assume itself

Kashmir could not be like any other seven issues in these peace talks. India has explained the equation at the 533rd Meeting of Security Council held on 01 March 1951 and said – “There is a tendency in certain quarters to assume that this is just a dispute between India and Pakistan, and that the views of the lawful government of Kashmir need not be considered. This is a mistaken assumption. As I have already said, the authority of the Government of India over the Government of Kashmir is limited to certain subjects; outside that sphere, it can only advise and cannot impose any decision.”

The impression that Indian action of 5 August 2019 has no anti-dote and is irreversible has no merit. Even if Pakistan backs out (we hope not) from its political, moral and diplomatic support to the people of Jammu and Kashmir, an unwilling people could not be quieted and vanquished by Indian use of military brutality.

India and Pakistan have both on 01 January 1948 and 15 January 1948 made written submissions to the UN Security Council that their engagements under article 33 of the UN Charter have failed and that the failure has brought them to the UN Security Council.On 15 January 1948 Government of India, surrendered the accession of 26th October 1947, at the 227th Meeting of UN Security Council, for a UN supervised vote. India has asked as follows:

“The question of the future status of Kashmir vis-à-vis her neighbours and the world at large, and a further question, namely, whether she should withdraw from her accession to India, and either accede to Pakistan or remain independent, with a right to claim admission as a Member of the United Nations- all this we have recognized to be a matter for unfettered decision by the people of Kashmir, after normal life is restored to them.” Kashmir does not have any accession with India today.

India can’t occupy and colonise a people, which had (and continue to have) their own constitution, their own flag, their own national anthem, their own penal code and their own law of nationality. This special status of Kashmir until the holding of a vote on the provisional agreement (called accession) is carried out under UN supervision, is discussed at page 4 of Report of The State Autonomy Committee published in July 2000 in Srinagar. It states, “But it is relevant to mention here that whereas other Princely States signed the instrument of Accession to India and subsequently the instruments of merger, the accession of J & K State was limited only to the areas of Defence, External Affairs and Communication”. The Committee was set up by the J&K Government on 29 November 1996.

In view of this submission by India at the UN SC the people of Kashmir have a jurisprudence to prosecute their case against India. If Pakistan overlooks it and awards an advantage to India in any peace initiative involving a quid pro quo, it would be doing it at its own peril. People of Jammu and Kashmir (minus the auxiliaries) will regard it as an unfriendly act of Pakistani military leadership. There would be serious questions on the merits of the start of militancy and support of Hurriet in Kashmir. The present presence of 900000 Indian forces in Kashmir and the 5 August 2019 Indian actions, flow from the indiscipline and mediocrity found in these two disciplines. United Nations has placed three restraints on the behaviour, number and location of the Indian forces in Kashmir.

What India has done is a crime against peace, against a people subject of a Plebiscite under UN supervision. Under UN template “The party that would dare to violate an agreement thus reached would load upon itself a very grave offence against the other party, against the United Nations, and against the right of the people of Jammu and Kashmir to self-determination”. India without doubt has “loaded upon itself a very grave offence.”

The PDP-BJP agenda for minimum programme is also a public document and Indian Government has accepted to negotiate with Pakistan. Indian Government has set up five working groups to negotiate with the people of Jammu and Kashmir and Government of Pakistan. The Jankinath Wazir CJ and Shahmiri J judgement in May 1951 in Meghar Singh Case and many other High Court Judgements, help us in domestic courts and at the international level

If Pakistan finds itself unprepared and pressured, it should not trade future of Kashmir for the Indian ‘hand-shake’. UN SC has agreed to let India and Pakistan engage bilaterally provided that the result is ‘consistent with the principles of UN Charter”. Bilateral efforts are not infinite and it is time for the article 103 of UN Charter to assume itself. China is a reliable friend of Pakistan. We should recall what China has said at the 765th meeting of the UN Security Council held on 24 January 1957. China has said, “This dispute has another peculiar feature. From the very beginning, the Council began with an agreement between two parties. In fact, before the two parties directly concerned ever appeared before the Council, the two parties agreed that the plebiscite should be the answer.”

We have the tools to prosecute our case against India. Unfortunately we are shouting at India from this end of the river. It is time to take a boat across and stare India in the face. Webinars are an engaging exercise but not a substantive one. We have to graduate and make it clear that India has not only to honour its obligations but remains liable to pay reparation and compensation.

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