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Issue Brief

The Jammu and Kashmir Dispute: Where Do People of Jammu and Kashmir Stand?

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On December 14, 2015 Indian External Affairs Minister, Sushma Swaraj briefed the Indian Parliament about the outcome of her recent visit to Pakistan, during which India and Pakistan took a decision to start a renewed Comprehensive Bilateral Dialogue. The agenda of this dialogue includes the issue of Jammu and Kashmir. The Pakistanis and Kashmiris believe that this is the core issue. India, on the contrary, contends that it is just one of the issues and that the issue of terrorism is more pressing and urgent. Shusma Swaraj, while addressing a press conference in Delhi on August 23, had contended that there were only two parties to Kashmir dispute and there was no room for the Hurriyat Conference or anyone else to claim participatory rights in India-Pakistan dialogue.¹

Where exactly do the people of Jammu and Kashmir stand in the dialogue process between India and Pakistan, both legally and politically?

The issue of Jammu and Kashmir continues to be the core driver of conflict between Pakistan and India. Despite numerous rounds of negotiations held and several agreements reached between the two countries to find a lasting solution to the issue, the Kashmir dispute is still unresolved. Under the Independence Act of 1947, Jammu and Kashmir was free to accede either to India or Pakistan with due consideration to communal composition.² The people of Jammu and Kashmir had a natural interest in allying with Pakistan, since at the time of transfer of powers Muslims constituted about 87% of the entire population and had religious and cultural affinities with Pakistan.³ However, Maharaja Hari Singh, against the interest of the people of Jammu and Kashmir and the Partition Plan, and under duress, decided to accede to India. The people of Jammu and Kashmir rejected this 'forced accession' and fought against the forcible occupation by Indian security forces.

In 1948, the issue of Jammu and Kashmir was brought to the United Nations (UN) by India. At that time, India committed itself to UN resolutions and stated that "it is only the people of Kashmir who can decide the future of Kashmir... we are not going to stay against the wishes of the people. We are not going to impose ourselves on them at the point of the bayonet" (Jawaharlal Nehru, June 26, 1952). Despite these commitments, India has always tried to keep the Kashmiris out of the negotiation process with Pakistan.

A recent example of this was India's refusal to hold the National Security Advisors (NSA) talks with Pakistan, that were going to be held in New Delhi on August 23, 2015, and setting preconditions that the Pakistani delegation would not be allowed to meet the Kashmiri leaders in New Delhi. Considering

Kashmiris as “irrelevant”⁴ to the dispute clearly demonstrates that India does not respect the inalienable rights of the people of Jammu and Kashmir.

Table 1: Indian Commitments to Plebiscite

Date	Commitments
27 October 1947	“In regard to accession also, it has been made clear that this is subject to reference to people of State and their decision.”
28 October 1947	“.....the people of Kashmir would decide the question of accession. It is open to them to accede to either Dominion then.”
21 November 1947	“We are anxious not to finalize anything in a moment of crisis and without the fullest opportunity to be given to the people of Kashmir to have their say. It is for them ultimately to decide. “And let me make it clear that it has been our policy all along that where there is a dispute about the accession of a state to either Dominion, the accession must be made by the people of that state.”
16 August 1950	“The most feasible method of ascertaining the wishes of the people was by fair and impartial plebiscite.”
12 February 1951	“We have taken the issue to the United Nations and given our word of honour for a peaceful solution. As a great nation, we cannot go back on it. We have left the question for final solution to the people of Kashmir and we are determined to abide by their decision.”
26 June 1952	“I want to stress that it is only the people of Kashmir who can decide the future of Kashmir. It is not that we have merely said that to the United Nations and to the people of Kashmir; it is our conviction and one that is borne out by the policy that we have pursued, not only in Kashmir but everywhere. Though these five years have meant a lot of trouble and expense and in spite of all we have done we would willingly leave Kashmir it was made clear to us that the people of Kashmir wanted us to go. However sad we may feel about leaving, we are not going to stay against the wishes of the people. We are not going to impose ourselves on them at the point of the bayonet.
20 August 1953	“People seem to forget that Kashmir is not a commodity for sale or to be bartered. It has an individual existence and its people must be the final arbiters of their future.”
18 May 1954	“But so far as the Government of India are concerned, every assurance and international commitment in regard to Kashmir stands.”
31 March 1955	“We had given our pledge to the people of Kashmir, and subsequently to the United Nations; we stood by it and we stand by it today. Let the people of Kashmir decide.”

Source: www.na.gov.pk

Even a cursory glance at the commitments made by India, as quoted above, reveals that the early leadership in India recognised Kashmiris as the inherent stakeholders to the dispute. The recent moves by the Modi government to keep the issue of Jammu and Kashmir and the Kashmiri leadership away

from the dialogue process with Pakistan clearly points to the fact that India is establishing new red lines with regard to the Kashmir dispute.

The issue of Jammu and Kashmir is more than a territorial dispute because it centers on the right of self-determination of the people of Jammu and Kashmir. Therefore, India's refusal to accept the Kashmiri people as a party to the dispute cannot annul their right to determine their future which has been given to them by the United Nations in its numerous resolutions passed on Jammu and Kashmir. (See Table.2)

Table 2: UN Resolutions Passed Over Jammu and Kashmir

UNSCR 47	Question of accession of Jammu and Kashmir should be decided through democratic methods of free and impartial plebiscite
UNCIP resolution August 13, 1948	Part III: Pakistan and India reaffirm that future status of state of Jammu and Kashmir shall be determined in accordance with will of people
UNCIP resolution January 5, 1949	Question of accession of Jammu and Kashmir should be decided through democratic methods of free and impartial plebiscite
UNSCR 80	To exercise all of the powers and responsibilities devolving upon UNCIP by reason of existing resolutions of UNSC and by reason of agreements of parties embodied in UNCIP resolutions of August 13, 1948 and January 5, 1949
UNSCR 91	Reminding government and authorities concerned of the principle embodied in its resolutions of 47, 1948, 1949 and 80 that final disposition of the state...will be made in accordance with the people...
UNSCR 98	Recalling the provisions of UNCIP resolutions of August 13, 1948 and January 5, 1949 provided question of accession...would be decided through democratic method...conducted under the auspices of UN
UNSCR 122	Reaffirm the affirmation in its resolutions of 47, 1948, 1949, 91 and 98

Source: www.un.org

All the UN resolutions and India's commitments make it amply clear that it is only the people of Jammu and Kashmir who can determine their own future. According to the International Court of Justice (ICJ) and the International Human Rights Law, the right of self-determination is "a right held by people rather than governments,"⁵ and therefore the plebiscite debate over Jammu and Kashmir reflects the right of the people of Jammu and Kashmir to 'determine their future' and declares their 'inherent character' to the Kashmir dispute. The non-implementation of UN resolutions by India cannot invalidate the 'relevance' of the people of Jammu and Kashmir to the Kashmir dispute.

Indian interpretations that involvement of a 'third party'⁶ is a violation of the Simla Agreement⁷ is illogical, since the Kashmiris are the central party and cannot in any sense be considered a third party. The first paragraph of the Simla Agreement binds both the countries to accomplish in good faith the commitments assumed by them regarding Jammu and Kashmir in accordance with the resolutions under Chapter VI.⁸ Therefore, the Simla Agreement too binds India to respect and implement UN resolutions on Jammu and Kashmir which seek to ascertain the wishes of the people of Jammu and Kashmir. These facts debunk the Indian myth of bilateralism tagged to the Simla Agreement and declare that the people of Jammu and Kashmir have every right to project their voices and aspirations in all dialogue processes on Jammu and Kashmir.

Pakistan and the All Parties Hurriyat Conference (APHC) have always recognised the people of Jammu and Kashmir as key stakeholders in the dispute. A decision by the High Court of Srinagar on October 11, 2015 has rejected the Indian claim of Jammu and Kashmir as being part of Indian dominion and declared that Article 370 of the Indian Constitution, which gives a special status to Jammu and Kashmir, is beyond abrogation, repeal or even amendments.⁹

India needs to recall that since its formation, leaders of APHC and other Kashmiris have also been involved in promoting the dialogue between Pakistan and India for a peaceful resolution of the Jammu and Kashmir dispute at numerous UN human rights sessions and many other international forums. Furthermore, establishment of APHC office in New Delhi, inaugurated by I.K. Gujral in 1995 – at that time Member Parliamentary Committee on External Affairs who later became the Prime Minister - was seen as an opportunity to boost dialogue between New Delhi and Srinagar.¹⁰ Prime Minister Atal Bihari Vajpayee, the BJP leader before Premier Manmohan Singh, committed himself to resolving the Kashmir dispute, and also acknowledged the role of Kashmiris in the dialogue process.¹¹

On November 4, 2015 the Indian government offered that "New Delhi is ready to talk to anybody including separatist leaders who want to function within the framework of India's Constitution and sovereignty. These are two issues with which there can be no compromise."¹² This offer has been spurned by Kashmiri leaders. But India's offers show that they too regard the Kashmiris relevant to the dialogue process. Therefore, keeping the Kashmiris out of the dialogue process will be a negation not only of the UN resolutions, but also of the wishes of the people of Jammu and Kashmir.

The historical, political and legal facts as established above show that the people of Jammu and Kashmir are party to the dispute and that the core objective of the negotiations between India and Pakistan is to ascertain their wishes about their political future.

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