

# **The Agony of Article 370 - The Legal Framework that Binds Jammu and Kashmir State with India by Maharaj Kaul**

The notoriety of Article 370, the legal framework that connects India with Jammu and Kashmir State (J&K) as a nation, has grown to a mythic level for its political implications both among its vested players and its casual observers.

This article attempts to demythologize Article 370 and bring it down to its functional basis, which was the original intent of its framers. But to do that one has to go to the birth and evolution of the Kashmir Problem, to engage in its details, as the devil lies there.

When Britain decided in June, 1947 to leave India the problem of the latter's effective survival after its exit from the scene became a gnawing anxiety for it, as India had remained a fragmented fabric throughout its deep history. But the lines of the pattern of new India were already inscrutably crystallizing. A lot of Indian Muslims had already decided to have their own space as far back as early twentieth century. The ongoing accelerating Indian freedom movement, comprising both Hindus and Muslims, to free India from the yoke of Britain, did not bring the two closer, but put them on divergent goals of achieving separate nationalities, Indian and Pakistani. Following historical outline aims at providing an experience of the evolution of Article 370, which is more meaningful than just learning its dry final facts.

## **Instrument of Accession**

Instrument of Accession (IOA) was a legal instrument which Britain first created in Government of India Act 1935 for precisely establishing its relationship with the Princely States. But when Britain decided to leave India in June 1947 (Indian Independence Act 1947), it was decided by Britain, Indian National Congress, and Muslim League that IOA should be used to facilitate the incorporation of the Princely States in the new nations of India and Pakistan, which were called dominions at the point of their independences in 1947, before they made their constitutions and fully became republics, breaking completely free of the British yoke.

By 1947 India under Britain was divided into British India and Princely States. While the former was directly under the British government the latter were 578 states, basically ruled by either their princes or their controllers, but having a subsidiary alliance relationship of suzerainty or paramountcy with Britain. Typically, Britain controlled their defense, foreign affairs, and communications. British India had 54% of India's area and 77% of its population. The territories under British India were called provinces but those under the princes were called states.

By early 1947 it was well established which provinces of British India will the new dominions of India and Pakistan incorporate. Although almost all the princely states had also decided which new dominions they will join but at the time of the independence of India and Pakistan, August 15 and 14, 1947, a few states' incorporation took up to several years.

The significant situations were that of Hyderabad, Junagarh, and Jammu and Kashmir. While the Instrument of Accession for the Princely States was set up for the princes to decide which new dominion they wanted to join but the reality of the religious composition of the three mentioned states, where the religious orientations of the princes and their subjects differed, forced a change in it. The amendment, accepted by all the three parties, Britain, Indian National Congress, and Muslim League, spelled that in case of differing religious orientations between a prince and his subjects, the will of the subjects would prevail in

choosing which of the two dominions they would join. In case of Junagarh, where the prince created a lot of difficulty in following the amendment, a plebiscite was conducted which decided that it will go to India. In case of Hyderabad the situation was more complicated as Nizam wanted Hyderabad to be an independent nation, though his Hindu-majority subjects wanted to join India. India did not want to have a foreign nation in its middle, so it forced Hyderabad to join it by a military intervention in 1948.

Since Maharaja Hari Singh of J&K harbored a deep ambition to make his state an independent nation, a Switzerland of the East, he would not choose one of the two dominions he would like to join even after their formation on August 14 and August 15, 1947. He asked for a Standstill Agreement to have more time to decide from the two entities, which Pakistan granted but India did not respond to. As India did not have any cards to play with, as Maharaja leaned for independence and the majority of his subjects were Muslims, it did not do anything to capture J&K. As time ticked on Pakistan's greed to acquire J&K swelled, seeing Maharaja's indecisiveness and India's lack of hunger to get it. On Oct. 22, 1947 it attacked J&K, its army camouflaged by a tribal militia, giving an appearance of their revolt against Maharaja's government over some grievances. Maharaja had a miniscule army which evaporated momentarily. As the invaders came closer to Srinagar, Maharaja panicked. He sent an SOS to Governor General of India, Mountbatten, on October 25, 1947, to help him save his countrymen and himself. Mountbatten recommended to the newly founded Indian government that Maharaja should be helped, but only after he accepted the IOA. Indian government accepted his advice and Maharaja signed the IOA on October 26, in Jammu, where he had run after invaders closed on him in Srinagar. The following day, Oct. 27, Mountbatten, on behalf of India, accepted it. But it is one of the errors of history that Kashmir's accession to India is celebrated on Oct. 26, while it was consummated on Oct. 27, when Mountbatten signed it into law.

But one item in the approval of the IOA, not mentioned above, influenced the subsequent history of J&K-India relationship. While India accepted Maharaja's IOA, it added a rider condition to it, which was conveyed in the approval letter Mountbatten attached to it. That condition is the following:

“...it is my Government’s wish that, as soon as law and order have been restored in Kashmir and her soil cleared of the invader, the question of the State’s accession should be settled by reference to the people.”

What it meant was that the accession of J&K to India would only be completed after the will of its people about the accession is determined. India did this to be consistent with the principle it used in incorporating Junagarh and Hyderabad with it. Also, because J&K was under an invasion, people’s will could only be properly known when it was cleared. It did not specify how that will could be determined. But it is well known that there are a few ways to do that: plebiscite, elections, through an empowered panel. But popular notion among the people, politicians, and the press was that it would be done through a plebiscite.

There was a second element in IOA that was also significant, though not as much as the first one. It was the Clause 7 Maharaja added to the standard IOA:

“Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future constitution of India or to fetter my discretion to enter into arrangements with the Government of India under any such future constitution.”

It meant that Maharaja was not obligated to accept any future changes in the constitution of India which it might think applicable to his state. Only foreign affairs, defense, and communications were under the union government but all other matters were under the state government.

India’s war with Pakistan in defense of Kashmir went on through 1948, but on January 1, 1948, India went to U.N. to plead for forcing out of the invader, a

ceasefire, and a plebiscite. Pakistan accepted the ceasefire, which took effect on Jan. 1, 1949. But it took U.N. sometime to investigate the Pakistani attack. Then on April 21, 1948, under U.N. Security Council Resolution 47, in Chapter VI jurisdiction, it asked both the countries to accept certain conditions before a plebiscite was conducted. Because Pakistan would not fulfill U.N. conditions, therefore, the plebiscite was never conducted. U.N. could not enforce its resolution because its Chapter VI status was non-binding. Later, U.N. declared that since the demographics in J&K had changed significantly since the Pakistani attack in 1947, it was unfeasible to conduct the plebiscite. In 2003, President Musharraf of Pakistan announced that Pakistan will drop the demand of a U.N. resolution on Kashmir Problem. In Nov., 2010, U.N. announced that it had dropped J&K among the disputed territories in the world.

Outside the U.N. Nehru twice offered Jinnah a plebiscite but he declined it, because he believed Pakistan would lose it. One of the things Pakistan relied on in its attack on Kashmir was the support of Kashmiri Muslims (KMs). But it never received that support. Mountbatten, in 1948, at the end of his term as the Governor General of India, with the agreement of India, offered Pakistan a division of Kashmir, which it rejected. Then in 1954, during Pakistan's Prime Minister Mohammed Ali's visit to India, Nehru offered him a plebiscite. Ali rejected it because he insisted that General Nimitz, then U.S. representative to U.N., be the plebiscite in-charge, which Nehru did not agree to, as he wanted someone from a smaller nation for that job. This was the last time India offered Pakistan a plebiscite. But plebiscite in J&K was put to death by its Constitution when it declared in Article 3 (Part II): *J&K is and shall be an integral part of the Union of India*. Since Musharraf's time Pakistan has given up on the plebiscite to solve its claim on Kashmir. Its new thinking is that since Kashmir has Muslims as its majority, it ought to be with it. In the last decade majority of Kashmiri Muslims, about 95%, have moved away from joining Pakistan, instead they want to be an independent nation.

## **Constitution of India**

There was a significant shortcoming in the newly formed dominions on account of a lack of a constitution to govern by. It was decided by all parties that India Act of 1935 would serve as a temporary constitution until new constitutions were framed. But it was done after some revisions to it, and served under Indian Independence Act of 1947, as a temporary constitution of India until Jan, 25, 1950, when on the following day, Jan. 26, India became a republic under its own constitution.

In India the work on the framing of a new constitution started right at its independence. The constitution had to incorporate in its framework broadly two areas: Union government and the Princely States. Since the latter were incorporated in the Union on a voluntary basis, it was Union's obligation to ask them if they would accept the union constitution fully or if they would like some amendments to be made to it. If they wanted the latter, they were asked to send their representatives to the Indian Constitution Assembly or to make their own constitution assemblies to create the amendments. Most of them were unable to make the assemblies in time. But a few of them did: Saurashtra Union, Travancore-Cochin, and Mysore. All the suggested amendments were accepted by the Union. Eventually, all the States accepted the Union constitution, except J&K, which wanted to have its own constitution. India had no choice but to accept it.

### **Article 370**

In May, 1949, the rulers of all the states agreed to accept the finalized Union constitution, with the exception of J&K, which fell in a separate category altogether.

J&K negotiated its constitutional relationship with the Union from May through October, 1949. It was agreed upon that it would set up its own constitutional assembly to frame its constitution. While it would take time to get that done, meanwhile, a temporary framework was created. That was called Article 370,

which during its drafting was called Article 306A. It is Part XXI of the Indian Constitution, under Temporary, Transitional, and Special Provisions.

Nehru appointed a minister in his cabinet, without portfolio, Gopaldaswami Iyyengar, especially to frame Article 370. Iyyengar had been a Prime Minister of J&K for six years and, also, a Dewan. So, he was considered eminently qualified for the job.

Article 370 was debated in the Indian Constitutional Assembly in the presence of the five representatives from J&K: Sheikh Abdullah, Mirza Afzal Beg, Maulana Massoodi, and Moti Ram Baigra. (I do not have the name of the fifth representative) Some of them had some disagreements initially with it but eventually they were taken care of. On October 17, 1949, Article 370 was unanimously approved by the Constitutional Assembly of India. On Nov. 25, 1949, Karan Singh, acting as the Regent of J&K signed it. And on January 26, 1950 President of India, Rajendar Prasad, signed it into law.

### **Salient Points of Article 370**

1. It fully incorporates I.O.A., notably its clause of J&K's accession to India. (Article 1,b,i)
2. Union Parliament can only make laws for J&K which fall within the three spheres of Foreign Affairs, Defense, and Communications, as stipulated by IOA. (Article 1, b, i)
3. But because IOA did not give details of which items in the Union and Concurrent List covered the three spheres, a mechanism of establishing them was set up. President of India in *consultation* with the J&K Government can do it. (Article 1, b, i)

4. Also, the same mechanism will deal with matters beyond the three spheres, if India thought that they were needed for good governance, with *concurrence* of J&K Government. (Article 1, b, ii)
  
5. Since J&K Government was not fully developed by January 26, 1950, Maharaja of J&K, in *consultation* with its Council of Ministers, *for the time being*, was considered the Government of the State. There were no Legislative Assembly and Council of Ministers at that time, only thing there was was Maharaja's Proclamation of March 5, 1948 to form a constitutional government. It was expected that when they were formed, along with the J&K Constitution, then the final Government of the State would be established. This clause was put as Explanation in Article 370, which made Sheikh Abdullah unhappy, and has figured in Supreme Court's deliberation on Article 370. (Explanation)
  
6. If laws outside the three spheres of IOA are created, as indicated in Item 4 above, before the Constitutional Assembly is commissioned, then they would be subjected to its review before they are considered final. J&K Legislative Assembly could only give a *provisional* approval to them meanwhile. (Article 2)
  
7. President may declare Article 370 void, modify it, may make exceptions to it, or change dates of its or its clauses' applicability, if recommended by the J&K Constitution Assembly. (Article 3)

## **J&K Constitution**

Maharaja's Proclamation of March 5, 1948 declared that J&K would have a constitutional government. Which implied that a new constitution would be



created. The extant laws were not set up in a constitutional framework to meet the situation flowing from IOA.

But Maharaja by his proclamation on June 9, 1949, transferred all his powers over the government to his son, Karan Singh, because of his stated reason of health. He left J&K soon after, never to return.

Karan Singh made a proclamation on May 1, 1951 to convene J&K Constitutional Assembly. In it he also cited some items in the original proclamation by his father on the subject of not being able to meet the present situation.

J&K Constitution Assembly was set up on Oct. 31, 1951 by J&K Legislative Assembly. It went through rigorous steps of establishing the basic principles of the future constitution and covered significant matters affecting its citizens and its relationship with India.

The correspondence on the negotiations on the constitution's framework and some of its significant items among Nehru, Abdullah, Ayyangar, Patel, and other national and state leaders is imbued with passion and a sense of high purpose. Especially, passionate and poignant are letters between Abdullah and Nehru. The former was a nitpicker but latter wanted the integration of J&K and India to be consummated fast, leaving the details to be settled later. Abdullah had come to believe by his arrest on Aug. 9, 1953 that Indian government was not going to be honest in giving J&K the full extent of autonomy it owed to it by virtue of Article 370. Though he trusted Nehru but he was not sure about other Indian leaders. By his exit from the Constitutional Assembly it lost its most demanding leader. These negotiations between Indian and J&K leaders over the content of J&K's constitution were called Delhi Agreement. They were just negotiations, they lacked legal authority.

J&K Constitutional Assembly was dispersed on Nov. 17, 1956 and was dissolved on Jan, 25, 1957. President of India, by his Order on Jan. 26, 1957, made it effective.

### **Salient Point of J&K's Constitution**

Note: There have been 29 amendments made to J&K Constitution since its inception on Jan. 26, 1957.

1. Preamble: J&K has acceded to India on Oct. 26, 1947.
2. Article 3 (Part II): J&K is and shall be an integral part of the Union of India.
3. Article 4 (Part II): J&K territories are those which were under the Ruler of the State on Aug. 15, 1947.
4. Article 5 (Part II): The executive and legislative power of the State to extends to all matters except those with respect to which Parliament has powers to make laws for the State under provisions of the Constitution of India.
5. Article 147 (Part 12): No bill shall be introduced or moved in State Legislative assembly to amend or change the above indicated Articles 3

and 5, which relate to J&K's relationship with India.

6. Also, if J&K Assembly wants to make changes to some aspects of the institutions of Governor and Election Commission, then it needs President's assent for them to come into effect.
7. J&K has its own flag but it can only be flown with deference to the Indian national flag.
8. Article 48 (Part VI): Defines Pakistan administered Kashmir as "Pakistan Occupied Territory" and reserves 24 Assembly seats for it, which remain inoperative till the territory is handed over to J&K.
9. India has no power to declare financial emergency under Article 360 in the State. Only the State can initiate such an emergency.
10. India can declare security emergency in the State only in case of war or external threat, but not on account of State's internal disturbance, unless State asks for it. Under certain conditions, India can impose Governor's rule.
11. Matters related to Defense, Foreign Relations, Finance, and Communications are directly under the jurisdiction of India.

12. Head of State is the Governor, who is appointed by President, for five years at a time, and serves under his pleasure.
  
13. Citizens of India who do not qualify to be Permanent Residents of the State do not have a right acquire property there.

### **Article 35A**

This article was made part of Indian Constitution by a Presidential Order in 1954. It protects J&K's Permanent Resident and other state laws above those of the rights of any other citizen of India. Like an Indian citizens outside J&K cannot own property there and cannot claim state government jobs and other protections meant solely for J&K citizens. This article was incorporated in the Indian Constitution without a debate. Because of these matters it is considered to be a dark spot in India's Constitution and is being challenged in the Supreme Court. It was a gift given by India to J&K to make its accession to India strong.

### **Life after Article 370 and J&K Constitution**

Article 370 stipulated that J&K Constitutional Assembly could declare it to be inoperative or be operative with such exceptions and modifications and from such date as it may specify. But it did not. So, it became permanent. But why is it still called "temporary, transitional, and special" under Part XXI of Indian Constitution? It is because it helps India to impose new legislation for J&K through Article 370, giving an appearance that the integration between India and J&K is still incomplete due to the history of latter's accession to India.

Ninety-four of the ninety-seven entries in the Union List were extended to J&K, as were 260 of the 395 Articles of the Indian Constitution from 1954 to 1994 by Presidential Orders made under article 370. The validity of these orders have been upheld by the Supreme Court of India. Its rationale has been that even though the J&K Constitutional Assembly was dissolved on Jan. 25, 1957, India could make new laws for the State with the concurrence of its government. This defies in the face of Article 370, which mandates that new laws have to be concurred by the Constitutional Assembly. So, logically speaking if the Assembly ceases to exist, then no new laws can be made for J&K. But who are we to challenge the Supreme Court, it makes the laws of the land.

J&K's Constitution was overridden by India in the following matters:

1. J&K had the Head of State, Sadar-i-Riyast, elected by its Legislative Assembly. Karan Singh became the first such head in 1952. But India got it changed to Governor, appointed by President, on Nov. 24, 1966, after the State Constitution was amended on April 10, 1965, by the use of the Sixth Amendment, in violation of the Section 147 of the State Constitution.
2. India amended State's constitution debarring the state legislature from amending matters with respect to Governor, Election Commission, and the composition of the State Upper House (Legislative Council).

J&K's political leaders and people believe that India has committed a fraud by passing laws beyond the dissolution date of its Constitutional Assembly but latter believes that it has done so by the permission of Article 370, which has been upheld by the Supreme Court. So this erosion of Article 370 is very much affecting the relationship between the two. The former is calling for going back to pre-1953 level of J&K's autonomy.

## **Concluding Thoughts on Article 370**

Article 370 is not the devil behind Kashmiri Muslims' political insurgency in Kashmir but it is a catalyst for that. If it were not there the place would have been quieter and more cooperative with the center. Engendering more private businesses in J&K and, therefore, more jobs for the unemployed youth. The supreme irony is that Kashmiri Muslims do not know the extent of harm they are doing to themselves. By living in a permanent state of anarchy, Kashmiri Muslims are destroying their economic growth and peace of mind.

Kashmiri Muslims by nature are slothful. Their only expression of energy is in talking, and there are no facts so sacred for them that they cannot twist them into figments of their imagination to protect their ego, past inhuman actions, and Islam. They hounded out innocent Kashmiri Pandits in 1990, who were miniscule and a harmless community living with them ever since the advent of Islam in Kashmir in 1339. The original inhabitants of Kashmir were Pandits, dating back to 5,200 years.

The concept of plebiscite to determine the political status of J&K, which originated in India asking for it in IOA in 1947, was put to death when J&K settled the matter by providing in its constitution, in Article 3, in 1957, that it was an integral part of India. Also, the constitution forbids Article 3 to be amended.

Article 370 stands like a sword of Damocles for the center, for its autonomy privileges to Kashmiri Muslims is potent with separatism, alliance with Pakistan, and turning Kashmir into a Middle East-like Islamic state, discouraging Hindus to travel there, let alone living there. This is all the more painful because India is the largest democratically secular nation in the world.

The supreme irony is that Kashmir cannot be independent as it does not have the

economic and military resources for that. Within weeks after the hypothetical independence of Kashmir, Pakistan will capture it, and Kashmiri Muslims will be rendered second-class citizens. Even independence overseen by U.N. will not prevent Pakistan infiltrating to control reins in Kashmir. Sensible Muslims know that but they want to keep the anarchy alive in Kashmir as it helps them maintain their political power, financial resources, and ego.

India cannot let go of Kashmir because first of all it has done nothing illegal and immoral in holding on to it. It was not India that captured Kashmir but it was Kashmir that asked for its help when Pakistan attacked it in 1947. Ceding Kashmir to its arch enemy will invite huge security problem for India. It means Pakistan will be nearer to New Delhi by about 500 miles in north. Indian military will strongly advise against it and Indian Parliament will never approve it.

### **What Should India Do About Article 370?**

What should we do about Article 370? First of all, it was a necessary legal instrument to let India and J&K live together. A lot of effort and cool thinking went into its formulation. Why it failed was because J&K political leaders promoted a lot of distrust between India and J&K, which they attributed to Indian manipulation to undercut it. This led to a permanent state of anarchy in J&K, which has suffocated its political, economic, and cultural progress.

Although India can keep on effecting legal changes in J&K through the mechanism embedded in Article 370, as it has done since Jan. 26, 1950, when it was born, but that cannot give it a peace of mind, as the continuous political turbulence in Kashmir is politically unsettling to India. Kashmir is a bomb waiting to explode, with the connivance of India's arch enemy, Pakistan. This foreign policy implication of Kashmir Problem is not something India can throw under its rug. Let us see if it is feasible to jettison Article 370.

But India has never asked for the abrogation of Article 370. But recently B.P.Yadav, a lawyer based in Andhra Pradesh, petitioned before the Supreme Court of India, that it be abolished and that all laws of India be applicable to J&K. The Chief Justice of Supreme Court of India, H.L. Dattu, on October 30, 2015, decided that “We can strike down a provision if it is unconstitutional but we cannot be asking Parliament a provision. It has to be done by them.” That meant that Article 370 has been in Indian Constitution for 66 years and, therefore, Supreme Court cannot remove it, so it is Indian Parliament which has to come up with a new law that abolishes it.

If India is strong on changing J&K political nightmare, it must pass a new bill in Parliament rescinding Article 370. Supreme Court then will have no choice but to accept it. There will be uproar in J&K and Pakistan will beat its chest, and some nations will castigate India for its immorality. But that would not matter as history is replete with cancellation of treaties among nations and their parts.

Suffern, New York, May 3, 2016; Rev. May 4, 2016; Rev: May 7, 2016; Oct. 11,201; Feb. 2, 2019

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# Enigma of Kashmir Problem

English poet Edmund Spenser described tragedy as a theory killed by a fact. A theory on anything is one of the greatest works of a human mind. So, when a theory is proven wrong on account of a fact discovered in the subject being observed, it is tragedy for the mind.

Kashmir Problem has had the life of a theory being offered to a set of situations in Jammu and Kashmir state of India since the onset of the independence of India and Pakistan in 1947. While Jammu and Ladakh provinces of the state are allied fully with India, it is the province of Kashmir that has given creeps to India since about 1950.

What ails the fabled Kashmir Valley? It is its obtuse Muslim majority of 96.4%. It would like to have an absolute Islamic governance as well as the culture in it. In the earlier years, 1950 -2000, it wanted to join Pakistan. But subsequently seeing that nation's epic and disgusting political and governance problems, the Valley Muslims were pushed to choosing the independence path alternative. But why an independent Kashmir? India is the world's third largest Muslim country, with about 189 million people. They have an absolute freedom to pursue their Islamic faith, including being governed by Sharia laws, which cover some parts of their social life. In fifty years from now, it is projected, that India will become the largest Muslim country in the world. Then why this desire to become an independent Muslim country? At 1947 epic partition of Indian subcontinent into India and Pakistan, about 30% Muslims chose to remain with India than join Pakistan.

Kashmir has been a Shangri-La place for most of its history due its natural beauty, natural barriers to enter it, foreign occupations, and closeness to many foreign

countries. This has created an aloofness with the rest of India. Maharaja Hari Singh, the erstwhile king of Jammu and Kashmir state and Sheikh Abdullah, its first Prime Minister and fabled hero, wanted it to be an independent nation.

Kashmir's integration with India has been a perfectly legal thing. When in 1947 578 Indian princes were asked to choose between India and Pakistan, 565 chose India and 13 chose Pakistan. Kashmir's accession to either of them was delayed due to Maharaja's harboring a desire to make Kashmir an independent nation, a choice that was not on the table. Even after Pakistan and India became two new nations on August 14 and 15 respectively, Maharaja continued to remain undecided. When on October 22, 1947 Pakistan attacked Kashmir under the disguise of a tribal uprising against its government, Maharaja ran away from Srinagar to save his life. This precipitated, painfully, for him to sign the Instrument of Accession on Oct. 26, in order to get military assistance from India to fight Pakistan out of his state. India signed the treaty on the following day and rushed its military the same day to push the invaders out.

India attached a rider to the treaty stating that when the life in the state returned to normal, a plebiscite would be conducted to determine its people's wish to affirm the treaty or join Pakistan. This was done because Kashmir had a majority of Muslims living in it, even though its king was a Hindu. Same logic was used in the choice of accession of the states of Junagarh and Hyderabad between India and Pakistan, where the majority people were Hindus but the princes were Muslims. In case of the former a plebiscite determined that the majority of the people wanted to accede to India, while in latter the will of the majority Hindus to join India required a military intervention of India.

India's war with Pakistan in defense of Kashmir went on through 1948, but on January 1, 1948 India went to U.N. to plead for forcing out of the invader, a ceasefire, and a plebiscite. Pakistan accepted the ceasefire, which took effect on Jan. 1, 1949. But it took U.N. sometime to investigate the Pakistani attack. Then on April 21, 1948, under U.N. Security Council Resolution 47, in Chapter VI jurisdiction, it asked both the countries to accept certain conditions before a

plebiscite was conducted. Because Pakistan would not fulfill U.N. conditions, therefore, the plebiscite was never conducted. U.N. could not enforce its resolution because its Chapter VI status was non-binding. Later, U.N. declared that since the demographics in J&K had changed significantly since the Pakistani attack in 1947, it was unfeasible to conduct the plebiscite. In 2003, President Musharraf of Pakistan announced that Pakistan will drop the demand of a U.N. resolution on Kashmir Problem. In Nov., 2010, U.N. announced that it had dropped J&K among the disputed territories in the world.

Kashmir decided to have its own constitution, as it was allowed to do so under the Instrument of Accession, which the other 564 princely states did not. J&K Constitution Assembly was set up on Oct. 31, 1951 by J&K Legislative Assembly. It went through rigorous steps of establishing the basic principles of the future constitution and covered significant matters affecting its citizens and its relationship with India. J&K Constitutional Assembly was dispersed on Nov. 17, 1956 and was dissolved on Jan, 25, 1957. President of India, by his Order on Jan. 26, 1957, made it effective. Significant parts of the constitution relating to the relationship between Kashmir and India are:

Preamble: J&K has acceded to India on Oct. 26, 1947.

Article 3 (Part II): J&K is and shall be an integral part of the Union of India.

Article 5 (Part II): The executive and legislative power of the State extends to all matters except those with respect to which Parliament has powers to make laws for the State under provisions of the Constitution of India.

This article stipulates that the relationship between Kashmir and India is to conform to the requirements of Articles 370 and 35 A

Article 147 (Part 12): No bill shall be introduced or moved in State Legislative assembly to amend or change the above indicated Articles 3 and 5.

After the creation of Kashmir's constitution both India and Kashmir thought everything in their relationship was engineered meticulously, that too willingly, therefore, future should flow smoothly for their alliance. It did, in a rough way, for about three decades. The malevolent Islamists in Kashmir would time to time raise their heads in form of meetings, speeches, and protests, expressing their deep unhappiness with Kashmir's alliance with India. They believed Kashmir naturally should be a part of Pakistan. But their evil designs were manageable by the state. Then in 80's disturbing and ugly political infighting got out of control, resurrecting the bogey of Kashmir's integration with Pakistan. Pakistan seized the opportunity and planned to overturn India's hold on Kashmir and prepare grounds for its empowerment there. One of the consequences of the anarchy it unleashed was the forced exodus of about 350,000 Kashmiri Pandits. Subsequently, Kashmir regained stability, but the opposition to Indian rule became stronger than before, and Separatists became a force to reckon with.

Kashmir province's militants know no rest. They want to turn it into an Islamic Republic of Kashmir. For which effort they are financed by and morally supported by Pakistan and some Middle Eastern countries. In a decade Kashmir has seen the profusion of several hundred Wahhabi Islamic mosques. Besides the religious centers that they are, they are also militancy centers. They support militants with money and encouragement. When a strike is called for by the Separatists, the shopkeepers and the other non-government workers are paid by these mosques against the losses incurred due to the strikes. This is treason. There are many other treasonable activities that militants and non-militant sympathizers indulge in.

Even with a lot of improvements in the world moral level, it is still a very unfair place to live in. Take for example women's equality with men. U.S. is the country

where maximum progress has been done in this area. Yet the progress is still far from the desired level. There are lesser number of women CEO's than men CEO's, and they are judged more strictly than men are. There is still high level of racial discrimination in the world. There are many more problems of morality that still exist in the world, though they have made progress. When a part of a country wants to leave that country there is a strong resistance to it from the country. This is because the country thinks that the part has been with it historically, culturally, and legally, and, generally, over a long period of time. That is why countries do not give a divorce to their parts easily.

Kashmir has been a part of India for seventy years in its recent political history, and beyond that overall for thousands of years. Demands of Kashmiri separatists to let it become an independent nation are fraught with tremendous difficulties. First of all, only India's parliament has an authority to break Kashmir off India. There is not a single vote in the parliament to let that happen now and in foreseeable future. Even the members of the parliament from Kashmir are not expected to vote for it. The reasons for it are that Kashmir is legally a part of India, also, its severance from India puts it in a huge militaristic deficit with India's arch enemies, Pakistan and China. The separatists do not have the military power to break away Kashmir from the clutches of India. So, for foreseeable future there is no chance that Kashmir will become an independent nation.

So, Kashmir Valley Muslims are damaging themselves in hitting against a concrete wall. This is seen in the high rate of depression and suicide there. The life in the valley is depressive, anxiety-laden, bereft of joy and excitement of yore. Cultural and social activities are meager. Many a youth have given up schooling, leading a life of purposelessness, devoid of ambition. Drug use has shot up. Murder rate has shot up and every other day militants do their misdeeds of disturbing the peace and create arson. Why cannot genuine Kashmiri political leaders talk with the separatists and reason with them that an independent Kashmir is impossible to achieve? That being the case why disturb Kashmiris' peace of mind and let people concentrate on their lives, help their children achieve a good education, and have some joy in their hearts. I recently talked with a Kashmiri leader about this line of thinking. He agreed with me on all the points,

but said emphatically that separatists do not want to hear that their wishes are insane. But good leaders would try.

How long will such a state of anarchy and mayhem last in Kashmir? Apparently indefinitely, as Kashmir leaders are dishonest in wanting a reasonable level of peace there. Even though separatists constitute only 5% of the people but there exist 95% soft-separatists. The latter are pro-India during peaceful times, but when terrorism and strikes occur they show their support for the die-hards quietly.

What should India be doing to enforce a reasonable normalcy in Kashmir. It can stop the treasonable actions of mosques from aiding militancy. It can freeze their bank accounts. It can monitor and cut off suspected foreign communications and financial assistance, through electronic and other means. It can talk to Middle Eastern countries aiding treasonable activities in Kashmir. It can threaten them with breaking diplomatic relations with them. It can threaten the so-called soft-separatist leaders, who are in the high-level government jobs, with dismissals. It can send, every few months, a high-level Indian leader to Kashmir who would tell Kashmiris bluntly that India would never give Kashmir the independence they are clamoring for. Turning their eyes off the soft-separatists has been a monumental problem created by India since the exit of Sheikh Abdullah. If only India had been bluntly honest in dealing with them Kashmir Problem would not have grown to such a difficult level as it is at now.

Although there are several elements that have been driving the Kashmir Problem for seven decades, as described earlier, but Pakistan's role is the most pivotal among them. India could have held its feet to fire for that. A blunt and vigorous stand against its intervention in Kashmir could have if not completely but quite to a significant level reduced its leverage in the creation of anarchy there. Why does not India keep the bogey of Pakistan's illegal occupation of Azad Kashmir alive, a 36% area of the original Jammu and Kashmir state, thereby keeping them defensive. Any Western country in place of India would have done much better than India has done to keep its legitimate state away from Pakistan's greed to

snatch it from them

.That brings us back to the assertion made at the beginning of this article: tragedy lies in the death of a theory by a fact. After Kashmir's constitution was made by Kashmiris in 1957, which specified an unamendable article in it, which prohibits the separation of Kashmir from India, one would have thought that that would bring the demise of the Kashmir Problem. But it proved to be only a good theory. Due to India's laxity in keeping the dragons of independent Kashmir in check, the facts developed thus killed a good theory. So, Kashmir Problem will go on existing for an unknown time. I think when a new generation of Indians come to political power in not so distant future, they will pursue it with utter honesty and vigor, thereby taming Pakistan's greed and Kashmiri separatists' insanity.

Suffern, New York, October 13, 2018

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## **Kashmir Problem - A Self-inflicted Wound**

The killing of an established terrorist like Burhan Wani, who had killed some innocent people and was expected to kill more, should not have unleashed a protest in Kashmir so large and threatening that it has entailed the death of over

forty people and injuries to hundreds of people.

Every nation in the world has a security system which is in continuous-watch mode to detect threats to its security. An established criminal like Burhan would be on the hit-list of all the nations.

Then why are Kashmiri Muslims (KMs) treating the legal killing of Burhan as the death of a hero. It is because they have lost their sanity and self-respect. They are alive because of India's aid to them, and yet they are aspiring to be an independent nation.

All civilized nations grant divorce to married couples who seek it, though some of the details of the terms of divorce are different in different nations. But there is no political divorce. That is, there is no political culture in the world at this time, where a state within a nation can seek a divorce from it. States or provinces are part of a nation over a long time, due to historical and other reasons. They cannot breakaway from the nation just because they are unhappy with the union. Scotland has been fighting to break away from Briton for a very long time, but the end is not anywhere near. If a state in U.S., let us say, Maryland, wants to become an independent nation, due to its perception of racial intolerance toward its African-Americans from the Whites, what are the chances of its getting their wish? Zero.

The causes of Kashmir Problem are the following:

1. Maharaja Hari Sing's deliberate action of not deciding which of the new dominions, India or Pakistan, he was joining. He harbored the ambition of making Kashmir an independent nation. When his indecision passed over the timeline of the formation of the two dominions, Pakistan sensed a good opportunity to attack Kashmir in order to grab it. When the invaders



were close to Srinagar, Maharaja sent an SOS to Mountbatten to help him to stop the invasion. Help was given to him on the condition of his signing the Instrument of Accession. Which he did on October 26, 1947.

2. Sheikh Abdhullah was an ardent supporter of Kashmir's becoming an integral part of India, until 1947. Once he became Kashmir's prime minister, he thinking started to change. In a few years he believed it would be best for Kashmir to become an independent nation. Even though he, along with Beg and others, created a constitution of Jammu and Kashmir (J&K), which declared it to be an integral part of India. Furthermore, the constitution forbid am amendment of this clause. Abdullah was caught red-handed trying to create an independent nation of Kashmir, with the help of some foreign nations. All his successors as the prime ministers or chief ministers upheld the constitution.
  
3. Pakistan has a demonic wish to acquire Kashmir, for reasons of its fragile nationhood. It offers its masses the prospect of acquiring Kashmir, thereby tranquilizing their perennial frustration and anarchy over their government's awful and epic failures.
  
4. KMs, because of their corrupt leadership, and India's timidity have, after Sheikh Abdullah's arrest, found it tantalizing, ego-lifting, and heroic to put one foot in Pakistan, and the other in India. Their leadership has indirectly permitted it for their ego and financial profit. There are many other people in Kashmir who would not like to settle the Kashmir Problem, because it would kill their cash-cow and ego-builder.

Seeing Pakistan's horrible political life over decades, when governments changed like pins on a game-board; president after president would change the constitution, then were charged for one fraud or another, forcing them to flee their country; KMs respect for it changed. The only constant in Pakistan was the invisible power of its military.

A decade ago, Cambridge University, conducted a poll in Kashmir, finding that only 2% KMs wanted to merge with Pakistan, while most of them, about 50%, wanted to be independent. The situation has not changed much since.

But Kashmir cannot ever be independent as India can never let it happen for security reasons, as explained later in this article.

5. KMs cannot see that it is impossible for them to gain independence. Their leadership keeps this illusion alive in them for their own benefit. KMs have lost their self-respect

and sanity. While their bellies are filled by India, they harbor dreams of separation from them. They are leading a delusional life. Kashmir Muslim youth does not have much of a life. Many of them are unemployed. All they harbor is a dream of one day having an Islamic Republic of Kashmir. That is the only anodyne in their lives.

KMs are in the process of attempting to change the history of their land. They want to blank out the ancient history of Kashmir because it was then totally comprising of KPs. Beyond the changing of names of villages, towns, and streets, they are trying to delete the influence of KPs in academic papers and seminars.

What we are witnessing is pathological situation in which a community has lost its self-respect, honor, honesty, and sanity.

A loss of Burhan is but an excuse for the expression of KMs' withering sanity. Kashmir Problem is their epic self-inflicted wound.

Article 370 is not the devil behind Kashmiri Muslims' political insurgency in

Kashmir but it is a catalyst for that. If it were not there the place would have been quieter and more cooperative with the center. Engendering more private businesses in J&K and, therefore, more jobs for the unemployed youth. The supreme irony is that Kashmiri Muslims do not know the extent of harm they are doing to themselves. By living in a permanent state of anarchy, Kashmiri Muslims are destroying their economic growth and peace of mind.

Kashmiri Muslims by nature are slothful. Their only expression of energy is in talking, and there are no facts so sacred for them that they cannot twist them into figments of their imagination to protect their ego, past inhuman actions, and Islam. They hounded out innocent Kashmiri Pandits in 1990, who were miniscule and a harmless community living with them ever since the advent of Islam in Kashmir in 1339. The original inhabitants of Kashmir were Pandits, dating back to 5,200 years.

Article 370 stands like a sword of Damocles for the center, for its autonomy privileges to Kashmiri Muslims is potent with separatism, alliance with Pakistan, and turning Kashmir into a Middle East-like Islamic state, discouraging Hindus to travel there, let alone living there. This is all the more painful because India is the largest democratically secular nation in the world.

The supreme irony is that Kashmir cannot be independent as it does not have the economic and military resources for that. Within weeks after the hypothetical independence of Kashmir, Pakistan will capture it, and Kashmiri Muslims will be rendered second-class citizens. Even independence overseen by U.N. will not prevent Pakistan infiltrating to control reins in Kashmir. Sensible Muslims know that but they want to keep the anarchy alive in Kashmir as it helps them maintain their political power, financial resources, and ego.

India cannot let go of Kashmir because first of all it has done nothing illegal and immoral in holding on to it. It was not India that captured Kashmir but it was

Kashmir that asked for its help when Pakistan attacked it in 1947. Ceding Kashmir to its arch enemy will invite huge security problem for India. It means Pakistan will be nearer to New Delhi by about 500 miles in north. Indian military will strongly advise against it and Indian Parliament will never approve it.

Although India can keep on effecting legal changes in J&K through the mechanism embedded in Article 370, as it has done since Jan. 26, 1950, when it was born, but that cannot give it a peace of mind, as the continuous political turbulence in Kashmir is politically unsettling to India. Kashmir is a bomb waiting to explode, with the connivance of India's arch enemy, Pakistan. This foreign policy implication of Kashmir Problem is not something India can throw under its rug. Let us see if it is feasible to jettison Article 370.

But India has never asked for the abrogation of Article 370. But recently B.P.Yadav, a lawyer based in Andhra Pradesh, petitioned before the Supreme Court of India, that it be abolished and that all laws of India be applicable to J&K. The Chief Justice of Supreme Court of India, H.L. Dattu, on October 30, 2015, decided that "We can strike down a provision if it is unconstitutional but we cannot be asking Parliament a provision. It has to be done by them." That meant that Article 370 has been in Indian Constitution for 66 years and, therefore, Supreme Court cannot remove it, so it is Indian Parliament which has to come up with a new law that abolishes it.

If Modi is strong on changing J&K political nightmare, he must pass a new bill in Parliament rescinding Article 370. Certainly, J&K will contest that in Supreme Court. We do not know what will be its verdict. It could well be that it will consider the new bill unconstitutional. So what, at least an effort was made to make sense of the center's relationship with J&K.

Suffern, New York, July 24, 2016

# **Some Reflections on Kapil Kak's Article "Post-elections Jammu and Kashmir"**

The article is more imbued with the excitement engendered by the recent election results in Jammu and Kashmir than by any new insight and understanding of its recent political climate and the seven-decade old Kashmir Problem.

The election results do not portend any change in the Kashmiri Muslims' minds about the governance of the Valley and the Kashmir Problem. The election created excitement due to BJP's vigorous campaign to get a tangible grip on the political power of the Valley. Jammu, and more so Ladakh do not matter, as former's pro-India stance and latter's political insignificance, have remained unchanged.

People in the Valley voted in record numbers because they wanted to stop BJP's ascendancy to power there and not because they were sanguine about the functioning of Indian democracy. It would be sheer recklessness on PDP's part if it were to get allied with BJP to assume power. It will turn the Valley further into political alienation and freeze than before. It is because Modi's image after the Gujrat massacre has yet not been fully repaired and his half-hearted and unimaginative efforts to rescue and rehabilitate the flood victims has hurt the Valley Kashmiris. It would be politically prudent for PDP to ally with NC or

Congress, with the help of independents.

Elections have changed nothing in the Valley. Its people are still feeling miserable in living with India, are openly soft-hearted toward Pakistan, and dreaming of independence. They consider these parts of their political mental architecture to be indispensable to their survival. Reasoning with them that over sixty-six years this thinking has not brought them closer to what they want a whit is of no avail. At the deepest level all mass political uprisings are emotional, blocking facts and rational thinking.

Mr. Kak believes that Kashmir is the microcosm of India as an idea. Nothing could be farther from the truth. Kashmir is the worst example of a state in a country which by its self-created politics from 1947 has inflicted epic injuries on itself, by cutting itself from its roots, cutting asunder its historical ties with KPs, and by putting itself with a begging bowl for all its survival needs. No other state in India is as conflicted as Kashmir is in all the significant spheres of its existence.

He also believes that Sufism is alive in Kashmir. Where was it in 1989? It now hangs as a speck of dust on the horizon. It was the change of heart and mind of Kashmiris in 1989 that the present impregnable climate of intolerance and distrust in Kashmir was born.

Solving AFSA problem is important as it rankles Kashmiris very much. Interdependence and cultivated interactions between different Kashmiri communities is a step in right direction. But return of KPs is not required to have peace in Kashmir, as most of them do not want to do so because of their bitter experiences and also because they feel settled now in their new lives.

Dissolution of Article 370 is required if we want to see Kashmir as an integral part of India. By treating Kashmiris specially makes them irresponsible and addictively

selfish. If we want to see Kashmiris progress and make Kashmir peaceful it is the only way. Trying to solve Kashmir Problem by nuts and bolt engineering of its hotspots is not only counterproductive, wasteful, but is absolutely dishonest. If India has courage of its conviction that Kashmir belongs to it this this painful step is necessary. Otherwise, Kashmir should be given independence, even though that would mean the ultimate destruction of Kashmir as we know it. This Kashmiris do not understand.

The only thing that can save Kashmiris is to become realistic. Since it has no economy and security of its own it cannot harbor dreams of independence. The first thing they have to do is strengthen their character. Perhaps more than one third of all the financial and material help that J&K and Indian governments and NGO's rendered to Kashmir for its flood victims and infrastructure destruction was pocketed by its evil characters. Without some reasonable level of character among its people Kashmir will always remain in a parasitic dependence on others. Its leaders have to be sincere. If the leadership in Kashmir would have been that there would not have been a Kashmir Problem. They have lead with diverse loyalties, most significant of them being the loyalty to their self-interest. In fact, some of them do not want the problem to be solved because it would cut the tree that feeds them.

GOI on its part has been weak and unimaginative, supporting the corrupt people at J&K helm. It is well known that the youth in a turmoil-laden place have to be provided with jobs, as their restless energy can turn to its destruction. What has GOI done in this direction in the last sixty-six years?

Elections in Jammu and Kashmir have been decided but Kashmir Problem remains brutishly alive.

Suffern, New York, December 26, 2014  
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# **To Be or Not To Be: Kashmir Problem And Its Two Architects - Jawaharlal Nehru And Sheikh Abdullah**

Little would Jawaharlal Nehru and Sheikh Abdullah know that Kashmir Problem continues to remain unsolved, in fact it has gathered the myth of one of the great unsolved political problems of the last 100 years of the human history. Nehru and Abdullah created the Kashmir Problem but they strongly believed at the time of its creation that it was solvable. Now time has imparted a hallow and mystique to it.

In the beginning was Jawaharlal Nehru, a Kashmiri Pandit, who greatly loved the land of his ancestors for its beauty, history, and the tug of roots it provided to him. By early 30's having become one of the high echelon leaders of Congress, he was in a position to impact the disposition of Kashmir, in the scheme of allocation of the 565 Princely States between the two new nations of India and Pakistan. The vested interest of Nehru was to play an important part in the development of the Kashmir Problem.

Nehru was born in an aristocratic family, so wealthy that they would send some special clothing to France for cleaning. After school and college education in England, he returned to India trained as a lawyer. His seven years of stay in England, at an impressionable age, had a lasting impact on him. His thought process, as well as dreaming, happened in English. Little did his countrymen



know that their great leader was quite a bit an Englishman in his thinking and lifestyle. The pursuit of a legal career could not hold Nehru's imagination; so after a short flirtation with it, he jumped into the ongoing movement for the independence of India from its 200 years slavery of Great Britain, under the compelling and enigmatic leadership of Gandhi.

Nehru was a student of history and was attracted to science; he had grown up to become an intellectual. These attributes held poorly against the Indian ethos of religion and mythology; Nehru was an agnostic and never visited temples on his own, except when political situation left no choice. He would complain that his countrymen did not respect facts, that is, facts did not much influence their thinking. Also, he was an idealist. This intellectualism and idealism combination got him into a lot of problems with his fellow political leaders, who operated with conventional wisdom. But he went on to burn his life at the altar of India, first for its independence, then for laying its foundation as a democratic nation. Little do many of his countrymen now remember or know that he was the chief architect of modern India.

Sheikh Abdullah was born in a family of shawl-weavers in Kashmir, in a cultural climate of Sufi humanitarianism; his grandparents were Kashmiri Pandits. His family having discerned in him early on a personality possessed of mental keenness, spared him of the family business, and launched him into an academic pursuit. He went to Government College Lahore and Aligarh Muslim University to obtain a B.A. and an MSc. in Chemistry, respectively. These were considerable achievements for a Kashmiri those days, particularly for a Kashmiri Muslim. He returned to Kashmir in 1930 at the age of 25 and was hired as a teacher in a school. He tried to get a better job, commensurate with his education, but was thwarted in his attempts by the ongoing discrimination against Muslims under the Dogra reign. Unable to accept his and Muslims' condition as a fait accompli, he launched a civil disobedience movement for a constitutional and responsible government, which looked after all its constituents and not only after selected ones, which included generationally poor landless peasants. Only born leaders can defy circumstances and risks on their lives to confront authorities, that too which have absolute power, like Maharaja Hari Singh had.

Abdullah's party that launched the revolution against Maharaja Hari Singh came to be called Muslim Conference, which was instituted in 1932. Abdullah's towering physical personality (6' 1"), his mellifluous and fiery oratory, his revolutionary ideas, quickly turned him into a leader of stature, unlike anyone seen in Kashmiri history. His main fight was for the poor landless peasants, who were mostly Muslims, working on Dogra owned lands, and for uniformity of the laws of the land for all the people, and for the responsibility of the government for the welfare of its people. His renown spread all over India. While Kashmir was going through its revolution against Maharaja, India was already on that path over a much longer time against Britain. Abdullah learnt a lot from the latter. He felt strongly attracted to Congress because of its secular and idealistic policies. He stated that , "...people of Kashmir may attain their freedom in the larger freedom of India." He also believed his working class movement was above any communalism. He exhorted, "We must end communalism by ceasing to think in terms of Muslims and non-Muslims." With the advice of some people in Congress, but with the displeasure of Muslim League, in 1939 he changed the name of Muslim Conference to National Conference. When Congress launched Quit India movement, Abdullah launched Quit Kashmir movement.

Abdullah met Nehru in mid-1930's in Lahore and was immediately attracted to him on account of his idealism, keenness of mind, honorable demeanor, and personal magnetism. Nehru's being a Kashmiri was another factor of his hero worship for him. Together with Gandhi, Nehru provided quite a pull for Abdullah to throw Kashmir's lot with Congress, rather than with Muslim League. Besides the pull of the great personalities, he believed that Pakistan's strongest attraction for Kashmir to join it was that it was a Muslim state but he wanted secularism, which Congress was strongly advocating for India. Also, Pakistan would be protecting feudalism and landlordism, fighting which was the *raison d'être* of his revolution against the Dogra rule in Kashmir.

Nehru's attraction for Abdullah lay in the kind of revolution he was spearheading in Kashmir for the benefit of the peasants and the common people, against the

supreme power of a monarch. It was similar to what he was doing for India, only at a larger scale. Abdullah was only 27 when he ignored the risks to his personal life, inherent in such an undertaking. Furthermore, Nehru learnt about Abdullah's hero worship even in the remotest villages of Kashmir. He realized that his sobriquet Sher-i-Kashmir (Lion-Of-Kashmir) was apt. This was the kind of stuff that appealed to Nehru's heart and mind. They became personal friends.

Ever since the enunciation of the Two Nation Theory by Mohammed Jinnah, also known as Lahore Resolution, in 1940, which proclaimed that India was not a unitary nation, but consisted of two nations, one comprising Muslims and the other Hindus, Nehru had been anxiously watching Abdullah's revolution in Kashmir. This was because the heterogeneous composition of the state: Hindu king ruling a predominantly Muslim state, had the huge potential of creating problems at the partition of India. He knew his friend Abdullah was secular but he also knew the Muslim League, and the future Pakistan, would not like to lose Kashmir from its fold. Nehru's mind worked ahead of many other Indian political leaders in the uncertainty that was inherent in the situation of Kashmir.

In 1946 when Abdullah was arrested by Ram Chander Kak, Kashmir's Prime Minister, Nehru went to Srinagar to give him legal as well as moral support. He stated, "There can be no peace in Kashmir unless Sheikh Abdullah is released." Since Maharaja wanted to incarcerate Abdullah no matter what, he was. But to send a message to Maharaja, Nehru appointed Abdullah President of All-India States' Peoples' Conference, a body dealing with the people's affairs of the Indian states.

On June 3, 1947, Mountbatten announced that Britain had decided to divide India into two nations, India and Pakistan. A few of the 565 Princely States, which occupied about a quarter of India, posed a problem in their being awarded to one or the other new nation, in that they had a heterogeneous composition: their kings and the majority of the people living in them were of different religious orientations. They were Junagadh, Hyderabad, and Kashmir. In Junagadh and Hyderabad the kings were Muslims but the people were Hindus. India argued

strongly that it must be the people's choice that must decide which nation, India or Pakistan, they must join and based on that made a considerable effort for them to join it. But at the time of the partition of India into India and Pakistan, in August, 1947, the alignment of these states was still uncertain. Kashmir was the third largest Princely State, after Hyderabad and Mysore.

Obviously, Nehru had to maintain a uniform principal in fighting for the Princely States that had heterogeneous compositions. In Kashmir, unlike Junagadh and Hyderabad, the king was a Hindu but the people were Muslims. Prima fascia, it should have gone to Pakistan but what made the situation exceptional was the role of Kashmiri people's supreme leader Sheikh Abdullah. He was staunchly for India and had clear-cut reasons for rejecting Pakistan.

After the June 3, 1947 declaration of Britain to partition India, Jammu and Kashmir Government and those connected with it were thrown into a flurry of activities and all eyes were glued to it. Maharaja Hari Singh deliberately withheld his choice to join either India or Pakistan. This caused a great anxiety in Nehru, who knew a delay in Kashmir's choice would embolden Pakistan to lay claim on it. He wanted Maharaja to release Abdullah immediately so that the latter could tell the world that Kashmiris wanted to be with India and not with Pakistan. He wanted to go to Kashmir to help his case but Kashmir government did not allow him to do that. Frustrated, he asked Mountbatten to go to Kashmir to persuade Maharaja to release Abdullah and also gave him a 28 paragraph brief on Kashmir, written by him, to be given to Maharaja. In the brief Nehru pointed out that Abdullah was the preeminent leader of Kashmir, who was backed by National Conference for Kashmir's accession to India. So, freeing him from jail now would settle the matter of accession to India easily and that the alternative of Maharaja's joining Pakistan would bring him a lot of problems.

Mountbatten went to Kashmir to meet Maharaja between June 18 and June 23, 1947. He told him to take a decision to join either India or Pakistan immediately, but Maharaja remained non-committal. But asked Mountbatten his opinion on Kashmir becoming independent. Mountbatten replied that he though Britain

would not support it. He gave Patel's message to Maharaja that even if he opted for Pakistan, India would honor it. He also told him to have a Standstill Agreement with both India and Pakistan in the interim. Pursuing hard for Maharaja to make a commitment to join either of the two nations, but Maharaja's evasiveness pushed Mountbatten to the last day of his visit. The last day, June 23, 1947, came without any meeting taking place, as Maharaja pretended to have had an attack of colic. If Maharaja had not pretended to have colic and committed Kashmir, to either India or Pakistan, Kashmir Problem would not have existed.

On July 5, 1947 Indian government created two new departments called States Depts., one each for the new nations of India and Pakistan, which were to be born shortly, to facilitate the absorption of 566 Princely States between them. Patel was head of the India States Dept. So, getting Kashmir into Indian fold was his task. But as we have come to know, he was not for Kashmir's accession to India, as he did not have a lot of confidence in Abdullah and Kashmiri Muslims in this matter. He did not even respond to Maharaja's request for a Standstill Agreement. But history has shown that he was right. Because of Patel's coolness to the integration of Kashmir with India, invaluable time was lost in Maharaja's procrastination to accede to India and freeing Abdullah from the jail. Here was a study in contrast: Nehru thinking Kashmir was an asset to India and doing everything necessary to acquire it, Patel considering Kashmir a liability and therefore giving a short shrift to it. (Patel was considered having the necessary ingredients to influence Maharaja). Nehru wrote a letter to Patel on Sept. 27, 1947 (after India's independence, when Nehru was the Prime Minister) telling him his office had received information that Pakistan was making preparations to invade Kashmir. Pushed by his boss, Patel made Maharaja to free Abdullah two days after he received the letter. But nothing more happened from the Indian side for the next three weeks, when Pakistan attacked Kashmir on October 22, 1947. After release from the jail, Abdullah issued a statement, "I never believed in the Pakistan slogan....Pandit Jawaharlal Nehru is my best friend and I hold Gandhiji in real reverence." He went to Delhi and stayed with his friend, Nehru. If Patel had acted with passion and persuaded Maharaja to accede to India before Pakistan's attack, there would have been no Kashmir Problem.

Seeing Maharaja's vacillation and India's indifference to Kashmir, Pakistan attacked Kashmir on Oct. 22, 1947, with a camouflage of tribesmen, giving birth to Kashmir Problem. If Maharaja had signed the Instrument Of Accession before the attack, there would have been no Kashmir Problem. Once having been caught red handed with its hand in the cookie jar, Pakistan without any feeling of guilt or embarrassment, proclaimed that Kashmir belonged to it, by virtue of its believing that Kashmiris (96% of whom that time were Muslims) wanted to join Pakistan rather than India. But the irony is that when Pakistan attacked Kashmir, they had believed Kashmiris would lend them support and make the takeover of Kashmir easy, which did not happen,, because they preferred India.

Pakistan's attack on Kashmir forced India to act, as Maharaja signed the Instrument Of Accession, and sent an SOS to Mountbatten to send Indian military help to thwart the invaders, as they were just a few miles away from his palace. Mountbatten strongly recommended the new Indian government to help Kashmir. Nehru considered the request coolly and thought that if the help were not provided, there would be a bloodbath in Kashmir, that would unleash mayhem all over India. Also, he thought he had to honor his friend Abdullah's request (who agreed with Maharaja's request for the Indian military help) to save the honor of his people. In Nehru's eyes Pakistan's attack on Kashmir was a barbaric violation of its sovereignty, which India must help Kashmir with, but there was no intention in it for India to stay on there. So, in spite of Maharaja's signing the Instrument Of Accession, Nehru believed that after the Pakistan's attack was vacated, it was for the people of Kashmir to decide which of the two nations they wanted to accede to. It was a very flawed thinking on part of Nehru, as he had the Instrument Of Accession and Abdullah in his pocket; he did not need anything more. The idea of holding a plebiscite after Pakistan was repulsed beyond the Kashmir border was preposterous, as at that point Kashmiri Muslims did not want to be with Pakistan; they wholly supported their leader Abdullah on this. Nehru's blunder was encouraged by Mountbatten, who independently thought of the plebiscite, and it was not opposed by Patel or any other cabinet member. What was he thinking when he came with the idea? Obviously, he was thinking of Junagadh and Hyderabad. He wanted to be consistent with the position India had taken on them, in that people's wishes had to be taken into consideration when dealing with the Princely States with a heterogeneous composition, when their

kings and people had different religious orientations. But where was the doubt about Kashmiri Muslims' preference in accession? The proviso attached to the Instrument of Accession, referring to holding a plebiscite after the vacation of Pakistani attack and restoration of law and order in Kashmir, has created huge problems for India. Here was Nehru, keen on getting Kashmir in India's fold, but blundering terribly at the point of realizing his cherished goal.

Within twenty four hours of the signing of the Instrument Of Accession by Maharaja on Oct. 26, 1947, India launched Operation JAK, mobilizing an emergency force, comprising several hundred planes, and sending it to Kashmir. It thwarted Pakistani forces, when they were at the brink of entering Srinagar. On Oct. 30, 1947 Maharaja appointed Abdullah as the Head Of Emergency Administration. After first denying complicity in the Kashmir attack, claiming it was purely a tribal invasion to stem the ongoing mistreatment of Muslims in Kashmir, Pakistan, later, when positive proofs of its masterminding of and participating in the attack were presented, confessed to its evil deed. The first meeting between India and Pakistan on the war was held on Nov.1, 1947, at Lahore. India offered the plebiscite, but shocking as it is to believe it today, Jinnah rejected it. Mountbatten's suggestion to have the plebiscite under U.N. was also rejected. Pakistan had made attempts to bring Abdullah to its side before the war. In Mid-Sept., 1947 it sent people to contact National Conference. In Oct. Abdullah sent Sadiq twice to meet the Pakistani Prime Minister Liaquat Ali Khan. The message from Abdullah was clear, that Pakistan should not force Kashmir to join it. Abdullah made the following statement on Oct. 31, 1947 "I ...request Mr. Jinnah to accept the democratic principle of the sovereignty of our State, including as it does 78 per cent Muslims, whose free and unhampered choice must count in the matter of final accession." In other words, Abdullah was telling Pakistan that Kashmiri people had decided to throw their lot with India.

As the war continued in Kashmir, stories of the large-scale killing of non-Muslims and selling of Kashmiri girls reached Delhi, triggering intense reaction from many members of the Indian cabinet. They asked for an all out military punch to oust Pakistani and tribal attackers from Kashmir. But the military command, which still comprised of Britons at the top, after due deliberation, concluded that it was

not feasible to do so. The reasons for that are not clear. It is said that Mountbatten had a role to influence military's decision, as he thought that all out war between the two recently formed nations would unleash a large scale bloodbath, which would destabilize the entire subcontinent, which was against the British interest. Mountbatten counseled Nehru that India must take the case to U.N., an inexperienced organization at that point, which had been formed only in 1945. For Nehru, inclined to be a pacifist and an internationalist, it was a good idea. So, India went to U.N. with the problem of the unresolved Kashmir war, with an offer, unbelievably, of a plebiscite. Pakistan neither wanted to go to U.N. nor did it want to have a plebiscite. Going to U.N., as we understand now, was the second major blunder Nehru committed about Kashmir. It is said that Patel, who was said to have been a lot more practical person than Nehru was, went along with the decision to go to U.N.

Just before Mountbatten left India for good, on April 21, 1948, he made one last attempt to resolve the Kashmir Problem: he proposed a partition of Kashmir, which Nehru accepted but Pakistan rejected.

Abdullah became the Prime minister of Kashmir on March 3, 1948; a crowning milestone in the life of a revolutionary, who set himself to overthrow its monarchy 16 years earlier. But being a revolutionary and being a Prime Minister are two different things. The difference is from being in a state of passion to a state in which one looks at things coolly. Abdullah's disenchantment with India began. It is not well understand what exactly caused it but it is thought he saw the signs of communalism developing in India, and his friend Nehru losing his backbone to fight it. Gandhi's assassination is said to have confirmed Abdullah's worst fears. As Abdullah's heart was cooling toward India, he tried to resolve the problem he was going to put Kashmir into. Since he did not want to be a part of Pakistan, because of its backward approach to the role of religion in the governance of a state, treatment of the poor peasants, and the evil attack it launched on Kashmir, that left only independence of Kashmir to resolve the problem. But nobody knew better than him how difficult it was to have that. He had many times in the past considered it and then rejected it due to the practical reasons. He had publicly stated that an Eastern Switzerland could not be created due to its being



geopolitically unfeasible.

But Abdullah, in spite of his understanding that an independent Kashmir was impractical, could not let go of his dream. He was in a “to be or not to be” Hamletian state of mind. His meeting of some foreigners: Mrs. Loy Henderson, wife of U.S. Ambassador to India, some CIA agents, Sir Owen Dixon (U.N. Rep.), and Adlai Stevenson (two time U.S. presidential candidate) was interpreted by Indian intelligence to be his exploration of Kashmir’s independence. On July 13, 1953 he said, “Kashmir should have sympathy of both India and Pakistan...” His statements and behavior with his colleagues and talks with Indian leaders, lead to his arrest, removal from his office, and jail on August 9, 1953. This was very hard for his friend Nehru, who had to authorize it. He had written to his sister Vijaylaxmi Pandit, sometime earlier, in context of Abdullah’s behavior, “The most difficult thing in life is what to do with one’s friends.”

In August, 1953, after Abdullah’s removal from Kashmir Prime Ministership and his jailing, Nehru met Pakistan’s Prime Minister Mohammad Ali in Delhi and once again proposed a plebiscite to settle the Kashmir Problem, but with only one condition that Admiral Nimitz, the U.S. envoy to U.N., not be made the chief Plebiscite Administrator. This is because Nehru did not trust super powers like U.S. in this matter; instead, he proposed that someone from a smaller country be put in that position. But Pakistan, always diffident of winning a plebiscite, up to that time, made Nimitz’s appointment a condition for the plebiscite. This was the last time when Nehru proposed a plebiscite to Pakistan. After Kashmir Assembly, on February 15, 1954, under the leadership of Bakshi, voted Kashmir’s accession to India, Nehru believed that no plebiscite was needed, as the people had spoken.

So started the bizarre twist in the life of Kashmir’s most ardent supporter of alliance with India. He was intoxicated by his dream of an independent Kashmir, whose emperor he would be. Practical difficulties of doing that, which had visited his mind several times, were swept aside by the intensity of his fantasy. He went on to spend some 13 years in Indian prisons. Did he have remorse for his actions, nobody knows? People like Abdullah, people of intense passion, never doubt their

passion. His friend Nehru, who had to authorize the first two segments of his sentence, amounting to about 10 years, may not have been fully convinced about Abdullah's illegal activities, but he had no way of refuting the evidence his colleagues had collected against him. But as Kashmir Conspiracy case launched against Abdullah and others by the government was not brought to the court for several years, Nehru's conscience was bothered for the continued incarceration of his friend. (While the Kashmir Conspiracy case was later withdrawn for want of strong legal weight, nobody has any doubt that Abdullah's political misbehavior demanded his removal from his office). Abdullah was released on April 8, 1964. Right after his release from the prison he was the guest of honor at his friend's residence. It is incredible how a person who was punished by 10 years of jail for his illegal activities by the government, could right after his release be the guest of honor at the home of the head of the government. It shows the unusually idealistic nature of Nehru. In his mind, in spite of Abdullah's mistakes, he was still a good man and good for the solution of the Kashmir Problem, and sent him to see Pakistan's President Yahaya Khan, with a proposal of launching a confederation of India, Pakistan, and Kashmir (an idea developed by Abdullah). Nehru obviously believed Pakistan had a role to play in the solution of the Kashmir Problem. Yahaya Khan rejected the proposal out of hand. Nehru died on May 27, 1964 and Abdullah publically cried for him.

Abdullah was rearrested on May 5, 1965, after Nehru's death, for communicating with China and Pakistan on Kashmir's independence, while he was abroad attending a conference. He spent another two and a half years in prison, being freed on December 8, 1967. Throughout his time in prison, starting in 1953, and out of it, before he regained his political office, he acted as the leader-in-exile for the Kashmiri Muslims who were disillusioned with India and were either seeking to accede to Pakistan or become an independent nation. He resurrected the bogey of plebiscite to his full advantage. It was his hidden as well as an open weapon against India. He was a staunch ally of India until he got the political power of Prime Ministership; after that his loyalty to India slowly eroded. Throughout his years of revolt against Maharaja and until sometime after he became the Prime Minister, he had no doubt that there was no necessity of a plebiscite, as he and his people were fully for the accession to India. After he was released from jail on September 29, 1947, he went to Delhi and met Nehru. Coming to know that

Nehru was thinking of requiring holding a plebiscite a condition of Kashmir's accession to India, he told him that it was absolutely unnecessary.

Abdullah was made of steel, which was provided by his powerful ego, passionate nature, and religious zeal. Martyrdom appealed to him; but he did not care for principles or consistency. He knew his place was secure in the folklore of Kashmir and its history. In 1975 he reached a closely negotiated settlement with Indira Gandhi and became the Chief Minister Of Kashmir for the next seven years, dying on September 8, 1982, while in that position. During this period he renounced the dreams of independence and therefore of plebiscite. But by his unleashing of the genii of plebiscite, and playing with it for a decade and a half, he corrupted the psychology of Kashmiri Muslims' faith in India forever.

Nehru's idealistic streak made him commit blunders about Kashmir. In the beginning he thought that the requirement of plebiscite in Kashmir was necessary, even though Abdullah had assured him that there was no need for it, so that he could show Pakistan and the rest of the world that India was not usurping Kashmir but on the contrary Kashmiris were acceding to India in full volition and without fear. He would have seen to it that such a plebiscite was conducted but with Pakistan's attack on Kashmir the conditions for such a process taking place had changed, making its feasibility impossible. With one third of Kashmir under Pakistan how could a plebiscite be held? Even if it were held, Pakistan would not accept its expected results of favoring India, on the ground that the intimidation of Indian army toward the people made the result intrinsically biased. When U.N. Resolution 47, on April 47, 1948, required Pakistan to withdraw its military from Kashmir for the plebiscite to take place, it did not comply. Nehru's idea of continuing to offer plebiscite to Pakistan even beyond this point was that he wanted to be transparent, and he had nothing to be worried about, as he knew the results would favor India. But since there were practical difficulties of holding a plebiscite, he should have withdrawn the plebiscite card. By keeping it in circulation as long as he did, he created a psychology of uncertainty among Kashmiri Muslims, as they saw their leader Abdullah's bond with India loosen. Similar idealistic thinking on part of Nehru took him to U.N., after Indian military high command, in 1947, decided against an

all-out attack on Pakistan. Nehru could have waited a little longer and let the British generals heading the Indian military that time leave India, and then have his way. By internationalizing the problem, he gave Pakistan and Kashmiri Muslims a card to play, even though it was blank.

Nehru's continued faith in Abdullah, even after he was jailed for 10 years for exploring the independence of Kashmir, was another practical error he committed. Abdullah, he should have known by then, was not fully loyal to India, as he had another agenda for Kashmir in his mind.

Holding a plebiscite in Kashmir, since it was first offered by Mountbatten and Nehru, in the Instrument Of Accession, that was signed by Maharaja Hari Singh, on Oct. 26, 1947, has remained a mirage. For more than a decade and a half Pakistan rejected it, because it feared its verdict. Later when Abdullah started dreaming of independence, Pakistan thought that it would favor it. Whatever double-minded thinking Kashmiri Muslims might have had about Pakistan in 70's through 90's, it is over by now. People have been turned off by Pakistan's weakness as a government and a society. Elections in Kashmir have repeatedly been in favor of politicians leaning toward India. The British poll last year, conducted by Royal Institute Of International Affairs and Kings College indicated that only 2% Kashmiri Muslims would like to accede to Pakistan. Since Musharaff's presidency of Pakistan, it has withdrawn plebiscite as a requirement to solve the Kashmir Problem. Its *raison d'être* for having Kashmir now is that it belongs to Pakistan because of its Muslim majority.

Here were two persons, Nehru and Abdullah, both passionate and willful leaders, both intensely loving Kashmir. But one was an intellectual, an idealist; the other was a dreamer, soft on principles, opportunistic. The bad decisions of both of them on Kashmir have woven a fabric studded with pain, strife, distrust, bad dreams, and uncertainty, which continues to make the life of Kashmiris, both Muslims and Hindus, who live inside Kashmir and outside it, stained with sorrow.

# The Impasse Over Kashmir

The impasse over Kashmir over time has proved to be painful, stubborn, and mythical. Kashmir watchers often wonder why a simple situation grew up to be so intractable.

The problem of Kashmir is the problem of a community changing its mind about its belonging to a nation it had been part of for several decades and the nation not being in a position to grant the community the independence it wants.

Beginning at the very beginning of the India Kashmir nexus, we go to the momentous event of the division of the Indian subcontinent into the two nations, India and Pakistan, in 1947. The division, among other things, involved some 552 princely states, the rulers of which had the option of either going to India or to Pakistan or in a special case remaining independent. (The people of the states had no choice in the matter). The king of Kashmir, Maharaja Hari Singh, asked the two nations to give him time to make his choice, what was called the Standstill Agreement. Pakistan granted it while India did not respond to it. While Hari Singh was still making up his mind, Pakistan broke the Standstill Agreement, and invaded Kashmir on Oct. 21, 1947. On Oct. 26th Hari Singh sent an emergency request to Louis Mountbatten, then the Governor General of India and Pakistan, to help him. Along with the request for the help he signed the Instrument Of Accession, without which he knew India could not help him. Instrument Of Accession was a legal framework for the accession of the princely states to India and Pakistan. It was accepted by Mountbatten on Oct. 27th and he requested the newly formed Indian government to help Kashmir. The Indian troops were dispatched to Kashmir on the same day. Jawaharlal Nehru, India's Prime Minister, further stipulated that when the peace and order was restored in Kashmir, its

people approve their state's accession to India, even though it was not required by the Instrument Of Accession. In 1952 and again in 1957 the Jammu and Kashmir Constitution Assembly ratified it. Furthermore, this willful choice was made under the leadership of the greatest Muslim leader in the modern Kashmiri history, Sheikh Mohammad Abdullah.

Nehru approached U.N. in Dec 1947, when the Indian troops had repulsed the Pakistani army only partially, to seek its intervention to get Pakistan out of Kashmir. This is considered to have been a monumental blunder by him, as he could have pushed the invaders all the way from Kashmir and then gone to U.N., if at all that was necessary. His idealism was so strong and his practical grasp of the situation so poor that he further jeopardized India's interests by asking the U.N. to hold a plebiscite in Kashmir to ascertain its people's wishes on which nation they wanted to join. Pakistan did not fulfill the U.N's. conditions to hold the plebiscite because it thought it would lose it.

So, Kashmir's accession to India has been without duress and absolutely legal.

Then why did Kashmiri Muslims change their mind in 1989 when they helped Pakistan in launching a massive revolt in Kashmir? The answer to that question lies in the unrelenting drive Pakistan has desperately managed to keep to acquire Kashmir, to divert the attention of its people from its monumental failures in solving their problems of economy and maintaining a democratic and stable government. Political leaders of Pakistan have reached an understanding a long time back that keeping the Kashmir Problem alive was vitally significant for their nation's survival. Through lies and mythologizing Kashmir has become a dream for Pakistanis, whose fulfillment would erase all their previous failures and make them pure once again and earn them a cathartic victory. Pakistan has invested hugely in keeping Kashmir destabilized over the decades, so that its arch enemy India's hands are not free to interfere in their nation. Also, the worldwide upsurge of Islamic fundamentalism has seduced Kashmiri Muslims into breaking their lot with India. Even though they prospered as never before in their history after they took over Kashmir in 1947, still their intrinsic religious insecurity made them

double-minded about their relationship with India. They liked India's money and its pampering of them but their heart was with the Islamic center of gravity. In the earlier phase of their cooling of relationship with India, in early 60's, they wanted to join Pakistan; but in the last few years, seeing Pakistan's hopelessness as a nation, they have pinned their hopes on becoming an independent nation.

Pakistan's claim on Kashmir is based on the fact that the majority of Kashmiris are Muslims. Well, that is so only in Kashmir province. The state has three distinct provinces in it based on the demographics, history, and geography: Kashmir, Jammu, and Ladakh. Disregarding the areas lost to Pakistan and China, Kashmir has only 46% of the land area of the state and about 54% of the population. Jammu has 66% of its population as Hindus, Ladakh 50% Buddhists and 44% Muslims. Only in Kashmir Muslims have a majority of 95%. Both Jammu and Ladakh do not want to break away from India. (Ladakhi Muslims are different from the Sunni Muslims of Kashmir) So, no one is thinking of making the entire state of Jammu and Kashmir as an independent nation, even though in the entire state Muslims have a majority of 67%; only Kashmir province can be considered for that. The famous Kashmir Valley, where the majority of the Muslims live, has only 7.5% of the area of the state.

Whatever the reason for Kashmiri Muslims' change of mind, it is not easy for a nation to let a part of it sever from it. There are only a few examples of nations letting parts of it cede into new nations. Generally, nations consist of many parts which are intrinsically interconnected by history, culture, economy, and geography. Letting a part break away is difficult due to the emotional and practical reasons. Giving up Kashmir will entail huge difficulties to India. Foremost is the example it will set for some other restive parts of India, like Punjab and Assam, even though their active struggles to be independent of India are behind them but the old ambitions may be still be simmering in their peoples' hearts and minds. Also, Kashmir's breakup from India will send wrong signals to its 170 million Muslims. Then there is a massive concern for the security. With Kashmir detached from India, the northern international border of India will be some 300 miles closer to New Delhi.

Let us think for a moment that Kashmir is given independence. In less than 6 months from the onset of that Pakistan will doubtless invade it and claim it on the basis that they have cited for over the last six decades in its attempts to acquire it - that the Kashmiri Muslims want to join them. Nothing in the world at that point can reverse their usurpation. And the thought of that nightmare shakes Indians to even consider the independence of Kashmir. There is not a single member in Indian Parliament, which has the ultimate authority to let Kashmir cede from India, who is for it. Autonomy is the closest thing to independence that can be granted to Kashmir which is feasible. But Kashmir already has an autonomy provided by the Article 370 of the India constitution, which barring foreign affairs, defense, finance, and communications, lets it administer itself more freely than any other state in India can do it. Kashmir has even its own constitution and flag. All that is viable is to increase this autonomy.

So, unfortunately there are not many choices there are to cater to the wishes of Kashmiri Muslims. They are like married to India in a system of marriage where a divorce is not permissible. Will a time come in the future course of the humankind when a state within a nation can get a divorce from it as a matter of right? While the humankind is getting more and more sensitive to freedom, both individual and group, even a 100 years from now, I do not think that kind of divorce will be easy. Kashmiri Muslims, unfortunately, will have to shed a lot of blood for it. But we can ask the most germane question of the subject of the impasse over Kashmir: what is the need for Kashmiri Muslims to divorce India? They have more freedom than any state has in India; they are economically better off than most of the states; they have an absolute freedom to practice their religion. Just because the notion of Islamic exclusiveness crept in their minds sometime after 1947, must they burn up all their bridges with India, which in all likelihood will never grant them independence? In all likelihood, a few years from now, one of the pro-Hindu parties in power in New Delhi will remove the artificial oxygen protection of Article 370 to Kashmiri Muslims and let them live naturally like the rest of the nation. Their son-in-law treatment will evaporate and they will then rue why they had to rock their good life. The present Muslim leaders in Kashmir are leading their followers astray in a dangerous direction, after having already lost a lot of them in their confrontation with India, in which their trustworthiness by Indians



will haunt them for decades to come.

Suffern, New York, 12.9.10

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# The Kashmir Problem

Maharaj Kaul

Kashmir is like a very beautiful but a wounded woman. For a long stretch of its history it has been coveted and ruled by many foreigners. Immense misery has been wrought on its inhabitants by the usurpers. Even today its neighbor, Pakistan, believes that it has the right to own it. Kashmir Problem has aged enough over its sixty years, without permitting a clear view to many of its observers of its solution, thereby maturing to have become an enigma. About a hundred thousand Kashmiris have died, many more wounded, and a lot more displaced from their homes in the wake of the war, terrorism, and hatred Kashmir Problem has engendered. Above these images of Kashmir lie dark clouds of ignorance on the genesis of the Problem. Pakistanis and many people in the West believe that India is illegally occupying Kashmir.

Why is the problem so intractable? Only because of Pakistan's obstinacy to accept the facts. The facts are that in 1947, the year both India and Pakistan became free from Britain, Indian princely states had to make a choice of either being with India or Pakistan (a new nation being created). The choice had to be made by the ruling king of the state and its people had no say in the matter. There were about 560 kings involved. Because Maharaja Hari Singh of Jammu And Kashmir was known to be an arrogant and a difficult person to deal with, the Indian leader, Sardar Patel, and the Govt. Of India's administrative executive, V.P.Menon, who were in-charge of managing the eligible states through the process of integrating

with India, decided not to woo him to the India fold. A special legal document called Instrument Of Accession was created for the purpose of states' integration with both India and Pakistan. The initial vacillation of Maharaja Hari Singh melted fast after the Pakistan army backed civilians attacked Kashmir, exposing the thinness of Maharaja's military strength. He approached the Viceroy Of India for help, who in turn asked Prime Minister Jawahar Lal Nehru to intervene. Indian Government approached Maharaja Hari Singh telling him that that they would help him if he signed the Instrument Of Accession. Maharaja accepted the condition, creating the bedrock of Jammu And Kashmir's accession to India. It is as legal as anything can be. Meanwhile, India went to U.N. complaining about Pakistan's unlawful incursion into Kashmir. U.N. declared a ceasefire which both India and Pakistan accepted. In the later negotiations in U.N. a move to hold plebiscite in Kashmir was passed but with the condition that the area of Kashmir presently under Pakistan (about one-third of Kashmir) should be first vacated and the people who originally lived there and had fled due to the Pakistan backed invasion should be brought back to participate in the plebiscite. (We do not know how U.N. will handle this matter as sixty years have passed since the people fled the area) Pakistan does not talk at all about this condition of the U.N. plebiscite. Many young Pakistanis know nothing about it. Also, this is a condition Pakistan is supposed to have been reluctant to meet as it does not have the confidence that the relocated people will favor them in the plebiscite.

Subsequent to the above indicated event Maharaja left his state and he was toppled in power by Sheikh Mohammad Abdullah, a leader of the peasants and the common people, who had been fighting the Dogra royalty over several decades. He has been the greatest Muslim leader Kashmir has had. This was a single instance during the transfer of power from Britain to India that in one state indirectly a democracy replaced a monarchy. The new Jammu and Kashmir Assembly twice voted to have the state be a part of India. So, the integration of Jammu And Kashmir state was made legal three times. Subsequently, in the next two decades, the Muslims became the leaders in government, commerce, and culture. They had never seen such prosperity in their history.

But India's neighbor, Pakistan, was not only not happy with Kashmir's prosperity

but also had deep designs of its own about it. Pakistan is a benighted country, where except for the first few administrations after its independence the government has been run by its military. Constitutions, supreme courts, and parliaments have been changed to suit a new president. One of the glimmering gems it has been dangling in front of its very angry and disenchanting people has been Kashmir. Politicians have been telling the people that the jihad with India over Kashmir was ongoing and sooner or later they would be bringing Kashmir to them. Wars in 1965 and 1989 were the offshoots of this thinking. Kashmir is a well developed intelligence base of Pakistan. Pakistan has spend over half billion dollars over years to seize Kashmir. But this has not happened because of the superior military power of India.

The most important question about Kashmir is who does it belong to? The myth perpetuated by Pakistan is that it belongs to it by virtue of the Muslim majority of the vale of Kashmir, which is only a small part of the state of Jammu And Kashmir.No country can decide the nationality of a state of a sovereign nation. As has been indicated at the outset of this article that it absolutely belongs to India by virtue of the legality of the Instrument Of Accession which Maharaja Hari Singh of Jammu And Kashmir signed in 1947. It was followed by the state government run by the people's leader, Sheikh Mohammad Abdullah. Historically unprecedented prosperity befell Muslims subsequently. If India is sending military forces and otherwise spending a huge amount of money on Kashmir, it is because it is trying to defend one of its states. The matter is the graver as the people who are disturbing Kashmir are from the neighboring country who are bent on annexing it. It is an international crisis. Which Western country would sit silently and see one of its states annexed. Almost all the Western countries would be very aggressive in defending their territorial integrity. The Eastern ethos mold of India has rendered it into a passive country. If it had defended Kashmir aggressively earlier then perhaps it would not have seen Pakistan's war on Kashmir in 1989.

The recent eruption of turmoil over Jammu And Kashmir government's transference of some 90 acres of land to a Hindu organization called Shri Amarnath Sangarsh Samiti for annually facilitating thousands of Hindu pilgrims'

journey to the Amarnath cave, a high level religious event. This was done because the government thought the organization would do a better job in constructing temporary shelters and other facilities for the pilgrims than it has been doing for a long time. The Muslim politicians seized upon this land transfer as a dilution of demographics between the Hindus and the Muslims and launched a bloody protest, which took the shape of the stoppage of work, food, and other amenities of living. In retaliation Hindus virtually stopped everything in the Hindu city of Jammu over two months, bringing the life there to virtually a standstill. The transferred land lies at 13,000 Ft. and so no one can live on it for an extended period of time. So, where does the demographic dilution lie? The Muslim agitation went beyond the land transfer to the breakup with India and joining up with Pakistan. Pakistan invests millions of dollars every year to keep the pot of unrest boiling in Kashmir. It also sends trained and armed infiltrators to achieve its goals. India has been rather weak taking the regular attacks inside its land in a low key, response as needed basis.

Unfortunately, there is a lot of ignorance in the world about Kashmir. The facts are that Kashmir is a legitimate part of India and it keeps military forces there to keep Pakistani infiltrators and Pakistani backed insurgents in check. India is doing a legitimate thing in defending its land.

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# **Insanity And Insensitivity - Reflections On Kashmir Problem**

Reflections On Kashmir Problem

After a magnificent victory of big dimensions one does not, generally, stop to think the underlying causes behind it; but in the aftermath of a mammoth failure one is compelled to ponder its avoidability.

The irenic and languorous people of Kashmir lie today physically impoverished, mentally rattled, economically devastated, and politically dead. The physical grandeur of Kashmir lies in shambles. Heavy layers of gloom surround the moribund existence of its people, who are spiritually exhausted, staring blankly at the future.

The Kashmiri children will bear the greatest damage of all the people in the conflagration. Their psyches will grow aberrated, robbing them of full and healthy lives. The culture of the place has suffered a violent wound, which will take decades to heal, leaving forever an excruciating stigma.

What caused this calm and care-free people living in majestically beautiful and idyllic surroundings, riding a long turbulence-free history, to explode so violently?

When the greatest Kashmiri leader Sheikh Mohamad Abdullah was asked why he decided to throw his political lot with Hindu India rather than with Muslim Pakistan, he answered that he did so only because he thought his people would prosper more. He was right on the mark. In the period between 1947, the year modern Kashmir was created, and 1989, the year when the ongoing civil war became a force to reckon with, Kashmiris experienced a huge economic upliftment, unprecedented in their history. They were the unquestioned masters of their land politically, culturally, and in the practice of their religion.

What laid the seeds of their insanity was their psychologically insecure identity. They never felt they were part of India, in spite of living grandly on its resources. This irrationality of apartness from India, maturing into alienation, became the bedrock of the political divide.

Why would anyone join an economically crippled and politically benighted Pakistan, which since its inception fifty years ago has played a havoc with its existence? It is a nation without a reliable structure of government; unrelentingly under the evil control of its military ; without the tangible will for political change in its much frustrated, tired, and resigned people. It is one of the most exploited, confused, and backward nations in the world. It draws sustenance from the efforts it expends on destabilizing its neighbor. It is a nation without a program and without an awareness of the severity of its problems.

When Pakistan is not able to take care of itself, how can it take care of the added burden of Kashmir, which has no significant economic resources. But acquiring Kashmir is not a tangible plan for Pakistan, but a blinder set up by its politicians to divert its people's attention to their colossal problems, a tranquilizer provided to make them forget its bleak record and unpromising future. Pakistani leaders know that Kashmir can not be wrested from India, but they want their people to have the illusion to the contrary. There have been few nations in the history of the world in which politicians squandered so much national wealth and energy, and fooled its people so long ,for so little.

A Kashmiri would remain a much stigmatized second-class citizen in the expanded nation of Pakistan and Kashmir. From the very outset the new province of Kashmir would be a seething cauldron of political intrigue and unrest. Its former economic security will pulverize into paralysis and panic. Kashmiris will beat their chests for their catastrophic blindness.

This drama of the insane hunter and the blinded prey is tragic, traumatic, and devastating.

An independent nation of Kashmir is a geopolitical impossibility at this time.

Behind the glossy but tragic drama of the hunter and the hunted lies the egregious devastation of the original inhabitants of Kashmir, the Kashmiri Pandits. Some three thousand Pandits were expended casually, just to give color and excitement to the cause of the Islamization of Kashmir. Another three hundred thousand were kicked out of their homes by the vicious fear and the scorching threats unleashed by the militants against them. Rendered refugees in their own land, they are leading miserable and wasted lives in camps. Their children are growing without proper nutrition, education, and future.

These unmourned victims of the Kashmir crisis have even been foresaken by their own government. Never has a government knowingly neglected the victims of a civil war raging in its country to appease the criminal group responsible for it as much as in the Kashmir war. In fact, Govt. Of India's strategy is to maintain the brotherly relationship with the militant- sympathizers, in the hope that one day they will come around, as it happened in the Nagaland crisis. The government has let the Kashmiri Pandits wither away, to keep the Kashmiri Muslims less critical of them.

What has the rest of the world done for the Pandits? There have been no international relief measures taken for them. In fact, most of the world does not know much about their plight. A few thousand deaths and a few hundred thousand refugees do not excite the mankind very much these days. The devastation has to be much larger to occupy the world news headlines.( Bosnia is supposed to have completely eclipsed Kashmir).

Pakistan's proxy war in Kashmir has not elicited much criticism in the world. People have turned their heads away in the West from the vicious Pakistani invasion, because it has happened in the East, and also because Pakistan had been a friend of the West for a long time. Morality at the international level is a matter of region, race, and convenience.

Throughout the history there have been some wars and upheavals based on the insanity of the participants rather than on the territorial and economic reasons. The war in Kashmir is a splendid example of this genre. The mankind's collective will is still so diffused , light in ambition , and unsure of its morality, that it can not be counted on saving a part of it at this time.

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# Kashmiri Refugees' Settlement In US

One of the definitions of fantasy is that it is a dream-like happening in imagination with uncertainty hanging over its ability to stand on the ground.

Such is the quality of the idea of the mass-emigration of the KP refugees to US.

The idea is a fantasy because:

- US is not going to grant a refugee status to such a large number of KP's, because that would be directly meddling in India's internal affairs ( which Govt. Of India has very strongly resisted in the past).
- With the prevailing anti-immigrant mood in US, Clinton Administration is not going to sponsor such an idea.
- Govt. Of India is going to fight this idea tooth and nail to maintain an image of even-handedness with KP's.(The mass-exodus of KP's will be a egg- on-the- face in GOI's history)
- Most of the KP's will not be willing to make such a move because of its extreme dimensions.



Emigration to US does not provide the solution to the problem of the loss of Kashmir for KP's; though it may provide ( if it is feasible) relief to their practical living . ( Ask a Jew if settling in US has made him forget the agony of Israel).

What we need is patience. The elections in Kashmir are a turning- point in the ongoing civil war. With the militants not having thrown their towel yet, and GOI not fully exploiting their weakened position, it may still take a couple of more years for the tide to turn significantly in KP's favor. The geopolitics of the situation is in India's favor; Pakistan's evil is against them.

KP's can not run away from Kashmir; we have to bear the agony a little longer. We have to set hartals, employ Gandhi's satyagraha, and keep on hammering on the politicians in Delhi. The old- guard politicians are on their way out; to be replaced by more practical- thinking people, unencumbered by the old loyalties and stigmas. More than the Kashmiri Muslims and Pakistan, it is our own GOI which is the villain in this upheaval.

Those few KP's who wish to emigrate to US should be encouraged to do so and helped by us. Let the word go out that there is a possibility in this direction for some of them. Let us campaign on that basis. ( That will also embarrass GOI a little)

Panun Kashmir, with its laudable commitment to the rehabilitation of KP's and the great efforts it has expended in the general direction of the KP cause, has not been an effective organization. We need to rethink our strategy with GOI, and regroup if necessary.

The history of the unfair treatment of the groups of the mankind is mind-bogglingly enormous , but the capacity of the trampled masses to overcome that is no less overwhelming.

If we stand our course, but not hesitate to change our tactics if the situation so warrants, one day we will win.

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# **Disillusionment And Faith - The Future Of Kashmiri Pandits**

When a man is robbed of his belongings, kicked out of his home, and forced to leave his land where his ancestors had lived for thousands of years, it is very hard to imagine that he will continue to have faith in the human values of his tormentors and destroyers - even of his neighbors and countrymen at large, and even that of the people around the world.

Human life is a fragile phenomenon, where the support of the physical environment and the faith in the fellow human beings is a requisite for meaningful existence.

Kashmiri Pandits, the original inhabitants of Kashmir, have been kicked and destroyed before, but never have they been so grossly brutalized, victimized, and dehumanized as this time. This destruction of Kashmiri Pandits is the most profound in their history and it will have a significant impact on their survival and happiness.

The annihilation of Pandits happened while the central government of India was watching and well aware of the dimensions of the tragedy taking place but chose to play soft with its perpetrators, Muslims, in the hope of winning the civil war in Kashmir one day. Cries of help to the people of India and beyond evoked little

effective sympathy and help. Ambushed in daylight, Pandits left Kashmir Valley in pain, misery, and utter revulsion toward Muslims and disgust toward their central government - but invisibly, deep beneath their day to day consciousness, many of them harbored hopes of justice and human treatment. It took many years after being kicked out of the valley before most of them started losing faith in the mankind's mythologized human values and civilization's much vaunted democratic institutions.

Most of the KP's pass time in the dreary, pigeon-holed, futureless existence in Jammu. Thousands of men in mid-30's to mid-50's never go to work, as they have chosen to survive on government handouts given in lieu of the salary they would have earned, if they had the proper conditions to work in Kashmir. This psychological-self-annihilation is the worst price KP community is paying at the hands of the civil war. The lack of zeal, ambition, and a sense of honor to work has had devastating effect on the family happiness and the proper psychological health of KP children. Many young, professionally educated KP's have chosen to fight the mental illness and the consequent physical illness than attempt to carve a new future in places distant from Kashmir. This long immersion in slothfulness and hopelessness will cast a dark shadow on the development of the future Kashmiri culture. It will take generations before Kashmiri Pandits of Jammu and Kashmir will regain purposefulness, confidence, and cheerfulness in their lives. One has only to look at the volume of anti-depression, ulcer, and blood-pressure medications consumed by KP's in this region. Some time back there was a report that the average birth-weight of KP babies in the region was significantly deteriorating. The young KP boys and girls do not harbor big and many dreams.

One thing is clear in the present Kashmiri Pandit catastrophe, that they will never reoccupy Kashmir Valley in the same fervor, legitimacy, and bond as before. Although Kashmir will continue to remain under India, its past social and cultural atmosphere will never remerge, as it has been badly shattered. It is as if the spine of a human being has been broken in a violent collision and thereafter he can never reclaim his old poise, gait, and grace. Kashmiri Pandit's have to accept the fait accompli of the situation the events have thrown them into. Bleeding our hearts on the mammoth loss will not make us recover it. All the diplomacy, the

political jostling and posturing going on in the world on Kashmir problem does not touch the plight of KP's. They are the side-show of the side-show in this insane and ancient drama played between Muslims and Hindus. All the intense and prolonged efforts by KP's round the world to draw attention to their injustice and pain have not produced any significant results. KP efforts have by now reached an apex, any further intensification and revision of strategy to win people to their cause will not be helpful. No energy should be expended to influence Govt. Of India, as it has its own strategy and agenda, in which KP's have a marginal weight. In such a situation KP's should give up on the hope of reclaiming Kashmir in the way it occupied it before. Kashmir can not become their home in the same way as it was before. The recent catastrophic experiences in Kashmir have alienated the dominant majority of Kashmir, Muslims, and the Hindus for a long time to come. How can a KP return to a place where his fellow KP's have been murdered, many of their houses have been burnt, by a majority community who hates them. It would not be possible to have a normal emotional and psychological life there. And an attempt to raise KP children there would be a leap into insanity. Even though Kashmir will continue to remain a part of India, it is no longer a home of KP's.

With the above perspective, it would make a lot of sense for KP organizations like Panun Kashmir and KOA to withdraw from the cause of returning KP's to Kashmir and rechannelize their energizes and financial resources to the placement of young KP's in jobs, helping in the education of the destitute children, and the creation of international networking for the sustenance of KP identity and ambition. KP's should be helped to run for local elections. They should stop beating their chests and look to future for the betterment of their children and community. There hang myths about Kashmirs that they have a sharp sense of survival and a keen mind. Although they are not accurate but Kashmiris do have some sense of survivability and some measure of mental keenness - both greatly needed in their present circumstances.

If KP's follow two things - and it seems that they eventually will - they will do quite well in future. One is to work hard and the other to not to tamper with their identity. KP's are college-education minded and this helps them greatly in these

technological times. KP's are into all kinds of technological and scientific fields. One area they are not good at is private entrepreneurship, no wonder not many KP's are in that. Working hard, though not natural for Kashmiris, is accommodated by them when circumstances demand. We have to see how KP's work when they are outside Kashmir. They being permanently exiled from Kashmir Valley is in a way a boon for them, as their mental keenness coupled with diligence may take them to hitherto unrealized achievements. Kashmiris are very comparing, that is before embarking on important things they see whether fellow Kashmiris are also doing the same. In the universal climate of hard work, engendered by cutthroat competition, KP's will follow the tide.

Identity is one of the basic structures of human psychology, any attempt to modify it is risking a lot. KP's have to keep nourishing their identity (but not necessarily continue with some bad things of the old culture). This should take form of the community cultural clubs, international gatherings on history, art, and literature of Kashmir, etc. The internet revolution is obviously a bonanza to the uprooted communities like KP's. As long as KP's consider themselves first as Kashmiris and then as Indians, they have a better chance of retaining their Kashmiri identity. Having been rendered refugees in the country of their citizenship, they can not do any better. Like Jews we have been rendered rootless and like them we will become cosmopolitan and mixable with other communities. but without losing our identity. Like them our history will become our destiny. Our greatest pitfall will be if we try to become Americans or British or French, etc. We have to live through our Kashmiri identity to live in peace, dignity, and happiness.

Contrary to popular opinion there will be people living in the world a hundred years from now, who will not only call themselves KP's but be KP's - though different from us, to account for the passage of time and the change of circumstances. They may not be speaking Kashmiri, same way as many Europeans in U.S.A. do not speak their ancestral languages. The whole world is changing in that the ethnicity of its groups is diluting as global village metaphor is hitting the ground. We will be a colored element in a vast kaleidoscope. From the high pedestal of Kashmiri Brahmin we have to descend gracefully to become a mere flower in a widespread garden. History has taught us that ethnicity does not

disappear, though it may change its appearance. Also, Kashmiris , in spite of complex relationships they often have with each other, do not mix well with other ethnic groups. Networking will remain the backbone of the Kashmiri psychological survival. They are vastly more inclined to the psychological condition of "being," rather than of "becoming." Kashmiris seek their kind, even the one's they would have reservations about mixing with back home, outside Kashmir, in foreign lands, wherever they are spread thin. Kashmiris, history has shown us, have resistance to change. Kashmiris will survive ethnically as Italians, Irish, Spanish, and other groups have. Identity and survival are in their genes.

Moving out of Jammu and Kashmir as refugees and restarting their lives has been traumatic for more than one reason. A refugee's resettlement is expectedly fraught with anguish and perspiration, but in a KP's case the added dimension of heart-break came from our central government's apathy and neglect - which has been so bad that it seems it was calculatedly done. Add to it the lack of sympathy and help from the non-Kashmiri Indian (the significant help from Bal Thackeray and others has only been a drop in the ocean), which has hurt the KP pride very badly. There are only about 800,000 KP's round the world, but they have a high estimation of their legacy, character, and personality, and ,therefore, they are understandably a proud people. Indian people are battling a universe of problems, the plight of KP's is only a small air current in a hurricane they live in. KP's can not find proper sympathy, help, and opportunity to transplant themselves in India outside Jammu and Kashmmir after their destruction and desecration in land of their ancestors. They have to seek refuge outside India, if possible.

United States is a special place in the world at this time in history. It is not only the biggest nation of the immigrants but also a champion of democracy and is economically the strongest engine in the world. No wonder it has been a magnet to the world's disaffected, disfranchised, and deprived. KP's have a logical place to attempt to emigrate to in their circumstances. There are some one thousand KP families in U.S. eager to help them. Given the ethnic multiplicity and tolerance in the country, U.S. is the most suitable place for KP diaspora to land at. Even though it is far from Kashmir, it is the most suitable garden in which the fragile KP plant has the best chance of transplantation. We can try, at a larger scale, to

influence U.S. Govt. to give us refugee treatment in giving us land and financial support. This simple idea has unfortunately not been give a chance. Better than living in India, U.S.A. would best serve the long-time goals of many KP's.

Disillusionment is the present state of mind of the KP refugee, we could not expect any different from his circumstances. For thousands of years he clung to his mother Kashmir but now time has come for him to take a radical step, a step to make a clean break from the past illusions, and at last tread on the ground leading to liberation. We have been a target of religious hatred, a political bargaining chip, and a peripherally insignificant minority for a long time but now fate gives us a chance to escape the turmoil and a torture of hundreds of years - a chance we can not lose, an opportunity we can not spoil. Future beckons us. Faith has been simplistically described as belief without reason. But we need not abandon reason in having faith that KP's will transcend the present impasse and emerge as a more successful and happier community than before. All we have to do is work hard, retain our identity, and try to leave India. The subconscious religiosity of KP's, their non-conformist inclinations, their strong love for nature, and their disinclination toward a personal god are all ingredients for a people who can transplant themselves to different places and cultures in the world.