

Managing Kashmir Conflict: A Collaborative Approach

Abstract

Kashmir conflict between Pakistan and India has been a source of severe conflict between the two states throughout the post-independence history of sub-continent. Both the states have extremely divergent perspectives regarding ownership of Kashmir with stringent standpoints. The claims have gained intensity to the extent that they have become the symbols of national prestige and none of the disputant parties can roll back its claim even having recognized the facts on ground. Despite 68 years have passed since the independence, the dispute seems not to be resolved in the near future. The stagnancy regarding dispute over Kashmir has several drawbacks that have halted the potential regional developments and both the states are suffering a lot in every field of life including socio-politico-economic as well as in international relations. The study suggests that the Kashmir conflict can be dealt at its best by adopting 'Conflict Management' technique based on 'Collaborative' approach of conflict resolution, which may further create opportunities for the ultimate resolution of the dispute. How to manage the Kashmir conflict is a big question. The study has provided an innovative idea of creating Loose Confederation of Jammu & Kashmir territories across the line of control, which can be a feasible option that can at least provide opportunities for the socio-politico-economic development of the people of Kashmir while not compromising the stringent viewpoints of both India and Pakistan. By adopting the conflict management technique based on collaborative approach, the socio-economic development can be assured at least, which may contribute to reduce the burden of hostile history over the natives at its minimum.

Key Words: Kashmir, India, Pakistan, Conflict Management, Collaborative Approach.

Introduction

Kashmir conflict between Pakistan and India has been a source of severe conflict between the two states throughout the post-independence history of sub-continent. The intense nature of the conflict led both the states to fight direct wars with each other as well as led to the Nuclearization of South Asia. Both the states have extremely divergent perspectives regarding ownership of Kashmir with stringent standpoints. The claims have gained intensity to the extent that they have become the symbol of national prestige and none of the disputant parties can roll back its claim even having recognized the facts on ground. Despite 68 years have passed since the independence, the dispute seems not to be resolved in the near future. The stagnancy regarding dispute over Kashmir has several drawbacks that have halted the potential regional developments and both the states are suffering a lot in every field of life including socio-politico-economic as well as in

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international relations. The study suggests that the Kashmir conflict can be managed at its best by adopting 'collaborative' approach of conflict resolution, which may further create opportunities for ultimate resolution of the dispute. Due to the intensity of the dispute and severity of the stringent standpoints, the conflict management techniques should be applied at first stage by adopting collaborative approach. The second stage towards ultimate resolution should be convened only when the first stage gets enough strength that it may not be reversible. By adopting the conflict management technique based on collaborative approach, the socio-economic development can be assured at least, which may contribute to reduce the burden of hostile history over the natives at its minimum.

Background

Kashmir has always been the major source of confrontation between Pakistan and India. Both countries have been entangled in various wars and near-war crises situations due to their divergent claims over Kashmir. Scholars from both sides also consider Kashmir as the major source of confrontation. Gaynesh Kudaisya and Tai Yong Tan have described that, "as a source of persistent low-level cross border conflict and as the subject of protracted negotiations between the two states, Kashmir remains the key agenda in India-Pakistan relations." (Tai Yong Tan and Gyanesh Kudaisya, 2000, 217) Jeff Hay attributes Kashmir as "one of the most unfortunate legacies of the arbitrary boundaries that divided the Indian subcontinent in 1947." (Hay, 2006, 2-6) Since independence from British Rule, the Kashmir conflict has been pivotal in the bilateral relations of the two countries. Genesis of the Kashmir conflict lies in the mismanaged partition process of the Sub-continent by the departing British rule. Sumantra Bose described Kashmir as a "by-product of the partition of the subcontinent" after British rule. (Bose, 2007, 163-167) According to the plan of partition, the princely states were given the option to join either Pakistan or India as per their will. At that moment, Kashmir, despite having a dominant Muslim population, was ruled by a Hindu ruler, Hari Singh. Sumantra Bose claims about Singh's intentions that "he seemed to be inclined toward negotiating with the Pakistani leadership to preserve his throne and privileges, rather than with Indian Congress leaders, whose disdain for the princely rulers was widely known; but a modus vivendi between the subcontinent's Muslim state and Kashmir's Hindu autocrat failed to materialize" (Bose, 2007, 163-167) Eric Margolis explores that "Kashmiri Muslims, who overwhelmingly desired to join Pakistan, were ordered to surrender their arms, and promptly revolted. In September 1947, in the southern Kashmir regions of Poonch and Jammu, which had and still have sizeable Hindu majorities, mobs of Hindus and Sikhs, aided by the Maharaja's Sikh soldiers, began slaughtering Muslims." (Margolis, 2001, 66) Fearing Singh's decision to accede with India against the will of Muslim population, "Muslims near the cities of Poonch and Muzaffarabad, many of whom spoke Punjabi, rebelled, and their leaders called for union with Pakistan. This sparked popular support in Pakistan itself, as tribal members from Muslim Pashtun areas in Pakistan's North West Frontier Province sought to aid their Muslim brethren against the Maharaja's forces." (Byman, 2005, 158) The panicked Maharaja of Kashmir Singh called for Indian help to dislodge the freedom move and acceded to India in reward. He wrote a letter to Mountbatten and said,

“With the conditions obtaining at present in my State and the great emergency of the situation as it exists, I have no option but to ask for help from the Indian Dominion. Naturally they cannot send the help asked for by me without my State acceding to the Dominion of India. I have accordingly decided to do so, and I attach the instrument of accession for acceptance by your Government.” (Singh, Text of Hari Singh's Letter to Mountbatten, 1947)

In response to Singh's letter, Indian forces were ordered to help the Maharaja's forces against the rebels. However, according to Jeff Hay, “Mountbatten did so only on the condition that in the near future a vote be held; he wanted Kashmir's people to decide themselves whether they were to be Indian or Pakistani.” (Hay, 2006, 2-6) Mountbatten replied to Hari Singh:

“In consistence with their policy that in the case of any State where the issue of accession has been the subject of dispute, the question of accession should be decided in accordance with the wishes of the people of the State. It is my Government's wish that, as soon as law and order have been restored in Kashmir and its soil cleared of the invader, the question of the State's accession should be settled by a reference to the people.” (Mountbatten, 1947)

Moreover, Mountbatten already had insisted categorically that “a decision to accede to either India or Pakistan must be on the basis of two considerations: the location of their fief in relation to the territories of the two emergent sovereign polities, and the preferences of their population of subjects.” (Bose, 2007, 163-167) Margolis notes: “Mountbatten advised that the Kashmiri majority be allowed to choose their own allegiance and Nehru publicly promised to respect their wishes, but in the end both advice and promises were ignored.” (Margolis, 2001, 66) Although these letters are considered the corner-stone of Indian claim regarding accession of Kashmir to India, originality of the letters is declared as doubtful by Alastair Lamb in his well-known work on Kashmir. Alastair Lamb considers the instrument of accession as a false document due to the false dates of letters that are contradictory to the circumstantial evidences. (Lamb, 1991, 137) Government of Pakistan also considers the instrument of accession (IoA) as a fraudulent document that was engineered by the Indian Government. Objecting the Indian claim on Kashmir on the basis of IoA, the official website of Pakistan's foreign office states: “This claim was made on the basis of a fraudulent instrument of accession.” (Ministry of Foreign Affairs Pakistan, 2011) The act of accession by the Maharaja was not acceptable to Pakistan. Despite having meager resources, Pakistan fought war with India against the forced accession and despite Indian intrusion of forces in Kashmir, Pakistan succeeded in capturing many areas of Kashmir. Dissatisfied with the performance of Indian troops, Singh wrote a letter to Sardar Vallabhbhai Patel and complained the failures of Indian forces. Hari Singh wrote:

“The military situation as you know has been quite depressing since the arrival of Indian troops. Except the first gains in the Kashmir Valley there has been a debit balance throughout so far as achievements are concerned. The Indian troops arrived in the Valley on 27 October. At that time we were in possession of about 3/4th of Poonch and the whole of

Mirpur district. We had by then lost only small bits of Poonch and Muzaffarabad district. After the recapture of Baramulla and Uri there has been a standstill. Two months have passed and the Indian troops are still at Uri. They attempted a venture to the town of Poonchand though they reached it was at great cost and the road was eventually lost. In the PoonchJagir which was held by the State troops inch by inch we had to withdraw and eventually lost the whole of the Jagir except the town itself where about 40,000 people are besieged along with 4 battalions (3 State and 1 Indian). The situation is by no means satisfactory.” (Singh, Letter from the Maharaja Hari Singh to Sardar Patel , 1948)

Pakistani advancement in the area and repeated failure of Indian army brought India to the United Nations Security Council. India made a complaint in the UNSC (United Nation Security Council) against Pakistan, which brought international attention to the dispute. United Nations passed various resolutions for the settlement of dispute through plebiscite and declared that accession of Jammu & Kashmir to India or Pakistan should be decided through the democratic method of a free and impartial plebiscite. Victoria Schofield mentions:

“The recommendations of the United Nations, formulated into three resolutions passed in 1948and 1949, also formalized the presence of a third party into the debate: the wishes of the people who lived in the land over which India and Pakistan were fighting. All three resolutions recommended that India and Pakistan should proceed with holding a plebiscite, as already agreed by the Governments of India and Pakistan, so that the people themselves could decide their future.” (Schofield, 2003, xii)

Although several guarantees were given to ensure the decision of Kashmir’s accession to either side through plebiscite in accordance with the will of the people living there but the matter was put into stalemate due to contending demands from both India and Pakistan. UN resolutions never saw accomplishment due to India’s delaying tactics; therefore both countries went into crises over Kashmir again in 1965, 1990 and 1999. Discussing the contending demands from both India and Pakistan, Jeff Hay notes:

“The Indian Prime Minister Nehru demanded that before any vote take place, the Pathans withdraw from ‘Free Kashmir’. His Pakistani counterpart, Muhammad Ali Jinnah, demanded that both the Pathans and Indian forces elsewhere leave Kashmir at the same time, but neither backed down. Even though the guns had stopped firing temporarily, the underlying issues lay unresolved, and Mounbatten’s vote never took place.” (Hay, 2006, 2-6)

Different solutions have been suggested at different times but most of these solutions are either impractical or unacceptable to India and Pakistan. Of these solutions the one that Pakistan would opt for is a plebiscite, as required by the UNSC resolutions. India, however, considers this option as irrelevant and outdated on the basis of *Rebus Sic Stantibus* doctrine (A treaty can be terminated on the basis that the state of facts and conditions upon which treaty was based changes to a substantial degree). Basically, India views the pledge that was made in 1948 as ‘void’ due to the fundamental change of circumstances since the

agreement. (Glahn, 1992, 588) Navnita Behera attributes Kashmir Conflict “as an immutable zero-sum test of India’s and Pakistan’s legitimating ideologies, in which one’s validity invalidates the other’s, which in turn precludes the possibility of any reconciliation.” (Behera, 2006, 1) On the other hand, Nicolas Blarel comments that, “From the start, the Kashmir dispute symbolized the competition of myths of nation-building and of legal interpretations of the accession and the UN resolutions.” (Blarel, 2008, 138) The complexity of claims from both Pakistan and India over Kashmir has resulted into congenitally flawed relationship between the two countries. The dispute is still unresolved and has become the major source of nuclear danger in South Asia.

After traditional tit for tat statements from the officials at the UNO, the spokespersons from external affairs ministries, and military elites for one & half a decade in the early phase of 21st century, the most recent development in the bilateral relationship between India and Pakistan was the visit of Indian Foreign Minister, Sushma Swaraj to Pakistan in December 2015 for participation in the ‘Heart of Asia Conference’. After repeated efforts to refrain from the dialogue process, Indian government had realized for a little time that the bilateral confrontation is the major obstacle for the regional development. Indian foreign minister had a meeting with the Pakistani officials including the Premier of Pakistan and expressed the willingness of Indian government to start a ‘Comprehensive Dialogue’ process between the two countries on all outstanding issues. Within the same month, Indian Premier, Narendra Modi paid a surprise visit to Pakistan for the Birthday wishes to the Pakistani counterpart on December 25, 2015, although very short, was warmly welcomed as a symbol of improving bilateral relationship but soon shattered due to the terrorist attacks on Indian Air base at Pathankot and the commitments for comprehensive dialogues have again been halted. Since the Kashmir issue is the major obstacle in the development of bilateral cooperation and it has kept both the states away from the socio-political-economic development that could be attained through cordial bilateral relationships, it needs to be carefully dealt by adopting non-traditional methodologies for resolution. Due to the intensity of the Kashmir dispute and severity of the stringent standpoints by both the states, the conflict management techniques should be applied at first stage by adopting collaborative approach. The second stage towards ultimate resolution should be convened only when the first stage gets enough strength that it may not be reversible. By adopting the conflict management technique based on collaborative approach, the socio-economic development can be assured at least, which may contribute to reduce the burden of hostile history over the natives at its minimum.

Conflict Management & Collaborative Approach

No individual in this world can fulfill all the necessities of life by itself. In order to fulfill human needs, it becomes mandatory for every individual to live with other people in a societal organism where people exchange their necessities and services with each other and try to make their lives fulfilled. However, it is not necessary that all the people have common interests. Clash of interests has always been a possibility, which involves them into conflict with each other that ultimately undermines their basic objective of a secure and good life. Therefore, conflicts are considered undesirable and one needs to avoid conflict. This

underpins conflict as the integral part of human life and necessitates the tools by which the negative outcomes of conflict situations may be neutralized. Just like individuals in a society, states are the main actor in the international society where each state needs to live in international society in order to fulfill the necessities of its citizens. At the same pattern, there may be clash of interests among the states that may involve them into violent conflict leading to the insecurity of the lives of their citizens. Therefore, conflicts among the states also need be dealt in the ways that may reduce the negative outcomes. The surge for methods to avoid the negative outcomes of conflict paved way for various academic disciplines to study conflicts and explore the techniques for avoiding conflicts. These techniques include various terminologies related to the conflict under various paradigms; conflict resolution, conflict transformations, conflict prevention, conflict prevention and conflict management.

Since the '*Conflict Management*' paradigm has been proposed for dealing with the Kashmir dispute, one needs to identify the differences among various other paradigms known in the discipline. Amongst other paradigms, *Conflict Resolution* aims at to find out the underlying reasons of the conflict and adopts innovative approach to find out the options that might not have been explored by the disputant parties. *Conflict transformation* is "a process of engaging with and transforming the relationships, interests, discourses and, if necessary, the very constitution of society that supports the continuation of violent conflict". (Miall, 2004, p. 4) *Conflict Prevention* is to take measures for escalation control over the dispute. The purpose is to avoid conflict from becoming violent; while the *Conflict Provention* is an advanced action for preventing a conflict, which aims at to deal with the conflict at its inception phase for preventing it to develop into a crisis situation; and '*Conflict Management*' theorists see "violent conflicts as an ineradicable consequence of differences of values and interests within and between communities. The propensity to violence arises from existing institutions and historical relationships, as well as from the established distribution of power" (Miall, 2004, p. 3). Since the conflict is an integral part of human life, resolving such conflicts is viewed as unrealistic according to this paradigm: the best that can be done is to manage and contain the negative outcomes. The key assumption according to Bloomfield and Reilly is that "*conflict cannot be eliminated but can be managed from becoming violent. It is the positive and constructive handling of difference and divergence. Rather than advocating methods for removing conflict, [it] addresses the more realistic question of managing conflict: how to deal with it in a constructive way, how to bring opposing sides together in a cooperative process, how to design a practical, achievable, cooperative system for the constructive management of difference*". (Miall, 2004, p. 3)

Addressing a conflict with the lens of a particular paradigm also necessitates an appropriate approach according to the nature of the conflict. How to approach a conflict, determines the outcome; adoption of inappropriate approach may lead to the failure. There are various approaches that may be used to address a conflict; i.e. the *Conquest approach* that relies on seeking one's own interest at the expense of the other party; the *Avoidance approach* that relies on lingering on and ignoring the conflict; the *Bargaining approach* that focuses on the give and take formula; the *Accommodating approach* that tries to preserve the relationship by surrendering one's own interest and satisfying the other; and the

Collaborating approach adopts the policy of mutual respect for one another and deals with the conflict as a mutual problem. It tries to discover such innovative options which may satisfy the interests of both the disputant parties. Integrating the mutual interests and understanding each other's needs bring new energies and innovative options that may lead to positive outcome. (Kenneth W. Thomas and Ralph H. Kilmann, 2015).

Managing Kashmir Conflict Through Collaboration

How to manage through collaboration is the major question with reference to the premise suggested above. This question can be addressed by outlining various steps to be taken successively.

1. First and foremost requirement is the cognizance of Kashmir dispute as a mutual trouble and the root cause of the backwardness of both India and Pakistan that has barred the socio-economic development of both the states. The inimical relationship between the two countries due to the Kashmir issue has incurred huge cost not only in terms of expenditures on security arrangements but has also deprived of from potential economic benefits that could be attained through bilateral trade. Recognizing dispute as mutual trouble shall pave the way for collaborative approach to work for the better management of the disputed territory, which is the only viable option in the contemporary strategic environment.
2. Keeping in view the strategic imperatives and domestic politics of both the states as cited in the introduction, the study has suggested adopting the collaborative approach to manage the conflict over Kashmir. Therefore, one needs to find out a mechanism that could serve the strategic concerns of both the states vis-à-vis reduce the negative impact of the dispute on bilateral relationship. Keeping in view the complexity of the dispute, the study suggests the establishment of a loose confederation of Jammu & Kashmiri territories with as much as possible decentralization where matters related to the central government should be governed jointly by Pakistan and India through a Council of Common Interests (CCI) including Kashmiri representatives from both sides. In case of disagreement in the CCI, the wills of each state would be implemented in their respective areas defined according to the line of control. The confederation of Jammu & Kashmir can be designed on the principles resembling to the working of European Union, which would neither compromise the territorial claims nor withstand the traditional standpoints of the two states rather would provide an opportunity for the prosperity of Kashmiri people. Creation of a loose confederation is a viable option due to the reservation of right of confederating units to get exit from a political union they entered in. It is neither the permanent merger of two territories into a single entity nor rules out the bilateral cooperation. Confederation of Jammu and Kashmir territories is an option that can create peace along with keeping intact the domestic slogans regarding status of Kashmir. It will be a win-win situation when both the states shall be collaborating while continuing their stance over the disputed territory.

3. Creation of political union based on confederation principles shall also require a fiscal confederacy that too should be based on the same principles as cited above regarding creation of political confederation. Fiscal authorities regarding local government affairs should be devolved to the Jammu & Kashmir legislature while international economic activities may be jointly regulated by the CCI where fiscal policies should be conditioned with approval only through consensus. Freedom of bilateral trade to Kashmiris within the territorial limits of Jammu & Kashmir would be an added incentive for promoting peace, which can be made possible by creating a common Kashmiri currency followed by an intra-Kashmir free trade agreement that would enable a single market economy and fiscal autonomy to the natives.
4. Establishment of people to people contact based on biometric verification system would be an ideal one if the freedom of movement to the Kashmiri people within the Jammu & Kashmir territory across the line of control is introduced. Since, both the states have acquired high-tech expertise in mass-identification mechanisms, introducing a system of security verification identity cards may reduce the burden of complex and tough visa-regime. It shall not only facilitate the intra-Kashmir people to people contact but would also enable the security agencies of both the states to compile and scrutinize the data and movement of each individual to ensure the security imperatives of both the states. The best example in this regard can be found in the mass-transit system across the European Union states where the masses have freedom of movement from one state to the other despite various differences among the member states. Although, it is too ideal to implement a Europe-like system in Kashmir but it can be implemented with certain limitations. Implementing such a mechanism in Jammu & Kashmir may prove to be a successful pilot-project that may serve to enhance the people to people contacts across the nations.
5. Above all, border management and force deployment is the most significant concern that has been a herculean task to deal with. Keeping in view the security concerns of both the states, it shall not be plausible to suggest the complete withdrawal of armed forces from Jammu & Kashmir territory rather the study suggests to keep the forces at their current places to ensure the proper implementation of the mechanisms cited above. However, a successive reduction based on equal percentage of the number of deployed forces at the current moment from both sides in a phased manner is suggested only when both the states bilaterally agree and feel satisfied on the positive implementation of the measures suggested above.
6. The proposals cited above provide innovation in the bilateral dispute management that can be further strengthened through consultation with relevant experts in the fields concerned and be implemented under a comprehensive international treaty.

Conclusion

Keeping in view the complex history of dispute over Kashmir, stringent standpoints of both Pakistan and India, their military confrontations, dangers of nuclear escalation, international strategic environment, and inefficacy of the UN resolutions, it can be deduced that Kashmir conflict is not going to be resolved in the near future and the people of Kashmir shall continue to suffer socio-politico-economic underdevelopment. By adopting the factual analysis of the conflict, the study accepts the hard-reality regarding ill-prospects for complete solution of the dispute in near future. Therefore, it has suggested reducing the sufferings of Kashmiri people by adopting a conflict management technique based on collaborative approach. Creation of a loose confederation can serve to maintain the stringent claims of both the states intact due to the availability of 'reversal' option to both the states alongwith providing an opportunity to the people of Kashmir to have a political union to serve their interests. Creation of a fiscal confederacy as suggested above shall provide economic opportunities to the people of Kashmir while control of international trade by a joint council of common interests shall help both the states to cater bilateral trade benefits leading to the economic development of both the nations. Freedom of movement to the people of Kashmir based on a biometric verification system shall contribute to the social life of the people and the establishment of a digitized database of people moving across the LoC shall serve to meet the security imperatives of both the sides. Withdrawal of the armed forces in Kashmir has always been a complex issue that has usually halted the efforts for peace in the disputed territory, therefore, the study has deliberately suggested to keep the armed forces at their places to meet the security concerns of both the nations unless both bilaterally agree to withdraw their forces. Suggestion of bilaterally agreed withdrawal based on equal percentage of currently installed forces is logical due to the enshrined suspicion of both the states regarding control over the disputed territory. Implementation of the plan cited above shall require some international guarantees due to the lack of trust between Pakistan and India that can be overcome through a comprehensive international treaty which should contain an article that if any one state feels the creation of confederation as useless, it can go for the unilateral reversal of confederation and reinstate the positions that existed at the time of the conclusion of the treaty. Although, the suggestions cited above seem to be very ambitious but they are feasible due to the availability of 'undo' option under the confederation principles and it can also satisfy the national prides of both the nations by keeping their stringent viewpoints intact. Only requirement for the purpose is a sincere effort made from both India and Pakistan with the understating that the dispute is a mutual problem.

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