

The Kashmir Dispute: Quest for an Amicable Settlement

Dr. Mohammad Jafar Ullah Talukder*

Abstract

One of the most long standing disputes in the world is the dispute between India and Pakistan over Kashmir. When British India was given its independence, it was supposed to be divided into two countries: India and Pakistan. All areas which were more than 70% Muslims were supposed to go to Pakistan. The rest would be India. However, the “princely states” would be left to decide on their own where to go. They could join Pakistan or India or they could remain independent. According to the Indians, India has the right over the whole of Kashmir on the basis of accession to India by the Maharaja of Kashmir. But, Pakistan has a different view. The Maharaja of Kashmir had no right to accession of the Jammu and Kashmir State to India against the will of Kashmiri people. Because, the agreement was that any areas more than 70% Muslims would go to Pakistan. Kashmir has more than 90% Muslims and therefore clearly should have been part of Pakistan. In these circumstances, an attempt has been made in this article to analyse the background to the Kashmir dispute, the role of the United Nations in settling the dispute, bilateral negotiations and mediation of third party, and Indian and Pakistani point of view regarding the dispute in order to settle the Kashmir dispute between India and Pakistan through amicable procedure.

* Associate Professor, Department of Law, University of Chittagong, Chittagong.

The Kashmir Dispute: Quest for an Amicable Settlement

1. Introduction

The original Kashmir dispute between India and Pakistan is in essence a territorial dispute, an argument over who had the right to the possession of the whole of Jammu and Kashmir as it had been on the eve of the Transfer of Power in 1947 on the basis of certain legal criteria to which the expressed wishes of the people were incidental. Even when the plebiscite had been injected into the disputes it was treated in a highly legalistic way. The Indian side argued that a plebiscite was unnecessary because the Kashmiri people had voted in other ways through the Constituent and Legislative Assemblies. The Pakistani side at the beginning was not too enthusiastic about plebiscite, particularly those which involved the dismantling of the State of Jammu and Kashmir into its component parts. Their claim was to all the states on specific legal grounds to which they attached great importance. Any claim by a Muslim state to territorial possession of Buddhist Ladakh could not, by the widest stretch of the imagination, be described as being based upon the quest for an expression of the will of the people exercising their rights under the Two Nations Theory. The Kashmir dispute, therefore, refers to the territorial dispute between the People's Republic of China, India, and Pakistan over the northwestern region of the Indian subcontinent. Pakistan claims all areas of Kashmir except for those administered by China while India claims the entire Dogra Kingdom of Jammu and Kashmir including most of Jammu, Ladakh, and Siachen Glacier. The Kashmiri region under Chinese control is known as Aksai Chin.¹ Three wars were fought between India and Pakistan over the region of Kashmir from 1947 to 1999 and India has fought a war with China in 1962 over Kashmir.

¹ The New Encyclopedia Britannica Vol. 6 (Micropedia), Fifteenth Edition, Chicago (1993), p. 491.

2. Early History of Kashmir

During its history Kashmir has been ruled by Hindus, Buddhists, Sikhs and Muslims.² The Mauryan emperor Ashoka is often credited with having founded the city of Srinagar. Kashmir was once a Buddhist seat of learning, perhaps with the Sarvāstivādan school dominating. East and Central Asian Buddhist monks are recorded as having visited the Kingdom. In the late 4th century AD, the famous Kuchanese monk Kumārajīva, born to an Indian noble family, studied Dīrghāgama and Madhyāgama in Kashmir under Bandhudatta.³

The Hindu Kings ruled over Kashmir for over four thousand years. During this long period of history, twenty-one dynasties came to power one after the other. An account is given about the Kings of this period, but most of this appears to be of a conjectural nature.⁴ As the centuries passed, the people of Kashmir lived under a succession of foreign dynasties—Pandava, Maurya, Kushan, Gonandya, Karkota, Utpala and Lohara.⁵

Reliable sources trace the history of Kashmir only to the beginning of the seventh century, although it is known that in the second century Kashmir was annexed to the Kushan Empire by Emperor Kanishka and become part of the Kushan Empire, later a part of China. From the eighth to the fourteenth century the State was independent.⁶

² New Standard Encyclopedia, Vol. Eight, Standard Educational Corporation, Chicago, p. K-29.

³ http://en.wikipedia.org/wiki/History_of_Jammu_and_Kashmir

⁴ Sardar M. Ibrahim Khan, *The Kashmir Saga*, Lahore: Ripon Printing Press Ltd, (1965) p. 4.

⁵ Josef Korbelt, *Danger in Kashmir*, Revised Edition, Princeton, N.J. (1966), p.10.

⁶ Ibid.

The Kashmir Dispute: Quest for an Amicable Settlement

2.1. Kashmir under the Muslim Rule

In the late 14th century, after years of Buddhist and Hindu rules, Muslims conquered Kashmir and most of the population converted from Hinduism to Islam.⁷ The fourteenth century saw the establishment of Islamic power in the Vale of Kashmir (by one Shah Mir who seized power in 1339 and reigned as Sultan Shamsuddin). Under the Shah Miri Dynasty numerous Muslim preachers visited Kashmir, notably the Persian Mir Syed Ali Hamadani (also known as Shah-i- Hamadan), who consolidated the dominance of Islam among the people of the Vale of Kashmir.⁸ The period of the fifty-year rule of Sultan Zain-ul-Abidin (1442-1474) was considered one of Kashmir greatness and has been called its Golden Age. Various Sultans continued in their rule over the country till 1587, when it was annexed to the Moghul Empire by Emperor Akbar and made a part of the Moghul Empire.⁹

In 1586, the Moghul Emperor Akbar added Kashmir to his dominions and it then became a favourite summer resort for successive Moghul rulers. In 1750, Ahmad Shah Durrani invaded and conquered Kashmir. The country thus passed into the hands of the Afghans.¹⁰ In 1819 the Sikhs, coming from the Punjab, entered Kashmir, ousted the Afghan ruler and established the modern state of Jammu and Kashmir. The people of Jammu and Kashmir were known generally as Dogras whatever their origin.¹¹

⁷ Ibid, p. 11.

⁸ Alastair Lamb, *Kashmir A Disputed Legacy 1846-1990*, Karachi: Oxford University Press, Reprinted in 1992 (Third Impression 1993), p. 9.

⁹ Josef Korbel, *op. cit.*, p.11.

¹⁰ Sardar M. Ibrahim Khan, *op. cit.*, p. 6.

¹¹ Sir William Barton, *The Princes of India*, Nisbet & Co., London, (1934), p. 121.

When the Sikhs launched their expedition against the Afghan ruler in Kashmir, they were assisted by a member of the Dogra family, Raja Gulab Singh. Because of his assistance, the Sikhs rewarded him by establishing his control over the whole Province of Jammu. In 1837 and in 1839, he extended his rule by seizing Tibet the northern areas, Ladakh and Baltistan.¹² In the years that followed the Dogra acquisition of the Vale of Kashmir and the creation of the new State of Jammu and Kashmir, Gulab Singh and his successors expanded their influence to the North-West into what the British in the latter part of the 19th century often referred to as Dardistan, including Gilgit, Hunza, Nagar and other tracts adjacent to Chinese Sinkiang and Afghanistan to create what are today known in the language of the Indo-Pakistani dispute as the Northern Areas.¹³

2.2. Princely State of Jammu and Kashmir

The State of Jammu and Kashmir was the creation in the first half of the 19th century of a Dogra chieftain, Gulab Singh, who had won the favour of Ranjit Singh, the builder of the great Sikh Empire in the Punjab with its capital at Lahore. In 1820, Ranjit Singh confirmed Gulab Singh as Raja of the State of Jammu; and from this base Gulab Singh rapidly proceeded to build up a small empire of his own, first in the 1830s conquering Ladakh and then in 1840, acquiring Baltistan (sometimes referred to by 19th century travelers as “Little Tibet”). In 1841, Gulab Singh undertook a disastrous campaign into Tibet proper (then part of the sphere of influence of the Manchu Dynasty in China) which halted his advance to the east.¹⁴

¹² Josef Korbel, *op. cit.*, p.12.

¹³ Alastair Lamb, *Kashmir A Disputed Legacy 1846-1990*, *op. cit.*, p. 9.

¹⁴ Alastair Lamb, *Kashmir A Disputed Legacy 1846-1990*, *op. cit.*, p. 7-8.

The Kashmir Dispute: Quest for an Amicable Settlement

At about the same time that Gulab Singh received Jammu from Ranjit Singh, the Sikh ruler granted to Dhyan Singh, Gulab Singh's younger brother, as a Jagir (or fief), the small district of Poonch. Poonch thus became a State in its own right quite distinct from Gulab Singh's Jammu. Its Muslim inhabitants did not take easily to Dogra rule, and the 1830s saw a series of singularly bloody rebellions which tested severely the military abilities of the Dogra Rajas.¹⁵

In 1846, as a result of his neutrality during the first Anglo-Sikh War, Gulab Singh was granted by the British Dominion over the Vale of Kashmir. This had been conquered by the Sikhs from its Afghan rulers in 1819. In 1846, the Sikhs had been obliged to cede Kashmir to the English East India Company, but the Governor-General, Sir Henry Hardinge, reluctant to expand the British direct rule into what was then an extremely exposed position, immediately transferred it (by the Treaty of Amritsar of 16 March 1846) to the Ruler of Jammu by what amounted to a deed of sale for the sum of Rs. 75,00,000.¹⁶ It took Gulab Singh, and then only with British military assistance, some two years to establish himself in his new possession where his presence was not welcomed by the local population. Some of his opponents he caused to be flayed alive, one of his favourite punishments. Contemporary British observers did not find Gulab Singh a kindly soul, though many were surprised to find him to be a convivial companion when relaxing from the affairs of state.¹⁷

¹⁵ B. S. Singh, *The Jammu Fox. A Biography of Maharaja Gulab Singh of Kashmir 1792-1857*, Carbondale, Illinois, (1974), pp. 12-13.

¹⁶ A. C. Benson & Viscount Esher, eds., *The Letters of Queen Victoria. A Selection of Her Majesty's Correspondence between the Years 1837 and 1861*, Volume II, 1844-1853, London (1908), pp. 73-74.

¹⁷ Alastair Lamb, *Kashmir A Disputed Legacy 1846-1990*, *op. cit.*, p. 8.

In 1846, therefore, the State Jammu and Kashmir was created under the Treaty of Amritsar between the East India Company and Raja Gulab Singh of Jammu who bought Kashmir Valley from the East India Company for Rs.75,00,000 and added it to Jammu and Ladakh already under his rule.¹⁸

The first Maharaja, Gulab Singh, was succeeded in 1857 by Maharaja Ranbir Singh. His rule was followed by that of Major-General Pratab Singh in 1885. The British Crown in 1889 replaced his rule temporarily by a Council, because the Maharaja had no son to succeed him. This temporary arrangement lasted till 1905. The Maharaja was then reinstated, at least nominally. In 1925, the nephew of the Dogra ruler, Maharaja Hari Singh Bahadur, mounted the throne.¹⁹ Hari Singh is part of a Hindu Dogra dynasty, ruling over a majority Muslim State.²⁰

3. Background to the Kashmir Dispute

After the British withdrawal from the Indian Subcontinent in 1947, territorial disputes between India and Pakistan over Kashmir started brewing. When India and Pakistan were partitioned, the Ruler of the princely State of Jammu and Kashmir was given the right to decide on whether to merge with either Pakistan or India or to remain independent with certain reservations.²¹

The ruler of Jammu and Kashmir, Maharaja Hari Singh, was not able to decide on the issue of his State's accession.²² In addition, Maharaja nursed fond hopes of remaining the princely ruler of

¹⁸ Tavleen Singh, *Kashmir: A Tragedy of Errors*, New Delhi (1995), p. 240.

¹⁹ Josef Korbel, *op. cit.*, pp. 15-16.

²⁰ Prem Nath Bazaz, *The History of Struggle for Freedom in Kashmir*, New Delhi: Kashmir Publishing Co., (1954), pp. 140-160.

²¹ <http://hiduism.about.com/library/weekly/aa010102c.htm>

²² Sardar M. Ibrahim Khan, *op. cit.*, p. 26.

The Kashmir Dispute: Quest for an Amicable Settlement

Kashmir, as an independent nation. The Maharaja approached both India and Pakistan for conclusion of a standstill agreement with two Dominions. Pakistan accepted the offer and Maharaja signed a 'Standstill Agreement' with Pakistan which came into force on the 15th day of August 1947. But, **India** refused to sign a similar agreement.²³

In spring in 1947, internal revolt began in the Poonch region against oppressive taxation under the recently imposed direct rule by the Maharaja. Poonch was a predominantly Muslim area. So, Maharaja strengthened the Sikh and Hindu garrisons in the Muslim areas and ordered the Muslims to deposit arms with the police.²⁴ In August, Maharaja's forces fired upon demonstrations in favour of Kashmir joining Pakistan, killing innocent people. The people of Poonch left their families, crossed over to Pakistan and returned with arms and the Poonch rebels declared an independent government of 'Azad' Kashmir on 24 October.²⁵ Barring National Conference, other political parties including the Muslim Conference and the Chiefs of Gilgit region, advised the Maharaja against acceding to the Indian Union.²⁶

On 22 October, thousands of Pathan tribesmen from Pakistan recruited by the Poonch rebels, invaded Kashmir along with the Poonch rebels. India accused Pakistan of violating the Standstill Agreement with Kashmir by disrupting the supply links and of engaging in aggression by sending in the tribesmen. Pakistan

²³ Alastair Lamb, *Kashmir A Disputed Legacy 1846-1990*, *op. cit.*, p. 121-122.

²⁴ Josef Korbel, *op. cit.*, pp. 66-67.

²⁵ Prem Nath Bazaz, *Struggle for Freedom in Kashmir*, *op. cit.*, pp. 325-327; *Official Records of the United Nations Security Council*, Meeting No: 534, 6 March 1951, pp. 3-4; Meeting No: 234, 1948, pp. 250-1.

²⁶ Josef Korbel, *op. cit.*, p.70.

The Chittagong University Journal of Law

refuted the charges.²⁷ But, Maharaja Hari Singh requested armed assistance and asylum from India. India refused to send its troops unless Kashmir officially joined the Union of India.²⁸

In these circumstances, the Maharaja of the State of Jammu and Kashmir signed the Instrument of Accession (IOA) on 26 October 1947, joining the 77% Muslim majority region to the Indian Union.²⁹ India accepted the accession, regarding it provisional until such time as the will of the people can be ascertained by a plebiscite, since Kashmir was recognized as a disputed territory.³⁰

Sheikh Abdullah endorsed the accession as *ad hoc* which would be ultimately decided by a plebiscite, and was appointed head of the emergency administration. Pakistan claimed that the accession was illegal and it was fraudulent and the Maharaja acted under duress and that he had no right to sign an agreement with India when the standstill agreement with Pakistan is still in force.³¹

In November 1947, India proposed that Pakistan would withdraw all its troops first, as a precondition for a plebiscite, which Pakistan rejected on the ground that the Kashmiris may not vote freely given the presence of Indian army and Sheikh Abdullah's friendship with the Indian Prime Minister, Jawaharlal Nehru.

²⁷ Prem Nath Bazaz, *Azad Kashmir*, Lahore (1950), p. 33; Horace Alexander, *Kashmir*, London (1952), p. 8; Alastair Lamb, *Incomplete Partition*, Oxford (1997), pp. 136-7.

²⁸ Josef Korbel, *op. cit.*, pp. 78-79.

²⁹ The New Encyclopedia Britannica Vol. 6 (Micropedia), Fifteenth Edition, Chicago (1993), p. 491.

³⁰ A plebiscite is the direct vote of all members of an electorate on an important public question being referred to them, in this case accession of Kashmir to India or Pakistan.

³¹ Alastair Lamb, *Incomplete Partition*, *op. cit.*, pp. 185-7; Sheikh Abdullah, *Flames of the Chinar*, New Delhi (1993), p. 97.

The Kashmir Dispute: Quest for an Amicable Settlement

Pakistan proposed simultaneous withdrawal of all troops followed by a plebiscite under the supervision of the United Nations, which India rejected. Pakistan sent regular forces to Kashmir and the first war over Kashmir broke out.³²

The Indo-Pakistani War of 1947 sometimes known as the First Kashmir War was a war fought between **India** and **Pakistan** over the region of Kashmir from 1947 to 1948. It was the first of **four wars** fought among the two newly independent nations.³³

4. The Role of United Nations in Settling the Kashmir Dispute after Indo-Pakistan War of 1947

The Government of India took the Kashmir issue to the United Nations Security Council on January 1, 1948.³⁴ India in its complaint stated that –

- i. at the request of the Ruler of the State, Maharaja Hari Singh, India sent troops to the State;
- ii. at the request of the Maharaja and of the leader of the National Conference Party of Kashmir, India accepted the accession of the State to India; and
- iii. Pakistan was assisting in the invasion of Jammu and Kashmir State and supporting the invaders.³⁵

Under Article 35 of the United Nations Charter, India also requested the Security Council to instruct Pakistan to desist from meddling in Kashmir.³⁶

³² Alastair Lamb, *Incomplete Partition, op. cit.*, pp. 217-222.

³³ http://en.wikipedia.org/wiki/Indo-Pakistani_War_of_1947

³⁴ Sardar M. Ibrahim Khan, *op. cit.*, p. 120.

³⁵ *Ibid.*

³⁶ Alastair Lamb, *Crisis in Kashmir 1947-66*, London: Routledge & Kegan Paul, (1966) p. 55.

The Chittagong University Journal of Law

The Pakistan government firstly, denied all the allegations of assistance and support to the forces of liberation operating in the State of Jammu and Kashmir. Secondly, the Government of Pakistan denied the validity of accession of the State of Jammu and Kashmir to India. The Government of Pakistan counter-charged India that —

- i. India obtained the accession of Jammu and Kashmir State by fraud and violence;
- ii. large-scale massacres, lootings, and atrocities on the Muslims of Jammu and Kashmir State have been perpetrated by the armed forces of the Maharaja and of the Indian Union and by non-Muslim subjects of the Maharaja and the Indian Union;³⁷ and
- iii. The Kashmir accession to India, which India accepted, was compared to Junagadh's accession to Pakistan, which India had set aside. In both cases, it was pointed out, the ruler was of a different religion to his subjects, Kashmir with Hindu rule over Muslims and Junagadh with precise the opposite.³⁸

After hearing both the countries, on January 20, 1948, the U.N. Security Council by its resolution (Resolution 39 of 1948) established the United Nations Commission for India and Pakistan (UNCIP) to investigate all outstanding matters of dispute between the two countries. This resolution was accepted by both India and Pakistan.³⁹

The Security Council adopted another resolution on April 21, 1948. The Resolution noted with satisfaction that both India and Pakistan desire that the question of the accession of the Jammu and

³⁷ Sardar M. Ibrahim Khan, *op. cit.*, p. 123.

³⁸ Alastair Lamb, *Crisis in Kashmir 1947-66*, *op. cit.*, p. 56.

³⁹ Sardar M. Ibrahim Khan, *op. cit.*, p. 127.

The Kashmir Dispute: Quest for an Amicable Settlement

Kashmir State to India or Pakistan should be decided through the democratic method of a free and impartial plebiscite. It provided provision for the appointment of a Plebiscite Administrator to carry out the plebiscite.⁴⁰ The Government of India rejected this Resolution. Neither did Pakistan see its way to accepting this Resolution. Notwithstanding their objection to the Security Council Resolution, both India and Pakistan co-operated with the Commission.⁴¹

From 10 July to 13 August 1948, the UNCIP held a number of meetings and discussions, both with the Government of India and Pakistan. After long discussions, on 13 August 1948, the UNCIP adopted a resolution on Kashmir dispute.⁴² Under the UNCIP Resolution, a cease-fire had been agreed upon in Jammu and Kashmir State. This UNCIP Resolution was mainly in three parts— i. the cease-fire agreement; ii. the truce agreement; and iii. the plebiscite period.⁴³

On 5 January 1949, almost a year after Nehru's offer of plebiscite, the UNCIP [passed a resolution](#) that stated: "The question of accession of the state of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of free and impartial plebiscite".⁴⁴ The Resolution provided for the demilitarisation of the State in two stages: the truce stage and the plebiscite stage.

The Resolution of 5 January 1949 empowered the Plebiscite Administrator to determine the final disposal of the Indian Forces remaining in the State, the State Forces and State Militia, on the

⁴⁰ The [UN Security Council Resolution, 21 April 1948.](#)

⁴¹ Sardar M. Ibrahim Khan, *op. cit.*, p. 130.

⁴² [Ibid, p. 131.](#)

⁴³ [UNCIP Resolution, 13 August 1948.](#)

⁴⁴ [UNCIP Resolution of 5 January 1949.](#)

The Chittagong University Journal of Law

one hand, and on the other, the final disposal of the Azad Kashmir Forces.⁴⁵ On 22 March 1949 the Secretary General of the United Nations appointed Fleet Admiral Chester W. Nimitz as the Plebiscite Administrator.⁴⁶

On the other hand, a long controversy arose as to the interpretation of the agreed resolutions of 13 August 1948 and 5 January 1949. India put her own interpretation on these resolutions. The UNCIP, however, did not agree with the Indian interpretation and it proposed that all points of difference concerning the truce agreement be referred to arbitration by Admiral Chester W. Nimitz, whom both India and Pakistan had accepted as the Plebiscite Administrator. Pakistan accepted the arbitration proposal; but India turned it down. Then, the UNCIP referred the case back to the Security Council in December 1949.⁴⁷ The UNCIP submitted a report to the Security Council and suggested the dissolution of the Commission and the appointment of one man as mediator.

On March 14, 1950, the Security Council passed a resolution confirming the UNCIP resolutions of 13 August 1948, and 5 January 1949.⁴⁸ The Security Council decided to appoint a UN representative to replace the UNCIP, so that the UN representative could assist India and Pakistan in the preparation and execution of a programme of demilitarization.⁴⁹

In 12 April 1950, the UN Security Council appointed the prominent Australian Jurist Sir Owen Dixon as the United Nations

⁴⁵ [UNCIP Resolution, 5 January 1949.](#)

⁴⁶ Aziz Beg, *Captive Kashmir*, Lahore: Allied Business Corporation, p. 45.

⁴⁷ Sardar M. Ibrahim Khan, *op. cit.*, p. 90.

⁴⁸ The Security Council Resolution of March 14, 1950.

⁴⁹ *Ibid.*

The Kashmir Dispute: Quest for an Amicable Settlement

representative in place of UNCIP to find expeditious and enduring solution to the India-Pakistan dispute over Kashmir.⁵⁰ According to Sir Owen Dixon's proposal, the prime Minister of Pakistan agreed to take the first step to withdraw the Pakistani army. However, Sir Owen Dixon's gratification was short-lived. The plan proposed by Sir Owen Dixon for demilitarization was rejected by India.⁵¹

In these circumstances, Sir Owen Dixon submitted his report to the Security Council in September 1950.⁵² The Security Council adopted a resolution on 30 March 1951 confirming the principles embodied in its resolutions of 21 April 1948 and 14 March 1950 and also the resolutions of 13 August 1948 and 5 January 1949 of UNCIP. The Security Council in its resolution also declared in the following words—

“That the final disposition of the State of Jammu and Kashmir will be made in accordance with the will of the people, expressed in the democratic method of a free and impartial plebiscite, conducted under the auspices of the United Nations.”⁵³

On 30 March 1951, the Security Council accepted the resignation of Sir Owen Dixon, and appointed Dr. Frank P. Graham a new United Nations Representative for India and Pakistan. Dr. Frank P. Graham was charged by the Security Council with the carrying out of the programme of demilitarisation of the State of Jammu and Kashmir in accordance with the resolution of 13 August 1948 of UNCIP.⁵⁴

⁵⁰ Sardar M. Ibrahim Khan, *op. cit.*, p. 144.

⁵¹ Josef Korbel, *op. cit.*, p. 170-172.

⁵² Alastair Lamb, *Crisis in Kashmir 1947-66*, *op. cit.*, p. 61.

⁵³ The Security Council Resolution of March 30, 1951.

⁵⁴ Sardar M. Ibrahim Khan, *op. cit.*, p. 160.

The Chittagong University Journal of Law

On 23 December 1952 the Security Council passed a resolution requesting the Government of India and the Government of Pakistan to start immediate negotiations under Dr. Graham's auspices, in order to reach agreement on the specific number of forces to remain on either side at the cease-fire line. Since this resolution rejected by India, the Geneva negotiations started with a view to reaching a truce agreement on the basis of the principles embodied in the UNCIP Resolution of 13 August 1948 regarding the demilitarisation of Kashmir. This negotiation also ended on failure.⁵⁵

The Security Council, on January 1957, resolved that this development was in clear conflict with the principle of plebiscite.⁵⁶ On 14 February 1957, the Security Council voted a resolution requesting its President, Gunner V. Jarring of Sweden, "to examine with the Governments of India and Pakistan proposals which, in his opinion, were likely to contribute to the achievement of demilitarisation or to the establishment of other conditions for progress towards the settlement of the dispute, having regard to... the proposal for the use of temporary United Nations force..."⁵⁷ Even this oblique reference to a United Nations forces, the then Soviet delegate vetoed the resolution.

Confronted with the Soviet veto, the Security Council a few days later adopted a milder resolution, this time with Soviet abstention, requesting Mr. Gunner Jarring to go to the Sub-continent and to "examine ... any proposals which, in his opinion, were likely to contribute towards the settlement of the dispute..." with due regard, however, "to the previous resolutions of the Security

⁵⁵ Sardar M. Ibrahim Khan, *op. cit.*, p. 161-162.

⁵⁶ The Security Council Document No. 3779 of January 24, 1957.

⁵⁷ The Security Council Document No. 3787 of February 14, 1957.

The Kashmir Dispute: Quest for an Amicable Settlement

Council and of the United Nations Commission for India and Pakistan.”⁵⁸

Mr. Jerring’s report makes it clear that his experience in India and Pakistan did not differ from those of his predecessors. He first explored the hindrances to a full implementation of the UNCIP resolutions. The Indian Government told him that Part I of the UNCIP resolution of 13 August 1948, in particular sections B and E, had not been implemented by Pakistan; it was, therefore, premature to discuss Parts II and III and the subsequent resolution of 5 January 1949. Pakistan, however, insisted that Part I of the resolution had been implemented and that steps should be taken to implement Part II.⁵⁹

Mr. Jerring then suggested that the problem be submitted to an arbitrator who would not only decide whether Part I was or was not implemented, but who would also, in case of a negative finding, indicate to the parties in dispute the measures which should be taken for full implementation. After a given time limit, the arbitrator would determine whether his recommendations had been followed and whether Part II had been implemented.⁶⁰

Mr. Jerring submitted a report to the Security Council stating that Pakistan had accepted his suggestion after a certain hesitation. But India did not consider an arbitration appropriate because such a procedure would be inconsistent with the sovereignty of the State of Jammu and Kashmir and rights and obligations of the Union of India in respect of this territory.

The Security Council discussed Jerring’s report in the autumn of 1957 and adopted a resolution requesting the United Nations

⁵⁸ The Security Council Document No. 3793 of February 21, 1957.

⁵⁹ Josef Korbel, *op. cit.*, p. 313.

⁶⁰ *Ibid.*

The Chittagong University Journal of Law

Representative for India and Pakistan, Dr. Frank P. Graham, to make such recommendations as he saw fit to the parties concerned on the implementation of the UNCIP resolutions and a peaceful settlement of the dispute.⁶¹

Dr. Frank P. Graham in his report recommended that consideration be given to the possibility of stationing a United Nations force on the Pakistani territory bordering the State of Jammu and Kashmir, following the withdrawal of Pakistani troops. He also proposed that a conference between the Prime Ministers of India and Pakistan be held under his auspices in the spring of 1958, or at the earliest possible time.

Pakistan accepted Dr. Graham's recommendations in principle; But India rejected them and blamed both Pakistan and the United Nations for failure to implement Part I of the UNCIP resolution of 13 August 1948.⁶² Dr. Graham's report of 28 March 1958 marked the end of the Security Council's consideration of Kashmir issue for some four years.⁶³ Over the years, letters from the Governments of India and Pakistan continued to reach the Security Council, each accusing the other of violations of the United Nations resolutions and raising alarming warnings about the aggravation of the situation. The Security Council met on several dates in February, April, May and June 1962 to hear Pakistan's new proposals and India's rejections. Another Soviet veto killed a UN resolution to bring India and Pakistan again together for negotiations.⁶⁴

In early 1964, following the crisis in Kashmir on the issue of disappearance of a sacred hair of the Prophet Mohammad from the

⁶¹ The Security Council Document No. 3922 of December 2, 1957.

⁶² Aziz Beg, *op. cit.*, p. 53-54.

⁶³ Alastair Lamb, *Crisis in Kashmir 1947-66*, *op. cit.*, pp. 63-64.

⁶⁴ The Security Council Document No. 5134 of June 22, 1962.

The Kashmir Dispute: Quest for an Amicable Settlement

Hazratbal Shrine near Srinagar, Pakistan again raised the Kashmir issue in the Security Council.⁶⁵ The Council, however, did not even proceed to a draft resolution, its President suggesting that it adjourn the debate *sine die*. The debate was still adjourned when serious fighting broke out between India and Pakistan over Kashmir in the summer of 1965.⁶⁶

5. Bilateral Negotiations and Mediation in Solving the Kashmir Dispute

In June 1953, Mohammad Ali Jinnah and Jawaharlal Nehru discussed the Kashmir issue informally in London, where they met on the occasion of the coronation of Queen Elizabeth. On 25 July 1953, Nehru paid a visit to Karachi, where the problem was discussed, among other questions, in general terms. Further negotiations were envisaged. On 9 August Sheikh Abdullah was dismissed from office and Ghulam Mohammad Bakshi was nominated as Prime Minister of Kashmir. Then, Mohammad Ali Jinnah went to Delhi and discussed the Kashmir issue especially the appointment of a plebiscite administrator.⁶⁷ But, finally bilateral negotiations were failed. In May 1955, Prime Ministers Mohammad Ali Jinnah and Jawaharlal Nehru further met. At this time a new proposal of division of the State of Jammu and Kashmir was offered by Pakistan to settle the Kashmir dispute, but this proposal was rejected by India.⁶⁸

In January 1962, President Kennedy suggested that Eugene R. Black serve as a mediator of the Kashmir dispute. Pakistan was

⁶⁵ Josef Korbel, *op. cit.*, p.318.

⁶⁶ Alastair Lamb, *Crisis in Kashmir 1947-66*, *op. cit.*, p. 63-64.

⁶⁷ Josef Korbel, *op. cit.*, pp. 192-193.

⁶⁸ *Ibid*, pp. 306-307.

The Chittagong University Journal of Law

willing to accept his good offices, but India argued that the dispute should be solved through bilateral negotiations.⁶⁹

From the end of December 1962 until May 1963, the representative of India and Pakistan held six sessions, or as they were called, rounds. Pakistan opened the negotiations by asking for a plebiscite in accordance with the UNCIP resolutions but India reiterated that circumstances had changed since 1949 and that a plebiscite was no longer possible. India also rejected the idea of a plebiscite limited to the Valley of Kashmir.⁷⁰

Early in May 1963 the American Secretary of State, Dean Rusk, and Duncan Sandys were in Delhi, offering their services for a settlement of the dispute. Indian government in this time expressed a willingness to cooperate, and it was Pakistan, seeking clarification of the various aspect of this procedure before accepting the mediation offer, that thwarted this attempt. Finally, in August 1963, Nehru stated that “there was no question of ... considering any proposals for internationalising or division of the Valley, or joint control of Kashmir, and the like.” He closed the door to further negotiations by declaring, “The concessions which we offered to Pakistan are no longer open, and they must be treated as withdrawn.”⁷¹

The two governments did not meet again around a conference table and the next encounter was on the battlefield.⁷²

The Indo-Pakistani War of 1965, also known as the Second Kashmir War, was the second fought between India and Pakistan

⁶⁹ Ibid, p. 308.

⁷⁰ Ibid, p. 309.

⁷¹ Kashmir: Prime Minister Nehru’s statement in Parliament, August 13, 1963. Information Service of India, p.7.

⁷² Josef Korbel, *op. cit.*, pp. 310- 311.

The Kashmir Dispute: Quest for an Amicable Settlement

over the region of [Kashmir](#).⁷³ The war lasted five weeks, resulted in thousands of casualties on both sides and ended in a [United Nations](#) mandated [ceasefire](#). In January 1966, Tashkent Declaration was signed by both countries agreeing to revert to pre-1965 position, under Russian mediation.⁷⁴

6. The Role of the United Nations during the Indo-Pakistan War of 1965

On 1 September 1965, the then Secretary General of the United Nations, U Thant, appealed to Prime Minister of India Lal Bahadur Shastri and President of Pakistan Ayub Khan to respect the cease-fire line and to arrange for a withdrawal of their forces. Both leaders, in effect, rejected the Secretary General's request.⁷⁵ On 3 September 1965, the Secretary General presented to the Security Council a report on the violations of the cease-fire line.⁷⁶ On 4 September 1965, the Security Council by adopting a resolution called upon the Governments of India and Pakistan for an immediate cease-fire and for a withdrawal of armed personnel to the respective sides of the cease-fire line; it further requested the Secretary General to report within three days on the implementation of the resolution.⁷⁷ The UN Secretary General submitted his report in negative. Having heard the Secretary General's report the Security Council on September 6 unanimously passed another resolution repeating its appeal for cessation of

⁷³ Alastair Lamb, *Kashmir A Disputed Legacy 1846-1990*, *op. cit.*, p. 247.

⁷⁴ Balraj Puri, *Kashmir: Towards Insurgency*, New Delhi (1993), pp. 31-2; Alastair Lamb, *Kashmir A Disputed Legacy 1846-1990*, *op. cit.*, pp. 255-271; Victoria Schofield, *Kashmir in Conflict*, New York (2000), pp. 114-6.

⁷⁵ Alastair Lamb, *Kashmir A Disputed Legacy 1846-1990*, *op. cit.*, p. 264.

⁷⁶ The Security Council Document No. 6651 of September 3, 1965.

⁷⁷ The Security Council Resolution No. 209 of September 4, 1965.

The Chittagong University Journal of Law

hostilities. It instructed the Secretary General to go out the Subcontinent immediately to report on the situation.⁷⁸

The Secretary General visited Rawalpindi on 9 September and was in New Delhi on 12 September. After talks with leaders on both sides he sent letters to Lal Bahadur Shastri and President Ayub Khan calling for a cease-fire to take effect by the early morning of 14 September. India declared that it would be ready for a cease-fire if Pakistan withdrew all its forces from the State of Jammu and Kashmir and if the United Nations guaranteed that never again would Pakistan commit acts of aggression. Pakistan said it would agree to a cease-fire if it were immediately followed by a complete withdrawal of all Indian and Pakistani forces from the State of Jammu and Kashmir, their place to be taken by a United Nations force, recruited from Afro-Asian countries, the task of which would be to prepare the ground for a plebiscite within three months. On 14 September, on the expiry of the Secretary General's time limit, Lal Bahadur Shastri said that India would accept a cease-fire; but he made it conditional upon Pakistan doing likewise without preconditions, which Pakistan was clearly not prepared to do at this point.⁷⁹

In these circumstances, on 20 September the Security Council by adopting a resolution firmly demanded a cease-fire in three days, "22 September 1965 at 0700 hours GMT," and a "subsequent withdrawal of all armed personnel back to the previous positions".⁸⁰ The deadline for the cease-fire was subsequently extended for a few hours. Both the Governments of India and Pakistan complied with the resolution, stopped the fighting; and

⁷⁸ The Security Council Resolution No. 210 of September 6, 1965.

⁷⁹ Alastair Lamb, *Kashmir A Disputed Legacy 1846-1990*, *op. cit.*, pp. 264-265.

⁸⁰ The Security Council Resolution No. 211 of September 20, 1965.

The Kashmir Dispute: Quest for an Amicable Settlement

the war came to a halt at 3.30 a.m. Indian summer time on 23 September 1965.⁸¹

7. Soviet Mediation and the Tashkent Declaration, 1966

On 20 August 1965, the Soviet Prime Minister Aleksei Kosygin wrote to both President Ayub Khan and Lal Bahadur Shastri requesting that Pakistan and India should refrain from taking any step which would serve to widen the conflict then developing in the State of Jammu and Kashmir. On 4 September 1965, he urged both sides to agree to an immediate cease-fire and offered Russian good offices for a negotiated settlement between the two nations. At this time both President Ayub Khan and Lal Bahadur Shastri turned the Russians down.⁸²

The Tashkent conference, when it opened on 3 January 1966, appeared to have little prospects of success. However, on 10 January 1966, the Pakistani President Ayub Khan and Indian Prime Minister Lal Bahadur Shastri signed a declaration, which is known as the Tashkent Agreement, 1966.⁸³ The most urgent item in this Declaration, the withdrawal of the armies behind the established international borders and the 1949 Kashmir cease-fire line, was implemented by late February 1966.⁸⁴

In 1971, fighting again broke out between India and Pakistan. The [Indo-Pakistani War of 1971](#) ended with the liberation of [Bangladesh](#) on 16 December 1971.⁸⁵

⁸¹ Alastair Lamb, *Kashmir A Disputed Legacy 1846-1990*, *op. cit.*, p. 265.

⁸² *Ibid*, p. 269.

⁸³ Alastair Lamb, *Kashmir A Disputed Legacy 1846-1990*, *op. cit.*, p. 270.

⁸⁴ *Ibid*, p. 271.

⁸⁵ http://en.wikipedia.org/wiki/History_of_the_Kashmir_conflict

8. Bilateral negotiations and the Simla Agreement, 1972

Between 28 June and 2 July 1972, after talks at lower levels had been held since April, and following a great deal of international diplomacy by both sides, Zulfikar Ali Bhutto and Indian Prime Minister Indira Gandhi met in Simla to try to restore some order to Indo-Pakistan relations. On 2 July 1972, Zulfikar Ali Bhutto and Indira Gandhi signed an agreement which is known as 'the Simla Agreement, 1972'.⁸⁶ In the agreement it was declared that the two countries are resolved to settle their differences by peaceful means through bilateral negotiations or by other peaceful means mutually agreed upon between them.

India and Pakistan, further, resolved that the basic issues and causes of conflict which have bedeviled the relations between the two countries for the last 25 years shall be resolved by peaceful means.⁸⁷

In November 1974, Kashmir Accord was signed by G. Parthasarathy for Indira Gandhi and Mirza Afzal Beg for Sheikh Abdullah, who was out of power at that time. The Accord retained Kashmir's special status, but the state was termed as a 'constituent unit of the Union of India'. Opposition parties and Pakistan condemned the Accord. Abdullah was installed back in power. Later in 1977, he spoke in favour of protecting the autonomy and special status of Kashmir.⁸⁸

India conducted nuclear tests in May 1998; Pakistan also responded with nuclear tests. In these circumstances, India and Pakistan signed Lahore Declaration on 21 February 1999 agreeing

⁸⁶ Alastair Lamb, *Kashmir A Disputed Legacy 1846-1990*, *op. cit.*, p. 296.

⁸⁷ See the text of Simla agreement. For example, Government of Pakistan, Ministry of Information and Broadcasting, Department of Films and Publications, *Peace with Honour. Step by step approach to resolve Indo-Pakistani disputes*, Islamabad, (1972) pp. 24-26

⁸⁸ Victoria Schofield, *Kashmir in Conflict*, New York, (2000), p. 125.

The Kashmir Dispute: Quest for an Amicable Settlement

to ‘intensify their efforts to resolve all issues, including the issue of Jammu and Kashmir.’ Soon after his visit to Lahore, the Indian Prime Minister Vajpayee declared that ‘Kashmir is an integral part of India and not a single area of Indian soil would be given away.’⁸⁹

The Kargil War, also known as the third Kashmir war, was an **armed conflict** between **India** and **Pakistan** that took place between May and July 1999 in the **Kargil** district of **Kashmir**.⁹⁰ At the same time, fears of the **Kargil War** turning into a nuclear war, provoked the then-US President Bill Clinton to pressure Pakistan to retreat. Faced with mounting losses of personnel and posts, Pakistan withdrew the remaining troops from the area ending the conflict. India reclaimed control of the peaks which they now patrol and monitor all year long.⁹¹

In February 2000, US President expressed his willingness to mediate between India and Pakistan over the Kashmir conflict. In July 2001, Indian Prime Minister and Pakistani President met in a summit in Agra. But the summit failed to produce a joint statement on Kashmir.⁹²

In October 2001, the Chief of the United Nations Military Observers Group in India and Pakistan (UNMOGIP) suggested the US might have to step in to resolve the issue. But, India rejected by saying Kashmir is an ‘internal issue’, with no need for third party intervention. India also rejected a demand from Pakistan for tripartite talks about Kashmir.⁹³

In June 2002, after intensive diplomatic efforts by other countries, India and Pakistan began to withdraw troops from the international

⁸⁹ Ibid, pp. 207-8.

⁹⁰ http://en.wikipedia.org/wiki/Kargil_War

⁹¹ http://en.wikipedia.org/wiki/History_of_the_Kashmir_conflict

⁹² <http://www.yespakistan.com/kashmir/achronologyofkashmirdispute.asp>

⁹³ Ibid

border, and negotiations began again. Effective from 26 November 2003, India and Pakistan have agreed to maintain a ceasefire along the undisputed International Border, the disputed Line of Control. In February 2004, Pakistan further increased pressure on Pakistanis fighting in Indian-administered Kashmir to adhere to the ceasefire. The nuclear-armed neighbours also launched several other mutual confidence building measures.⁹⁴

In July 2006, second round of Indo-Pakistani peace talks started and ended with no progress. In November 2009, a delegation from the European Union said Kashmir needs a solution through peaceful talks between India, Pakistan and concerned people in Kashmir. In December 2009, Pakistani President asked for United States to mediate between India and Pakistan on the Kashmir issue. But, United States ruled out any mediatory role in Kashmir stating that it should be resolved ultimately between Pakistan and India with the active involvement of the people of Kashmir.⁹⁵

9. Reasons behind the Dispute between India and Pakistan over Kashmir

Ever since the Partition of India in 1947, both India and Pakistan have claims over Kashmir. These claims are centered on historical incidents and on religious affiliations of the Kashmiri people.

9.1. Indian point of view

The Indian claim centers on the agreement between the Dogra Maharaja Hari Singh, Prime Minister Jawahar Lal Nehru and Lord Mountbatten according to which the State of Jammu and Kashmir became an integral part of the Union of India through the Instrument of Accession.

Thus, the Indian viewpoints are summarised below:

⁹⁴ http://en.wikipedia.org/wiki/Kashmir_conflict

⁹⁵ http://en.wikipedia.org/wiki/Timeline_of_the_Kashmir_conflict

The Kashmir Dispute: Quest for an Amicable Settlement

- ❖ The invasion of Kashmir by tribal, allegedly aided and instigated by [Pakistan](#), had rendered the agreement between India and Pakistan, to maintain the *status quo* null and void.
- ❖ The accession of the State of Jammu and Kashmir to India was not just the decision of the Ruler Hari Singh, but also of the Prime Minister [Sheikh Abdullah](#) which reflected the will of the people living in Jammu and Kashmir.
- ❖ India does not accept the Two Nation Theory that forms the basis of Pakistan.
- ❖ For a UN Resolution subscribing Plebiscite monitored by any third neutral party, Pakistan should first vacate its part of Kashmir.
- ❖ The democratically elected Constituent Assembly of Jammu and Kashmir had unanimously ratified the Maharaja's Instrument of Accession to India and had adopted a Constitution for the state that called for a perpetual merger of the state with the Indian Union.
- ❖ The state of Jammu and Kashmir is made autonomous by Article 370 of the [Constitution of India](#).
- ❖ Pakistan's covert designs on Kashmir like the failed Operation Gibraltar and [Kargil War](#) proves that Pakistan often resorts to force to settle the issue of Kashmir.
- ❖ The Indian Government believes that Pakistan has used the Kashmir issue more as 'a diversionary tactic' from internal and external issues and that the 'survival of Pakistan depends how effectively it can keep the pot boiling.'
- ❖ India regard Pakistan's claim to Kashmir based largely on religion alone to be no longer correct because now India has more Muslims than Pakistan.

9.2. Pakistani point of view

Historically, the Pakistani claim on Kashmir has been based on the fact that the majority of Kashmir population is Muslim and, if

given the option, most Kashmiris would vote to join Pakistan or seek independence. Since 1951, Pakistan has been demanding India to hold a plebiscite in Kashmir as agreed by both nations in 1951.

The brief survey of the population, economy and geography of Kashmir contains within it the fundamental grounds for the Pakistani claim to Kashmir and these merit summaries below:

- ❖ The State of Jammu and Kashmir was a region with an overwhelming Muslim majority contiguous to the Muslim majority region of the Punjab which became part of Pakistan.
- ❖ The economy of the State of Jammu and Kashmir was bound up with what was to become Pakistan. Its best communication with the outside world lay through Pakistan, and this was the route taken by the bulk of its exports.⁹⁶
- ❖ India has shown disregard to the resolutions of the UN (by not holding a plebiscite). It fears that if a free and fair plebiscite is held, the Kashmiris would choose Pakistan.
- ❖ India's pretence to be a secular state is a deceit. In India, everything is dominated by the Hindus and the Muslims suffer persecution and repression.
- ❖ To quell the legitimate voice of the Kashmiri people, the Indian army uses ruthless and barbaric methods. Pakistan alleges that the Indian Army has been involved in murdering innocents and in raping women in Kashmir.
- ❖ The Kashmiri people have now been forced by the circumstances to rise against the repression of the Indian army and uphold their right of self-determination through violent means. Pakistan just gives the Kashmiri freedom-fighters moral and ethical support.

⁹⁶ Alastair Lamb, *Crisis in Kashmir 1947-66*, *op. cit.*, p. 22.

The Kashmir Dispute: Quest for an Amicable Settlement

- ❖ There is one piece of etymological fact that the name “Pakistan” has double meaning. One is Pak-i-Stan, meaning “the Land of Pure”. The other is the fact that the name is composed of the initials of the regions from which Pakistan was to be created: P for Punjab, A for Afghan (North-West Frontier Province), K for Kashmir, S for Sind, and Tan for the ending of Baluchistan. Such a name would seem to imply that the Muslim leaders themselves had taken for granted that Kashmir would be an integral part of Pakistan. On the other hand, since the Indian National Congress failed to protest this highly political interpretation of the letter “K” in the name of Pakistan, it would seem to indicate at least its resignation to Kashmir’s eventually becoming a part of Pakistan.⁹⁷
- ❖ The other 584 Princely States not a single one with Hindu population became a part of Pakistan even though in two cases, Hyderabad and Junagadh, they were ruled by Muslim Princes. Nor did any state with Muslim population accede to India. Rather, they sought integration according to their religious affinity in every case save one—Kashmir.⁹⁸
- ❖ The Maharaja and Prime Minister acted under [duress](#), and that the accession of Kashmir to India is invalidated by a previous agreement between India and Pakistan, to maintain the *status quo*.
- ❖ A double standard role played by India regarding the decisions of independent rulers as the [Nizam of Hyderabad](#), another princely state, had not acceded to India, but the kingdom was forcibly incorporated with a police action on the grounds that he did not represent the majority population. Thus, while Kashmir’s rulers, without a vote by

⁹⁷ Josef Korbel, *op. cit.*, p. 62.

⁹⁸ *Ibid*, p. 63.

the Kashmiri people to decide their fate, were said by the Indian government to represent Kashmir, the Nizam, another native rule, was said by the Indian government to be not representative of the people.

- ❖ Another valid reason behind the dispute over Kashmir is water. Kashmir is the origin point for many rivers and **tributaries** of the **Indus River** basin. They include **Jhelum** and **Chenab** which primarily flow into Pakistan while other branches - the **Ravi**, **Beas** and the **Sutlej** irrigate northern India. Pakistan has been apprehensive that in a dire need India under whose portion of Kashmir lies the origins and passage of the said rivers, would use its strategic advantage and withhold the flow and thus choke the agrarian economy of Pakistan.⁹⁹

Pakistan also contested the validity of the Maharaja's Accession of the Jammu and Kashmir State to India on the following grounds:

First: the accession was legally invalid, either as a violation of the Standstill Agreement which the State had made with Pakistan in August 1947 or because it disturbed a general pattern of established understandings.

Second: the Maharaja by 26/27 October 1947 was no longer competent to sign any Instrument of Accession because he had to all intents and purposes been overthrown by his own subjects. By the stated accession date of 26 October 1947, it is clear that the Maharaja had failed to gain effective control over the Gilgit Agency; and in Poonch his rule had been formally replaced on 24 October by that of a new State which had seceded from him, Azad Kashmir. He had been obliged to flee from his own summer capital, and the capital of the Vale of Kashmir,

⁹⁹ http://en.wikipedia.org/wiki/History_of_the_Kashmir_conflict

The Kashmir Dispute: Quest for an Amicable Settlement

Srinagar. Even the formal exchange of letters between the Maharaja and Mountbatten associated with the Instrument of Accession itself gave oblique recognition to this general situation.

Third: the Instrument of Accession was conditional. The Acceptance of Accession also had here an implied conditionality. For example, if there were “a reference to the people” which decided against accession to India, then presumably the acceptance by India of that accession would be cancelled. If not, then India would be denying the right of the people to decide.

Fourth: that India’s dealings with and concerning the State of Jammu and Kashmir from at least the beginning of the Mountbatten Viceroyalty were dominated by fraud culminating in the annexation of much of the State of Jammu and Kashmir by force.¹⁰⁰

From a strictly rational point of view, based on a study of the culture and the economy of the region, there can be little doubt that a scheme for the partition of the Indian subcontinent such as was devised in 1947 should have awarded the greater part of the State of Jammu and Kashmir to Pakistan. That such an award was not made was essentially the product of a series of historical accidents arising from the nature of the Princely States and the British attitudes toward them.

10. Conclusion and recommendations

From the above discussion and analysis it is revealed that one of the most long standing disputes in the world is the dispute between India and Pakistan over Kashmir. This dispute started in 1947, on the day after India and Pakistan simultaneously became independent. Three major wars have been fought over this and

¹⁰⁰ Alastair Lamb, *Kashmir A Disputed Legacy 1846-1990*, *op. cit.*, pp. 150-151.

thousands and perhaps even more than a million people have died. Most scholars who have studied this issue believe that Pakistan has the stronger case. However, India has more people and therefore more who advocate their point of view. It may be noted that the British were at fault for not resolving this issue before pulling out in 1947. In these circumstances, to settle the Kashmir dispute between India and Pakistan through amicable procedure some recommendations are put forward below.

- ❖ The first pacific method of settlement of the Kashmir dispute is the holding of a plebiscite according to the United Nations Security Council Resolution. It may be noted that the UN Security Council adopted a resolution on 21 April 1948 regarding plebiscite in the State of Jammu and Kashmir. Thus, the question of accession of the State of Jammu and Kashmir to India or Pakistan should be decided through the democratic method of free and impartial plebiscite under auspices of either the International Court of Justice or any other international body. In this case, both India and Pakistan should bind themselves beforehand to accept such a verdict.
- ❖ The second peaceful means of settlement of the Kashmir dispute is the partition of the State of Jammu and Kashmir. There has, however, been a suggestion put forward, on a diplomatic level, to the effect that the State of Jammu and Kashmir be partitioned in such a manner, that India should get all such contiguous areas as are dominated by the Hindu population and Pakistan should get all such areas which are dominated by the Muslim population.
- ❖ The third possible amicable settlement of the dispute is the independence of the State of Jammu and Kashmir. One cannot easily conceive of the State of Jammu and Kashmir remaining a full sovereign independent State.

The Kashmir Dispute: Quest for an Amicable Settlement

There are some psychological and sentimental reasons for such a proposition. If it is possible, then the people of the world can very well visualise an independent Jammu and Kashmir State as a Switzerland of Asia.

In addition to the abovementioned recommendations, the followings might be considered:

- ❖ It might be appealed by the United Nations General Assembly to India and Pakistan to demilitarise Kashmir according to those proposal endorsed by the Security Council Resolution and to proceed with the plebiscite as it had been agreed upon under the resolution of the United Nations Commission for India and Pakistan.
- ❖ It might be asked the International Court of Justice by the United Nations for an advisory opinion on the legal validity of the accession of Jammu and Kashmir State to India.
- ❖ It might be appealed by the UN General Assembly to India and Pakistan to accept arbitration on at least the process and scope of the demilitarisation of Kashmir.
- ❖ It might be proposed by the UN General Assembly to the disputing parties to station United Nations troops along the Kashmir border in order to allow the State of Jammu and Kashmir to be completely demilitarised and assured of real freedom for a plebiscite. The United Nations units might be composed of nationals of the countries which are neither politically nor geographically directly concerned with the issue. This might be excluded also nationals of the five permanent members of the Security Council.
- ❖ The United Nations Security Council should take necessary measures for a peaceful settlement of the Kashmir dispute in accordance with the relevant UN

The Chittagong University Journal of Law

Resolutions and as agreed upon in the Shimla Agreement. The first clause of the Shimla Agreement says that the principles of the UN Charter should govern the Indo-Pakistan relations; the next clause commits the two countries to settle their differences by peaceful means through bilateral negotiations.

- ❖ There are, of course, other peaceful ways of solving the Kashmir dispute as long as the wishes of the Kashmiri people are respected and their freedom of expression fully assured. But all of these are predicated upon the presence of good will. Without it, even the most ingenious proposal is condemned to failure.