

An Ethnic Conflict between India and Pakistan in reference to Kashmir

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ABSTRACT

Ethnic conflicts with a strong religious component do not have merely domestic or foreign causes and consequences. As a result, internationalization of ethnic conflict has become an important subject of inquiry both in terms of pure research and policy-oriented studies. This paper analysis the origins of the Kashmir dispute, its influence on Indo-Pakistan relations, and the prospects for its resolution, used to evaluate the role of religion and the explanatory power of the approach. The approach, an application of “systemism,” contributes to current developments in the realist school of international relations through its emphasis on the need to look at both international and state levels in combination. Earlier applications of realism, as both neotraditional and structural realism clearly demonstrate, tend to remain restricted to one level or the other. In this approach, a religious dynamic can have a domestic source yet be effectively examined in terms of international ramification.

1. Introduction

India's efforts to integrate Kashmir into Indian Union did not succeed because the major Kashmiri leaders and parties resisted these efforts. The Kashmiris want that they should themselves decide about their political future, as committed to them by the UN Resolutions of 1948-49. Indian leadership contests this and use force to crush this demand. This has caused a perpetual conflict between the Indian authorities and the people of Kashmir. India has been using security establishment to control Kashmir which often resulted in human rights violations in Kashmir. Indian actions are driven by the consideration of keeping Kashmir under its control irrespective of the human rights or other cost. The excessive use of security forces and state power by India has the Kashmir Valley into a “Human Tragedy.” Ethnic conflicts with a strong religious component do not only have domestic or foreign causes and consequences. As a result, internationalization of ethnic conflict has become an important subject of inquiry both in terms of pure research and policy-oriented studies. In this paper, India's foreign policy related to Kashmir will be analyzed within the context of religion. The aim of this study is to apply a foreign policy approach that simultaneously incorporates domestic and external factors in an analysis of how and in what ways religious elements of the Kashmir question affect India's foreign policy. The approach, an application of “systemism,” contributes to current developments in the realist school of international relations through its emphasis on the need to look at both international and state levels in combination. Earlier applications of realism, as both neotraditional and structural realism clearly demonstrate, tend to remain restricted to one level or the other. In this approach, a religious dynamic can have a domestic source yet be effectively examined in terms of international ramifications Religion influences many aspects of politics and society and is considered by many to be an inseparable and integral component. There are many definitions of religion in connection with social and political matters. In this study, religion refers to three specific characteristics of a broader concept. One of the most important effects of religion is its

ability to bolster or undermine the legitimacy of governments. For example, a Marxist interpretation acknowledges the relationship between legitimacy of the state and religion, and claims that religion is a tool of dominant and opposing classes to facilitate their own political actions. Secondly, religion refers to a source of identity that meets the human need to develop a secure identity for the individual or group. Third, religion is a source of political mobilization or the organization of political activities.¹ Therefore, our definition of religion refers to an individual or group identity capable of political mobilization and affecting the legitimacy of governments and government policy. This study begins by presenting a particular ontological approach and method of inquiry—systemism—that facilitates understanding the connection between domestic factors and external, or international, features. The section continues by presenting the theoretical premises that are related to internationalization of ethnic

conflict and concomitant religious factors as synthesized from the literature. The third part of the section presents an approach to the study of foreign policy that incorporates international, state, and sub national considerations of foreign policy with religion as an essential component. The second section of the paper presents a case study of Indo-Pakistani relations over Kashmir, used to evaluate the role of religion and the explanatory power of the approach presented here. The concluding section sums up the contributions of the analytical framework, assessing the impact

of each factor from the framework on foreign policies while concentrating on religion. Overall generalizations and implications for further research and policy are summarized.

2. Geographical and Historical Background

The state of Jammu and Kashmir comprises the regions of Kashmir valley, Jammu and Ladakh with approximately 10 million people. According to S.M Burke and Salim-ud-Din Quraishi, the population figure of Jammu and Kashmir State on the eve of transfer of power, were as under:

Jammu		
Muslims	1208675	61%
Hindus	772760	39%
Kashmir		
Muslims	1489988	92%
Hindus	139217	8%
Jammu & Kashmir Present		
Total Muslims in the state	3101247	77%
Total Hindus in the state	809165	21%
Total Sikhs to the state	65903	
Total Buddhist in the state	40696	
Total Population	4021616	

The Jammu and Kashmir conflict dates back to the partition of the subcontinent in 1947. The first India-Pakistan war over Kashmir soon after the independence resulted in the division of the territory into Indian held "Jammu and Kashmir (comprises the regions of Kashmir valley, Jammu and Ladakh) and the smaller area with Pakistan (Azad Kashmir plus sparsely populated regions in the High Himalayas known as Pakistan's Northern Areas" now designated as GilgitBaltistan. (Imperial Gazetteer of Kashmir and Jammu, 2002). The dividing line between Azad Kashmir and Northern Areas and Indian administered Kashmir originated in a Cease Fire line in 1949 under the UN Resolutions. It was marginally altered during Indo- Pakistan 1971 and renamed as the Line of Control (LoC) under the India Pakistan agreement signed at Simla in July 1972. Both India and Pakistan have contesting claims of sovereignty over the territory of Jammu and Kashmir. They both raised their claims at the UN and also the fight for the Kashmir several times in the past. The majority of the population of the Kashmir is now fed up with this dispute and some of them also want to see Kashmir as an independent state. The problems between India and Pakistan are very largely a legacy of their histories including the histories of Indian and Pakistani nationalism. The Indian nationalism advocated a secular, pluralist India where all religions should co-exist. The Muslim League argued that India comprised of two nations: Muslims and

Hindus and that because of irreconcilable historical, political, social and cultural differences and contradictions. Since Indian nationalism was secular it could not concede to the idea of Kashmir's accession to Pakistan. Therefore, Kashmir was held hostage to the two nationalisms. Both of whom had held on to what parts of Kashmir they controlled and wanting control of the rest. Kashmir is a very complex dispute, it is an ethnic dispute it is a religious dispute, it is a territorial dispute, it is a dispute over Human Rights, but above all it is a dispute about the right of the Kashmiri people to determine their own political future. Apart from the terrible suffering and deprivation, the people of Kashmir have suffered and are suffering. They have also paid a terrible price. The Kashmir problem was sought not to be resolved by dialogue but by bloodshed not by force of reason but by the reason of force. The option of plebiscite to settle the dispute of Kashmir was originally suggested by the Indian leadership in 1947 when the dispute arose over the accession of the princely state of Jammu and Kashmir both Lord Mountbatten (the Government General of India) and Jawahar Lal Nehru. (Indian prime minister) categorically stated the option of plebiscite to know

the wishes of the dispute of Kashmir. India took the case to the U.N and option of plebiscite was institutionalized in the two cardinal resolutions of the U.N passed in 1948-49. However, the plebiscite was never held and India did not honor its pledge. Pakistan considers the Indian pledges to be binding today as it was when first voluntarily made in 1947-1948. Indian politician have used this emotive issue to scare their public that Indian might break-up if Kashmir separates from it. The plebiscite solution of the Kashmir issue is rejected by India and according to the Indian perception, it smacks of the 'two nation theory' as it is based on two nation theory which India rejects. India fears that if the Kashmir is quit India, the separatist movements in the North East of India would be even more difficult to handle. Even Punjab and Tamil Nadu might reopen their demand of leaving the Indian Union. That is reason why India has deployed so heavy security forces in the valley and uses the state power and laws to suppress the freedom movement in Kashmir.

3. Laws at Variance with Human Rights

a) Jammu and Kashmir Public Safety Act 1978

Under this act the government may detain a person on the ground of the security and public order. Detention without charge is possible for up to one year where there is a threat to public order and up to two years where there is a threat to the security of the state. There is no need to inform the detainee of the grounds of detention. The state authorities may also detain persons from Jammu and Kashmir in place outside the state, thereby making access to the persons more difficult. They enjoy impunity against any lawful scheduled for anything done in good faith. Its high discretionary tone undermines efforts to discover the where about of arrested persons and the quest for habeas corpus. If a person is released from the umbrella of another law the person may still be apprehended under this law.

b) Terrorist and Disruptive Activities (Prevention) Act (TADA) 1987

The detention without charges is possible for 189 days. TADA defines "disruptive activity" as any speech, article or other act that supports secession from the union. This is a blatant contravention of the right to freedom of speech. TADA also contains provisions which contravene the presumption of innocence. All proceedings under TADA are in camera unless the public prosecutor requests otherwise. Two special courts in the state are those of Srinagar and Jammu but for awhile the operations of the courts in Srinagar were suspended, thereby making life more traumatic for those seeking bail and trial close to home.

c) Armed Forces Special Power Act 1990

The act gives authority's power to declare state to be a disturbed area and to authorities the use of the armed forces in aid of the civil power. This provision provides the basis for military to suppress legitimate political activity. In a disturbed area any member of the armed forces down to and including noncommissioned officers can authorize the use of lethal force in circumstances which include contravention of any law prohibiting the assembly of five or more persons or the carrying of things capable of being used as weapons. No one acting thus can be tried without the leave of the central government.

d) Prevention of Terrorism Act (POTA)

This is another instrument, which is incompatible with fundamental rights in the Indian constitution and the international human standards. Four main provision are (i) detention without trial (ii) confession before police as evidence (iii) denial of public hearing of trials (iv) criminalisation of legitimate political dissent and free speech. India has been criticized on the national level for these laws. The high authorities of the UN also made some objections on these laws. The Indian government did not look positive to solve this issue because of the some Hindu foundations like Shiv-Sena and the other force Indian government to take the Kashmir from Pakistan at any cost. "In 1991, during the presentation of the second periodic report to the Human Rights Committee, which monitors compliance with international standards, several members of committee were dissatisfied with the implementation of the covenant of Indian law and practice" (Kashmir Times, 2004). There are other laws, which have been promulgated or revived with negative impact on human rights. The judicial system in Kashmir according to the international commission of jurist report is almost dysfunctional of failure to address bail applications and for not putting on trial those charged with offences arising out of the disturbances. But over all there is a need of to reconcile the laws which Indian emphasizes on the Kashmir and the people of Kashmir. The people of Kashmir suffer very badly with this unrecoverable issue between Pakistan and India and they are suffering from it a long time ago. So now Indian and Pakistani governments should be sitting together and try hardily for resolving this conflict for the better sake of lives and economy of the Kashmir.

4. Human Rights Situation in Occupied Kashmir

International human rights organization such as the Amnesty International, Human Rights Watch, Physicians for Human Right have regularly reported human rights violations in the occupied Kashmir. Their reports can be divided into two periods. Those that were filed between 1990 and 2003, when militancy in Kashmir was intense and relations between the two countries were less than normal to pay the least. And those that were filed after the militancy had considerably subsided and a thaw in relations between the two countries had set in. For the first period 1996 report of Human Rights Watch Asia and for the second period 2004 report of the European Parliament's Committee on Foreign Affairs are worth mentioning. As to the Watch report, it holds the Indian government responsible for summary executions, torture, illegal detentions, disappearance, rape cases and election related intimidation of voters. It is estimated that the human rights situation started deteriorating from 1995 onward when the Indian government began systematically using "renegades" — described by the Watch as India's secret, illegal army, for its own purpose. It is observed that the Indian government did not make any public investigation into anyone of the documented cases of torture, nor has it ever announced that a number of the security forces was prosecuted or punished for torture. "On custodial killings, it stated that no security forces personnel were prosecuted. According to the Watch in the few high profile cases soldiers were tried for excessive use of force rather than for murder, which should have been done" (Amnesty International India <http://web.amnesty.org/web.nsf/print/2004->

ind.summary.eng). According to Watch reports the Indian authorities did little to curb human rights violations by the security forces. In the rare cases in which investigations were made, the most severe punishment was generally limited to dismissals or suspension from duty. The Watch also brings out that article 6 of the covenant on civil and political rights expressly prohibit derogation from the right to life. "It points out that even during emergency no one shall be arbitrarily deprived of life. It also underlines that article 4 and 7 explicitly ban torture even in time of national emergency or when the security of the state is threatened" (The Hindu, 2004). The Watch also reported human rights violation by militants. The militants have launched indiscriminate attacks that have killed and injured hundreds of civilians. They have made use of car bombs and other explosive devices in crowded places. They have thrown grenades at houses and government buildings killing and wounding civilians. They have kidnapped civilians including foreigners and held threatened, assaulted and some cases murdered Hindu residents of the valley. "They have kidnapped and summary executed informers and collaborators. They have also kidnapped and murdered civilians" (Reports of Human Rights Watch, Asia, 1996). The report of the European Parliament's Committee on Foreign Affairs released in 2004, after a visit to the disputed territory is quite instructive on the current human rights situation in the occupied Kashmir. Whereas it censures militants for human rights abuses its condemnation of India is particularly strong. It observes that human rights abuse by the Indian security forces feeds the cycle of violence. "It points out the international committee of the Red Cross cannot visit at detention centers and the UN special reporters on torture has not been granted permission to visit Kashmir since 1989" (Reports of Human Rights Watch, Asia, 1996). Mr. David Bowie, a member of the delegation, says: Kashmir has been turned into the most beautiful prison in the world. This analysis shows that the human rights situation in Kashmir is as grim today as it was during the period of the so called cross border terrorism.

5. How to Improve the Situation

This prevailing situation can be improved in a number of ways:

1. The government of India should adopt the National Human Rights Commission's recommendation that the magistrate, or other state official, accompany security forces on cordon search operations to reduce the potential for abuse, which would also lower the risk to security forces of false accusations being made against them.
2. NGO's, Human Rights NGOs need to coordinate efforts avoid turf wars and maintain to more even handed position on abuses. In particular:
 - The National Human Rights Commission (NHRC) should fulfill its mandate to provide training for human rights organizations and the regional office of the UN High Commissioner for Human Rights in Bangkok should help as allowed under its mandate to assist statutory bodies.
 - The UN High Commissioner for Human Rights should use his good offices to impress on India that it would be useful for reporters on torture disappearances extra judicial killings and human

- rights defenders to take greater interest in Kashmir, particularly in the provision of technical advice.
- Many national and international groups need to expand human rights training. Amnesty International has done training through its national chapter but organizations should expand availability of specially tailored, internet-based human rights education module designed for a situation such as Kashmir. The International Committee of Red Cross (ICRC) should take up the issue of common article 3 with the Indian government asking it to restrict operation by security forces. Under this article, an impartial humanitarian body like ICRC may offer its services to the party in conflict.
 - As mentioned above, Prevention of Terrorism Act (POTA) repeal would go a long way toward improving the human rights situation in Jammu and Kashmir. The government should follow all safeguards in the implementation of other special laws, such as the Public Safety Act (PSA), the Armed Forces Special Powers Act and Disturbed Areas Act. It should ensure periodic review of their utility, amending them where appropriate. Any special powers must be balanced by review procedures that work. Indeed, some provisions of these laws are draconian and need to be reviewed to bring them into line with standards and commitments to which India has international obligations. Special laws like POTA have been mostly used against non-terrorists such as political activists, union leaders and others. Over-reliance on these laws does not improve security but tends to intensify human rights abuses.
 - The government must ensure that families of those held are informed as rapidly as possible. Disappearances have become a source of corruption as families are forced to pay for information on missing relatives.
 - The Armed Forces Special Power Acts create army authority without accountability, a serious problem in any democracy and a situation that needs review as judicial rulings have suggested.
 - Accepting the National Human Rights Commission's 2002 recommendations for amendments to the protection of Human Rights Act 1993 under which it operates, to give it the right to investigate allegations of human rights violation by security forces including army, paramilitary forces and the police.
 - The Indian government has made much use of surrendered militants in security operations as informants and as police. This policy has caused serious human rights abuses and undermined the accountability of the security forces. The creation of semi-official or official militias and proxies has ended up causing more problems than is being solved. So surrendered militants should not be used in military operations.

- India must honour the pledges that the question of Kashmir would be decided in accordance with the wishes of the Kashmiris. Both India and Pakistan had accepted that the acquisition of accession would be decided through the democratic method of free and impartial plebiscite.

6. Conclusion

The Kashmir problem is the symbol of the unresolved conflict of communal loyalties and secular politics. Pakistani governments, one after another, characterize it as "the unfinished business of partition" by which they mean that, in view of its Muslim majority, the state and certainly the valley should belong to Pakistan. Religious dynamics are the products of historical legacies; they shape governmental and political structures, affect the policies of other nations, shape individual leaders and elites, and help us in understanding the cultural side of the foreign policy coin. Especially in the developing world, where the exercise of power often is legitimized on religious grounds, the masses mobilized with communal consciousness and power structures can easily be drawn together by ethnic and religious ties, including ethno-religious factors, thus strengthening explanations about politics and foreign policy. The foreign policy approach presented here, based on a system-oriented approach, provides further understanding of the relationship between domestic factors and foreign policy as it concerns India and Kashmir. It helps to illustrate how, in the case of Kashmir, ethnic conflicts may become internationalized and determine a substantial part of a country's foreign relations. It helps to clarify domestic-level factors, such as religion, and international-level factors, such as Pakistan's foreign policy, and their combined effect on India's foreign policy. A system-oriented approach can be used to better understand sub-national and external relationships. Domestic, or state-level factors such as religious differences, have profoundly shaped the foreign policy patterns of India. Ethno-religious conflicts originating in Kashmir are as important, if not more so, than structural or international-level factors in explaining some foreign policy decisions. In this case, a domestic religious factor in India has served as the impetus for Pakistani and UN involvement, subsequently promoting a foreign policy response by India. Since foreign policy cannot be analyzed successfully without paying special attention to domestic factors, the approach presented here provides a systematic way to study various domestic- and international-level factors and a variety of causal relationships among them. Using domestic factors and structures such as religion, culture, leaders, factors, and government (with specific reference to the ontological approach known as systemism), this study provides a robust example of a foreign policy approach that is able to clarify a more complete picture of international politics. Specifically, the emphasis on religion and the endeavor to understand how religious factors shape foreign policy decisions in different domains of polity and society gives a special strength to the approach. Lastly, from a theoretical perspective, this study justifies the notion that realism as a dominant paradigm of international relations literature can be applied to the study of domestic and international structures. In other words, the foreign policy goals of states often have ethno-religious dynamics that play an important role in policy

formation. This is not to claim that states do not consider security concerns as primary or that national interests are not defined by power-related issues. Rather, insight into what defines national interest (and how a state pursues it) is more complex than what traditional realism has argued. As is seen in the case of Kashmir, ethno-religious divides, historical legacies, and nation-building strategies have affected both the domestic and foreign policies of India. Additional applications of the approach are recommended. Religion as a domestic factor resulting in the internationalization of a conflict can be the focus of concentration for a variety of comparative studies. Beyond the concentration on religion, other state-level factors can be placed under more intense study and analysis. As mentioned earlier, the precise effect that international-level factors, responding to initial state-level and sub national events, can have on a state's specific foreign policy processes would be a natural extension to this and other comparable studies.

The political history of Kashmir since 1947 shows that the Kashmiri's have resisted Indian's efforts to integrate Kashmir fully into Indian federation. The Kashmiris have faced the wrath of Indian's security forces but they did not change their mind on the future of Kashmir. This problem has negatively affected the relations between India and Pakistan. There is a need to seek a peaceful political solution of the Kashmir problem. For this purpose Pakistan and India should held a regular dialogue for evolving methods to implement the UN resolutions on Kashmir. Meanwhile the Indian Government should adopt ways to control human rights violations by its security forces in Indian administered Kashmir. The hardships of the people of Kashmir should be addressed on a priority basis. The suggestions made in this article can help to improve the situation of ordinary people in India administered Kashmir and create an environment for a just solution of the Kashmir problem.

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