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## Kashmir's Desire for Self-Determination: In Need of Political Imagination?

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### **Abstract:**

*The demand for self-determination and the related conflict in Kashmir are key security issues for India and South Asia. The demand represents crucial political struggles of the present time. The concepts of nation and national identity often drive this struggle between India and Kashmir. An understanding of national security in terms of the stability of the state and preserving the norm of territorial integrity treats Kashmir's demand for self-determination as secessionist. Thus, neglects the Kashmiri desire for self-respect and dignity are a source for such drive of self-determination. Instead, the self-determination reduced to secessionist demand results in homogenization of societies through denial of the recognition of their cultural differences. Such emphasis on unity informs the present conception of national security of India which prioritises the militarization of Kashmir over human security in the region. Although military security practices ensure procedural and legal authority, they cannot assure stability to the state and society. The recognition of difference can help to transform political imagination of unity from oneness to togetherness. So, the Kashmir's dissent from Indian identity is a search for unity in togetherness rather than oneness.*

**Keywords:** *Self-determination, National security, Homogenization, Unity*

### **1. Kashmir: The Struggle of Present Time**

The Kashmir issue is one of the prolonged crises in South Asia. It revolves around the contestation between the political right of self-determination and the principle of territorial integrity. These two norms of international relations had emerged during the inter-war period and were the culmination of the institutionalisation process of previous centuries. The principle of self-determination initiated through Woodrow Wilson's fourteen points and institutionalised through Article 1 (2) of the United Nations Charter. It aims to ensure universal peace based on the principle of equal rights and respect for self-determination as appropriate measures for friendly relations among different nations in the world. Erez Manela (2007) traced the idea of 'self-determination' with the 'consent of governed' though intended for European audiences; the nationalist mobilisation within the colonies have utilised this to organise their struggle against the imperial rulers. At the same time, the Paris Peace Conference (1919) played a crucial role, in making the territorial sovereignty criteria for the external recognition while organising the hierarchical structure of the new community of nations in the world (Abraham 2014). This, in other words, has made demarcated territory as an essential feature of the modern nation-state. In the following period, these two norms had governed the world and acted as legitimising or delegitimizing the struggle of several groups of people across the South Asian region.

There are several political communities in the region of South Asia which shares such discontent. The Baluch in Pakistan, Tamil in Sri Lanka along with Kashmir population several religious and sub-national groups are few immediate examples. The framework of the modern nation-state and security preferring stability and unity of such modern state through territorial integrity is one of the main reasons to perceive such struggle as a threat. The post-1947 period, both the state of India and Pakistan claims the state of Jammu and Kashmir as an integral part of their respective national imaginations and national identities. These struggles are often derived from the concept of nation and national identity. The present state of Jammu and Kashmir is situated at the crossroad of three different cultures. At present, the territory is divided between these three states. The focus is on the Indian-administered region of Jammu and Kashmir where the valley of Kashmir, a major reason for the dispute is located. Often the narratives start with the partition of British India in 1947, moving to the division of the then princely state of Jammu and Kashmir between India and Pakistan. The period of last sixty years has a history of three wars and several military skirmishes' and continuous tension over the region raising the concern of 'nuclear flashpoint'. The simultaneous development over the period shows increasing polarisation between secular and religious extremist ideologies within these societies.

### **2. Drivers of Struggle: Nation, Identity and Self-Determination**

The significant aspect is since the inception of the issue there is a continual demand for the right to self-determination from the people of Jammu and Kashmir. Their struggle to preserve the desire to shape their political destiny by preserving their distinct political

identity. The concept of nation is an important aspect of collective identity. It plays important role in organising modern political societies. The identities are central to the question of agency and have a pivotal relationship with politics of location. The two major trends in modern identity formations are self-realization and recognition and self-differentiation working through difference and exclusion. Stuart Hall synthesising the two important elements of identity formation argues that identity is not only integral, ordinary and unified but are also a product of difference and exclusion. He suggests that identity is performative self. Identities are the narratives which are partly fictional but produced in specific historical and institutional sites within the specific discursive formation (Hall 1996). Charles Taylor (1994) in an essay *The Politics of recognition* has argued that modern identities are partly shaped by recognition or its absence. Such understanding of identity works through the concept of recognition, authenticity and dignity. The importance of recognition has modified the new understanding of individual identity; that emerges at the end of the eighteenth century. It is an individualised identity. The notion of a human being endowed with moral sense and this morality anchored in our feeling has changed the modern culture. Our moral sense of salvation comes from our recovering authentic moral contact with ourselves; this makes the idea of authenticity crucial for self-realisation or self-fulfilment of identity.

Nationalism is processed materialising the abstract concept of nation. The process of such collective political assertion as a nation is not smooth and often has a history of many conflicts. Such demands are put most explicitly in terms of self-determination. The right to self-determination is about the right of people to choose the form of political organisation and relation with other groups. The denial of such right self-determination is a human rights violation and constitutes a breach of international law (Papian 2010). This right to self-determination is often in conflicts with territorial integrity; which is an important principle of existing international system. The exercise of the principle of self-determination leading to birth to a new nation-state is a recent development in the history but such principle cannot be universalised. Hence every time nation's demand of self-determination cannot be assessed as a desire to form separate state (Liebich 2003). The approach that every assertion of self-determination shall lead to the formation of the new sovereign has got recognition, acceptance and support in order to have long-term peace in the international system. As Patrick Heinig (2010) suggests that the limitations of existing political framework in fulfilling aspiration of certain groups within state results in their demand for self-determination. In this way, present general understanding to the right to self-determination serves external requirement of maintaining order in the international system rather than serving the inherent moral right of a nation to decide its collective political future.

The right to self-determination, is in theory, rooted in the liberal philosophy. There are various interpretations of such right to self-determination ranging from autonomy to secession. The self-determination is also about protecting the existence of the collective self and also helps to get recognition from the other such entities. Such interpretation of the principle of self-determination relates to learning about respecting differences. Danial Philpott argues that the principle of self-determination rooted in moral autonomy in the context of democracy is about self-government (Philpott 1995). The recognition and practice of self-determination which addresses the issue of self-respect and self-rule to shape even political destiny will help to form stable nation-states. The secession is being considered as a most crucial threat to territorial integrity for parent state. The main limitation of the present form of secession in the Kashmir issues is the opting out from the parent political sovereign state hardly helps to overcome the limitations of the present state as an institution of political authority. The tension between majority and minority group in the power-sharing arrangement within representative democracy remains unaffected. The demand for secession is seen as a tension between centre and state, federation, but not as a crisis of the state in general. Neera Chandoke argues that self-determination rather than being legitimacy claim; it can be seen as a constitutive aspect of democracy. There is a need to scale down the concept of self-determination from state making or breaking to a constitutive principle of democracy (Chandhoke 2012).

### **3. Kashmir: Security or Living under Militarization**

The traditional understanding of national security is defined in terms of political independence and territorial integrity. The historical development of state formation in South Asia needs to recognise the role of colonial rule. It is reflected in the way the state defines the threat or sources of insecurity in the present period. Recognising inheritance of the colonial rule in the state formation, Suvir Kaul (2010) observes that the cardinal feature of state formation in the independent post-colonial nation state has been the development of a massive security apparatus. Apparently to guard international borders but in practice reflected in coercive practices in several fields of governance. The desire for economic growth and 'neo-colonial ambitions'<sup>1</sup> where the state is adopting peculiar policies of development aiming high growth rate but neglecting social implications and a desire to increase influence on the neighbouring states. The alternative policies or dissent is often treated as a challenge to its authority and dealt as law and order problem. Resisting the authority of state even in the sphere of development is treated as a threat to state's existence (Kaul 2010).

Two major strands of security policy while thinking about Kashmir issue are the use of force and political means. The presence of security forces with the history of three wars to border state like Kashmir was not new. The wars between the two states of India and Pakistan have left 115,000 dead; while as many as 100,000 have been killed in the disputed region of Kashmir alone (Walker 2011). The deployment of security forces in Jammu and Kashmir since 1990 to till date is one such measure of securing territorial integrity and national interest. This has resulted in the militarization of Kashmir, large-scale military deployment and the web of such draconian laws as Armed Force Special Power Act (AFSPA) virtually converted Kashmir into prison and people into potential victims. According to Gautam Navalakha, at present Kashmir is under military occupation. It is governed by Armed Force Special Power Act declaring it as disturbed area resulted in huge military deployment. Kashmir has the ratio of deployment as 1:13/14, one soldier for

<sup>1</sup> The phrase Suvir Kaul (2010) used to explain the continuation undemocratic imperatives of the modern state inherited from colonial empire.

thirteen to fourteen people. The ninety-two villages in Baramullah has three police stations but four Indian army headquarters, twelve check posts, from 100-150 to 300 military personals patrolling regularly (Navalakra 2011: 158-159). The excessive use of violence is a strategy used by security force as counterinsurgency to yield a result for reducing the militancy (Joshi 1999). Angana Chatterji (Chatterji et al 2009 and 2011) explains how India's will to power uses discipline and death to govern the population in Jammu and Kashmir. The cultural difference as the large presence of mosques often which is unfamiliar to most of the ordinary soldiers in India gets conceptualised as a threat due to otherness associated with it. It resulted in treating ordinary Muslim people in Kashmir as an anti-national element, criminalising their everyday living practices. Most significantly it can be seen in the implications as enforced disappearances and mass graves (Chatterji et al 2009).

According to Amnesty International, an enforced disappearance takes place when a person is arrested, detained or abducted by the state or agents acting for the state, who then deny that the person is being held or conceal their whereabouts, placing them outside the protection of the law (Noorani 2003). One of the non-governmental organisations (NGO) puts the number of enforced disappearances in Kashmir's long, brutal war at around 8,000 men and boys (Peer 2011). Such acts of enforced disappearances violate a range of the basic human rights, as the right not to be subjugated to torture or other cruel activities, inhumane or degrading treatment and punishment, the right to the human condition of detention, the right to legal personality. The most recent investigation of these cases of unmarked graves was carried out by International People's Tribunal for Justice and Human Rights for Kashmir (IPTK)<sup>2</sup>. It has carried out this investigation in border districts of Bandipora, Baramulla, and Kupwara in north-western Kashmir. It investigates 2,700 graves where body count was 2943 plus. Sometimes, the number of bodies ranged from 3 to 17 in one grave. Moreover, most of these graves were found nearby local settlements. The committee has found that often these were the local peoples killed in fake encounters and buried as foreign militants. Most of them were Kashmiri Muslim. Many of them were later identified through the photos or other belongings kept by regarding authorities as well as claimed by their family members (Chatterji et. al 2009).

The incidence of mass rape in Kunan Poshpora<sup>3</sup> was one major incidence that is still waiting for justice. The sexual violence against women committed by both security force personals and militant makes them vulnerable. In addition to this, there are several women who are half widows suffering at several levels. 'Half widows' mean women whose husbands are assumed dead but there is no proof to show actually they are. Kashmir like many other regions in South Asian society has patriarchal structure. Often these women do not receive their right of inheritance due to cultural structures. Further, the 'half-widow' do not qualify for state support, such as pensions offered to widows, while they are marginalised from securing property rights under the prevalent structure of property ownership customary in the heteronormative context in South Asia, including in dominant interpretations of Islamic law' (Ibid). Haley Duschinski and Bruce Hoffman (2011) carried out a field study of the Shopian tragedy<sup>4</sup> in 2009 to study the everyday life under the military occupation and state as well as societies response to it. Their observation explains how the state through its various governing institutions not just fails to protect basic rights of its citizens it denies such rights and ensures the systematic denial of the justice and accountability to the people.

One of the unrecognised groups suffering in the whole process is the soldiers on the ground. The inhuman activities like killing, interrogation along with other such activities which they have to undertake as an 'act of service' also has a negative impact on them. In this context, Chatterji argues that the psychological health and stability of the Indian armed forces is in serious contention. It can be seen from the increasing incidences of suicides and fratricides among the soldiers working in Kashmir. A total of 169 soldiers committed suicide between January 2002 and September 2009 (Chatterji et al 2009: 35). The present approach of security practice in Kashmir has produced enforced disappearances, mass graves, and half widows, increasing the vulnerability of women, youth and soldiers. On the other hand, the steady and sustained discontent shows that security forces and a state have not succeeded in its security objectives.

#### 4. Political Imagination: At Crossroads?

The political approach is to protect its political values, the most significant value, in this case, being diversity. The diverse conceptualization of self in terms of various sub-nationalities is taken as a threat to the unity of homogenous national identity. Balveer Arora (2013) examining the Indian federalism notes that asymmetric federalism gets special status has been developed as analytical and conceptual tool which gets associated with the 'secessionist potential' or leading to social or political disintegration. Though recent scholarship as L. Tillin (2007) argues that present provisions of asymmetry through constitutional provisions are not important for India's ability to 'hold together.' Patrick Hoenig (2010) notes that in Indian federalism 'unity in diversity' where unity is the first priority and diversity is expected to follow. The discourse of federalism lacks the accommodative capacity as two major phases guiding are 'from above' and to 'hold together.'

The present understanding of modernity in terms of 'self and other' leads to present perception of diversity as a threat to single, homogeneous national identity. The modern understanding of the world in terms of binaries leads a division of the psychological understanding that if somebody or some ideas are not with us or different from our general understanding then it must be against or

<sup>2</sup>International People's Tribunal for Justice and Human Rights for Kashmir (IPTK) along with APDP and Jammu and Kashmir Coalition of Civil Society, has conducted the study. During November 2006 to November 2009 Angana Chatterji, Parvez Imroz, Gautam Navalakra, Zahir-Ud-din, Mihir Desai, and Khurram Parvez conducted it.

<sup>3</sup>The Kunan Poshpora incidence of 1991, where group of security forces of (4th Rajasthan Rifles 68th Brigade) supposed to have ganged rape many women in these two villages; while conducting cordon and search operation (The Hindu, 8 June 2013).

<sup>4</sup> In the summer of 2009, the apparent murder and rape of two young women in the small town of Shopian sparked a year of popular protest.

harmful to us. The pre-colonial conceptualization of identity as an embedded plurality which was formed by sharing horizontal plane rather than hierarchical informs the present plural understanding within South Asian societies (Behra 2007). Such identities were not clearly demarcated and territorially fixed. The conceptualization of identity was not absolute but plural and flexible. The South Asia societies are not homogeneous but have the diverse cultures where a subgroup of people desires to preserve its distinct identity. The present understanding of political authority in term of sovereignty which is hierarchical and centralised in nature is one of the major reasons producing the tension within in the process of negotiation with the singular conception of modernity perceived by state. Further, Suvir Kaul (2010) explains the cartographic inheritance where the government of India after partition accepts the borders decided by British colonial government without recognising the right to self-determination of the local population leading to sustained discontent among the peripheral states.

The failure to respect the cultural differences resulting into denying self-respect and dignity, distinct identity to a section of the population resulted in treating it as a threat to India's national unity. The lack of political imagination persists with the continuation of much legislation introduced by the colonial rule to govern the subject and to control its resistance to imperial power. One such prominent example is Armed Forces Special Powers Act (1958). The state at present gives prime importance to protecting its territorial borders with increasing militarization and centralization of power. While dealing with the resistance from the peripheral states. In many cases, political processes and civil governance have been routinely marginalised to allow military solutions. The present structure of governance recognises unique status of Jammu and Kashmir in theory under the structure of quasi-federal system but in practice, Indian union lack purpose and conviction.

The present period shows the trend where the forces for maintaining stereotypes in the case of the imagination of national security, identity are renewed but the forces of resistance have managed to survive. The most explicit evidence can be the increasing voice of Kashmiri population for raising the issues of Kashmir's suffering. The literature produced and got circulated in several forms ranging from academics to movies discussing Kashmir, recognising the suffering of those living in Kashmir. Patrick Hoening (2010) observes the need to give primacy to human rights, international law and suggests the need to break the taboo around the conception of self-determination essentially leading to secession. It is crucial for ensuring the enhancement of a democracy in India. The Kashmir's dissent from Indian identity is in a search for unity in togetherness rather than oneness. The recognition of differences and cultural specificity of diverse identities can help to transform political imagination of unity from oneness to togetherness.

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