

# Kashmir The True Story



*Jammu & Kashmir is an integral and inalienable part of India. Basic facts pertaining to this issue are well established. However, there has been a concerted dis-information campaign that presents a distorted historical account of the developments that led to the irrevocable accession of the state of Jammu & Kashmir to India; the subsequent wars inflicted by Pakistan on India and the unleashing of terrorist violence in the once tranquil and beautiful Kashmir Valley. The involvement of Pakistan in fomenting insurgency and terrorism in various parts of India, especially Jammu & Kashmir, has been well documented and accepted by all impartial observers. Following the cataclysmic events of 9/11 the international community also accepts that there can be no justification for acts of terrorism. Nevertheless, the historical perspective on Jammu & Kashmir needs to be put in the correct, factual light. The following pages attempt to do so.*

## THE JAMMU AND KASHMIR ISSUE

### Accession to India

1. The Accession of the State of Jammu and Kashmir to India, signed by the Maharaja (erstwhile ruler of the State) on 26th October, 1947, was completely valid in terms of the Government of India Act (1935), Indian Independence Act (1947) and international

law and was total and irrevocable. The Accession was also supported by the largest political party in the State, the National Conference. In the Indian Independence Act, there was no provision for any conditional accession. The Instrument of Accession executed by the Maharaja was the same as the ones executed by over 560 princely states

in India. There has been no complication in any of the other cases. There would have been none in this case either, except for Pakistan's action in sending in tribal invaders first (in October 1947) and its own regular troops later (May 1948).

2. Lord Mountbatten's acceptance of the Instrument of Accession was unconditional. He said: "I do hereby accept this Instrument of Accession". The Instrument of Accession was complete with the offer and acceptance.
3. There can, therefore, be no question of negotiating on the question of accession of the State of Jammu & Kashmir to India.

### Reference to UN

4. India made a reference to the United Nations on 1st January 1948 under Article 35 of the Charter, which permits any member state to bring any situation, whose continuance is likely to endanger international peace and security, to the attention of the Security Council. The intention behind this reference was to prevent a war between the two newly independent countries, which would have become increasingly likely if the tribal invaders assisted first indirectly and then actively by the Pakistan army had persisted with their actions against India in Kashmir. The Government of India requested the Security Council "to put an end immediately to the giving of such assistance which was an act of aggression against India".
5. Pakistan consistently misled the world regarding its involvement in Kashmir: (a) It claimed initially in 1947 that it was not in any way assisting the tribal invaders and was only not actively opposing their passage out of fear that they may turn against the local Pakistani population. It was, however, clearly established that these invaders were being looked after in Pakistan territory, fed, clothed, armed and otherwise equipped and transported to J&K with the help, direct and indirect, of Pakistani officials, both military & civil. The first Governor General of Pakistan, Mohammad Ali Jinnah claimed in a meeting with the then Governor General of India Lord Mountbatten that he was in a position "to call the whole thing off" subject to some of his demands being met. (b) Pakistan later claimed that its own forces were not involved directly in operations in Kashmir. But the UN Commission that visited India in July 1948 found Pakistani forces operating in Pakistan occupied Kashmir. The UNCIP Resolution of August 1948 documented the Pakistani aggression when it stated: "The presence of troops of Pakistan in the territory of the State of Jammu and Kashmir constitute a material change in the situation since it was represented by the Government of Pakistan before the Security Council". The UN sponsored mediator, Owen Dixon, was also constrained to record in his report of 15.9.1950 that "I was prepared to adopt the view that when the frontier of the State of J&K was crossed, on I believe 20 October 1947, by hostile elements, it was contrary to international law, and that when, in May 1948 as I believe, units of the regular Pakistan forces moved into the territory of the State that too was inconsistent with international law".

### Non-implementation of UN Resolutions by Pakistan

6. India had made it clear that full implementation of the UN resolutions would be conditional upon Pakistan fulfilling Parts (I) & (II) of the UNCIP resolutions of 13 August, 1948, which inter alia, required that all forces regular and irregular under the control of both sides shall cease fire; Pakistan would withdraw its troops, it would endeavour to secure withdrawal of tribesmen and Pak nationals and India will withdraw bulk of its forces once the UNCIP confirms that the tribesmen and Pak nationals have withdrawn and Pak troops are being withdrawn. India was also to ensure that the State government takes various measures to preserve peace, law and order. Indian acceptance of these UNCIP resolutions was also subject to several conditions and assurances given by UNCIP including that Pakistan would be excluded from all affairs of Jammu & Kashmir, "Azad J & K Government" would not be recognised, sovereignty of J & K government over the entire territory of the State shall not be brought into question, territory occupied by Pakistan shall not be consolidated, and Pakistani troops would be



withdrawn completely. Pakistan never fulfilled these assurances.

### **Preconditions for Plebiscite Never Fulfilled by Pakistan**

7. The Government of Pakistan wrecked any possibility of plebiscite being conducted by not implementing Part II of the resolution, perhaps because it was fully aware of what the result of such an exercise would be. The Pakistani troops, which were to withdraw from the State, did not do so. As a result normal conditions under which a plebiscite could be held were never created.
8. India had accepted these resolutions, subject to assurances, (mentioned in para 6) and in the hope of having the matter resolved quickly. Pakistan, however, wrecked the implementation of the resolutions at that time by not fulfilling the preconditions. As V.K. Menon stated in the Security Council (763 Meeting, 23 January, 1957): "If an offer is made and it is not accepted at the time it is made, it cannot be held for generations over the heads of those who made it". With Pakistan's intransigence, and passage of time, the offer lapsed and was overtaken by events. In fact, the representative of India (M.C. Chagla) had stated in the Security Council as far back as 1964 (1088 meeting, 5 February 1964): "I wish to make it clear on behalf of my Government that under no circumstances can we agree to the holding of a plebiscite in Kashmir".
9. In a statement in New York on March 31, 1966 the then Prime Minister of India had said that "any plebiscite today would by definition amount to questioning the integrity of India. It would raise the issue of secession - an issue on which even the United States fought a civil war not so very long ago. We cannot and will not tolerate a second partition of India on religious grounds. It would destroy the very basis of the Indian State." Today, thirty-seven years later, the Pakistani position is even more untenable.

### **Non-Applicability of 'Self-determination' to Integral Parts of States**

10. Under the UN Charter, the principles of self-determination are meant to apply to colonial territories and not to integral parts of

countries. Pakistan's harping on "self-determination" today, against the principles advocated by the founders of Pakistan, are only a cover for territorial ambitions. The principles being espoused by Pakistan pose severe dangers to several countries in the world where multi-ethnic and multi-religious societies co-exist.

### **Solution Proposed by Resolutions: Time and Context Specific**

11. Since 1957 there have been no UN resolutions on the substantive aspects of the Jammu and Kashmir issue. Time and circumstances have not stood still. More than four and a half decades have lapsed since the original proposals were made as a possible solution. They can no longer be considered valid. In fact, in his report (dated 29th April, 1957), the UN Representative, who was then President of the Security Council, Gunnar Jarring, after completing his mission to India and Pakistan in 1957, took note of larger realities of the sub-continent including in Jammu and Kashmir and stated: "The Council will, furthermore, be aware of the fact that the implementation of international agreements of an ad hoc character, which has not been achieved fairly speedily, may become progressively difficult because the situation with which they were to cope has tended to change".
12. Dr. Frank Graham, the UNCIP representative stated in March 1958: "...the execution of the provisions of the resolution of 1948 might create more serious difficulties than were foreseen at the time the parties agreed to that. Whether the UN representative would be able to reconstitute the status quo which it had obtained ten years ago would seem to be doubtful....".
13. Over fifty five years after Partition, the ground situation in the state to which the resolutions referred to has considerably changed. Pakistan unilaterally ceded a part of the state to China in 1963. There has been a demographic change on the Pakistani side with generations of non-Kashmiris allowed to take residence in the parts of J&K occupied by Pakistan. Pakistan sponsored terrorism into J&K has also forced the minority Kashmiri

Pandits to migrate out of the Kashmir valley to Jammu and to other parts of India. If the resolutions had begun to lose relevance in 1957, they have far less relevance now.

14. The above position is increasingly being acknowledged by the world today. Highlighting the fact that the UNCIP resolutions did not come under Chapter VII, and were therefore not self enforcing, the UN Secretary General stated at a press conference in Islamabad in March 2001, that “the two parties discussing these issues and finding a peaceful way out, is the route I recommend”.
15. It is now widely acknowledged that bilateral dialogue, in accordance with the Simla Agreement, reiterated in the Lahore Declaration, is the only way to address all bilateral issues between India and Pakistan, including the issue of J&K. UNSG’s view was categorically supported by EU Commissioner, Chris Patten, during his visit to Pakistan in May 2002. UK’s Secretary of State for Foreign and Commonwealth Affairs, stated in the British Parliament on 10th June 2002, that “if United Nations resolutions could have solved the matter, it would have been solved more than 50 years ago”. Speaking for the British Government, he said: “We think that there is not a huge amount of point in getting in a historiographical exercise about which position is correct. We have to deal with the here and now”, adding that a solution to this issue could be found only “by looking forward and by a direct dialogue between those two sovereign nations, India and Pakistan”. The US Government has also made its stand clear that in keeping with the Simla Agreement of 1972, this issue should be addressed by India and Pakistan bilaterally.

### **Choice Made by the People of J&K and Elections in Kashmir**

16. The people of Jammu and Kashmir could not wait indefinitely to decide their future. In any case the UN resolutions did not recognise or grant any role to Pakistan in the conduct of the plebiscite. “If Pakistan, therefore, has no part in the plebiscite, it really became a domestic matter for India”. (V.K. Krishna Menon, UNSC, 800th meeting, 11 November, 1957). India

waited several years for Pakistan to fulfil the preconditions. When that did not happen, the people of Jammu and Kashmir then convened a Constituent Assembly in 1951, which once again reaffirmed the Accession of the State to India in 1956 and finalised the Constitution for the State. The Jammu and Kashmir Constitution reaffirms that “the State is and shall be an integral part of the Union of India.”

17. The people, therefore, were consulted. “We did not consult them privately; we did not consult them by selecting the people who were to be consulted. We consulted them by a normal process of democratic election - not even for a Parliament which we established, or the existing Government of Kashmir established, but for a Constituent Assembly”. (V.K. Krishna Menon, UNSC, 800 Meeting, 11 November, 1957). In several subsequent local, state and national elections the people of Jammu and Kashmir have repeatedly exercised their democratic choice.

### **India Pakistan Discussions on J&K**

18. India has always been willing to discuss all issues, including the issue of Jammu & Kashmir, with Pakistan. In fact, in the decades of the ‘50s and ‘60s, several rounds of bilateral discussions took place between India and Pakistan over 1950-51, 1953-54, 1956-57 and 1962-63, to resolve the differences over Kashmir. J&K is also one of the eight subjects identified for dialogue under the Composite Dialogue set up at India’s initiative in 1998. A perusal of the records of these meetings makes it clear that they failed in their endeavour only because of Pakistan’s intransigent, unrealistic, and on occasions, unifocal approach, which did not take into account either the moral and juridical aspects of the issue or the existing realities.
19. As in the UNSC, during these bilateral discussions, Pakistan has sought parity with India in terms of locus standi in Kashmir. This is untenable since the erstwhile ruler of J&K had duly acceded to India, the largest popular party had endorsed the Accession, and the people had subsequently ratified the earlier decisions. Pakistan, as the aggressor could not have parity with India, with which



the accession of Jammu and Kashmir was complete and final.

### 1965 War: Its Implications

20. Pakistan tried to impose a military solution on J&K yet again in 1965, by instigating a war against India. The people of J&K resisted this new invasion. Pakistan's failure to impose this military solution and the efforts of the people of Kashmir to thwart the aims and designs of the Pakistani invaders are well documented.
21. By imposing a war, Pakistan negated the very reason for which a reference had been made to the UN in 1948. All the arrangements that were arrived at with Pakistan through the instrumentality of the Security Council were based on the integrity and inviolability of the cease-fire line established after the 1947-48 skirmishes. By violating this line in 1965, Pakistan rendered obsolete and dead the resolutions of 1948 and 1949, in the context of which the Cease-Fire Line had been established through the Karachi Agreement of 1949.

### Simla Agreement - Its Implications

22. Pakistan imposed yet another war on India in 1971. After this conflict, bilateral talks were held in June-July 1972 and the 'Simla Agreement' signed on 2 July 1972. In terms of this Agreement, which was duly ratified by the two Governments in 1972 itself, the two countries undertook to resolve all differences bilaterally and peacefully. Pakistan, through its commitments enshrined in this Agreement, accepted the need to shift the J&K issue from the UN to the bilateral plane.
23. India's stand has been clearly enunciated. Jammu and Kashmir is an integral part of India. While India is prepared to resolve all differences with Pakistan through bilateral talks as envisaged in the Simla Agreement, there can be no compromise on India's unity and sovereignty. The issue that remains to be resolved is the vacation by Pakistan of territory illegally occupied by it.
24. For meaningful bilateral negotiations, Pakistan must create the right climate by stopping its support to terrorism. There must be tangible and credible evidence of this on the ground.

The Simla Agreement, reiterated in the Lahore Declaration, expressly forbids hostile propaganda, interference in internal affairs and encouragement of any acts detrimental to maintenance of peaceful and harmonious relations. It also enjoins respect for each other's territorial integrity and sovereignty. Pakistan is violating all these provisions.

### The Lahore visit of the Prime Minister

25. Prime Minister A.B.Vajpayee took a historic initiative and visited Lahore from February 20-21, 1999. The visit was aimed at conveying India's deep desire to establish peaceful, co-operative and friendly ties with Pakistan. Prime Minister Vajpayee proclaimed from the Minar-e-Pakistan that a stable, secure and prosperous Pakistan was in India's interest. The Lahore Declaration, which committed the two countries to build trust and confidence and develop mutually beneficial co-operation to resolve outstanding issues including J&K through bilateral negotiations, provided a blue print for India-Pakistan relations into the 21st Century

### Kargil

26. However, the ink had barely dried on the Lahore Declaration that the Pakistani Army manifested its compulsive hostility towards India by launching a military operation in May 1999 across LOC in an attempt to occupy dominating heights along a 140-Km long stretch of Srinager-Leh Highway. Its aim was to create a situation by which Pakistan would dominate the strategically important Kargil heights. India's firm response forced Pakistani troops to retreat to their side of LOC. India's policy of maintaining the sanctity of the LOC and the tremendous restraint shown by India in its firm action against the intruders without crossing the LOC found wide international support and endorsement.

### Agra Summit

27. Notwithstanding the continued sponsorship of cross border terrorism, on May 23, 2001 India again took the initiative to establish a high level political dialogue with Pakistan by inviting General Musharraf to visit India. The Pakistani President General Musharraf

visited India from July 14-16, 2001 and had talks with Prime Minister Vajpayee in Agra. However, during the Summit, Pakistan demonstrated a unifocal approach, fixated entirely on one question, and sought to make any improvement in relations conditional on prior resolution of the Kashmir issue. Pakistan was also reluctant to address India's concerns relating to cross border terrorism. The hopes of forward movement in bilateral relations thus remained largely unattained.

### **December 13, 2001 and its aftermath**

28. The December 13 attack on the Indian parliament by Pakistan-based terrorists constituted the last straw in the threshold of India's tolerance for Pakistan's continued sponsorship of cross border terrorism. A number of concrete and firm steps were taken by India in response. These included - severing of diplomatic and other links with Pakistan, mobilisation of the armed forces on the LOC and international border with Pakistan, and apprising the world community about Pakistan's continued sponsorship of cross border terrorism and infiltration, especially in the State of Jammu and Kashmir. This led President General Pervez Musharraf to make a commitment on January 12, 2002, that "no organization will be allowed to indulge in terrorism in the name of Kashmir....strict action will be taken against any Pakistani individual, group or organization found involved in terrorism within or outside the country.. (and) Pakistan will not allow its territory to be used for any terrorist activity anywhere in the world."

### **MORI Poll**

29. Pakistan's persistent claim that the people of Jammu & Kashmir have no desire to live in democratic India and that the terrorist acts in the State are a part of a "freedom struggle" received a further jolt when the findings of a survey conducted in J&K by the respected London-based independent market research company, MORI International, were unveiled on May 30, 2002. The survey revealed, inter alia, that on the issue of citizenship, overall 61% of Kashmiris said that they felt that they would be better off politically and

economically as citizens of India and only 6% expressed a preference for Pakistani nationality. The survey also clearly brought out the popular disenchantment of the people of J&K against terrorist violence in the Valley. Over 2/3rd of the respondents in J&K took the view that Pakistan's involvement in the region had been "bad" and the presence of foreign militants in the State had been damaging.

### **J&K State Assembly Elections, October 2002**

30. It is a tribute to the people of Jammu & Kashmir that, in spite of facing not only terrorist threats but bullets, and notwithstanding open calls from across the border for boycott of the polls, they came out in large numbers in exercise of their right to vote in the free, fair and transparent elections for the J&K Legislative Assembly conducted in September-October 2002. The heavy turn out of about 44% confirmed that the people of Jammu & Kashmir were tired of the oppressive activities of the terrorists and sought a way out through the democratic process.

### **New Government in J&K**

31. Based on its electoral promises of providing a 'healing touch', the new government in Jammu & Kashmir announced fresh policy initiatives that included release and reintegration of militant elements and attempting to initiate a dialogue with them. Government of India also appointed an interlocutor to talk to the elected representatives as well as others.

32. The measures taken by the new government to reach out to all sections of Kashmiri society and to ensure the return of the minority Kashmiri Pandits, who had migrated out of the Valley, back to their homes, received tremendous popular response from the people of the State. The positive response was manifest in the enthusiastic welcome given to Prime Minister Vajpayee during his visit to J&K in April 2003. The public rally addressed by the Prime Minister in Srinagar on April 18 was attended by more than 20,000 people.

33. During his visit to J&K, Prime Minister Vajpayee announced measures designed to



improve the economic situation of the State. He said that at least one-lakh new jobs would be created in J&K in the next two years. He also said that a comprehensive plan would be drawn to tackle the unemployment problem confronting the state youth. He also laid the foundation of two major infrastructure projects in the state – the Udhampur-Baramulla railway project, and the section of North-South superhighway corridor falling in J&K.

34. The successful elections and installation of the new government despite attempts to disrupt the democratic process by Pakistan sponsored terrorist groups and their proxies had increased the frustration within the Pakistani establishment and the terrorist groups sponsored by Pakistan. Their frustration had been manifest in the sinister nature of acts of terrorism committed by the terrorists, and attempts to obstruct the movement of the newly installed government towards restoration of peace and normalcy. Terrorists also targeted more vulnerable sections of the society, including women and children. By targeting the minority community (the attack on the Kashmiri Pandits in Nadimarg on March 23, 2003 and killing of the pilgrims to the Vaishno Devi shrine in Jammu on July 21, 2003), the terrorists and their backers across the LOC wanted to further drive away the minority community from the state and frustrate the plans of the State government to bring the Pandits back to their homes, and pressurise the new government to re-examine its policy of releasing and reintegrating alienated sections of Kashmiri society. Terrorists had also targeted the free press in Jammu & Kashmir with an aim to stifle the important instrument of freedom of speech and democracy.
35. The buoyant mood in the Valley, reflected in increasing tourist arrivals, overwhelming response to Amarnath Yatra and pilgrimage to Vaishno Devi, record number of pilgrims for the Kheerbhawani Mela, and holding of a large number of conferences in Srinagar including a meeting of the Inter State Council and of Chief Ministers of Congress-ruled states, led the Hurriyat Conference to moderate its stance on dialogue with the Centre. In desperation,

Pakistan engineered a split in the coalition. On October 22, 2003 the Government of India offered to have a meeting with the Hurriyat Conference at the level of Deputy Prime Minister. The Hurriyat, led by Maulvi Abbas Ansari, announced its decision to accept the offer of dialogue. Despite the best efforts of the ISI and militant outfits, the hardline Geelani faction remains marginalized with the major constituent parties either in favour of dialogue or neutral at best.

### **Pakistan : epicentre of International Terrorism**

36. The present situation in Kashmir has been created by Pakistan's support to terrorism. This support to cross border terrorism is not only an attempt to unilaterally alter the status quo on the ground but also to undermine India's secular fabric. Following the terrorist incidents of 9/11, there is a widespread consensus in the international community that there can be no justification for terrorism. There is also a growing realisation amongst the international community about Pakistan being the epicentre of terrorism in the world today. Many countries have repeatedly called upon Pakistan to end cross border infiltration; dismantle the infrastructure of support to terrorism; and to stop acting as a platform for international terrorism. Mr. Jack Straw, UK Foreign Secretary, stated in the British Parliament on June 10, 2002: "A number of terrorist organisations-including Lashkar-e-Toiba, Jaish-e-Mohammed and Harkat-ul-Mujahideen... have been at the forefront of violent activity in the region. India has long charged that such terrorism has had the covert support of successive Pakistani Governments and, in particular, of the main intelligence agency in Pakistan, the Inter-Service Intelligence Directorate-ISID. Her Majesty's Government accept that there is a clear link between the ISID and those groups". He added: "Successive Governments of Pakistan have, through their Inter-services Intelligence Directorate, encouraged and funded terrorists... to make incursions across the Line of Control as outsiders in that dispute, and to engage in mayhem and terrorism." Ms. Condoleezza Rice, US National Security

Adviser said on October 30, 2003: “It is absolutely the case that the infrastructure of terrorism has to be dismantled. It is absolutely the case that everybody needs to do more, and Pakistan needs to do more to make sure that there cannot be terrorist acts taken in – from Pakistan or from Kashmir against targets there”. The US Ambassador to Pakistan Nancy Powell said at the Pakistan American Business Council Meeting in Karachi on January 23, 2003: “The Government of Pakistan must ensure that its pledges are implemented to prevent infiltration against the LOC and end the use of Pakistan as a platform for terrorism.” Russian President Vladimir Putin said on June 7, 2002: “We must call upon the leadership of Pakistan in the first place to put an end to the terrorist activities being carried out from its territory in India, in Kashmir and to do everything to ensure that society in Pakistan becomes transparent, democratic, predictable and understandable.” Dominique de Villepin, the French Foreign Minister, reminded his Pakistani counterpart on March 29, 2003 of the necessity of completing the implementation of the commitments undertaken by his authorities in regard to the ending of terrorist operations in Kashmir and the strict respect of the Line of Control. On June 10, 2002 the European Union called upon Pakistan “to take visible, decisive and verifiable steps to seal the Line of Control, stop the supply of militant groups, help restrain the violent activities of these groups in Kashmir, close the militant training camps on Pakistan’s side of the Line of Control.”

### **The ceasefire in J&K**

37. On October 22, 2003, India announced a series of measures aimed at promoting people to people contacts with Pakistan. The measures, inter alia, included the offer to start a bus link between Srinagar and Muzaffarabad. On November 23, 2003, Prime Minister Jamali of Pakistan offered a ceasefire on the LOC. India welcomed the proposal and extended the offer of ceasefire to Siachen as well. Subsequently, the DGMOs of the two countries agreed to observe ceasefire on the International Border, LOC and the Actual Ground Position Line (AGPL), with effect from the midnight of November 25, 2003. This is the first time that a formal ceasefire is being observed in Jammu and Kashmir extending from the International Border and LOC up to the AGPL in Siachen. It is hoped that Pakistan will take a lesson from the tremendous positive response generated by the ceasefire and end its support to cross border infiltration and terrorism on a permanent basis so that the ceasefire can also become a permanent one.
38. In a diverse country like India, disaffection and discontent are not uncommon. Indian democracy has the necessary resilience to accommodate genuine grievances within the framework of our sovereignty, unity and integrity. Government of India has expressed its willingness to accommodate the legitimate political demands of the people of the state of J&K. However, Pakistan sponsored terrorists have terrorised the population and hindered political dialogue by intimidating or silencing voices of moderation that wish to engage in dialogue. The human rights of the people of J&K have been systematically violated by such terror tactics and the kidnappings and killings of innocent people by terrorists.
39. Jammu & Kashmir is an integral part of India. There can be no compromise on India’s unity and integrity. We remain determined and totally committed to resist terrorism and violence until it is decisively eliminated. Clearly, in Jammu & Kashmir, we have met the challenges posed by terrorists and have succeeded in defeating their designs. Through consistent efforts and commitment we have been able to bring about normal conditions in J&K. We have a duly elected Government in J&K through a credible electoral process and are confident that we would move forward in reviving the economy, accelerating development activities and addressing other issues and problems of the people of J&K.

