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Human Rights Situation in Kashmir and U. S. Policy

By

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Contents

S.no	Title	Page no
	Acknowledgement	
1	Introduction	1
2	Chapter-1	
	The United States Foreign Policy and National Interest: Issue of Idealism and Realism	5
	◆ Origins and Evolution of Human Rights in United States Foreign Policy	10
	◆ Human Rights and the United States Foreign Policy	11
3	Chapter-2	
	Genesis and the Evolution of the Kashmir Dispute	37
	◆ Geo-Political and Strategic Significance	37
	◆ Geographic and Economic Significance of the State	40
	◆ Genesis of the Dispute	43
	◆ The accession Issue, Indian and Pakistani View Points	47
	◆ The Indian Stand	63
	◆ The Pakistan Stand	64
4	Chapter-3	
	The United States Human Rights Policy : Issues of Selectivity and National Interest: a political dimension	75
5	Chapter- 4	
	The Human Rights Violations in Kashmir Valley	99
6	Chapter- 5	
	Summary and Conclusion	122
7	Bibliography	139

Introduction

Human rights have emerged as the most paradoxical issue of international relations discourse. In the period before the Second World War human rights were considered to be the domain of domestic politics. Since the adoption of the Universal Declaration of Human Rights more than four decades ago, international relations have altered radically. Over one hundred treaties and other significant international instruments on human rights have been adopted in the United Nations systems and in regional organisations since 1945. The preoccupation of the international community and the primary focus of the US's foreign policy on human rights during this period was on standard setting through the development and articulation of basic human rights principles and norms. This was done with the intention of creating pressure on governments to respect the human rights of their own nationals.

Human rights have always been understood in a variety of ways because the internationalization of human rights has never been separated from the political context of international relations. The basic differences of opinion center on the importance and weight to be given to the various rights articulated in the International Bill of Rights and other human rights instruments. During Cold War, these different views were sustained in a geo-strategic way by a competition between larger, mutually incompatible ideologies of world order. By and large, each side used human rights as a tool for finding fault with

and imputing immorality to the other.) The discussion of human rights became part of a rhetorical political game in which players sought to undermine the legitimacy of others while turning a blind eye to human rights abuses within their own sphere of influence. In the global struggle between United States and Soviet Union, the US in order to undermine and punish its adversaries used human rights as powerful foreign policy tool. It enhances America's role as a world leader and undermines that of its adversaries. It also adds an ideological and moral component to United States foreign policy.

The slogan of human rights enables the United States to recapture moral leadership in an international ideological vacuum of sorts¹. But the reasons which the United States has for advocating human rights are not, always solely humanitarian. Promoting human rights serves the U.S. national interests, particularly over the long run.

There is disagreement among nations regarding the definitions of the term 'human rights' and a deep ideological cleavage. Human rights as an idea, as an issue in religious, political and moral philosophy, can be found not only in the traditions of the West but also in many diverse cultures and traditions. These cultures have their own way of helping to implement the concept, which is different from that of the US and the West. To these societies, the liberal notion of individualism appears destructive of traditional forms of community such as family, tribe, and religion. The characteristic of the notion of rights in most of the Developing World is that it emphasizes the rights of groups over those of individuals. The liberal view of states or of groups or communities as voluntary

associations of autonomous individuals is a view largely confined to nations with a European cultural heritage.

The Developing World includes a substantial number of desperately poor and non-industrialized states as well as a number of remarkably wealthy countries with levels of per capita income approaching those of developed countries and with fairly high levels of industrialization. The Third World regards the U.S. efforts for the promotion of civil and political rights of individuals as biased and unbalanced. Moreover, these countries believe that they are not adequately represented in the international forums particularly the United Nations. They regard United Nations to be an instrument of the United States and the West through which they try to impose their criteria and will on the Third World countries.

In the course of this analysis a few important questions should be asked: What categories of rights are promoted and protected and what place in U.S. foreign policy decision making is given to human rights? What purpose does a human rights policy serve for the United States and what are its implications for South Asia? Whether the United States foreign policy is dictated by humanitarian concerns or the national interests and in a situation of conflict between the two, which will take precedence?

The overall purpose in this dissertation is to critically examine the role of human rights in United States foreign policy generally towards South Asia and especially towards

Kashmir issue. The dissertation will be divided into five chapters, each dealing with a different aspect. In the first chapter, the origin and evolution of human rights in the U.S. foreign policy will be traced and analyzed the varying degrees of importance given to human rights by different U.S. administrations. The debate between the proponents of idealism and realism and the gradual incorporation of the human rights issue in U.S. foreign policy over the years. The second chapter gives the background of the Kashmir issue. The third chapter deals with the political dimension of U.S. human rights policy. It contains a critical analysis of the issues of inconsistency and selectivity that have been predominant in U.S. human rights policy. Here, a fundamental question will be discussed whether the United States holds all govt. to the same standard and responds with equal intensity to all situations where rights are being violated or whether it proceeds selectively applying different standards from country to country? In the fourth, the human rights violation by Indian military and paramilitary forces will be discussed while in fifth chapter, summary and conclusion will be presented.

The United States Foreign Policy and National

Interest: Issue of Idealism and Realism

Foreign policy has been defined "as a formulation of desired outcomes which are intended (or expected) to be consequent upon decisions adopted (or made) by those who have authority (or ability) to commit the machinery of the state and a significant fraction of National Resources to that end. "The term National Interest generally refers to foreign policy. It has long been used by statesmen and scholars to describe the foreign policy goals of nation states. Although the concept of National Interest is not new, there is ambiguity about its meaning and no two scholars agree on a precise definition of the concept". This has, as a result, led to a variety of definitions and descriptions as most scholars have chosen to use their own descriptions rather than follow of the definitions offered by others. Since this chapter deals with the concept of National Interest as envisaged by American foreign policy makers and since National Security, the main theme of the paper, flows out of the National Interests of the U.S., it would be useful to glance at the ideas put forward by some American scholars as to the nature and roots of National Interest ¹.

Charles Beard, in his monumental work The Idea of National Interest concerned himself with what might be called 'National Economic Interest. Beard maintained that historically, National Security was not a principal concern of the U.S. because no foreign power had the capability of invading the country and forcing it into submission.²

The Brookings Institution, in one of its publications has defined National Interest as "The general and the continuing interests for which a nation acts." ³ James Roseau describes the concept "an analytical tool, employed to describe, explain or evaluate the sources or the adequacy of a nation's foreign policy." He further characterizes National Interest as "an instrument of political action that serves as a means of justifying, denouncing or proposing policies." ⁴

The end of the Second World War proved to be a turning point in the history of American foreign policy. The post World War II period saw the United States as the foremost global power, saying farewell to her age-old isolationist policies. The change in the status of the United States called for a revised view of what constituted the basic interest of the U.S. One such view was presented by Hans J. Morgenthau in his masterly written text book, Politics among Nations and in a shorter treatise, In Defense of National Interest Morgenthau argued that power, primarily industrial and military power, was the means by which nations survive in an essentially competitive world, and that the nations neglecting self interest and national power succumbed to the influence and intimidation of other states which emphasize them ⁵. What Morgenthau presented was a "realist" outlook based on national self interest as compared to the "utopian" views of the world held by the "political idealists." ⁶

Robert E. Osgood in his Ideals and self-interest in American Foreign Relations proposed a common ground for the Idealist and Realist schools of foreign policy. He argued that nations, like individuals, seldom act out of either purely selfish motives or pure idealism; that most actions and policies are a blending of the two. The degree to

which a nation acts out of self-interest or from idealistic motives is a key to discovering the basis of its national interest. He described the two points of views as follows: "National self interest is understood to mean a state of affairs valued solely for its benefit to the nation.... an ideal is a standard of conduct or a state of affairs worthy of achievement by virtue of its universal moral value".⁷

Arnold Wolfers was another scholar who tried to bridge the gap between the idealists and realists. He noted that the term National Interest had become, in the post World War II period, practically synonymous with a formula for National Security. Wolfers believed that amongst scholars and statesmen, there was a pre-occupation with national security and military power which he said was not surprising during the 1950's when there was a major concern in the United States about building up strategic military power; but, he argued, "one did not have to be obsessed with national security, in order to be realistic about goals and interests of the United States in the world."⁸

A more comprehensive view of National Interest was described by Paul Seabury in his volume, Power, Freedom, and Diplomacy. Talking about National Interest, he says, "we might thus conceive of the National Interest as a kaleidoscopic process by which forces lateral in American society seek to express certain political and economic aspirations in world politics through the highest organs of state. To comprehend this process, we must not merely understand something of the formal governmental process by which foreign policy is made, but also penetrate into the

depth of the notion itself to discern the well springs of thought, ideology, and smaller interests that feed into the mainstream of American policy abroad."⁹

A precise definition of American National Interest has been provided by Donald E. Neuchterlein as "the country's perceived needs and aspirations in relation to other sovereign states constituting its external environment." The United States, like most great powers, has both changing and unchanging National Interests.¹⁰ The United States has four basic, relatively unchanging, national interests, and all of its interests and foreign policies could be fitted into these four categories: Defense, Trade and Commerce, The building of stable world order, and the promotion of American values abroad."¹¹

These could be defined as follows:

1. Defence of Homeland

The protection of nation state and its citizens from the threat of physical violence by another country and for protection from an externally inspired threat to the national political system.

2. Economic Interest

The enhancement of the nation states economic well being in relation with other states.

3. World Order/International Security Interests

The maintenance of an international political and economic system in which the nation state can feel secure; in which disputes between nations can be resolved without resort to war; and in which collective security, rather than unilateral action is employed to deter or cope with aggressions. This is also referred to as the international security interest, and it came to prominence after the United States achieved great power status early in the 20th century. This interest is also concerned with the question of alliances and the world balance of power.

4. Promotion of Values (Ideology)

Promulgation of a set of values that the U.S. leaders believe to be good and worthy of being followed by other countries.

Prior to World War II, the U.S. did not pay much attention to World Order/International Security Interest. This attitude developed because the Americans insulated in the 'fortress America' thought that they could be secure and prosperous without being involved either in the League of Nations or in other international alliances. The Second World War changed the isolationist attitude. The U.S. decided to pay greater attention to world order international security, since the old structure of international relations had been shattered by the war. Wilson's dream of 1918-19, which had been rejected by the US Congress and the American people was reviewed in the Truman period. It resulted in such momentous actions as the creation of the United Nations, Marshal Plan, the North Atlantic Treaty Organization (NATO) and

the Truman Doctrine – to aid Greece and Turkey to withstand communist pressures in the eastern Mediterranean. The US had emerged from the ravages of the war practically unscathed and as the most powerful nation in the world, and it wished to remain so. Taking the argument a step further, the problem of correctly defining the national interest, lies not primarily in identifying the broad enduring interests, but rather in assessing the intensity of the interest or stake at different moments in history, and the desirability of using influence and pressure to defend or enhance certain national interest in preference to others and at the expense of other nations. In order to gain its interests the US had used different tools and international institution e.g. economic aid, Human Rights issues, etc. The US used / misused most the Human Rights concerns in order to gain its national interests. In sum this study is concerned to see the relationship of the US interests and the Human Rights concerns and the use of these concerns as a tool to gain its own specific interest.

Origins and Evolution of Human Rights in United States Foreign Policy

The question of human rights has come to occupy a prominent place in the foreign policy of the United States. An attempt will be made here to put into perspective the gradual emergence of this concept in the U.S. international policy. The evolution of human rights in American foreign policy will be traced within the context of two important components of U.S. foreign policy - realism and idealism.

'Realism' generally means an approach which insists that considerations of national decisions in accordance to national interest. The realist regards this objective as

necessary in a world in which all states pursue their own interests, unrestrained by any international authority. Realpolitik is therefore seen as "the only proper philosophy for America in foreign affairs"¹². However, there has also been an attempt to incorporate a moralistic or idealistic impression in the making of American foreign policy. But this moralistic concern is not allowed to undermine the realist objectives.

Human Rights and the United States Foreign Policy

Nineteenth Century

Although the First Secretary of State, Thomas Jefferson, declared that, "it accords with our principles to acknowledge any government to be rightful which is formed by the will of the people"¹³, yet realist position has deep roots in America's experience in foreign affairs. One of its earliest manifestations was President Washington's refusal to side actively with revolutionary France in its conflict with England, on the ground that neutrality best served the interests of the U.S. This was the first test of America's domestic commitment to human rights abroad and it came just ten weeks after the inauguration of George Washington i.e. in July 1789. American public held the opinion that their own actions had helped inspire the French Revolution. Jeffersonian Republicans saw France's declaration of war against England in 1793 as a replay of the American struggle against the tyrannical regime of George III. George Washington, however, coolly resisted the public claim and his Proclamation of Neutrality of 1793 clearly indicates the low priority assigned to humanistic ideals and the upper hand of realist attitudes in American foreign policy from the very beginning.

Revolutions in Latin America 1809 - 10 made most Americans feel that others were apparently emulating their example. There were stories of Spanish atrocities in Latin America that made most U.S. citizens believe that they should support democracy south of the border against despotism. However, John Quincy Adams, Secretary of State in the administration of James Monroe, did not share such "popular fervor for the revolutions". He did not want to jeopardize British and Spanish support for other United States interests and thus delayed recognition of the Latin American republics until after the United States had uncontested title to Florida. Thus idealistic concerns were set aside in favour of more pragmatic decisions.

In 1821, support for Greeks spread across the United States after the Greeks rebelled against Turkish tyranny. Adams, refusing to be swayed, talked President Monroe into adjusting his annual message to the Congress in 1823. This message came to be known as the Monroe Doctrine where, the President changed his declaration of support for the Greeks to an earnest wish for their success. In return the United States expected the European nations to keep their hands off Latin American wars for independence. However, in time, the Latin American leaders saw that the Monroe Doctrine was less for the sake of their freedom than for the US interest, greed for land and growing national pride mingled with idealism in America's attitudes of the 1840s and 1850s".¹⁴

Human rights did not achieve prominence in the nineteenth century as notions of prudent diplomatic action continued to guide American foreign policy. This trend is visible in the consistency of thought from John Adams; Alexander Hamilton, George

Washington and Thomas Jefferson to John Quincy Adams, James Polk and William Steward. They were all realists approving a little bit of democratic idealism. The leaders responsible for American actions abroad condemned those who attempted to identify the national interest with the cause of humanity. The prevalent view in American foreign policy in the mid-nineteenth century was not to raise voice against repression. Although immense crowds cheered the Hungarian revolutionary Louis Kossuth when he came to the United States in 1851, the neutrality policy of the American leaders continued¹⁵. Leaders in the American South during the 1850s further assured a neutral stance by the United States. They opposed supporting such human rights related causes because of the fear that United States intervention in Europe would precipitate European efforts to free American slaves.

On the other hand increasing domestic tension over slavery in the United States during the nineteenth century had a significant effect on U.S. promotion of human rights elsewhere. President Franklin Pierce tried to divert domestic attention from the slavery issue by responding to popular pressure to save Cuba from alleged Spanish despotism. James Buchanan came into power in 1856 because he appealed to Southern Democrats who wanted to annex Cuba and thus counter northern territorial gains. Whatever element of idealism was there in the American foreign policy in the first century or so of this country's existence, its impact was lessened by the predominance of realism and by the feeling on part of some of the leaders that the influence of American values should be exerted through example, not overt action. According to John Quincy Adams, "the United States is the well wisher to the

freedom and independence of all. She is the champion and vindicator only of her own"¹⁶.

The Middle Years

We have seen that the discrepancy between public opinion and official action on human rights often put human rights in the background for the first century of the Republic. This, however, changed to some extent, in what we can regard as the middle years (i.e. end of the nineteenth century and beginning of the twentieth century). As the nineteenth century came to a close, idealism began to assume a more prominent place in U.S. foreign policy. During the Presidency of William B McKinley, realists and idealists began to struggle for control over the United States foreign policy. The belief in achieving national interest through an idealist approach became more popular. Woodrow Wilson identified America's purpose with the establishment of a world free of power politics and made self-determination part of American's war goals in 1917. The great debate over the Treaty of Versailles including its provision for the liberation of oppressed minorities was one reflection of that kind of domestic political struggle over human rights. In 1919 President Woodrow Wilson battled against the partisan Republicans who disapproved the treaty provisions and wanted Wilson out of the White House. Here, one thing should be made clear, Wilson's support for these "oppressed minorities" should not be confused with genuine desire to liberate them, rather this Wilsonian concern was based on a desire to acquire a leading role in the world for the nation that had newly emerged from isolation¹⁷.

Influential states-men including William E. Borah, Cordell Hull, Arthur Vandenberg and John Foster Dulles followed Wilson. All advocated the use of diplomacy as means of convincing nations to accept new principles of peaceful change and justice. For the period 1919- 41, the nation retreated into some kind of isolationism. The public was mainly concerned with issues like disarmament, debts and reparations rather than Human Rights. Although some Americans favoured support for anti-Franco Loyalists in the Spanish Civil war 1936 -39, and saw that fight as a battle for democracy, yet most Americans opposed involvement. There was minimal response to the Nazi extermination of Jews. The general U.S. response to events in Spain, Ethiopia, Finland and elsewhere in the 1930s was to extend United States legislation for neutrality. For example, the most that President Franklin Roosevelt was able to do because of congressional sentiment, was to denounce the Soviet invasion of Finland in 1939 as wanton disregard for materials to the U.S.S.R¹⁸.

Human Rights have also been used by the United States leaders for securing political purposes. For example, President William McKinley declared war against Spain in 1898 due to public fervor. Also domestic political considerations help explain the early emergence of U.S. concern for Jews in Europe. Teddy Roosevelt instructed John Hay, his Secretary of State, to respond to a cry for help from American Jews for intervention against Romanian persecution of Jews. Hay's diplomatic protest, in turn, helped the Republicans in congressional elections of 1902. In 1912, after public and congressional protest against massacre of Jews in Russia and Russian discrimination against naturalized U.S. citizens who wanted to return to their native Russia, William

Howard Taft placated American Jewish opinion by terminating an old (1832) commercial treaty with Russia. That action, except humiliating the Tsar did little good for American Jews. Political interests pushed Harry Truman to help speed the formation of Israel in 1948 that provided unlimited support to his campaign for the Presidency against Governor Thomas E. Dewey¹⁹.

Twentieth Century

Human rights came to full bloom in American foreign policy in the twentieth century. The reason is being the emergence of a moralistic element in American foreign policy that called for an idealistic approach to policy making. The motivation for this idealism was provided by the belief that United States could not be an effective world leader if its foreign policy was governed entirely by considerations, of realpolitik and thereby creating the impression that its only concern was its own power position, it was also maintained that unless its foreign policy rejected its moral values, this could not provide an attractive alternative to the ideologies of its rivals in the world arena. Finally, a principled foreign policy could prevent the U.S. from aligning itself with repressive regimes who were inherently unstable because they lacked popular support. Thus from the very beginning even the idealistic approach regards America's national interest as the foremost determinant of American foreign policy²⁰.

The pattern of American human rights policy in the twentieth century can be subdivided into different phases such as:

Phase I (1945 - 76): Human rights were generally overlooked during this period as other more important concerns occupied the attention of U.S policy makers.

Phase II (1976 - 80): Human rights movement reached its peak under the Democratic regime of President Jimmy Carter. Never before were Human Rights given as much significance as in this period.

Phase III (The Republican years): A period of stark realism under Reagan and Bush administrations.

The Clinton Years: A revised package of human rights under a Democratic government.

After 1945 the post war emphasis on human rights reached its culmination under U.S. Leadership in the drafting and endorsement of the universal Declaration of Human Rights. Nineteen forty eight also initiated a 'waning phase' in the human rights cycle as it is the year that marks the beginning of the Cold War, after the proclamation of the Truman Doctrine, which offered economic and military aid to the Greek and Turkish governments to support their struggles against communist encroachment²¹.

The period from 1948 to 1960, consisting of four Truman years and eight Eisenhower years, was dominated by the Cold War. In the late 1940s and 1950s tolerance for any abridgements of American sovereignty greatly decreased. Human rights obligations were seen as encroaching upon the United States Constitution and upon the

sovereignty of the (then) forty-eight states. Senator John Bricker, a conservative republican, working in conjunction with various pressure groups led a fight to prevent the ratification of human rights treaties, including the Genocide Convention. The Bricker efforts were so successful that by 1953, the Eisenhower Administration, through its Secretary of State, John Foster Dulles, abandoned any effort to increase the promotion of human rights by the United States, and indeed, until 1960 no further efforts to strengthen international rights by way of treaty obligations were made by either the President or Congress. Dulles was a very prominent figure of the period, devoting his energies to building a global network of anticommunist treaty arrangements and abandoning any serious efforts to promote human rights except in the ideological sense of claiming that the anti communist group of states constituted the 'free world' in contrast to the totalitarian realm constituted by the Soviet bloc. In such a climate, the stress on geopolitics and military approaches to security, rather than human rights issues dominated the foreign policy process²².

A second turning point i.e. 1960 marks the beginning of the Kennedy Presidency. This was the period of expansive international liberalism typified by the Peace Corps, the Alliance for progress, and global involvement in the internal affairs of foreign societies. The United States under Kennedy was perceived as an idealistic force in international society, despite such contradictory features as anti-Castro interventionary tactics and the escalating involvement in the Vietnam War. After Kennedy's assassination, Lyndon Johnson pressed forward on civil rights for blacks. Overall, the Kennedy – Johnson period 1960 to 1968 cannot be viewed as a very positive period in terms of support for human rights²³.

In the years immediately preceding Jimmy Carter's Presidency, the element of pure realism once again dominated the American foreign policy. The inauguration of Richard Nixon as President in 1968 brought a reversal of mood in American foreign policy that was also expressed as a further downwards, turning point' in human rights. The Nixon years were dominated by intergovernmental relations that generally accepted the legitimacy of territorial sovereignty and exhibited insensitivity to the rights of citizens, whether at home or abroad. The pursuit of human rights, even in the communist countries, was largely ignored in this period. This is exemplified by Nixon's initiative to create closer relations with China and his effort to achieve detente in relations with Soviet Union. Kissinger was a dominant presence in American foreign policy during the Nixon-Ford years. He was openly scornful of introducing human rights concerns into diplomacy. He regarded such concerns as 'moralistic encumbrances' upon the serious problems of negotiating stable arrangements of interstate relations. 'This was evident in the United Nations, where the United States, during Moynihan's tenure, used human rights as an ideological tool against the Third World in an effort to dilute the antiapartheid campaign. Of course, some minor countercurrents were evident even during this period, such as Nixon's support for the ratification of the Genocide Convention, as well as moves to protect individuals and societies from unofficial international terrorism.

Despite this adverse trend at the presidential level, an important countertrend took hold in Congress during the 1970s. Under the leadership of Congressman Donald Fraser, a series of hearings on human rights issues were held virtually every year. These hearings substantiated the convictions that the United States official's policy

had abetted violations of human rights. In the United States, as a response to the Vietnam war experience, the conviction was arising that it was not sensible foreign policy to support foreign governments just because they were anti –communist, and also, that in an era of detente, it was again possible to insist upon some moral content in American foreign policy. The same conviction was reflected in the congressional mood. The Congress once again started asserting itself in the foreign policy domain after a decade of relative passivity (in deference to the prerogatives of the Presidency during the Vietnam war)²⁴." One thing that should be kept in mind is that this countercurrent was at the level of the congress that is understandable.

The Congressional concern about the United States support for foreign governments that engaged in violations of human rights was reflected in a number of respects in the foreign assistance legislation. Section 502 B of the Foreign Assistance Act, which called upon the President to reduce substantially or terminate "security assistance to any country which engages in a consistent pattern of gross violations of internationally recognized human rights", had an unspecified "exceptional circumstance" provision that enabled the President to overlook human rights abuses if so inclined by other considerations²⁵. However, the Congressional objections were greatly disliked by the Kissinger -Ford administration and it thwarted any effort to bring human rights factors to bear on the foreign policy process.

Human rights concerns achieved greater attention in 1975 in U.S. foreign policy when Congress became more vigilant. Congress enacted a revised Section 116 to the International Development and Food Assistance Act that extended the approach of

Section 502 B to the area of economic assistance. According to Section 116, economic assistance could not be provided by the United States unless it “will directly benefit the needy people in such country”. Here, the Agency for the International Development (a part of governmental bureaucracy) has great discretion to determine whether recommended assistance is for the benefit for ‘needy people’. However, inspite of the record suggests something different. President Ford refused to cut aid to such human rights violators as Argentina, Haiti, Indonesia, Iran, Peru, and the Philippines. The trend of providing aid to the human rights violators continued despite the reporting requirements of the legislation, which imposed an obligation on the States Department to submit annual reports on the human rights records of all aid – receiving countries. However, a distinct human rights identity was created within the State Department bureaucracy. Whether the policy was correctly implemented or not, Congress had created certain expectations and conditions that moved the subject matter of human rights slightly closer to policy – forming process.²⁶

Despite these efforts on part of the Congress for a greater incorporation of human rights in the foreign policy making, the Presidential attitude did not seem very conducive to giving human rights a greater prominence. American foreign policy under Nixon and Kissnger was widely perceived as “pushing realism to an unrealistic extent, thus setting the stage for the subsequent preoccupation with the issue of human rights”²⁷. Kissinger's enthusiasm for pure realism became so pronounced that he was not only criticized by liberal democrats in Congress but also by the Republican Right Wing on the ground that he had ignored human rights and morality²⁸. The reason for pursuing realism to such an extent was the new developments in the international

arena in the post –1945 period. The two most important of these developments were as follows:

- (i) The passing of American strategic superiority and achievement of rough military parity by the Soviet Union**
- (ii) The economic constraints on American resources which dictated that America should not follow an interventionist foreign policy.**

Due to these reasons Nixon -Kissinger team decided to limit not only American interventionist role in the world but also to give greater priority to American security and strategic concerns rather than playing the role of human rights champion. To cut the long story short, it can be said that during this period evolution of human rights in American foreign policy achieved a setback as realism not idealism was the key word behind the policy making process.

At the beginning of the Carter Presidency a new surge of positive emphasis on human rights commenced. The Democrats had also used human right slogan during the Presidential campaign. After their coming into power the idealistic approach, which had become prominent in American foreign policy in the early twentieth century, once again came to the forefront. Indeed, the focus on human rights was given unprecedented attention as a dimension of foreign policy during Carter's first year in the office. It was claimed that relations with both allies and adversaries would be shaped by human rights considerations. The new thesis suggested that the most realist foreign policy is actually the one that has played an increasingly important role in the

formulation of American foreign policy over the years. It is, however, impossible to say just how influential this moralistic strain has been in shaping the actual policy, but Carter administration can be seen as setting the stage for his campaign for human rights. Thus Carter emerged as a national leader whose efforts to give a central place to human rights in the US foreign policy were made easy by the trends and events in the first one hundred and fifty years of this country's diplomatic history as well as in the era from the 1930s through the Nixon Presidency. Among these events are the Nazi persecution of Jews in Hilter's Germany, incorporation of human rights in the United Nations charter, the Vietnam war, Watergate, and the attitude of Nixon and Ford administrations toward human rights.

As Ernst B. Hass has noted, the post Vietnam era was one of disillusionment with the ability of the United States to promote its way of life by force of arms and the exercise of economic power". In a period like this, "it is understandable that a new administration would seek moral focus for a policy that eschewed the methods of its predecessors. It is understandable that it would seek to hold out to the American public and other nations an attractive symbol to legitimate foreign policy free from the stigma of duplicity, domination and defeat"²⁹.

The collapse of Nixon Presidency "in the wake of Water Gate joined with the Vietnam experience" created a powerful impact on the way the Americans felt about the handling of their country's public affairs. There was a readiness to accept a new kind of leadership that Carter offered. In announcing his candidacy for the Presidency, he said, "it is time to reaffirm, and strengthen our ethical, and spiritual and political

beliefs'. Jimmy Carter brought to his candidacy and then to the White House, particular value system. In December 1974, he declared that he had a dream "That this country set a standard within the community of nations of courage, compassion, integrity and dedication to basic human rights and freedoms"³⁰. The character of Jimmy Carter thus joined the events and trends in American political history to explain why human rights came to occupy such a prominent place in United States foreign policy in the late 1970s.

Despite the greater emphasis on human rights, the tension between human rights aspirations and geopolitical goals was evident from the outset. In this regard, the latter was normally given priority. Administration leaders acknowledged that human rights concerns, however serious, should not be allowed to impair the United States relations with strategic countries. Similarly, although Soviet dissenters were given some early aid and comfort, later stages in the Carter administration suggest that arms control and trade relations were more significant features of the American relationship with the Soviet Union and could not be successfully pursued if the stress on human rights was too strong. In effect, Soviet countermoves involved linking human rights attacks on their society with their denial of other forms of cooperation important to American leaders and making it clear that the American hope of separating various aspects of Soviet American relations was unacceptable to the Soviet Union. This attitude forced the American leaders to set priorities. In such ordering, economic co-operation and arms control outranked human rights³¹.

Throughout the Carter period a general concern with human rights was sustained and support lent to mild institutional initiatives at the United Nations. However, few serious pressures on behalf of human rights were mounted on the 'repressive regimes', the reason being the pressure exerted by economic anxiety and the related U.S. concern about energy prices and availability. This pressure, however, was almost neutralized by the characteristic and officials who endorsed human rights as a mandate in American Foreign policy.

In this period, as in all periods, it was realized that human rights tended to stand in the way of the satisfactory pursuit of United States economic interests, and they were accordingly brushed aside. The US economic interests in the Third World have led to a policy of containing revolution, preserving an 'open door' for the US investment, and assuring favourable conditions of investment. It was also realized that reformist efforts to improve the lot of the poor and oppressed including the encouragement of independent trade unions were not conducive to a favourable climate of investment. For most the aid receiving countries United States controlled aid was positively related to investment climate and inversely related to the maintenance of a democratic order and human rights. Although in his first major address on foreign policy in May of 1977 at Notre Dame, President Carter said, " we have reaffirmed America's commitment to human rights as a fundamental tenet of our foreign policy." Carter, however, was careful to emphasis the limited significance of this foreign policy postures, " we want the world to know that our nation stands for more than financial prosperity. This does not mean, we can conduct our foreign policy by rigid moral maxims. We live in a world that is imperfect, and which will always be

imperfect..... I understand fully the limit of moral suasion. We have no illusion that changes will come easily or soon. But I believe it is a mistake to undervalue the power of words and the ideas that word embody³².

Carter's stress on the 'imperfection' of the world suggests recognition that conventional American interests should not be jeopardized by the new emphasis on human rights. United States continued to value the military bases in the Philippines and up held the Status quo in Korea. Another negative feature of the Carter Administration was that it did not bring forth any actual plans to restructure the international economy so as to give poor countries a favourable prospect for solving problems of domestic poverty. Thus, the expansion of the conception of human rights to include economic rights was mostly verbal and hardly evident in policy settling.

However, if we look at the overall picture of human rights in United States foreign policy from 1970 - 80 we realize that this was a period of positive emphasis on human rights. Carter administration was responsible for making human rights a very prominent component of the U.S. foreign policy. But this was not the only aspect of foreign policy and could not be allowed to jeopardize other more important concerns.

With the coming into power of the Republicans the idealistic facade diminished and became less visible. President Reagan was initially opposed to using the I.J.S. Foreign policy to promote human rights around the world. Gradually, his attitude softened, but Reagan as well as Bush continued to insist that human rights could be furthered best through 'quiet diplomacy' and 'constructive engagement'. Reagan's lack of concern

about human rights was evident by the fact that he waited a long time before filling the post of Assistant Secretary of State for Human Rights And Humanitarian Issues and then nominated Ernest Lefever, who had publicly advocated repealing all human rights legislation and transforming all human rights policy into anti communism. Although his nomination was withdrawn after the Senate Foreign Relations Committee voted 13-14 against consent, the next nominee Elliot Abrams, confirmed by the Senate, held similar views about the role of human rights promotion in The US foreign policy.

Those who have examined the record of Reagan administration on the advancement of human rights in the less developed world have given mixed reviews. Most observers have concluded that his administration placed a lower priority on human rights than its predecessor had. Moreover, he proclaimed the symbolic goal of advancing human rights less frequently, and emphasized different kinds of human rights from the ones Carter did³³. For example, it is held that during the Carter administration the representatives on the boards of multilateral development banks often opposed loans on human rights grounds. Representatives of the Reagan administration seldom did. Some have even argued that these differences between the Carter and Reagan administrations were so great that the Reagan administration was not really concerned about human rights at all. In fact, the starting points were strikingly different Secretary of State Alexander Haig announced at his first press conference that "international terrorism will take the place of human rights in our concern because it is the ultimate of abuses of human rights".³⁴

Then, in its first months in office, the Reagan administration urged Congress to reinstate military aid to Argentina, Chile, Guatemala, and Uruguay all of who had been denied assistance by the Carter administration because of systematic violations of human rights. Reagan - Bush record on human rights suggests that their administrations meant something different than Carter had when they invoked the cause of human rights. Reagan as well as Bush equated the promotion of human rights with the promotion of democracy i.e. human rights abuses of constitutional democracies could be overlooked. Moreover, neither Reagan nor Bush acknowledged the existence of economic rights.

The debate, as to which rights are the most basic human rights, reflects real ethical differences concerning which types of human rights are most important to humankind. For the Reagan administration, respect for civil and political liberties such as freedom of speech, press, religion, and travel was the most important categories of human rights. Once these rights were lost, all other rights were in jeopardy, and the reason for this is that the government tyranny over the people could no longer be checked. The administration also made a significant change in the terminology used in the country Reports on human rights practices. It put forth its priorities among the other two categories of human rights: the right against the violation of the integrity of the person and the right to a minimum standard of living. During Carter Administration, each report contained a section on “ Government Policies relating to the Fulfillment of such vital Needs as food, shelter, health care, and education”. This was the second category of the rights discussed in each country’s human report. Beginning with the very first volume produced by the Reagan Administration in February 1981 and

continuing afterwards, that section no longer appeared. Instead each report begins with an introduction followed by a description of conditions regarding respect for the integrity of the individual and for civil and political liberties. These sections are followed by a section on general economic and social conditions in the country. President Reagan explained the break with the past in his introduction to the 1981 Country Reports: "The urgency and the moral seriousness of the need to eliminate starvation and poverty from the world are unquestionable, and continue to motivate large American foreign aid efforts. However, the idea of economic and social rights is easily abused by repressive governments that claim that they promote human rights even though they deny their citizens the basic rights to the integrity of the person, as well as civil and political rights. This justification for repression has in fact been extensively used. No category of rights should be allowed to become an excuse for the denial of other rights. For this reason, the term economic and social rights is, for the most part, not used in this year's Reports"³⁵.

For the Reagan and Bush Administrations, civil rights and liberties received highest priority, followed closely by rights of the integrity of the persons, and, very distantly, if at all, by the obligation of the government to provide for the economic and social welfare of citizens. Here, a break can be seen from the international human rights agreements which do recognize the existence of economic rights.³⁶ Moreover, for many Third world leaders, economic rights are the most fundamental, since a minimum standard of living is a necessary condition for human dignity. Mostly third world nations do not consider civil and political liberties to be crucial if the exercise of those rights could interfere with the goal of improving economic and social

conditions. Many of them would argue that government for the people is more important than government by the people. Furthermore, they regard civil and political rights as luxuries to be enjoyed after a minimum standard of living has been achieved. Although Reagan and Bush never formally acknowledged the existence of economic right, Reagan did abandon his early strategy of open antagonism toward incorporation any human rights consideration in to foreign policy decision making. At the Reagan Administration's urging, in 1983 Congress approved Project Democracy, a program designed to promote democratic institutions around the world. The program is administered by the National Endowment for Democracy (NED) and, according to the legislation, it funds projects around the world to help build an infrastructure for democracy. Many critics emphasised that its funds had been used to support particular political parties or to affect the out come of particular elections during the Reagan and Bush administrations, especially during the 1989 elections in Nicaragua³⁷.

A justification for such policies, talking in idealistic terms can be provided by the argument that Reagan and Bush were Republicans, who are generally known for their realpolitik approach. After two Republican regimes the Democrats have come into power in the United States. Human rights were expected to come into the forefront once again because of the Democratic Party's emphasis on idealism in foreign policy. President Clinton has continued President Bush's policies in Somalia, Burma, (where United States has recently secured the release of democracy leader and Nobel Peace Prize laureate Aung San Suu Kyi after six years of house arrest) and Iraq. Intervention in Haiti has added to President Clinton's credentials and involvement in Bosnia conflict has reaffirmed United States leadership role, However, human rights have not

been allowed to stand in the way of geo- strategic compulsion. In 1992, Bill Clinton as a candidate greatly criticized President Bush for 'coddling tyrants' in his relations with China and promised that human rights would be a priority in his administration's foreign relations. Shortly after becoming the President, however, Clinton moved away from human rights as the primary focus of U.S. policy with respect to China. Although China is greatly criticized by the Clinton Administration for its human rights abuses, Washington has come around to Bush's views that economic and strategic ties to China are too vital to be sacrificed due to Beijing's human rights record³⁸.

After the end of cold war and collapse of the Soviet Union, the issues which have come to prominence are economic. Since the threat of communist expansion is no longer there, the primary objective in front of the Clinton administration is to build a strong economy in a world where many economic powers have emerged. Not only Japan but also a number of other East and South east Asian States have acquired prominence economically. Although these other states do not pose a serious challenge to the United States, Japan might arise as a serious contender. In such an international atmosphere where economic interests have gained unprecedented primacy, the Clinton Administration is seeking ways to separate human rights and trade issues. Although Hillary Clinton's presence at the Fourth World Conference on Women, that was held from September 4 to 15 in Beijing, was based on certain preconditions and also the first Lady chided the Chinese government for restrictions it placed on the NGO forum that preceded the conference and criticized the Beijing government anti

human rights practices, yet, the Clinton Administration is not likely to take a stand on such issues if the United States trade interests are at stake.

With China becoming both an economic and military super power, Clinton now knows that it is imperative for Washington to maintain friendly relations with the nations having different ideologies. There is a realization that fixation on human rights will not serve the purpose. By giving human rights a backseat Clinton has been trying to bring U.S. Chinese relations back to where they were at the start of the Bush administration.

After having analyzed the evolution of human rights in United States foreign policy over the years, we can say that the attempt to give realism or idealism a more prominent place in the foreign policy was responsible for the emergence of human rights in US foreign policy. However, idealism does not go a long way in explaining the role of human rights in United States Foreign Policy as the element of realism over shadows the moralistic concern. Every US administration, whether it is Democratic or Republican, has to keep in mind other more important foreign policy concerns while implementing its human rights policy.

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Genesis and the Evolution of the Kashmir Dispute

Geo-Political and Strategic Significance

In a military sense though the area of occupied Kashmir is very much under Indian control, but in its political manifestation, it is on the verge of breaking away from the hold of the Center. Life in the valley means, one curfew after another and the periods in between mayhem and death. The freedom fighters have created a state within a state and conflict is in its high acceleration between the government of India and the freedom fighters backed by the Muslim majority population of the valley.

This conflict has become a conflict of bottom lines - the bottom line of the freedom fighters is, freedom or secession of the State of Jammu and Kashmir from the Indian yoke, the bottom line of the control is to hold the valley at all cost. To achieve the later, India has made the valley a camp for the law enforcing agencies Indian government and is treating it as if it is a colony. Coercion and brutal use of force by Indian authorities have pulverized the confidence and loyalty of locals vis-a-vis the State as, a result the alienated people have become a personified threat of Secession from the Indian Union.

To understand the genesis of the Kashmir dispute, it's necessary to have a look at the geographical and strategic significance of the state for both the countries - Pakistan and India.

The strategic importance of the state is neither confined to the sub-continent nor a phenomenon of post-partition era. It has a global perspective. During the nineteenth century the British utilised Kashmir's strategic position for the advancement of imperial pursuits in Asia. In the 1840's Kashmir was used by them as a pawn in the subjection of Panjab and Afghanistan. It was for this purpose that they established Gulab Singh¹ as

the ruler of Kashmir. This treacherous ² soldier played very much the role of a minor Mir Jaffar of the North.³

After their rule was firmly established in the whole of India, the British Government sought to use Kashmir as its forward military outpost in Central Asia which was gradually being grasped by the 'greedy tentacles of an equally insatiable octopus' from the north - Tsarist Russia.⁴ Situated as it is in the extreme north of India, Kashmir described by the London Foreign Office as the 'borderland of our Empire' was bound to figure prominently on the British strategical map. "In its relations to our rule in India the position of this kingdom, its physical and other characters, have an importance which its extent and general barrenness would scarcely warrant, for it constitutes rocky bulwark to an empire on its northern frontier, a natural obstacle against any foe proceeding from that quarter."⁵

The British attached great importance to Kashmir's northern and north-western frontiers - Gilgit, Hunza, Nagar and Chitral. The British Resident at Gilgit during the years 1889-94 (subsequently Military Secretary to the Viceroy, 1894-99) wrote:

The importance of this portion of the frontier lies mainly in the proximity of the Russian outposts. As the Supreme power the responsibilities of Kashmir became ours and it was recognized that the Hindukush for these hundreds miles must be our natural frontier .⁶

The British government's immediate objective was to hermetically seal these frontiers against any outside influence, primarily Tsarist, and build them into its strong outposts as to check the further advance of Russian troops towards the borders of India. Commenting on the situation, Algernon Durand wrote: "Gilgit is a poor valley, separated from India by snow passes, situated on the far side of the Indus, at the extreme verge of Kashmir territory. Why, it has been asked, should it be worth our while to interfere there whatever happened? The answer is of course Russia. She had advanced practically to the Hindukush; it was necessary to see she did not cross it".⁷

The strategic significance of the British occupation of Hunza and Nagar after a heroic resistance resulting into bloody battle, as frontier outpost was aptly summed up by a Tsarist statesman who on hearing of the occupation of Hunza remarked: "they have slammed the door in our face."⁸ After World War I it was planned to be used as a base for operations against the newly rising power - the USSR. Hardly had the embers of World War II conflagration gone cold, when plans were set afoot by the western powers for setting up of military bases against the Socialist powers of Russia and Peoples Republic of China.⁹

The geo-political setting of Kashmir makes it the heart of Asia. It borders on five different countries; Pakistan, Afghanistan, the USSR, India and China.¹⁰ Kashmir provides the only land bridge to South Asia and the Indian Ocean.¹¹ Since 1954 Indian maps have shown a claim to the Aksai Chin, a high and desolate plateau, 17000 feet above sea level.

This forlorn region was to be the bone of contention between India and China in 1960's.¹² Ladakh, an important part of the Indian held Kashmir is bounded by China on two sides: Sinkiang on the north and Tibet on the east. There are mines in the area. There is gold around Leh, and near border with Tibet. Its eastern areas are claimed and occupied by China.¹³

Speaking in Lok Sabha on July 24, 1952, Pandit Nehru said:

"While part of India it (Kashmir) is in fact the heart of Asia...It is also connected in various ways with Central Asia. Even now I wonder how many people realise that Kashmir is further north than Tibet. So one has to think of Kashmir in that particular geographical position apart from other facts in the case".¹⁴

Kashmir provides Pakistan with a vital common border with China. Communications across the border have developed. The famous Korakoram highway passing through the Khunjrab Pass stands as a power symbol of cooperation and goodwill between the two countries.¹⁵

Kashmir has strategic significance for Pakistan in its relations with India, Afghanistan and China. During the first war in Kashmir, Pakistan fought desperately to retain the northern areas in order to prevent India from gaining territory which could provide it with a link with Afghanistan.¹⁶ Thus through Kashmir India could establish a common boundary of 150 miles with Afghanistan and make Pakistan a victim of pincer movement. India's claim to Chitral which lies along Afghanistan border and was legally not an integral part of Kashmir state in 1947 further confirms this view.¹⁷

Regarding the strategic importance of the state it will be pertinent to refer to the following statements. Gandhi once said that Kashmir had the 'greatest strategic value, perhaps in all India.' Sheikh Abdullah in a statement to the Press in Delhi on October 27, 1947 said: "Due to the strategic position that the state (Kashmir) holds, if this state joins the Indian Dominion, Pakistan would be completely encircled."¹⁸ Thus by controlling Kashmir, India would gain a commanding position against Pakistan.

It is a matter of common observation that the Indian Congress accepted the partition of the sub-continent with reservations. After having failed to block the partition it did its best to let Pakistan come into being as a truncated country. Indian National Congress role to detach the North Western Frontier Province (NWFP) from Pakistan was in line to achieve the same end. This role of Congress could make sense only as a part of its broader strategy covering Kashmir as well as the Frontier province.¹⁹

Geographic and Economic Significance of the State

In addition to the state's strategic significance Kashmir has very important geographical and economic links with Pakistan. Kashmir is contiguous with Pakistan on three sides.²⁰ Its borders with Pakistan are criss-crossed by rivers and roads and historically provide natural and dependable means of communication all the year round between Kashmir and the world outside.²¹ The state is contiguous to India only by a small thirty miles stretch, which too was made possible by a dubious reversal of the original partition plan awarding the Muslim majority district of Gurdaspur to India.²²

Because of the close geographical, ethnic and religious links with Pakistan the significance of Kashmir for Pakistan and vice-versa can hardly be over-emphasised. The following narration from N.C. Chatterjee, a Hindu member of the Indian Parliament confirms Pakistan's contention. He says:

The geographical situation of the state was such that it would be bounded on all sides by the new Dominion of Pakistan. Its only access to outside world by road lay through the Jhelum Valley road which ran through Pakistan, via Rawalpindi. The only railway line connecting the state with the outside world lay through Sialkot in Pakistan. Its postal and telegraph services operated through areas that were certain to belong to the Dominion of Pakistan. The state was dependent for its imported supply like salt, sugar, petrol and other necessities of life on their safe and continued transit through area that would form part of Pakistan. The tourist transit traffic which was a major source of income and revenue could only come via Rawalpindi. The only route available for the export of its valuable fruit was Jhelum Valley route Its timber could mainly be drifted down only in the Jhelum river which ran into Pakistan.²³ This shows the degree of dependence of Kashmir's economy on Pakistan. Likewise we would see how Pakistan's economy is dependent on Kashmir.

Geographically the state is a continuation of West Pakistan into the mountains. The river Indus, Chenab and Jhelum have their fountain heads in the state. Thus they constitute the life line of Pakistan and flow from the state into the plains of Pakistan making the whole single geographical unit. The cultural connection between the Muslims of the

state and those of Pakistan are so close as to make them virtually identical. Therefore "the destiny of West Pakistan and Kashmir is linked together by nature and by all possible interests - economic, religious, cultural and strategic."²⁴

A part from this Kashmir has its own intrinsic value. The Indian occupation of the state would make India sit on and control all the rivers - the lifeline of Pakistan's economy, and turn the tap off any moment as it did before the conclusion of the Indus Basin Treaty. It would also give India a strategic edge on Pakistan so as to make the latter militarily vulnerable.

There is yet an ideological factor to be reckoned with. Pakistan's creation as an Islamic state was based on two-nation theory, the theory that Hindus and Muslims constitute two separate entities and that Muslims in the contiguous Muslim areas should be granted the right of self-determination. Kashmir is one of these Muslim areas, and the two-nation theory in Kashmir has been thwarted by India's refusal to abide by its promise of holding a plebiscite there. The people of Pakistan generally regarded Kashmir as the test of the validity of the two-nation theory, the basis of Pakistan's legitimate and separate existence.

This brief survey of population, economy and geography of Kashmir and the ideological element binding the two people(Pakistani and Kashmiri muslims) contain within them the main grounds for the Pakistani claim to Kashmir. These grounds carry much weight. Thus 'from a strictly rational point of view based on a study of culture and the economy of the region there can be little doubt that a scheme for the partition of the Indian sub-continent such as was devised in 1947 should have awarded the greater part of Kashmir and Jammu state to Pakistan.'²⁵ Mr. Muhammad Ali Jinnah and his colleagues in the Muslim League had always considered that the Vale of Kashmir at least formed part of Pakistan. Sir Muhammad Iqbal who gave the idea of a separate independent Muslim state in the sub-continent hailed from Kashmir. Chaudhry Rehmat Ali who coined the word 'Pakistan' in 1933 intended the letter 'K' in Pakistan to stand for Kashmir. The geographical and historical links between Punjab and the Vale of Kashmir were so close

that it was inevitable that the two regions should find themselves combined in the thoughts of protagonists of a separate Islamic state. These considerations combined with the fact of an overwhelming Kashmir Muslim majority under the domination of an autocratic Hindu dynasty must have made it appear axiomatic that Kashmir should join Pakistan should Pakistan ever come into being.²⁶

Genesis of the Dispute

Over two hundred years ago thirteen rebellious colonies on the North American Continent won their independence from their mother country after six years of fierce struggle. Over fifty years ago on another continent the people wrested their independence from the same country in a somewhat hasty and disorderly manner. The people of these countries had been agitating for independence for many years. When independence came suddenly with a rush, the nascent nations with about one-fifth of world's population, were ill prepared for the peaceful settlement of the many knotty problems that such a hasty operation entailed.²⁷

The problems really arose because of the hasty departure of the British from the sub-continent. Lord Mountbatten's desperate surgery left many grave issues unsettled. In the complex of the unresolved issues between India and Pakistan that were the legacy of the partition "the Jammu and Kashmir issue survived as the main cause as well as the symbol of their mutual animosity and intransigence."²⁸

The partition of the Indian sub-continent into two states was an extremely complicated task for which the British had absolutely done no homework. The apportionment of the pre-partition Indian financial assets, defense forces and arms and ammunition, communications and the water supply system had to be carried out. No serious thought before the summer of 1947 was given to these and a host of such other problems. Among the problems of partition none was to present quite such lasting difficulties as

the lapse of the British paramountcy over the princely States. What would be the fate of these states? To whom would they accede to - India or Pakistan or would they revert back to their pre-partition status? These questions were not answered until the very last moment of the British Raj. The hurried answers then found were not sound, hence subject to criticism and confusion.²⁹

Had the British given careful thought to the principles of partition and had there been a reasonable time frame between the British decision to partition the sub-continent and its implementation things would have been different. Partition would have been smoother, well organised and perhaps there would have been no problem such as the Kashmir dispute.³⁰

During the colonial rule actual British control of India was confined to eleven British Indian provinces and six provinces administered by the Chief Commissioners. The remainder of the sub-continent was divided into approximately 565 principalities headed by Maharajahs and Nawabs. Taken together these princely states composed 45.3 percent of the area of the sub-continent -and contained some 89-99 million people.³¹ These two distinct areas of the sub-continent had completely separate political relationships with the British Crown. The British Government exercised complete control over the former through Parliament, the Secretary of State for India, the Governor General of India -in Council and the Indian Legislature.³² The rulers of the Princely States administered their own laws and in some cases maintained their own armies. Each Prince, however, did acknowledge the paramountcy of the British Crown which was responsible for the foreign relations of the states and which had the right of intervention in case of serious misgovernment.³³

Soon after the partition political issues arose between India and Pakistan concerning the accession of certain princely states. Regarding the Princely states of British India the British Government declared that the suzerainty had lapsed. But it was assumed by all the three parties - Britain India and Pakistan that the future of these states shall be decided according to the same principle as the one by which the sub-continent was

partitioned. The principle involved was that the continuous Hindu and Muslim majority areas should form the territories of India and Pakistan respectively. This assumption was quite clear from the British Cabinet Mission's memorandum of 12 May 1946 and Lord Mountbatten's address of July 25, 1947 to the Chamber of Princes.

Addressing the assembly of the Indian Princes, Mountbatten said:

“The states are theoretically free to link their future with whichever Dominion they may care. But when I say that they are at liberty to link up with either of the Dominion, may I point out that there are certain geographical compulsions which cannot be evaded...you cannot run away from the Dominion government which is your neighbour anymore than you can run away from the subjects for whose welfare you are responsible”.³⁴

Thus the geographical continuity and the majority will of the inhabitants were the two main determinants of the rulers' decision regarding the future of their principalities. This assumption was further clarified in the protest telegram sent by Lord Mountbatten, the Governor - General of Indian Dominion to the Governor - General of Pakistan on September 27, 1947 on the eve of the accession of Junagadh (Hindu dominated state ruled by a Muslim Prince) to Pakistan. According to the-telegram the Government of India regarded this accession as a "clear attempt to cause disruption in the integrity of India by extending the influence and boundaries of the Dominion of Pakistan in utter violation of the principles on which partition was agreed upon and effected."³⁵

By August 15, 1947 three out of 565 states held out not acceding to the Dominions to which by reasons of geographical contiguity, their system of communication and the majority will of their inhabitants they would naturally have allied themselves. These were Kashmir in the northwest, Hyderabad in the south and Junagadh in the west plus a tiny holding called Manavadar³⁶. The struggle over the accession of these states became a source of extreme hostility between India and Pakistan. Junagadh and Hyderabad were predominantly Hindu states with Muslim rulers. These rulers desired their states to accede to Pakistan. On August 15, 1947 the ruler of Junagadh declared its accession to

Pakistan. Pakistan, initially, showed no reaction and accepted the same exactly one month thereafter. Likewise the Nizam of Hyderabad wanted to assume the dominion status or to join Pakistan. Both of these states were invaded and annexed by India through 'police action'³⁷. The state of Jodhpur was also annexed by India when its ruler expressed his wish to join Pakistan. The British and the American newspapers were particularly critical of India's conduct towards Hyderabad³⁸.

Thus all but one state joined India or Pakistan on the basis of religion professed by the majority of the populace in each case. In the cases of Junagadh, Hyderabad and Jodhpur, where the rulers concerned had indicated to act against the principles of partition, India compelled them to stick to those principles. It may be pointed out/the Muslim League had desired to incorporate the whole of the Predominantly Muslim provinces of Panjab and Bengal in Pakistan but Congress forced the Muslim League to agree to the partition of the two provinces so that the Hindu parts could join India.³⁹

In arriving at a decision about the future of British India and 564 Princely states India stuck to the principles of partition of the sub-continent. "The principles on which partition was agreed upon and affected" were that contiguous Muslim majority areas should be separated from contiguous non-Muslim majority areas to form the two Dominions - Pakistan and India respectively⁴⁰

Thus India laid claim to every single Hindu majority area on the ground that the partition of the sub-continent was affected on the communal lines. In case of Kashmir the standard was changed. Direct annexation seemed too embarrassing morally and difficult militarily. Under-hand means were, thus, employed; shady deals struck, and the Maharajah was approached and encouraged by the Congress leaders and Lord Mountbatten to sign the 'Instrument of Accession' with India. The application of the principles of partition no more suited India. To deny Kashmir to Pakistan the standard must be changed. There lies the root-cause of the Kashmir dispute.

The Accession Issue Indian and Pakistani View Points

By the criterion on which Hyderabad, Junagadh and Jodhpur were made to accede to India, Kashmir should have acceded to Pakistan. However, India remained adamant and unleashed forces to develop the situation to the point where the Maharajah of Kashmir could be coerced into acceding to India against the wishes of the majority of the people of Kashmir. Several months before the tribal invasion of Kashmir Congress initiated its shuttle diplomacy in the state. Acharya Kriplani, the Congress President was the first to visit Kashmir in May 1947 and Gandhi was, perhaps, the last to see the Maharajah and Maharani in August, 1947 to win them over to the side of Indian National Congress. In between the Maharajahs of Patiala, Kapurthala and Faridkot were deployed to achieve the 'noble mission' of persuading the Maharajah to join India. Lord Mountbatten also paid a visit to the state in June 1947 to 'guide' the Maharajah to arrive at some decision.⁴¹

According to Gandhi his visit to Kashmir in early August 1947 had nothing to do with political matters. It was just to honour an old pledge given to late Maharajah Partap Singh in 1919 to visit Srinagar, claimed Gandhi.⁴² Yet very important changes were effected in Kashmir soon after his visit. Within a week of Gandhi's visit to the state, Ram Chandra Kak, the Prime Minister of Kashmir who opposed the Pro Congress National Conference and favoured an independent Kashmir was removed and replaced on August 11, 1947 by Janak Singh as provisional Prime Minister of Kashmir. Sheikh Abdullah and his compatriots were released from detention and were soon off to Delhi for important discussions with Congress leaders. The activities of the Muslim Conference leaders and workers, on the other hand, were ruthlessly suppressed.⁴³ The National Conference leaders welcomed the change; showered petals on the new Prime Minister's car and garlanded him. They also shouted slogans such as Janak Singh Zindabad (Long live Janak Singh) and Maharaja Bahadur Ki Jai (Victory to Maharajah).⁴⁴ On his release Sheikh Abdullah addressed a huge gathering at the Hazuri Bagh in Srinagar. He praised the Indian National Congress leaders; denounced the two-nation theory of the Muslim League and condemned Jinnah. These efforts confirmed the

oft-held view that Abdullah and his National Conference were at the disposal of the Maharajah.⁴⁵

That Gandhi did not go to Kashmir merely to redeem 'pledge' and talk weather is obvious from the letter he wrote to Sardar Patel from Kashmir. "...I had an hour with the Maharajah and the Maharani. He agreed that he must follow the will of the people ...he wishes to remove Kak. He is only wondering how...you have evidently something to do about this. In my view the Kashmir situation can be improved".⁴⁶ Even the cautious London Times commented: ".⁴⁶ The indications are that the Hindu Maharajah of Kashmir, Sir Hari Singh, has lately been influenced by representations made by Mr. Gandhi who visited Kashmir three months ago and by other Congress leaders.⁴⁷ About this time the Maharajah began secretly to construct lines of communication with India at top speed. When a few newspapers published this news censorship was imposed on them.⁴⁸

Hindus and Sikhs of India were recruited in the Kashmir Army while the valiant Kashmiri veterans who had seen action in World War II and had recently been discharged from the Indian Army found no employment in the State army. They were rather asked to surrender all their arms.⁴⁹ It was also quite significant that from the very beginning Indian Congress leaders were advising the Maharajah not to declare independence.⁵⁰ Thus the appointment of Janak Singh and the subsequent developments proved that the Maharajah, his government and Abdullah's National Conference⁵¹ had lined up with the Indian National Congress. This caused a great tension in the state in general and the Valley in particular. There was a sharp reaction in the circles of the Muslim Conference led by Chaudhry Ghulam Abbas. Clashes between the workers of the Muslim Conference and the National Conference followed almost immediately.⁵²

This was the state of affairs in Kashmir on the eve of the 'D-Day' - August 14, 1947. The subcontinent was making grand preparation for the day of independence and the people of the state were rapidly heading for a catastrophe. Commenting on the Kashmir question before a delegation of Jammu and Kashmir Conference in July 1947, Quaid-i-Azam

Muhammad Ali Jinnah reflected the position taken by the All India Muslim League. He said:

“I have already made it clear more than once that Indian states are free to join either the Pakistan Constituent Assembly or the Hindustan Constituent Assembly or remain independent. I have no doubt that they, the Maharajah and the Kashmir Government will give the closest attention and consideration to this matter and realise the interest not only of the ruler but also of his people”.

53

Jinnah had expressed desire to visit Srinagar, but was persuaded by Mountbatten not to go, in face of objection from the Kashmir Government, though the latter did arrange for a similar trip undertaken by Gandhi.⁵⁴

Having decided to partition the sub-continent on the basis of religion it was presumed by all reasonable people including the Muslim League leaders that Kashmir shall become the part of Pakistan.⁵⁵ Jinnah was so convinced that he remarked: "Kashmir will fall into our lap like a ripe fruit."⁵⁶

Because of these factors the heads of the post offices in the state had received instructions to hoist the Pakistani flag on August 15, 1947. Such flags had been kept ready and were actually unfurled on that day on all buildings occupied by the post - offices in Srinagar. Janak Singh, Congress protégé got these flags removed. Censorship was imposed when the situation was adversely commented upon by the Daily “Hamdard”, Srinagar. The Paper was ultimately closed down.⁵⁷

To lull the suspicion of his subjects about his real design the Maharajah wrote to both Indian and Pakistani governments requesting that they enter a 'stand-still' Agreement with the state. While the Pakistan Government immediately accepted the offer the Government of India remained hesitant. There is enough circumstantial evidence that this was all being done to play for time; otherwise the die had been cast.⁵⁸

The 'stand-still' Agreement signed by Pakistan on August 15, 1947 provided the continuance of relations between Kashmir and Pakistan as that had existed between the British Indian Government and Kashmir. Pakistan, thus, became responsible for defense, external affairs, telegraph and railway administration of Kashmir.⁵⁹ Yet though no 'stand-still' agreement was concluded with the Indian Government, the Indian Post and Telegraph Department continued to function in Kashmir.⁶⁰

Apprehending Maharajah's desire to get the state acceded to India other elements such as the Jammu and Kashmir Muslim Conference and All Jammu and Kashmir Mazdoor Conference came forth with the idea that the state should accede to Pakistan.⁶¹ The Muslim Conference in fact had been pressing the Maharajah to join Pakistan and on July 19 had passed a resolution to that effect.⁶²

On September 5, 1947 the Working Committee of the All Jammu and Kashmir Kisan Mazdoor Conference adopted a resolution on the subject. The resolution read: The Committee is of the opinion that there is now no alternative before the state but to join Pakistan. If she does not do so the country and its people should have to face immense trials and tribulations.... the overwhelming majority of Kashmiri population is Muslim. The state is contiguous with Pakistan territories. All the three big highways - and all the rivers of the state go into Pakistan. For these reasons the Working Committee is of the opinion that the state should accede to Pakistan.... The state cannot remain independent nor can it, owing to its overwhelming Muslim population and being adjacent to Pakistan territories, accede to India. The working committee hold the view that the majority of the population desire to accede to Pakistan and the welfare of the thirty nine lacs of peasants and workers also lies in this.⁶³

The resolution was confirmed by the General Council of the Conference a few days later. It was published in the press on September 16. Thousands of its copies were distributed in the state in leaflet form during the same month.⁶⁴ Having given the 'closest

consideration" to the question of Kashmir whether the state should accede to India or to Pakistan or it should remain independent the Kashmir Socialist Part in a unanimous resolution declared:

The natural and the best course for the state to adopt would be to join Pakistan and not India. For obvious and substantial reasons...the state cannot remain independent...that in the best interest of the poor and backward people accession to Pakistan is desirable. The Party impresses upon the Maharajah that without any further unnecessary delay he should make an announcement accordingly.⁶⁵

In addition to these resolutions hundreds of telegrams were sent to the 'Maharajah from all over Kashmir 'imploring, beseeching and advising him not to accede to the Indian Union.'⁶⁶ The Rajas of Hunza and Nagar from the northern areas of Kashmir warned the Maharajah of dire consequences if he took to implement his 'evil' design. The Maharajah, however, remained steadfast on his march to a 'suicidal', course.⁶⁷ Maharajah Hari Singh continued his uneven treatment towards his subjects. While National Conference workers were allowed complete liberty to hold public meetings and take out processions, the Muslim Conference workers were deprived of even basic human and political rights. Yusuf Shah, Professor Ishaq and Hameedullah, some of the prominent leaders of the Muslim Conference were refused re-entry into Kashmir when they returned from Karachi after meeting Jinnah. It was taken for granted that they would prove a source of trouble for the unholy alliance of the Maharajah and the National Conference. ⁶⁸ To further augment the pro-Indian forces in the state, Mehr Chand Mahajan, a judge of the Panjab High Court replaced Janak Singh as Prime Minister of Kashmir. In Sardar Patel's words Mahajan was released for Kashmir for strategic and tactical reasons.⁶⁹

As if this was not enough, Mehr Chand Mahajan after taking over the charge on October 15, issued a most provocative statement to the press praising Indian leaders and Sheikh Abdullah and denouncing Pakistan in an unbecoming language.⁷⁰ This state known as Azad Kashmir Government⁷¹ with its headquarters at Pallandri, District Poonch. Not

heeding the warning of the times, the Maharajah's Government tried to stem the rising tide with outworn methods. He was bent upon a show down. The Azad Kashmir Government accepting the challenge declared a holy war on October 23 for the liberation of its homeland. Thousands of demobilized World War II soldiers living in Poonch and Mirpur Districts of Kashmir joined the ranks of Azad Kashmir Forces.⁷⁴

By this time the tribesmen from the transborder region who were devout Muslims, moved by the atrocities in East Punjab (India) and genocide⁷⁵ of their fellow Muslims in Kashmir crossed the border and joined the freedom fighters in Kashmir. The Maharajah's Forces were all but vanquished and on October 24 Srinagar, the capital was in real danger. The Maharajah asked for the urgent despatch of Indian troops to Kashmir and himself fled to Jammu.⁷⁶

In reviewing the circumstances leading to Kashmir's accession Prime Minister Nehru told a Press Conference in 1948: "...it is an established fact that these invaders among whom number of Pakistani nationals, have been helped in every way by the Pakistan Government."⁷⁵ Mr. Nehru made the same charge in many of the cables that he sent to the Pakistani Prime Minister.⁷⁶ The Pakistan Government, conversely repudiated any association with the invading tribesmen. In a letter to Mr. Nehru, Prime Minister Liaquat Ali Khan explained: "As regards the charges of aid and assistance to the 'invaders' by the Pakistani Government we emphatically repudiate them. On the contrary...Pakistan Government have continued to do all in their power to discourage the tribal movements by all means short of war."⁷⁷

The question of tribal raids was utilised by the Maharajah and the Indian Government to conceal the preceding popular uprising in Kashmir against the tyrannical rule and for accession to Pakistan. Richard Symonds, who served with a group of Quakers in the adjacent Panjab aiding tens of thousands of victims of communal strife, described the happenings of Kashmir before the tribal raids in an influential Indian daily: "There was a tax on every hearth and every window. Every cow, buffalo, and sheep was taxed and

every wife. Finally the Zaildari tax was introduced to pay the cost of taxation. Dogra troops were billeted on the Poonchis to enforce collection.⁷⁸

On September 12, the Maharajah himself admitted that there were widespread uprisings in Kashmir. Sheikh Abdullah who visited New Delhi in early October, confirmed in his statement released through the Associated Press of India that the Kashmiris were in 'open revolt against the King.'⁸⁰

The widespread shelling as a result of the clashes between the freedom fighters and the Maharajah's forces strained relations between Pakistan and Maharajah's Government in Kashmir. The Kashmir ruler protested that the Kashmiri rebels were getting aid from across the border i.e. Pakistan. He demanded a joint enquiry in this regard. Pakistan promptly accepted the proposal. Yet in subsequent telegrams the Maharajah while repeating his threats of asking friendly assistance (obviously from India) made no reference to his earlier proposal of a joint enquiry committee although Pakistan repeatedly expressed its readiness to set-up such a Committee.

One can only conclude that the Maharajah was seeking a pretext to invite Indian troops to Kashmir. Thus the situation was deliberately allowed to deteriorate. One of the members the United Nations Commission for India and Pakistan (UNCIP) described the situation in his book: "...Hindus and Sikhs intensified the bitterness out of their thrust against Pakistan. The Muslims of Kashmir fell before the rifles and the swords of the Dogras, and in Pakistan the tribesmen called a 'holy-war' of revenge against their brothers' killers."⁸¹

However, in many circles it was believed that Pakistan was not as innocent in the matter as it pretended to be. Commenting on the role of tribesmen fighting the holy war in Kashmir the U.S. Ambassador in Delhi, Henry Grady remarked: "There was little doubt that the invasion of Kashmir by raiders had the tacit, if not the active support of some NWFP officials. The raiders had killed Kashmiri Muslims and looted and burned their property.' 'American correspondents returning from Kashmir, according to the Ambassador's report, were of the view that the local Muslims resented the degradations

of the Pakistani raiders so bitterly that Abdullah's position had become stronger than ever before.⁸² This is not the whole truth. While stray incidents of excesses committed by the tribesmen could not be ruled out but to paint them all as butchers and highway-men and that Abdullah's position amongst his people rose high was contrary to facts. Basically being the loyal Muslims the tribesmen could be anything but guilty of killing 'Kashmiri Muslims.' Abdullah's position in his own circles might have gone high but he could, in no way, claim himself to be popular among the masses in Kashmir.

According to an eminent member of UNCIP, as the movement for Pakistan gathered momentum Sheikh Abdullah's popularity among his Muslim compatriots diminished correspondingly. As the Muslims in British India became more and more pronounced in their support for an independent Pakistan the Muslims in Jammu and Kashmir began to return to the ranks of the Ghulam Abbas led Muslim Conference, thus abandoning Abdullah's National Conference.⁸³

Although many individual Pakistanis undoubtedly sympathized with the tribesmen, the Central Government of Pakistan had nothing to do with their move in Kashmir. In fact, Pakistan got embarrassed by this turn of events. Circumstantial evidence suggested that Khan Abdul Qayyum Khan, Chief Minister NWFP was in some ways involved in it. But Jinnah knew nothing about the whole affair. Even Liaquat Ali Khan came to know about it when the tribesmen had actually entered Kashmir territory. Margaret Parton who had made extensive tours along the border reported in the New York Herald Tribune, (January 24, 1948) that the Government of Pakistan had nothing to do with the tribal raids. It may be pointed out that Pakistan inherited one of the most troublesome tribal areas of the world along its north-western frontiers. The tribesmen were susceptible to fanatical zeal under provocation. They have their own laws to govern their actions. The British Indian Government used to keep them under check by paying subsidies to the tribal chiefs, a practice no more in vogue after partition. However Pakistan in its birth pangs could hardly check a move of a very sensitive people from a sensitive area towards an equally sensitive issue.

Louis Hayes, discussing the role of the tribesmen in Kashmir, said that it was rather difficult to determine the precise Muslim goals (out of tribal action). Probably the tribal actions reflected longstanding grievances against the Dogra rule. The suggestion that the whole affair was a Pakistani plot is simply not credible. Even if they could have planned and engineered such an effort, which was doubtful, the likelihood of it ever producing results in their favour seemed remote.⁸⁴ The extent to which the tribesmen were assisted by the Government of Pakistan 'is still disputed', wrote Richard Symonds in his book, "The Making of Pakistan". In his opinion in mid-October the tribesmen from around NWFP, who came down to Panjab each winter to seek temporary employment in a less severe climate, saw an opportunity of gaining both t religious merit and rich booty in the holy war being fought by their compatriots against Hindus in Kashmir.⁸⁵

However with war going on in Kashmir, events moved with kaleidoscopic rapidity. Before Indian troops could be committed in the state in assistance to, the Maharajah's forces an 'Instrument of Accession' had to be signed by the state's ruler. V.P Memon, the Secretary to the States Ministry of the Government of India facilitated the job. Twice he flew to contact and advise the Maharajah, first at Srinagar and then at Jammu. Sitting in Jammu the Maharajah signed the document in favour of India on October 26, 1947.⁸⁶

Sheikh Abdullah who is known for his frequent shifts in his stand on Kashmir was no less active in advising India to get an 'Instrument of Accession' signed by the 'Maharajah. Mehr Chand Mahajan, the then Prime Minister of Kashmir and the author of the book "Looking Back" recalling the story of accession to India wrote: "met the Prime Minister of India and the Deputy Prime Minister and apprised them of the serious and dangerous situation in the state. I solicited Army help and said that the Army must be flown at once, otherwise the whole town of Srinagar and all that we hold valuable would be completely destroyed....I was assured that even if Srinagar fell into Pakistan hands it will be retaken. I was not impressed and took a firm attitude and said: Give Army, take accession and give power whatever you want to the popular party but the Army must fly to Srinagar this evening, otherwise I will go and negotiate terms with Jinnah, as the city must be saved. On this the Prime Minister Nehru flew into rage and

told me to get out. Just as I was getting upon an incident occurred that saved me and saved Kashmir from falling into Pakistan hands. Sheikh Abdullah who was staying in Prime Minister's house was over-hearing the talk. Sensing the critical situation, he sent a slip of paper to the Prime Minister. The Prime Minister read it and said that what I was saying was also the view of Sheikh Sahib, and his attitude completely changed....It was thus that Kashmir was saved from falling into the hands of Pakistan. ⁹⁷

Accepting the accession and committing Indian troops in the state, Mountbatten made it clear that the issue of accession would be decided in accordance with the wishes of the people of the state. He further clarified that as soon as the law and order was restored in Kashmir the question of state's "accession should be settled by a reference to the people." ⁹⁸ Nehru and his comrades in the Congress contributed in full to this view over the issue. Informing Pakistan of the Maharaja's accession Jawaharlal Nehru, the Indian Prime Minister said: Our assurance that we shall withdraw our troops from Kashmir as soon as peace and order are restored and leave the decision regarding the future of this state to the people of the state is not merely a promise to your government but also to the people of Kashmir and to the world. ⁹⁹

It is widely believed that unless the Indians were prepared in advance for such an eventuality, troops could not have been despatched so promptly. ⁹⁸ Jinnah felt deceived by Maharajah's accession to India. His earlier optimism about Kashmir gave way to deep disappointment. "We have been put on the wrong bus," he remarked. ⁹⁴

The dispatch of the Indian troops to Kashmir alarmed the Government of Pakistan. It wanted to send its own troops in Kashmir. Pakistan was quite justified in doing so since it was responsible for the defence of Kashmir under the 'stand-still' Agreement. Sir Claude Auchinleck, the Supreme Commander incharge of administering the partition of the British Indian Army, dissuaded the Pakistan Government from resorting to such a course. ⁹²

The situation arising out of the tribal raids could have been handled in many ways. Instead of striking a clandestine deal both India and Maharajah's government could have gone before the Joint Defence Council responsible for the partitioning of the British Indian Army and for the defence of the sub-continent during the transitional period. This body consisting of representatives of both India and Pakistan, could have taken steps against the tribal raids pending accession to either Dominion through plebiscite. Yet another course open to the Maharajah who was technically independent, was to have appealed to the United Nations. These peaceful courses, however, were not resorted to. In fact the whole chain of events from Gandhiji's visit to Kashmir in August 1947 to despatch of Indian troops in October the same year reveals a deep laid conspiracy to effect a clandestine accession against the known wishes of the people of Kashmir. However to pacify the Kashmiris India hastened to pledge to them that the "question of state's accession should be settled by a reference to the people."⁹³

The so-called accession of October 26 was also a violation of the spirit of the 'stand-still' agreement concluded between Kashmir and Pakistan on August 15, 1947. Under this agreement Pakistan was responsible, interrelation, for Defence and External Affairs of Kashmir. The Kashmir Government, therefore, could not transfer these powers to India, without previously disavowing the 'stand-still' Agreement. Nor could India send troops into Kashmir without the approval of the Pakistan Government so long as the 'stand-still' agreement existed between Pakistan and Kashmir.⁹⁴ Pakistan's accusation that the accession was achieved through fraud and violence, therefore, appears to be well founded. Pakistan, however, sought to settle the dispute by negotiations. Jinnah invited Lord Mountbatten and Nehru to Lahore for a conference on Kashmir. Nehru excused himself on the pretext of illness. Mountbatten came alone and Jinnah put forward the following proposals:

1. The Governments of India and Pakistan should issue a joint proclamation: giving forty eight hours ultimatum, to opposing forces to cease fire. If the Azad Kashmir Government and the raiders refused to withdraw both India and Pakistan would jointly take action against them.

2. Both the forces of India and the tribesmen to withdraw simultaneously from Kashmir.

3. The two Governor-Generals be given full powers by their respective governments to restore peace and arrange for a plebiscite without delay under their joint control and supervision.⁹⁷

Mountbatten, however, expressed his inability to make any commitment and none came subsequently from the Government of India. In his book, "Danger in Kashmir", Professor Josef Krobel observed that Kashmir tragedy could have been avoided had India accepted Jinnah's reasonable proposals

An analysis of the preceding narration shows that the Kashmir dispute is a product of imperialism in two respects. First, the territory of 'Jammu and Kashmir' was handed over to a feudal chief by the imperial power, Britain, through a sale deed in 1846. Second, the successor of this Chief, the Maharajah, was enabled in 1947 to prevent the natural accession of the state to Pakistan by none other than Britain. In the triangular collusion between the receding colonial power, the emergent authority in India and the feudal ruler of Kashmir lies the origin of the Kashmir dispute. The evidence of the collusion could be had from the following facts:

1. The Radcliff Award which determined the boundaries of India and Pakistan, and whose announcement was withheld by Lord Mountbatten, Britain's representative, until after the establishment of the two independent states, violated the basic principle of partition by which contiguous Hindu-majority areas were to be included in India and contiguous Muslim majority areas in Pakistan. It allocated the Muslim majority District of Gurdaspur to India. This was not accidental. It was clearly designed to provide India with a link to 'Jammu and Kashmir' and thus to enable the Kashmir ruler for state's ultimate accession to India. That the Award in this respect was the result of a premeditated plan on the part of Britain's representative, Lord-Mountbatten is clear from the public statement he made as early as June 4, 1947, before the Boundary Commission was constituted. In this statement he singled out the District Gurdaspur as the area where the ultimate boundaries would "almost certainly not be identical with those which have

been provisionally adopted." He said:...in the District of Gurdaspur in the Panjab the population is 50.4 percent Muslim. I think, and 49.6 percent nonMuslim. With a difference of 0.8 per cent you will see at once that it is unlikely that the Boundry Commission will throw the whole of the district into the Muslim-majority areas. ⁹⁶

Justice Din Muhammad, Member Panjab Boundry Commission, was not 0:8 as was stated by "His Excellency the Viceroy in the press conference but 2.28 and this obviously is not negligible". ⁹⁷ Even Mr. Teja Singh, Indian Member Panjab Boundry Commission agreed that Gurdaspur was a Muslim majority district. ⁹⁸ He, however, believed that it was not a predominantly Muslim district. ⁹⁹

It may also be pointed out that the Indian Independence Act 1947, Second Schedule showed Gurdaspur District as part of the "new province of West Panjab. ¹⁰⁰ The position is further explained by Lord Birdwood, a British Officer in the Indian Army:

The point is that the basis of the decision to divide was the district, and in an appendix to the plan the districts with the Muslim majorities according to the 1941 census were enumerated. In the Lahore Division, the Gurdaspur District carried Muslim majority. A glance at the map will show that had this district as a whole been awarded to Pakistan, the position of Indian troops flown to Srinagar would have been quite untenable. ¹⁰¹ Regarding the award of three crucial tehsils of District Gurdaspur to India, Sir Francis Moodi, the Governor of Panjab said: "I did not have any information about what the Radcliff Commission would decide, except for the telegram received about the 12th of August, giving advance information that Ferozpur would be included in Pakistan. This, of course, did not happen... I knew nothing about Gurdaspur nor did I know that the question was of any importance until after the Radcliff Award was announced and the importance of India's line of communication with Kashmir became apparent. The whole question of that Award and how it was arrived at has always puzzled me greatly and I am more and more doubtful about its bonafides". ¹⁰²

2. Lord Mountbatten, then visited Srinagar from 19 to 23 June 1947 and urged the Maharajah to accede to either of the two Dominions before 15 August and assured him that whichever Dominion he acceded to would "take the state firmly under its protection as part of territory."¹⁰³ Now, if he had not contemplated the inclusion of Gurdaspur District (minus Shakargarh Tehsil) in India he had no reason to assume a parity of position between India and Pakistan in the matter of Kashmir's defence, since all of Kashmir's communications led into Pakistan and there was no link with India.

3. While Lord Mountbatten was advancing the scheme of the Indian National Congress to maneuver the Maharaja's accession to India the leaders of the Congress were well in touch with the Maharajah. The Indian contention that it had nothing to do with Kashmir until the Maharajah was compelled by the tribal invasion on October 22, 1947 to seek accession to India had been conclusively falsified by the correspondence between the leaders of the Congress and the Maharajah prior to October 22, 1947. The correspondence published in India demonstrates that India's military intervention was not at all an unplanned operation based on a spontaneous response to an appeal for help. On the contrary, it was but the culmination of a plot for which the tribal 'invasion' was pressed into service as plausible excuse.¹⁰⁴

While India had made systematic preparation to incorporate Kashmir into the Indian Union there was no counter contingency plan prepared by Pakistan. When the Radcliff Award was announced the Quaid-i-Azam said:

"It was an unjust, incomprehensible and even perverse award. It may be wrong, unjust and perverse; and it may not be a judicial but a political award, but we have agreed to abide by it and it is binding upon us...It may be our misfortune but we must bear up this one more blow with fortitude courage and hope".¹⁰⁵

4. The conduct of some British officers on the eve of the tribesmen entry into Kashmir and during the subsequent developments following the despatch of the Indian troops to Srinagar amounted to no less than a sabotage of the cause of the Muslim Kashmir and of

Pakistan as well. The news of the tribesmen entry into Kashmir was immediately conveyed by the British Governor of the NWFP to General Lockhart, the Commander-in-Chief of the Indian Army. Again the news of the dispatch of the Indian troops to Srinagar reached Lahore Area Headquarters of the Pakistan Army on the evening of October 26 but was not passed on until the following evening to Pakistan's Governor-General who happened to be in the city on that day. Jinnah immediately ordered General Sir Douglas Gracey, the acting Commander-in-Chief of the Pakistan Army to dispatch troops in Kashmir. Gracey did not carry out the orders. He, instead, telephoned the Supreme Commander Field Marshall Auchinleck, in Delhi for instructions, despite the fact that the Supreme Commander had no operational control of the Pakistan Army. ¹⁰⁶

According to the procedure for the division of the Indian Armed Forces agreed upon at a meeting of the Partition Council on 30 June 1947: "Field Marshall Sir Claude Auchinleck would become Supreme Commander, until the division was completed, though he would have no responsibility for law and order, no operational control of any unit, save those in transit from one Dominion to the other and no power to move troops resign the frontier of either Dominion". ¹⁰⁷

In response Auchinleck threatened to withdraw all British officers from the Pakistan Army in case Jinnah's orders were carried out. In contrast no such threat was given to the British Commander-in-Chief of the Indian Army when he promptly complied the Indian Government's instructions to dispatch troops to Srinagar. The air-borne operation was supervised by a British Commander, General Dudley Russell. ¹⁰⁸

Mountbatten made his crucial contribution by suggesting that in return for military assistance, the Maharajah must be asked to sign the Instrument of Accession. Dr. Josef Korbel, Indian nominee on the United Nations Commission for India and Pakistan (UNCIP) aptly remarked:

"Why did he (Mountbatten) advise that Indian military assistance to the Maharajah must be covered by the legal technicality of accession? How could he have

reasoned that it would be illegal for Kashmir (which, at that time, was technically independent) to ask for military help from India without preceding the request for accession? He must have assumed that the Pakistan Government would refuse in any case to recognise the legality of such accession brought about without prior determination of the will of the Kashmiri people... Why was there at this point no appeal made to the United Nations from either the technically independent government of Kashmir or from Delhi?.....Finally, it is most difficult to understand why no one, particularly Mountbatten, advanced the most obvious idea - that of immediately getting into contact with the Karachi Government for consultation".¹⁰⁹

The Kashmir Dispute in the United Nations

The existing situation complicated by deep-rooted antagonism between the two countries called for a judicial procedure. On matters like this an agreement without a third party mediation seemed a remote possibility. It was under these circumstances that on the Indian complaint a barely three years old UN moved to stop fighting in Kashmir. Invoking Art. 35 of the UN Charter the Indian Representative at the UN headquarters transmitted to the President of the Security Council the Indian case in the form of a complaint against Pakistan. Between the night of December 31, 1947 and January 1, 1948 the Indian Government memorandum submitted to the UN Security Council requested the Council to call on the Government of Pakistan:

"To prevent its personnel, military and civil from participating in, or assisting the invasion of the state of Jammu and Kashmir;

To call upon its nationals to desist from taking any part in the fighting;

To deny invaders military and other kind of aid which might tend to prolong the struggle including use of its territory for operation".¹¹⁰

Indian plea was based on the 'validity' of the Maharajah's accession to India. The whole issue in view of Gopala Swami Ayenger, the Indian Representative at the Security

Council, arose from Pakistan's 'error; in aiding and abetting the tribesmen's action in Kashmir. ¹¹²

Declaring the situation in Kashmir as essentially one of popular revolt against the oppressive regime of Maharajah Zafarullah Khan, representing the Government of Pakistan rejected the Indian charges and lodged counter charges also under Article 35 of the UN Charter. He brought to the notice of the Security Council:

That India was attempting to paralyze Pakistan by genocide of the Indian Muslims forcing them to migrate to Pakistan;

“The forcible occupation of Junagadh and the adjoining states which had acceded to

Pakistan;

India's refusal to implement the partition agreement, i.e. withholding of Pakistan's share of cash balances and military stores etc. so vital to its existence;

d. India's securing of Kashmir's accession by fraud and violence.”¹¹²

The Indian Stand

Challenging the validity of the instrument of accession Zafarullah Khan said that Kashmir was a part of a wider Indian project for the very liquidation of Pakistan itself. Pakistan, therefore, requested the Security Council to set up a commission, arrange for a cease-fire in Kashmir followed by the withdrawal of all outside troops; establish an impartial administration in the state and hold a plebiscite under free and unfettered conditions. ¹¹³

Though recognizing that the over whelming majority of the people of the state were Muslims, India justified her occupation on the basis of the 'Instrument of Accession.' The act of accession by the Maharajah, according to the Indian stand was subsequently confirmed by the people of Kashmir through a "duly elected representative body," the Constituent Assembly on November 17, 1956. This being its people's voluntary verdict,

Kashmir's accession to India "is therefore final, complete, perfect and irrevocable." Regarding India's commitment to Kashmiri's right of self-determination India claimed that the same was obstructed by Pakistan refusal to withdraw her troops from such parts of the state as were under its "illegal" occupation. In the circumstances India had no alternative but to let the Kashmiris make a final decision through their 'representative body', the Constituent Assembly. ¹¹⁵

Another important consideration for India's action was the matter of security. As explained earlier Kashmir is located in a strategic position for both India and Pakistan. Part of Indian concern for Kashmir was due to the strategic significance of Kashmir. ¹¹⁵ Besides, India was committed to 'one-nation theory' which held that all British India including the princely states constituted a single national unit. This theory emerged as a counter to the All India Muslim League's 'two-nation theory' in the sub-continent. ¹¹⁶

The Pakistan Stand

Pakistan of course did not accept the Indian point of view. Apparently and from a strictly legal point of view, India's claim based on Maharajah's act of accession is sound. However, a careful consideration of the factors and circumstances under which, the 'accession' took place would lead us to a different conclusion. The Maharajah, Pakistan believed, once ousted by his people on October 24 was in no legal position to execute the 'Instrument of Accession', on October 26, 1947. By then the Azad Kashmir Government of the State of Jammu and Kashmir had already come into being with its headquarters in liberated territory. Moreover the Maharaja's accession was a violation of the 'stand-still' Agreement between Pakistan and Kashmir. This agreement having never been repudiated remained a bar to the subsequent accession of the state to India. ¹¹⁷

The view of the Legal Adviser (US) over the accession issue also corroborates this. In the opinion of the office of the Legal Adviser (US):

Execution of an Instrument of accession by the Maharajah in October 1947, could not finally accomplish the accession of Kashmir to either Dominion, in view of the circumstances prevailing at that time; the question of the future of Kashmir remained to be settled in some orderly fashion under relatively stable conditions; this question is an important element in the dispute; and in proceedings before the Security Council, neither party is entitled to assert that rights were finally determined by the Maharaja's execution of an instrument of Accession.¹¹⁹

Taking into consideration the accession crises in Junagadh and Hyderabad as well as Kashmir, India's position is far from consistent. In Junagadh, an accession by a Muslim ruler to Pakistan was rejected by a plebiscite held under Indian supervision. In this case the majority of the voters were Hindus. In Hyderabad accession programme by a Muslim Nizam was challenged by the Indians through force and the state was eventually annexed by India. The legality of these two accessions seems to be no more disputable than that of Kashmir. Nevertheless the Indians challenged these both. In Kashmir India refused to hold a plebiscite, which would benefit the Muslim population as it benefited the Hindus in Junagadh, and deplored the use of Pakistani armed forces on moral grounds which somehow did not apply to the similar use of the Indian armed forces in Hyderabad.¹²⁰

Pakistan defends its intervention in Kashmir on the grounds that the Azad Kashmir movement was spontaneous and indigenous. The initial violence was not a matter of aggression, but rather one of civil war. Pakistani troops intervened in Kashmir only after the Indian armed intervention threatened not only Kashmir, but the security of Pakistan as well. The Indian charge that Pakistan was guilty of aggression was meaningless, since the Maharajah's government of Kashmir had lost political control of its jurisdiction.¹²¹

India, Pakistan maintains, based her stand on Kashmir upon the conviction that Kashmir was an integral part of India against which Pakistan had been an aggressor. If India was convinced that aggression on part of Pakistan was the heart of the dispute, why did India

not invoke Chapter VII of the UN Charter which deals with "Acts of Aggression?" Why did she invoke only Chapter VI of the Charter concerning "Pacific Settlements" of the disputes? There appears some inconsistency between Nehru's attitude towards the Korean war and his continued insistence that Pakistan be named as an aggressor in Kashmir, a dispute which he had always declared should be settled by negotiations. If India seriously considered Pakistan to be an aggressor in Kashmir, how could she decline to see an act of clear-cut aggression by the Chinese in the Korean war? In case of Kashmir Indian's claim that Kashmir was a part of India was never confirmed by the UN nor Pakistan declared an aggressor. But in the case of Korea both North Korea and Peoples Republic of China were branded and condemned as aggressors. Nevertheless India refused to vote for such a resolution passed by the UN. Nehru called the move unwise declaring "it was clear it would not help to call a country an aggressor when you intended having dealings with it in order to reach settlement by negotiations and the two approaches are directly opposed to each other."¹²¹ ¹²¹

Pakistan's stand has been motivated neither by any territorial ambitions nor by desire to weaken or dominate any other country. It simply claims the extension to Kashmir of the principles on which the partition of the sub-continent was carried out. Its stand stood strengthened and vindicated by repeated pledges that India gave to Pakistan and the people of Kashmir directly and through the UN Security Council that the issue would be resolved by a reference to the people of the state. In its White Paper of 1948 about Kashmir, the Indian Government declared: "We regard the accession temporary and provisional till such time as the will of the people can be ascertained."¹²² ¹²² The same White Paper carried the much publicized Nehru's broadcast in which he stated in unequivocal terms that:

We have declared that the fate of Kashmir is ultimately to be decided by the people. That pledge we have given and the Maharajah had supported it, not only to the people of Kashmir but to the world. We will not and cannot back out of it. We are prepared when peace and law and order have been established to have a referendum held under international auspices like the United Nations. We want

it to be a fair and a just reference to the people and we shall accept their verdict; I can imagine no fairer and just offer. ¹²³

The key to the differences between India and Pakistan over Kashmir lies on the question of the plebiscite. India initially accepted that a plebiscite was called for. But she insisted that a plebiscite could follow the total withdrawal of tribesmen and other 'Pakistan sponsored forces from Kashmir'. Once achieved, the plebiscite might be held in which Indian leaders expected an overwhelming majority vote for Sheikh Abdullah and his administration. This meant the state's retention with India. To Pakistan the plebiscite meant something different. The plebiscite, in view of Pakistan, should follow the total withdrawal of all ' outside troops including Indian and replacement of Abdullah's-government by an impartial Kashmir government under some kind of effective UN supervision.¹²⁴ Subsequently India refused to fulfil at all its earlier commitments to plebiscite and declared Kashmir as an integral part of the Indian Union. Pakistan, however, continued to insist on the implementation of the principle of self-determination in the state.

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The United States Human Rights Policy:

Issues of Selectivity and National Interest: A Political Dimension

In the previous chapters we have discussed the origin and evolution of Human Rights in the US foreign policy, and evolution of the Kashmir issue. This chapter would see fluctuation of the US Human Rights policy according to its national interest. In addition, it will deal with the delimitation of inconsistency resulting from the US human rights policy, which is essentially selective in practice. Moreover, the selective nature of the policy is evident from the fact that in the era before the fall of Soviet Union, the US human right was directed at the left wing countries that came to be regarded as the greatest violators of human rights and fundamental freedoms. While similar and even more volatile human rights violation by the friends and allies of the U.S. were greatly overlooked. Furthermore, the primary targets of the US human right policy are small and weak states which are of no or little strategic importance for the United States and hence in no position to stand up to U.S. pressure.

The Section 2304.(a)(1) of 22 U.S. Code states that "the United States shall, in accordance with its international obligations as set forth in the character of the United Nations and in keeping with the constitutional heritage and traditions of the United States, promote and encourage increased respect for human rights and fundamental freedoms throughout the world without distinction as to race, sex, language, or religion. Accordingly, a principal goal of the foreign policy of the United States shall be to

promote the increased observance of internationally recognized human rights by all countries". 2304 (c)(1) c(2) of 22 US. Code provide for the Secretary of State to determine whether, "on all the facts it is in the national interest of the United States to provide such assistance", even if there are human rights violations that would otherwise require the denial of such assistance. Hence a conflict between the considerations of national interest and concerns for human rights emerges which leads the developing world to perceive the U.S. human rights campaign as an instrument of national policy.

The law governing U.S. security assistance is easily exploit due to an exception clause that has been added to the Foreign Assistance Act of 1961 (as amended in Section 2304 of 22 U.S. code) which clearly allow security s assistance to go to human rights violators if extra ordinary circumstances exist, or if it is necessary to protect U.S. national interest.

This dichotomy in American diplomacy, between profession of principles and preference for practices, has not only characterized past U.S. advocacy of human rights, but it continues to do so. Some critics of human rights diplomacy challenge the concept of moral principles. George Kennan believes that the United States has verbally exaggerated the role of moral and legal principles and neglected the pursuit of its own national interest.¹ Although the United States claims to be the champion and protector of international human rights such policies are used mostly where it serves the national interests of the U.S. The foremost objective of the U.S. foreign policy is the preservation of its national interest. It is precisely because of this reason that the 'exception clause' had

been added to the foreign assistance Act (as amended in Section 2304 of 22 U.S. Code) to provide a moral excuse from obligations imposed by the rest of the act. If it was a purely humanitarian concern this exception clause would not have been there because continued security assistance to the violators of human rights actually strengthens their hands and provides them with tools of repression as security assistance includes not only military education and training but also weapons and even police equipment. Stephen B. Cohen has discussed the United States application of the 'extraordinary circumstances' basis for extending U.S. aid to governments with poor human rights record. In the late seventies seven countries known to be egregious violators of human rights, i.e. Indonesia, South Korea, the Philippines, Thailand, Haiti, Nicaragua, and Paraguay all received security assistance totaling \$ 389.1 million. The reasons for the exceptions are not always made clear. The Philippines, for example, as reported by the Department of Defense was neither perceived as a threat by other nations in the region nor was it threatened by them. The real reason, however, was that the American military bases were located there. Similar considerations of interest determined the granting of security assistance to other countries, Indonesia was held to be a counterweight to Soviet and Vietnamese influence in Southeast Asia; Iran had a long border with the Soviet Union, was important for oil supply and was willing to contribute to the defense of American interests in the Persian Gulf; South Korea was significant as a deterrent to North Korean expansion.

The authoritarian regime of Ferdinand Marcos in Philippines was supported by the United States in return for military bases i.e. Clark Air Field and Subic Bay Naval Base,

there. This strategic importance provided the government of Ferdinand Marcos with considerable leverage over what the United States could demand. Nevertheless, the amount of aid to the Marcos government assured that U.S. had an upper hand in the relationship. U.S narcotics control aid helped to build a modern police force that oppressed and tortured political dissidents, and security assistance to the Philippines increased drastically since Marcos suspended habeas corpus in 1971 and declared martial law the following year. This security assistance created a backlog of undelivered orders that could protect the Marcos regime for several years from the effects of a possible termination of new sales and grants without a termination of deliveries. The United States seemed to be attempting to promote human rights.²

From 1948, when it helped to create the Republic of Korea, the United States often used its influence to promote democratic government there. United States was at first willing to exert some leverage on authoritarian rule resulting from the General Park Chung-Hee's military COUP in 1961, and until 1965 the United States tried to remain neutral between Park and his political opponents. But then the need for Korean combat assistance in Vietnam led to Washington's embracing Park and supporting him by stepping up its aid to ROK. After gaining support from the United States General Park declared 1972 and instituted changes that further eroded the respect for human rights. The government of South Korea engaged in wide spread arbitrary arrests and torture, restraints on liberties and created a judicial system that could be arbitrarily used political repression. Yet the U.S. military aid to South Korea continued to flow liberally³.

Turkey was another scene of serious human rights abuses but motivated by geopolitical considerations, the Reagan administration defended this country's record. Again the U.S. aid continued to flow to Zaire, despite its record of human rights violations and even though human rights concerns were said to be central to the U.S. policy toward Zaire. Then Assistant Secretary of State Abrams justified the U.S. policy by stating that human rights were "only one aspect of a complex and critical bilateral relationship"⁴.

Latin America is another area where the U.S., performance raised doubts concerning the degree of its concern for human rights. In El Salvador, for example, the United State's role was seen as that of; "an apologist for some of the worst horrors of our time"¹¹. The State Department's report on freedom of speech and association, torture, and killings. The record of abuses, however, did not prevent the U.S. from continuing military aid to El Salvador, justifying this policy with the argument that the human rights situation in this country was 'improving'⁵.

Guatamala is another Latin American country where the United State's response to a barbaric record demonstrates the selective nature of its commitment to human rights. Thus, despite the killings attributed to its leader, Rios Montt, Reagan declared that the Guatemalan government was the victim of a 'bun rap' and expressed the opinion that Guaternala deserve renewed military aid.

The U.S. dealing with other Latin American situations produced additional indications of a low-level concern for human rights. One study of its Latin American policy concluded that the Reagan administration "failed to concern itself in any visible way with human rights" in either Peru or Colombia and noted that "American ambassadors to Uruguay and Chile distanced themselves from human rights victims and human rights monitors, [conveying] the impression that the United States [did] not care about human rights."

Richard Falk, in his book Human Rights and State Sovereignty, has discussed two sides of the human rights issue, as manipulated by the United States in its foreign policy what he calls the politics of invisibility' and the politics of super visibility'. These two sides of the issue reveal much about how the human rights agenda is orchestrated by a tacit leadership between the state and mainstream media, even in a country such as the United States, which is A complete and formal democracy. There are many examples of the politics of invisibility but perhaps the most striking is the virtual media blackout, despite abundant documentation, regarding the plight of Timorese people. What happened in East Timor was that the Portuguese abandoned their colonial control in 1975. Beginning in December 1975, the Indonesians, with the U.S. arms, engaged in a murderous onslaught against the East Timorese. They then constructed a facade of popular approval for their take-over in the name of pacification of East Timor and formally annexed the territory. The U.S. refused to vote against Indonesia in the UN on this issue or do anything else about it.

Another illustration of 'invisible' context relates to the plight of the hundred million or so 'untouchables' in India. These people suffer a daily existence that is quite as humiliating as that endured by black South Africans. As far as politics of 'super visibility' are concerned, the postrevolutionary abuses of human rights in Iran and Vietnam have been reported with great favour. The politics of 'invisibility' and super visibility' demonstrate the American foreign policy imperatives of supporting certain repressive regimes and discouraging others.

Although the United States voiced criticism of the South African government's policy of apartheid, it was reluctant to impose sanctions on South Africa. Nothing U.S. opposition to one-time dictator Idi Amin and the belated American response to the cries of blacks for racial justice in Southern Africa, once a Nigerian delegate at the United Nations asked, "how can Americans expect us to believe that you mean what you say about human rights when the US representative advocate economic sanctions against black Uganda, but not against a regime most Africans consider far worse, that of the white dominated government in South Africa⁷.

In addition to giving more critical attention to adversaries rather than allies, the United States, in the past, made the communist states special targets of its human rights mentioned advocates of its policy. This has been true of the U.S. policy from the very beginning. Even the Carter administration, the much-mentioned human rights, operated on the basis of selectivity rather than evenhandedness. The contention that the U.S.

officials picked on friendly regimes (instead of adversaries) has no foundation. The concentration on the Soviet bloc in late 1970's was so evident that Soviet dissident Valery Chalidze reminded the administration in print that human rights violations were not confined to communist countries. Substantially, the U.S. aid to Nicaragua continued up through 1987..... few months before the ouster of President Anastasio Somoza Pebayle. President Carter sent a letter to President Anastasio Somoza in the Summer of 1978 praising him for the improvement of human rights in Nicaragua at the very moment that the country was about to explode because of the Somoza regime's persistent denial of its citizens human rights.

Among the countries that had been accepted as exempt from Administration's criticism was the Shah's regime in Iran. The argument was (and still is) that the objective of communism's containment should not be neglected in order to make human rights statements. The United States sought to strengthen Iran against Soviet aggression and to help it become a force for stability in the vital Persian Gulf area. The Shah received large amounts of U.S. arms, purchased with Iran's petroleum revenues. Given this income, Iran was able to finance its own needs, and thus the question of the U.S. aid did not arise.

The U.S. policy toward Iran was based on the assumption, that any erosion of the Shah's power might lead to chaos in maintain order, unleashed a reign of terror over the political opponents of the Shah's regime.¹⁰ Warnings of human rights violations were discounted by the U.S. policy makers who believed that if opposition groups came to power the

situation in Iran would worsen in terms of the U.S. interest as Shah was considered as the greatest friend of the west and Iran a bulwark against communist expansion. Thus, the more the United States needs to maintain a friendly alliance with a country, cannot maintain power with out the U.S. assistance.

The justification provided by some U.S. policy makers for not criticising friends was that the alienation of allies would give aid and comfort to Moscow which would offset any good that human rights diplomacy might have achieved. That problem, they maintain, was specially serious because the U.S. criticism of human rights violations in nations such as South Korea, the Philippines, Iran and several South American nations would have resulted undercutting their ability to counter communist expansion. It was wrong to criticise those authoritarian regimes, the argument goes, since doing so meant that they would fall under even worse totalitarian rule ¹¹. Thus Carter spoke out more vigorously against human rights abuses in the Soviet Union and Eastern Europe than against those developing world dictatorships where the United States had historically contributed to repression. The U.S. refused to grant the most favourvd nation trade status to the Soviet Union on human rights grounds. This position was in direct contrast to the treatment accorded to China and Taiwan in this respect, even though these two were also guilty of rights violations. The difference was that China was classed as present or potential political friend of the United States, while the Soviet Union was viewed as an adversary. Some observers see such actions as evidence of what they perceive the United States

tendency “to apply the human rights policy selectively to those countries with which the United States was in political tension”.¹²

In order to justify the United States prejudice against the countries included towards the left, a very interesting distinction has been presented by former the U.S. Ambassador to the UN Jean Kirkpatrick and Ernest Lefever, head of the State Department's human rights bureau during the Reagan administration. They proposed a distinction between 'traditional authoritarian' regimes that are seen as friendly toward the U.S. and 'totalitarian' regimes seen as hostile. As Kirkpatrick explains in her article on human rights "Dictatorships and Double Standards", that authoritarian regimes are 'less repressive' than their totalitarian counterparts.¹³ Omitting all reference to the shocking crimes committed habitually by Latin American dictators and military Juntas and ignoring the murders and abductions in Argentina, she wrote that authoritarian leaders "leave in place existing allocations of wealth, power, status and other resources which... Maintain masses in poverty". They leave untouched "habitual places of residence, habitual patterns of family and personal relations". Lefever added that authoritarian regime is "often allow opposition parties to operate and a restrained press to publish".¹⁴

Further, in Kirkpatrick's words, "right wing autocracies do sometimes evolve into democracies", given enough time and certain economic, social and political conditions. She also characterises; authoritarian regimes as more compatible with the U.S. interests.

On the other hand, she argues, virtually all totalitarian regimes are hostile to American interests and their brutality, staying power and hostility justified strong U.S. criticism¹⁵.

Since the choice between the lesser of two evils was 'inescapable', President Reagan criticised the idea of withdrawing the U.S. support from basically friendly countries because of disagreement over some fact of human rights' when that action would help destroy 'all human rights in that country'. In fact, the President and his top aides took every opportunity to pile extravagant praise on pro-western human rights violators. When Vice President George Bush visited Philippines, he proposed a toast to President Ferdinand Marcos: "We love your adherence to democratic principles and to the democratic process". A few months later President Reagan, during his visit to South Korea, declared, "in the short time you had had ...you have done much to strengthen the tradition of 3,000 years commitment to freedom"¹⁶

The totalitarian - authoritarian distinction, however, has been greatly criticised and has not proven well enough to guide the U.S. foreign policy. Virtually all dictatorships display totalitarian as well as authoritarian features. Examples are: former Ugandan President Idi Amin, Latin American tyrants who nearly exterminated their Indian populations, and the Salvadoran officers who crushed a 1932 revolt by: killing some 30,000 peasants. Moreover, "authoritarian regimes harassment of ordinary citizens often approaches totalitarian levels"¹⁷

Although some authoritarian governments such as Shah's monarchy and the Somoza regime allowed political parties to operate many others, especially in the southern cone of South America, have banned all organised political activities. Authoritarian governments in countries such as El Salvador, the Philippines, and South Korea have even denied the right to form labour unions. Further, claims of total political power appear in the statements and constitutions of authoritarian governments as well. dropped after November 1981 since it proved to be too films, it continued to influence American policy. A formulation, however, had surfaced in October 1981, when then Under Secretary of State, Richard Kennedy sent a memorandum to the Secretary of State. The administration, argued Kennedy, should make human rights "the core of our foreign policy" by redefining them as "political rights". "Human rights --meaning political rights and civil liberties", he said, "conveys what is ultimately at issue in our contest with the Soviet bloc"¹⁸.

The strategy laid down the Kennedy memorandum provided more flexible standard of political in was now exempt from blame. State terrorism and crimes against the person could now be dismissed as natural consequences of rebellion as long as the appearance of political progress toward democracy was made. Thus, throughout the Cold War, the U.S. administration tried to justify the human rights violations of right-wing dictatorships. Kirkpatrick described the insurgents in EI Salvador as "revolutionaries trained, armed and advised by _Cuba". Another well-publicized example was Kirkpattick's insinuation that the American nurses who were murdered by Salvadoran security forces deserved

their take due to their alleged political sympathies. Moreover, she asserted "Revolutions in our lives are caused not by social injustice"¹⁹. The U.S. policy makers tried to portray human rights as fundamental political freedoms ---free speech, free press, rule of law, due process--in order to justify the right-wing human rights violations. The Assistant Secretary of State for human rights and humanitarian affairs under the Reagan administrations, Elliot Abrams took this line in an interview: that's the thing, you could make the argument that there are not many countries where there are gross and consistent human rights violations except the communist countries because they have the system itself. It is certainly a plausible way of reading the statute"²⁰

Another justification provided by U.S. administrations, for not condemning the human rights violations of the friendly regimes, has been that the object is "not to isolate them for their injustice and thereby render ourselves ineffective, but to use our influence to effect desirable: change. In such cases silent diplomacy is the tactic that is always used. The diplomacy, however, does not remain silent when a strong human rights policy will prove to be compatible with anti-communism. In Uganda, under Idi Amin, for example, because Ugandan dictator had committed the error not only of massacring his political opponents but also of forging a close -diplomatic relationship with Moscow. On the other hand President Mobutu of Zaire had not committed crimes on the scale of Amin but his human rights record was far from clean. However, from the beginning he was Washington's man. And whenever he showed the slightest hint of getting friends with Moscow, the United States would _-apply brakes" through (international Monetary Fund)

IMF. The IMF attempt to check his mismanagement of Zaire's economy was directed at keeping Zaire within the western sphere of influence; it did not constitute a threat that the West would withdraw support if the regime did not improve its human rights record ²¹

An important aspect of the selective human rights policy is the attempt not to criticise the equals. At the outset of the Carter administration, the human rights policy was pursued vigorously and zealously. The White House criticised the Soviet Union directly for its violation of human rights while at the same time asserting that this criticism should have no effect on the SALT negotiations. However, as soon as the administration and the State Department realised that critical public statements about the Soviet Union would prejudice the SALT talks, the United States toned its voice down. Never again was Soviet Union directly criticised by the United States, because of the realisation that other U.S. interests often take precedence over human rights issues.

The Soviets in Geneva [to negotiate SALT II] never even hinted at the Kremlin's resentment of the Carter human rights policy, and the Americans were equally careful not to echo their Government's criticism of Soviet human rights abuses. Unaware of this rule, a new comer to the U.S. team brought up the dissidents in an informal tete-a-tete with his Russian opposite number. When he reported the exchange later in a 'memeon', his superiors told him never again to mix business with displeasure ^{22,}

Same is true of The SU relations with China's gloomy human rights record, trade relations between these two countries are flourishing. In 1992 candidate Bill Clinton greatly criticized George Bush for granting China Most Favoured Nation (MFN) status and having a cozy relationship with that country. After coming into power, however, President Clinton has been following a similar policy. Not only has China been granted MFN status every separate human rights and trade issues in the future ²³. Thus, the U.S. adopts a different approach where financial and economic interests; are at stake and one thing is certain, that these interests would take precedence whenever they come into conflict with human rights.

One final point that needs to be made is that when promotion of human rights is defined in terms of promoting democracy, the United States approach to achieving that has been essentially Nationalist rather than Progressive in character. Rather than use the influence of U.S. foreign policy to encourage free, more open and more democratic societies throughout the developing world, the United States respond only to targets of opportunity, defined in terms of the potential effectiveness of the U.S. action. Thus, the U.S. has generally not pressured dictatorships to move toward democracy unless there has been (1) a high probability of success; and (2) a low probability that such pressure would result in bringing to power a new regime detrimental to U.S. interests. No matter which administration is in power, human rights concerns can never be its sole or even primacy consideration. Questions of the U.S. national interest, the maintaining of strategic relationships, and (the containment of Soviet power in past) have always been

on the top of the U.S. foreign policy agenda. The promotion of free markets and fostering of democratic institutions are in America's interest, but they are not absolute goals. When democratic institutions are manipulated by enemies of the United States, as in case of radical Islamists. In Algeria, the long-term U.S. interests must take precedence over the short-term ideal of enlarging democracy. The essential goal of foreign policy is ultimately national survival. Thus the crucial question of where human rights fit into American foreign policy remains troublesome. How can a commitment to human rights be reconciled with the overwhelming importance of strategic and geopolitical factor? The answer has already been provided the pattern is that of preferential treatment that enhances national security which, in turn, adds a bias to human rights diplomacy.

The U.S. administration has never hesitated to twist, through redefinition, the traditional meaning of human rights and to ignore violations by so called friendly regimes. Thus human rights often yield to these priorities in the U.S. foreign policy. The Carter administration had little to say about Iran, the repression of opponents in strategically important countries like South Korea, Philippines and many in South America has been treated very gingerly by Reagan and Bush administrations. Clinton administration has set human rights concerns aside in its relationship with India and China.²⁴

The essentially selective nature of human rights policy becomes visible when the United States supports the rights of Iraq's Kurds to self-determination, but never support the rights of Scots, for instance, to secede from an unwillingness. It can, therefore, be

concluded that the United States policy on important point that emerges from this analysis is that Americans support stress on human rights more strongly in principia than in practice. Finally, the American sense of self-interest has direct relevance to the U.S. policy on human rights. The U.S. interest always takes precedence over human rights concerns and is the major factor behind the inconsistent nature of the U.S. policy. A human rights policy applied selectively, however, dementedly loses its moral authority.

Pakistan is a good example of the difficulties each U.S. administration faces in reconciling strategic interests and human rights. In May of 1979 the United States Secretary of State told the sub-committee on Human Rights and International Organisations that the Carter Administration had decided to reduce or cut aid to any country on the basis of its human rights violations. Among the several countries mentioned by him was Pakistan, both for its human rights record and non-acceptance of the US. Non-proliferation policies. Seven months later the soviet forces invaded Afghanistan. The Carter administration rushed in with a military assistance programme, which completely ignored whatever restrictions were imposed on Pakistan. Human rights considerations were superseded by strategic interests. Subsequently, the Reagan administration greatly increased that military assistance program, despite documented reports that human rights, violations continued on a much larger scale than in previous years. This security assistance to Pakistan continued till the time the soviet forces remained in Afghanistan and Pakistan was regarded as one of the greatest friends and allies of the United States and human rights issue was never voiced. After the Soviet army withdrew from Afghanistan the flaws in Pakistan's human rights record began to

emerge once again and its nuclear policy and human rights violations were used as a pretext to cut down the military assistance that remained next to nothing.

The United States has also given priority to its strategic and economic interests vis-a-vis India over that of interest in human rights and fundamental freedoms. Since 1989, the uprising in Kashmir has generated a popular revolt. Apart from creating a volatile situation, this uprising has aggravated the problem of the human rights in the valley. Excessive human rights violations have been committed by the Indian security forces to crush the uprising. The Indian government provided legal cover to these violations of human rights by enforcing in Kashmir laws such as the Public Safety Act, the Disturbed Area Act, the Armed Forces Special Power Act, and Terrorist and Disruptive Activities Act. These legal en actions empowered the Indian security forces to detain and arrest any person without trial and search and shoot at random.²⁵

Therefore throughout 1993, the U.S. emphasised the need to improve the human rights situation in the valley, the reason being the coming into power of Democrats in the United States. Democrats have always tried to add a touch of idealism to foreign policy and human rights was one of the campaign slogans of President Clinton. Thus very vocal expressions of the right of self-determination for the Kashmiri people came from different high ranking U.S. officials. President Bill Clinton in his address to the IJ.N. General Assembly in September 1993"listed the conflict in Kashmir with other civil, ethnic and religious wars in the world". He said, "Bloody ethnic, religious and civil wars

rage from Angola, Caucasus to Kashmir". The most explicit reference to the human rights abuses in the valley came from the U.S. Assistant Secretary of State, Robin Raphel in October 1993. She dismissed the Indian justifications for human rights violations in these words, "making people disappear, encounter killings, extra judicial executions, death in custody, all this stuff, frankly, there is no excuse for". Challenging Kashmir's accession to India, she said, "we view Kashmir as a disputed of Accession as meaning that Kashmir is forever more an integral part of India".²⁶

In 1994, however, the United States decided to reverse its human rights policy on India. Pakistan tabled a resolution condemning human rights abuses in the valley at the 50th session of UNHRC in February 1994. The resolution also asked the Commission to send a fact-finding mission to Kashmir to ascertain the situation there. There was a lack of reference to human rights abuses in Kashmir in the U.S. delegate's speech at UNHRC who otherwise condemned many other countries for human rights violations. The U.S. decision to abstain from the proposed resolution left Pakistan with little choice but to withdraw it as China and Iran were also unwilling to support Pakistan. Thus U-turn in the U.S. policy on Kashmir reflected the shallowness of the U.S. commitment to objectives like human rights.

The above argument can be analyzed in the context of Indo-U.S. relations rather than within the framework of its policy on Kashmir. Till the time Soviet forces were in Afghanistan, Pakistan as a frontline state had become very important for the United

States. Otherwise, India as the most powerful country of the region has always been the first choice of the U.S. India, however, had Soviet Union as a long standing ally. With the disintegration of the Soviet Union, not only did the military co-operation between India and the U.S. increase but their economic ties also strengthened. The process gained momentum with the assumption of the office by the Indian Prime Minister Narasimha Rao. He not only launched an ambitious economic reforms programme but also encouraged foreign investment through a policy of economic liberalisation. Thus India emerged as a very attractive market for the U.S. investors and private companies.²⁷ However, the Clinton administration's stress on human rights and its acknowledgement of the disputed status of Kashmir touched Indian sensitivities. With strong reactions coming from New Delhi over Washington's pronouncements the former softened its stand on the issue. Reversing her previous statement, U.S. Assistant Secretary of State, Robin Raphel, while speaking at the Asian society in Washington, refused to acknowledge the uprising in Kashmir as an insurgency and avoided any mention of the right of self-determination of the people of Kashmir.²⁸ A new approach seems to have developed in the U.S. dealings with India, the bottom line of this approach is that issues like human rights must not be pushed to such an extent, in case of certain countries, that they should in any way prove detrimental to U.S. economic interests. Thus the United States does not follow the principle of even-handedness holding all governments to the same standards and responding with equal intensity to all situations where rights are being violated.

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Human Rights Violations in Jammu and Kashmir

This chapter would deal with the human rights violations in Jammu and Kashmir valleys. This chapter also discusses the attitude and stances of the U.S. government on human right violations in the valleys by the Indian military and pra-military forces. It would enable us to conclude this thesis.

The Kashmir valley, which includes all the major towns and villages along the Jehlum river to the north of the Srinagar to Handwara and south to Anantnag, has been at the center of the insurgency since 1989. It is predominantly Muslim and Kashmiri-speaking. Most of the major militant groups have political representation through the All parties Hurriyat Conference, based in Srinagar. Many of the groups continue to command popular support in Srinagar and throughout the valley. However their military capabilities have been severely undermined by the Indian government's use of counter militant militias made up of former guerrillas who have infiltrated the militant groups and have assassinated and informed on their former colleagues. As a result, military engagements between militant and Indian government forces generally take place in more remote areas outside of the towns and villages of the valley, and the groups' presence in the urban areas has been reduced.

Prominent militant leaders taken into custody were among those executed. In an incident that sparked protest throughout Kashmir, on April 20, 1998, security forces from the

Special Operations Group(SOG), a police counterinsurgency unit, detained S. Hamid, chairman of the Jammu and Kashmir People's League. The next day the authorities claimed to he had been killed in a shoot out. Relatives who witnessed the arrest, however, stated that he was dragged out to the porch of his house and shot.¹

Many detentions carried out by Indian security forces in Kashmir occur after "crackdowns"- cordon- and search operations during which all the men of the neighborhood or village are called to assemble for an identification parade in front of the hooded informers.



Identification parade in front of army men.

Those whom the informers point out are taken for torture and interrogation, and some are simply taken away and shot. In those cases, official in Kashmir routinely claim that the

detainee was killed in an “ encounter “ with the security forces, or was shot trying to escape.²

Since January 1990, Indian occupied Kashmir is in a state of siege. A battle of nerves and bullets is continuing between the Kashmiris and the Indian forces. The Indian army and the para-military forces have been equipped with extensive powers, which sanction and legalize state terrorism and oppression against the people’s movement for the right of self-determination. They can shoot, kill or arrest people at will and on the slightest provocation may raze down an entire locality or village with impunity. The district magistrate does not have the powers of an SHO.³

The excessive misuse of lethal forces is painfully reflected in repeated “search and cordon” operations and military crackdowns involving indiscriminate firing on civilians, massive extra-judicial killings, massacres, summary executions, fake encounters, mass rapes, arbitrary arrests, prolonged detention and inhuman torture of detainees. Looting, ransacking and large- scale burning of businesses and localities have become an essential part of such operations.

There continued to be significant human rights abuses, despite extensive constitutional and statutory safeguards. Many of these abuses are generated by intense social tensions, violent secessionist movements and the authorities' attempts to repress them, and deficient police methods and training. These problems are acute in Jammu and Kashmir,

where the judicial system has been disrupted by terrorist threats, by judicial tolerance of the Government's heavy handed antimilitant tactics, and by the refusal of security forces to obey court orders. Separatist insurgent violence in the northeastern states increased, along with reported incidents of security force abuses.

Serious human rights abuses include: Extrajudicial executions and other political killings and excessive use of force by security forces combating active insurgencies in Jammu and Kashmir; torture and rape by police and other agents of government, and deaths of suspects in police custody throughout the country; poor prison conditions; arbitrary arrest and incommunicado detention in Jammu and Kashmir; continued detention throughout the country of thousands arrested under special security legislation; lengthy pretrial detention; prolonged detention.

During 1998 India made some progress in resolving human rights problems. The Supreme Court's investigation of serious abuses in the Punjab in the early 1990's continues. Continuing International Committee of the Red Cross (ICRC) prison visits in Jammu and Kashmir demonstrated some government transparency on human rights problems. However, researchers for international human rights organizations like Amnesty International (AI) and Human Rights Watch (HRW) were not permitted to visit Jammu and Kashmir. The Government's signing of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was welcomed by human rights activists. However, its decision not to accept Articles 20, 21,

and 22 of the Convention means effectively that the U.N. Human Rights Commission will not be able to investigate allegations of torture in India. However, insurgency-related deaths were slightly higher than 1998, due largely to an increase in violent encounters in Kashmir. The proportion of civilian deaths increased slightly apparently due to militant efforts to disrupt the newly elected government in Jammu and Kashmir.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Political and Other Extrajudicial Killing

Political killings by government forces (including deaths in custody and faked encounter killings), progovernment countermilitants, and insurgents continued at a high level in the state of Jammu and Kashmir. Security forces offered bounties for wanted militants brought in dead or alive.

Security forces committed an estimated 100-200 extrajudicial killings of suspected militants in Jammu and Kashmir. Although well-documented evidence to corroborate cases and quantify trends is lacking, most observers believe that the number of killings attributed to regular Indian forces declined slightly from 1997. According to press reports and anecdotal accounts, those killed typically had been detained by security forces, and their bodies, bearing multiple bullet wounds and often marks of torture, were returned to relatives or were otherwise discovered the same day or a few days later. In early March,

for example, three leaders of the Hizbul Mujahadin militant group were arrested in Srinigar by the Special Operations Group of Jammu and Kashmir state police; they were later found dead. Although the arrest took place in the presence of eyewitnesses, police claimed that the killings occurred in an armed encounter. Non governmental organizations (NGO's) active in Jammu and Kashmir reported that the bodies of two youths taken into custody by the Special Operations Group on March 22 were found shortly thereafter in Bemina; the bodies bore the marks of torture and bullet wounds. On June 5, the bodies of three young men arrested by soldiers in Chanpora were later found dumped in a nearby village; in this case too, their bodies bore the marks of torture. Security forces claim that these killings, when acknowledged at all, occur in armed encounters with militants. The Indian National Human Rights Commission (NHRC) has directed that all deaths in encounters are immediately investigated by an independent agency, but members of the security forces are rarely held accountable for these killings. The NHRC itself may inquire into alleged human rights abuses by security forces in Jammu and Kashmir, but does not have the statutory power to investigate such allegations if it is not satisfied with the responses to its inquiries. Authorities have generally not reported so-called encounter deaths occurring in Jammu and Kashmir to the NHRC.

Security forces also held persons in incommunicado detention; on occasion, as in the 1996 case of human rights activist Jalil Andrabi, such missing persons were later found dead.

Impunity has been and remains a serious problem in Jammu and Kashmir. Security forces have committed thousands of serious human rights violations over the course of the conflict, including extrajudicial killings, disappearances, and torture.



An example of extrajudicial torture and killings in Kashmir

Yet, during the period January 1, 1990 to June 30, 1997, only ten members of the security forces were tried and sentenced to 10 or more years imprisonment for violations of human rights in Jammu and Kashmir and Punjab (separate figures for Jammu and Kashmir are not available.) Additional fourteen received sentences of between 1 and 10 years, and 73 received sentences of less than 1 year. During the same period, 42 members of the security forces were dismissed or compulsorily retired and 20 were reduced in rank or seniority following conviction on charges of human rights violations. Seventy-one members of the security forces who are alleged to have committed human rights violations are currently under investigation, according to the Ministry of Home Affairs. Scrutiny by the NHRC and international human rights organizations, when permitted, and

the persistence of individual magistrates have resulted in greater accountability of the security forces in Jammu and Kashmir over the years. However, the vast majority of violations by security forces have gone and continue to go uninvestigated and unpunished.

Killings and abductions of suspected militants and other persons by pro-government counter militants continued as a significant pattern in Jammu and Kashmir. Counter militants are former separatist militants who have surrendered to government forces but have retained their arms and paramilitary organization. Although precise numbers are unavailable, pro-government counter militants may have committed 100 to 200 extra-judicial killings in Jammu and Kashmir during of 1997. Human rights groups believed that the number was slightly lower than in 1996. Government agencies fund, exchange intelligence with, and direct operations of counter militants as part of the counterinsurgency effort. Counter militants are known to screen passersby at roadblocks and guard extensive areas of the Kashmir Valley from attacks by militants. In sponsoring and condoning counter militant activity, which takes place outside the legal system, the Government cannot avoid responsibility for killings, abductions, and other abuses committed by these irregulars. Perhaps as many as 3,000 continue to operate in Jammu and Kashmir, particularly in the countryside, outside major towns. During the year, the Government took steps to organize Kashmiri counter-militants as a battalion in the paramilitary forces as a means of bringing them under enhanced control and military discipline.

According to the Union Home Ministry, 918 civilians, 189 members of the security forces, and 1,114 militants were killed in Jammu and Kashmir during the period January 1 to December 15. In 1996 the totals were 1,214 civilians, 94 security force personnel and 1,271 militants, according to reliable press reports. NGO and other sources agree that civilian deaths attributed to security forces have decreased. Press reports indicate that the increase in civilian deaths is attributable to militant efforts to disrupt the new government.⁴

Some case studies of Extrajudicial Executions

Ghulam Hassan Ganie

At about midnight on September 14-15, 1998, Ghulam Hassan Ganie, twenty-eight, was arrested in his house in Patel Bagh, Pampore, by a combined force of army and Special Task Force. Two other residents of the area, Abderrashid Bhat and Mohamed Jabbar Wani, were also arrested. L., who witnessed the arrest, told Human Rights Watch that the next day, September 15, the relatives went to the local police station of Pampore to report the arrests. In the evening, the state police administration publicly announced the arrest of the three men as suspected militants. Early on Monday, September 16, a rumor spread in the village that one of the detainees had been killed during an encounter and that his body could be recovered from the Srinagar police station, eighteen kilometers away. At 1:00 p.m. that day, the police of Shergali, the main local police station of Civil Lines,

Srinagar, told the family that Ganie's body had been found near the station. The Shregali police handed the body over to the Pampore police, who handed it over to the family. L., who saw the body, stated that Ganie had a bloody scar on the right cheek and a depressed chest. There were no other marks, and no bullet wounds. In the official police bulletin of that evening, nothing was said about the case.

Ganie had previously been arrested in 1996 because of his involvement with a militant group, and was jailed for two years. He was released in April 1998. On September 16-17, the people in the village protested the arrests and killing, and because the village is located on the main highway, they managed to block traffic. Villagers stated that as a result of the public pressure, the two other men were released at 7:00 p.m. on September 17 by the Jammu and Kashmir Light Infantry, an army unit whose headquarters is situated behind the Shergali police station. According to L., the two men have been too frightened to talk about the incident. At the time of Human Rights Watch interview, the family had received no explanation about Ganie's killing.

Ali Mohamed Bhatt

Ali Mohamed Bhatt was arrested in his home in Shoragrera Mohalla, Nawab Bazar, Srinagar on August 8, 1998 and executed that night. Aisha Bhatt, his wife, told Human Rights Watch that two men who were staying in the house at the time were also arrested and killed; the witness did not know their names. At 11:30 p.m. on August 8, a police team headed by the station house officer (SHO) of the police station of Mahraj Gunj,

Srinagar, raided the house. Bhatt and the two men were taken away. Aisha Bhatt and their three children were also taken that night and held in the police station for three days. When she was released she learned that her husband and the two other men were dead and that the bodies of the three men had been handed over to relatives for burial on the evening of August 9. After the killings, the Jammu and Kashmir police chief issued a press statement announcing that all three men had been killed in an encounter. Because the authorities claim that the house had been used by militants, Aisha Bhatt was unable to reclaim possession of it.⁵

Mohamed Amin

A resident of Badran, Badgam, described the summary execution of Mohamed Amin.⁶ Amin had been a member of the Hizb-ul Mujahedin since 1993. In the fall of 1995 he was arrested by the army in Tangmarg, Baramulla. He was held at the army camp for five days, and then they moved him to Zainakoot army camp on the outskirts of Srinagar. His family was allowed to meet him there about fifteen days after this arrest. He had been badly beaten and had been given electric shocks. He had been given the roller treatment and had been forced to drink his own urine. He was released after being held for one month. Over the next year, Amin was arrested and tortured eight times; each time he was detained in the morning and released in the evening. On February 20, 1997 he was called to the army camp and detained there but was released the same day. W. described what happened next:

The next day, first a civilian man came to see whether Amin was home. After they were assured that he was, an army unit headed by Major Shekawar came at 9:30 p.m. and took him to Aripathen camp, which is the military camp of our area. At midnight they returned with him and told him to show them where the weapons were buried. But there were no weapons, so they returned to the camp. At 2:00 a.m. they came back again, but he still did not produce any weapons, so then they took his brother, Abdurrashid, and beat him with their guns and sticks and kicked him with their boots. Then they took Mohamed Amin to another house in the village and started beating him there.⁷

The army stayed in the village till noon the next day and then went back to the army camp with Amin. The next morning, February 23, at 7:00 a.m., residents of the village found Amin's body tied to a tree on the outskirts of the village. W. stated:

I immediately went there. His body was riddled with bullets. The bone of his forehead protruded, one eye was out, all the fingers of his left hand were missing, and there was a bullet wound also in his left side. There were holes in his *pheran* [cape]. The army came shortly thereafter and took the body to the local police station where they filed an FIR claiming that Amin was a released militant who had been re-arrested to lead the army to an arms cache, and that he had done so. On returning to the camp, the FIR said, Amin tried to take one of those weapons and fire at the soldiers, upon which they killed him. I tried to fill FIR, but the

police said there already was a FIR. I tried to get a copy of it for the court, but the police refused to give me one.⁸

b. Disappearance

According to human rights groups, unacknowledged, incommunicado detention of suspected militants continued in Jammu and Kashmir although the practice again decreased compared with previous years. Between January and June, 1997 new writs of habeas corpus were filed with the Jammu and Kashmir High Court and the Supreme Court, most by family members of disappeared persons in Jammu and Kashmir. The Government acknowledged that, as of August 1998, it held about 1,600 persons in connection with the insurgency in 5 detention centers in Jammu and Kashmir, compared with 2,070 persons acknowledged as held in 1995. Of these 1,298 were held under the Public Safety Act and 772 under other laws, including the Terrorist and Disruptive Activities Act (TADA). Although the Government allowed the TADA to lapse in 1995, several hundred persons remained in detention awaiting prosecution under the law. Several thousand others are held in short-term confinement in transit and interrogation centers.⁹

Human rights groups maintain that as many as 3,000 more are held by the military and paramilitary forces in long-term unacknowledged detention in interrogation centers and transit camps in Jammu and Kashmir nominally intended for only short-term

confinement. Jammu and Kashmir courts currently have a backlog of more than 600 pending habeas corpus cases filed by family members of those who are missing, according to credible human rights groups. The U.N. Special Rapporteur on Torture reported that more than 15,000 habeas corpus petitions have been filed in India since 1990, "but that in the vast majority of these cases the authorities had not responded to the petitions." In one prominent case in Jammu and Kashmir, the Government responded to the U.N. Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions stating that human rights activist Jalil Andrabi was not arrested by security forces, as alleged by human rights groups, but was abducted by "unidentified armed persons." Andrabi was last seen alive in the presence of countermilitants and members of the security forces on March 8, 1996 in Srinagar. Despite the Government's statement, the army in February 1996 identified to a Srinagar court a major with a temporary commission as the individual primarily responsible for Andrabi's death. Andrabi's body was dumped in the Jhelum River, allegedly by security forces. His case is also the subject of inquiry by the NHRC, and there were no significant developments in the case by year's end.¹⁰

The Government maintains that screening committees run by the state government provide information about detainees to their families. However, other sources indicate that families are able to confirm the detention of their relatives only by bribing prison guards. A program of prison visits by the ICRC, which began in October 1995, is designed in part to help assure communications between detainees and their families. Between July 1996 and April 1997, the ICRC visited 3,249 detainees in Jammu and

Kashmir. All acknowledged detention centers in Jammu and Kashmir and Kashmiri detainees elsewhere in the country have been visited. The ICRC is not authorized access to interrogation centers or transit centers.

Militants in Jammu and Kashmir and the Northeast continued to use kidnappings to sow terror, seek the release of detained comrades, and extort funds. According to the Government, terrorists in Jammu and Kashmir kidnaped 422 persons during 1998, of whom 181 were killed by their captors, 82 were released, and 158 remained unaccounted for. The July 1995 kidnaping of American, British, German, and Norwegian nationals by terrorists remains unresolved. The Norwegian captive was beheaded in August 1995. A captured terrorist stated that the remaining hostages--one American, two Britons, and a German--were murdered by their captors in December 1995. There has not been a verifiable contact with the hostages for more than 2 years.¹¹

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits torture, and confessions extracted by force are generally inadmissible in court. Nevertheless, torture is common throughout the state and authorities often use torture during interrogations. In other instances, they torture detainees to extort money and sometimes as summary punishment.

On October 14, 1998 the Government signed the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the

decision to accede was welcomed by human rights organizations. However, the Government's decision not to accept Articles 20, 21, and 22 of the Convention means effectively that the U.N. Human Rights Commission will not be able to investigate allegations of torture in India.¹²

In 1997 the U.N. Special Rapporteur on Torture reported that torture was practiced systematically by the security forces against persons in Jammu and Kashmir "in order to coerce them to confess to militant activity, to reveal information about suspected militants, or to inflict punishment for suspected support or sympathy with militants." According to the Rapporteur, "on no occasion had information been made public regarding instances of action taken against security force personnel in Jammu and Kashmir for acts of torture."

The U.N. Special Rapporteur on Extrajudicial Executions received responses from the Government to several inquiries. In the case of Purushottam Kumar and Manoj Kumar, who reportedly died in police custody as a result of torture, the Government stated that four police officers had been found guilty and that further investigations by the state police were under way. The Government denied wrongdoing by the police in several other cases involving allegations of death from torture while in police custody, telling the Rapporteur that those in question had died of cardiac arrest or other illness, or by mishap during altercations with police. The Special Rapporteur on Torture noted that methods of torture included beating, rape, crushing the leg muscles with a wooden roller, burning

with heated objects, and electric shocks. Because many alleged torture victims die in custody, and others are afraid to speak out, there are few firsthand accounts, although the marks of torture have often been found on the bodies of deceased detainees. The U.N. Special Rapporteurs on Torture and on Extrajudicial Killings renewed their requests to visit Jammu and Kashmir to the Government in 1997, but they were not permitted to do so.¹³

The NHRC has identified torture and deaths in detention as one of its priority concerns. Between April 1996 and March 1997, 888 cases of custodial death were reported to the NHRC, including 188 deaths in police custody. The 700 deaths in judicial custody, occurring in a prison population of approximately 155,000, many of whom are held for years, include a large proportion of deaths from natural causes, in some cases aggravated by poor conditions in prisons. Deaths in police custody, which typically occur within hours or days of initial apprehension, more clearly imply violent abuse. The NHRC has no authority to investigate abuses by security forces directly, and security forces in Jammu and Kashmir and the Northeast are not required to report custodial deaths to the Commission.

As a result of NHRC investigations during the fiscal year 1998, 22 police personnel were prosecuted during the fiscal year and 79 were suspended, most in both cases due to involvement in custodial abuse. Charges against police prosecuted for custodial abuse include murder.

d. Arbitrary Arrest, Detention, or Exile

The Government implemented during the early 1980's a variety of special security laws intended to help law enforcement authorities fight separatist insurgency. There were credible reports of widespread arbitrary arrest and detention under these laws.

In reply to a question in the Jammu and Kashmir state's assembly in May, the Government reported that 15,826 people were detained under TADA in the state between 1990 and 1995. TADA courts use abridged procedures. For example, defense counsel was not permitted to see witnesses for the prosecution, who are kept behind screens while testifying in court. Also, confessions extracted under duress are permitted in evidence.

The Jammu and Kashmir Public Safety Act (PSA) of 1978 ¹⁴

allow the authorities detain a suspect without charge or trial as long as 1 year on loosely defined security grounds. The state government must confirm the detention order, which is reviewed by an advisory board of three high court judges within 7 weeks of arrest. PSA detainees are permitted visits by family members and lawyers and must be informed of the grounds for detention within 5 days (10 to 15 days in exceptional circumstances). Human rights groups allege that preventive detention can be ordered and extended under the act purely on the opinion of the detaining authority. Such a subjective decision cannot be overturned by any court.¹⁵¹⁴

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e. Denial of Fair Public Trial

In Jammu and Kashmir, the judicial system barely functions due to threats by militants against judges, witnesses, and their family members, because of judicial tolerance of the Government's heavy-handed anti militant actions, and the frequent refusal by security forces to obey court orders. Courts there are not willing to hear cases involving terrorist crimes or fail to act expeditiously on habeas corpus cases, if they act at all. As a result, there have been no convictions of alleged terrorists in Jammu and Kashmir since before 1994, even though some militants have been in detention for years. There were no reports of political prisoners.¹⁶

f. Arbitrary Interference With Privacy, Family, Home, or Correspondence

The police must obtain warrants for searches and seizures. In a criminal investigation, the police may conduct searches without warrants to avoid undue delay, but they must justify the searches in writing to the nearest magistrate with jurisdiction over the offense. The authorities in Jammu and Kashmir have special powers to search and arrest without a warrant.¹⁷

The Indian Telegraph Act authorizes the surveillance of communications, including monitoring telephone conversations and intercepting personal mail, in case of public emergency or "in the interest of the public safety or tranquillity." These powers have been used by every state government. The Union Government also uses the powers of the Indian Telegraph Act to tap phones and open mail.

g. Use of Excessive Force and Violations of Humanitarian Law In Internal Conflicts

Government forces continue to commit serious violations of humanitarian law in the disputed state of Jammu and Kashmir. Between 350,000 and 400,000 (but according to Pakistan sources the number of troops is 700,000) army and paramilitary forces are deployed in Jammu and Kashmir. The Muslim majority population in the Kashmir Valley suffers from the repressive tactics of the security forces. Under the Jammu and Kashmir Disturbed Areas Act, and the Armed Forces (Jammu and Kashmir) Special Powers Act,

both passed in July 1990, security forces personnel have extraordinary powers, including authority to shoot suspected lawbreakers and those disturbing the peace, and to destroy structures suspected of harboring militants or arms.¹⁸

Civilian deaths caused by security forces diminished for the fourth consecutive year in Jammu and Kashmir. This decrease apparently is due to press scrutiny and public criticism of abuses in previous years, increased training of military and paramilitary forces in humanitarian law, and greater sensitivity of commanders to rule of law issues. The improvement has taken the form of increased discipline and care in avoiding collateral civilian injuries and deaths (i.e., deaths in crossfire). The Union Home Ministry reported that 84 such deaths had occurred in Jammu and Kashmir in 1996-97, compared with 171 the previous reporting period. The security forces have not abandoned the abduction and extra judicial execution of suspected militants, nor accepted accountability for these abuses. However, the inclination of many commanders to distance their units from such practices has led to reduced participation in them and a transfer of some of such actions to counter militants.

In April the alleged rape by security forces of nine women in the village of Wawoosa, near Srinagar, led to protest demonstrations. There is no evidence that charges have been brought in Wawoosa. Kashmiris asserted that the incident was part of a larger pattern of rape committed by army personnel in the valley. In a separate incident in May, four members of the Rashtriya

Rifles were sentenced by military authorities to 10 years in prison for the rape of two women in south Kashmir.¹⁹



An example of rape and killing by army men.

After having the above mentioned long discussion on human rights violations in Jammu and Kashmir , it would be liked to commented that the US who took serious action in Middle East at the name of Human Rights but inspite of deadly human rights in these vales do not make it to a serious action to curb this situation – actually in the absence of Soviet factor in South Asia have made it a low priority area for the American Foreign Policy. And the U.S. faced a paradoxical situation of how to act as a “neutral player”, when both principal actors involved in the Kashmir dispute(India & Pakistan) continue to view its(the US) relations with one coming at the expense of the other.²⁰

The US has been following the policy of equi-distant with India and Pakistan during the decade of 1990's – and has adopted a lukewarm position on Kashmir issue. Actually, in 1990's the US foreign policy on Kashmir has focussed on the containment of the conflict

and the prevention of war between India and Pakistan without altering the regional status quo that is why there always remain a gap between the US official statements and its operative policy when analysed in depth.²¹

On the excessive human rights violations in the Kashmir vale, the US (diplomats and high ranking governments officials) has several time expressed its concern, committed by the Indian security forces to quell the Kashmir uprising. But the US has refrained to pressurize India (that is, economically) in more solid and subtle terms.²² The Indian Human Rights violation in the vale of Kashmir cannot even effect the fast growing economic interaction between the US and India.

The US pressure on the India has been essentially diplomatic, recognizing the “disputed” nature of the Kashmir and the Kashmiris as the essential party of third party for resolving the dispute. The US govt. on many instances has asked Indian Govt. to improve its human rights record in the valley. However, to sound more justified (and in attempt not to upset New Delhi) the US States annual (1998) report observes, the Kashmiris (Freedom movement groups) have also committed massive human rights violations in the valley. The report refrains to term Kashmiris action as counter productive of the Indian security forces actions in the valleu.²³

Equal to this, the US diplomatic pressure on New Delhi has continued. The visit of Interim Director of the South Asian Bureau at the State Department, John Mallot to the New Delhi (June, 1993) is dubbed by many analysts as, the US diplomatic attempt to persuade India, "to clean up its acts in Kashmir by putting an end to the human rights abuses there"²⁴.

In the same way, Ms. R. Raphel severely criticized Indian justification for Human Rights violation excesses²⁵ by maintaining that, "making people disappear, encounter killing, extrajudicial executions, death in custody, all this stuff..... frankly, there is no excuse."²⁶

The legal covers to the human rights violations carried by the Indian Security forces were provided by the Indian govt under the Public Safety Act, the Disturbed Areas Act, the Armed Forces Special Power Act, and Terrorstic and Disruptive Activities Act.²⁷ In 1998, 35000-40000 people were killed in the fightings.²⁸

The analysis of the situation infers that the US despite showing concern on the Indian Human Rights violations in Kashmir is not in the favour of internationalizing Kasshmiri's cause. That is the reason, the US has never supported Pakistan's attempts to raise the issue at the international forums such as , UN and SAARC in the 1990's. And indirectly

lead to the nuclearization of this region. The US always called for a bilateral talks, but has never used its “string” (especially on India) to agree to return to the negotiating table.²⁹

In early 1996, the US president Clinton observed that, the US has asked the Indian officials in New Delhi, “..... to work to reduce human rights violations , allow greater access by international organisations and encourage political dialogue in Kashmir that would lead to the restoration of a credible democratic process”³⁰.

The fluctuation in the US government’s criticism of the human rights abuses by the Indians have been inferred that the US economic interest with India(in the 1990s) overshadow its criticism of the New Delhi’s Iron-hand Kashmir strategy.³¹ As India coming up as one of the “ top ten market for the US.³² The application of the Human Rights principle (as perceived by the Clinton administration) in the Kashmir theatre loses its real significance.

Another argument could be that in the post cold war era the south Asian region has since no “strategic threat”(like the protection of the oil- in the case of the Kuwait in 1990) is at stake in the Kashmir, thus the US foreign policy fluctuates from the sharp criticism of the Indian government to an attempt to mollify New Delhi. This attitude is evident in the

Ms. R Raphel statements in Washington, in 1996 regarding the elections in the Kashmir. During 1999, tensions between India and Pakistan dominated by the Kashmir issue. The US welcomed the Indo- Pak summit in February 1998, but while crediting India with showing “restraint” in its handling of the Kargil crisis, the super power failed to use the opportunity to press India to curb human rights abuses in the state. The Clinton Administration dropped its objections to a US \$ 150 million World Bank loan request by India for a power project.³³

From the above discussion, it can be concluded that the US human right policy is fluctuating in nature and it is used as tool to serve its (the US) own national and international interests. The US government has not adopted concerned and initiative human rights policy on the part of Kashmir issue as contrast to its Peace initiatives in the Middle East. The level of the US Presidential interest and involvement in seeking the resolution of the Kashmir issue is virtually missing when compared to the Middle East and so on.

In short, the US Kashmir policy in the 1990s is a true reflection of the National Interest Principle-that is , Nations fight for their interests only and will not intervene(even if, gross Human Rights violations occur in other parts of the world) unless their stakes are directly threatened.

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Summary and Conclusion

The thesis started by tracing the origin and evolution of human rights in United States foreign policy. The study categorized the evolution of human rights aspect of the US foreign policy in to three parts: the nineteenth century; the middle years: and the late twentieth century. Until the mid nineteenth century human rights did not achieve prominence in U.S. foreign policy as the prevalent view among the American leaders was that the influence of American values should be exerted through example, not overt action. It was in the late nineteenth century and early twentieth century that idealism and idealism began to assume a more prominent place in the United States foreign policy. The element of idealism, however, was pushed into background as American public was mainly concerned with issues like disarmament, debt and reparations rather than human rights. An attempt has been made to analyze the human rights policies of different U.S. administrations during different periods and the degree of importance given to human rights by each of them. While the evolution of human rights in U.S. foreign policy achieved a setback during the Nixon - Kissinger period, they acquired great prominence during Jimmy Carter's presidency. This was due to the realization that the most realistic foreign policy is actually the one that is founded on idealism. During Carter and Bush administrations human rights as a foreign policy concern once again retreated into back ground. With the coming into power of the Democratic regime of president Clinton, a new surge of positive emphasis on human rights commenced. Human Rights, however,

are not allowed to impede economic and strategic ties as illustrated by United States relations with China.

The thesis has also tried to study in detail the issue of national interest and the inconsistency of the policy resulting from its pursuit. It states that the primary targets of the United States human rights policy are small and weak states which are of no or little strategic importance for the United States and hence in no position to stand up to the United States pressure. During the cold war era, human rights were related to the East West conflict. In this period, anti- communism dominated the human rights policies of United States administrations. Consequently the policy was not evenhanded and credible. The U.S. human rights policy was directed at the left wing countries that came to be regarded as the greatest violators of human rights and fundamental freedoms. Similar and even more volatile human rights violations by the friends and allies of the United States were greatly overlooked. In this regard, it has been attempted to analyze the distinction between the ' traditional authoritarian' regimes that are seen as friendly towards the United States and totalitarian regime seen as hostile. The politics of invisibility and super visibility are also analyzed whereby the United States administrations manipulate the human rights issue in such a way that human rights violations of some countries are greatly enhanced by the media while others are completely blacked out.

Then, finally, the evolution and emergence of Kashmir issue and the United States attitude toward it has been discussed in detail.

In historical reality the Kashmir dispute is a product of imperialism in two vital respects. First, the territory of Kashmir was handed over to Gulab Singh by the imperial power, Great Britain, through a sale deed in 1846. Second, the successor of this feudal chief, Maharaja Hari Singh was enabled by the same imperial power to prevent the Kashmir's natural accessions to Pakistan. In the triangular collusion between the receding colonial power, the successor authority in India and the autocratic Kashmir ruler lies the root cause of the Kashmir dispute. A nascent Pakistan like any nation in its birth pangs lacked the necessary means to check such a development and resolve an issue, which has been an incessant challenge for peace and prosperity in South Asia.

The Kashmir impasse between Pakistan and India remains in 1999 as it was after the cease-fire in Kashmir in January 1949. Each nation is convinced of the rightness of its claim to the state. Pakistan for historical, geographical, economic, strategic and ideological reasons; India for emotional, strategic and ideological reasons.

Today Pakistan has the closest ethnic, religious and family links with Kashmir. Pakistan also provides natural and dependable means of communications between Kashmir and the world outside. Geographically the state is a continuation of West Pakistan on three sides.

The Kashmir rivers constitute the life-line of Pakistan economy. The Indus, the Chenab and the Jhelum have their fountainheads in Kashmir and flow from the state into the plains of Pakistan making the whole area to look like a single unit.

The geo-political setting of Kashmir makes it an area of great strategic importance in the sub continent. Having common borders with five different countries and contiguous with Pakistan on three sides. Kashmir's strategic significance for Pakistan can hardly be over – emphasised the occupation of Wakhan corridor by the Russian troops in the wake of Russian intrusion in Afghanistan has enhanced the state's strategic significance for Pakistan. The cultural connection between the Muslims and Kashmir, and those of Pakistan are so close as to make them virtually identical.

There is ideological factor binding Kashmir with Pakistan. Pakistan observed that if two nation theory is observed, D.F. Karaka, “ has a grain of truth then Kashmir is bound to be the part of Pakistan”.

To Indians thought for different reasons, Kashmir held great historical and emotional importance. As the homeland of ancient gods and birthplace of their beloved Nehru, Kashmir's possession to Pakistan appeared unthinkable to multitudes of Hindus. About its strategic importance Ghandi once said, “ greatest strategic value, perhaps, in all India”. It is perceived that if India joined the Indian dominion, “Pakistan would be completely encircled. Thus with Kashmir in her possession, India would gain a

commanding position against Pakistan. The presence of China in Tibet-Ladakh border gives an added note of significance to these Indian considerations. Besides, Kashmir in view of the Indian leaders represents a test of India's success as a secular state in which a pluralistic society can flourish.

For these reasons India- Pakistan differ fundamentally on the permanent status and the future disposition of the state. Pakistan wants a universal and prompt plebiscite under the supervision of UN with no provision for partition. India stressing the, "illegality" of Pakistani position in Kashmir and on occupation of the major and better part of the state declares Kashmir as a part of the Indian Union. It, no more, recognizes its earlier commitments on Kashmir Pakistan's foreign policy has, therefore, been continuously influenced by its struggle with India for an equitable settlement of the Kashmir dispute, to which both Pakistan and India have agreed to abide by the result of a plebiscite conducted under UN supervision.

Indian obduracy over the settlement of this issue and the general security threat arising from India forced Pakistan to look for a power or group of powers which would guarantee its existence as a sovereign state and back it in its any dispute, especially Kashmir with India. Even in late forties and early fifties when Pakistan pursued non-aligned foreign policy, it somehow ardently desired and valued US support on the Kashmir dispute. In this respect the Indian objective was to isolate Pakistan and deprive it from any possible moral, material and diplomatic support within UN or from without.

Kashmir being located in the extreme north of the sub-continent and its close proximity of the USSR and People Republic of China has its strategic importance for the U.S. Even after the perfection of missile system by the super-powers the strategic significance of Kashmir, though somewhat lessened, could not be ignored. Yet when the Kashmir dispute erupted between India and Pakistan the American administration tried to remain uninvolved. The United Kingdom, once a great imperial power, was no more in position to effectively influence such situation. It, therefore, desired and made efforts to see that the US got interested and came forward to deal such developments on the chessboard of international politics. The US has its own geo-strategic interest in this region during the cold war and post cold war period, in order to serve these interests it has a fluctuating foreign policy toward this region. That is the reason, there always remains gap in its official statements on Kashmir and its operative policy when analysed in depth.

As a starting point of the analysis, the US post cold war Kashmir policy as enunciated in the official statements, can be summed up as follows:

1. The whole of the former princely state of Jammu and Kashmir remains a disputed territory and no election will change that status;
2. It must be resolved through a peaceful dialogue between India and Pakistan;
3. Kashmiris are essential third party to this dispute;

4. Indian authorities should work to curb human rights violations in the valley and Pakistan should cease material support for the Kashmiris;
5. And finally , it is India, Pakistan AND Kashmiris who will determine and negotiate the resolution of the Kashmir issue.

Actually in the absence of Soviet factor in South Asia have made it a low priority area for the American Foreign Policy. And the U.S. faced a paradoxical situation of how to act as a “neutral player”, when both principal actors involved in the Kashmir dispute(India & Pakistan) continue to view its(the US) relations with one coming at the expense of the other.

The US has been following the policy of equi-distant with India and Pakistan during the decade of 1990's – and has adopted a lukewarm position on Kashmir issue. Actually, in 1990's the US foreign policy on Kashmir has focussed on the containment of the conflict and the prevention of war between India and Pakistan without altering the regional status quo that is why there always remain a gap between the US official statements and its operative policy when analysed in depth.

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In short, the US Kashmir policy in the 1990s is a true reflection of the National Interest Principle—that is, Nations fight for their interests only and will not intervene (even if, gross Human Rights violations occur in other parts of the world) unless their stakes are directly threatened.

The central argument of this thesis is that

The Pakistani disenchantment with the Pak-US alliance was by no means a unique case of partnership besieged with conflicts. All such associations are subject to erosion. Alliances such as Pak-US alliances based on incongruent objectives are vulnerable to heavy friction and early disintegration. Moreover an analysis of this alliance suggests that in an alliance involving unequal members, the stronger power will probably determine the strategy of alliance. This means that the stronger ally's policies and interests will prevail even to the extent that the vital interests of the weaker ally be sacrificed. This event is not new in history. The world has often witnessed nations acting not out of moral imperative but of expediency and a desire for self-aggrandizement. Machiavelli, perhaps, spoke wisely when he warned weak princes against alliances with strong ones. In case of Pakistani predicament in Kashmir. Finland president's recently [1983] quoted

Machiavellian advice to small states is quite relevant. He said: "small states should ensure that their friends are nearby and that their enemies are as far away as possible."

The analysis of the discussion infers that the U.S. foreign policy on Human Rights fluctuates in accordance to its economic and geo-strategic interests. It also highlights the underlie reasons of the U.S. foreign policy's fluctuation on Kashmir issue is that actually the United States did not want to annoy both the countries (Pakistan and India), Pakistan as being its ally and India being the only power of South Asia.

The U.S. has always given an edge to India on Pakistan; firstly, because it is the tenth biggest market of the U.S. produces. Secondly, after the disintegration of the USSR, according the U.S. definition of enemy, Muslims are taken as a threat to the U.S. system. So the U.S. does not want to support human rights issue in the areas which as a result enhance the strength of Muslims. Lastly, India is considered the potential candidate for the 'China Containment'.

Due to all above mentioned economic and geo-political interests, the U.S administration never took serious action India, inspite of grave human rights violations in the Kashmir valley by the Indian military and para - military forces. In the end, it could be rightly commented that the U.S. human rights policy is not actually evenhanded. As it fluctuates in accordance to its economic and geo-political interests that is why in all governments where human rights are being violated, do not get same standard with equal intensity response from the super power.

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