



KASHMIRI PANDIT SANGARASH SAMITI

Sathu Barbar Shah, Srinagar, Kashmir (J&K) – 190001

e-mail: kpss.kashmir@gmail.com

PRESS RELEASE/ OPEN MEMORANDUM

26.07.2008

LEGAL STATUS OF KASHMIR VIZ-A-VIZ INDIA, PAKISTAN AND UN SECURITY COUNCIL

(No need to kill innocent people of the Jammu and Kashmir State, if the citizens of the State understand and plead the case legally to stop the hypocrisy of the vested interest political leaders in the sub-continent)

It was very unfortunate that the State of Jammu and Kashmir was raided by Pakistani renegades at a time when British India got freedom and thus divided into two dominions i.e. India and Pakistan, compelling Maharaja to leave and accede to Union of India, which created a confusion in the minds of common citizens of the State as also in the international forums to understand the real issue of the State. This confusion was worsened by factors viz:-

1. Accession by Maharaja to Union of India.
2. Pandit Jawahir Lal Nehru taking the issue in the United Nations Security Council.
3. The replies / stand taken by Pakistan
4. Occupation of part of territory of Jammu and Kashmir by Pakistan in the name of Azad Kashmir.
5. Occupation of part of territory of Jammu and Kashmir by India under the garb of so call accession.
6. Stand Still Agreement.

Falling back upon factor –



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1. The first legal question is whether Indian Independence Act 1947 under which two dominions were created and British Indian Raja's and Rulers were given the option to accede to either dominion, was at all applicable to Jammu and Kashmir as a Nation. When if it was applicable, then under section 7(b) Maharaja had no right to accede either to India or to Pakistan, because of cancellation of treaty of Amritsar under which he got the right to become Maharaja.
2. The second factor when pursuant to the accession the then Governor General of Free India Lord Mount Batten wrote a letter in the capacity of Governor General that the accession has to be put to referendum (also called as referendum – I) by the people of the Jammu and Kashmir Nation, when peace prevails, as Pakistani renegades made the Nation as their battle field, Pandit Nehru took the matter to the United Nations Security Council to deprive the citizens of Jammu and Kashmir Nation of their right to self determination in respect of accession to India or Independence.
3. The third factor is, Pakistan nowhere in the proceedings before United Security Council pleaded the cause of Jammu and Kashmir as Nation but pleaded its own interest. Pakistan in its reply did not challenge the Maharaja Hari Singh's competence to accede to Union of India, instead demanded the territory on the basis of religion to the part of Pakistan instead of India and not as Independent Jammu and Kashmir Nation, thus the



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legality of accession. Had Pakistan challenged the legality of accession then and only then, United Security Council was bound under United Nations Charter 25 and 36 to recommend the case to the determination of legal issue by the International Court of Justice. Since the legality of the issue was not under challenge and the Governor General of Free India has opined referendum to the people of Jammu and Kashmir and nobody pleaded for the common and innocent citizens of Jammu and Kashmir Nation, therefore, referendum to the people of Jammu and Kashmir Nation was construed a mutual decision but not limited to the fact of determination of instrument of accession but for an alternative i.e. accession to India or Pakistan, called in common practice the right of self determination, thus we confused people plead the case of Pakistan or India and have forgotten in the process – our own case of ratification or nullification of instrument of accession with India.

4. Another factor is occupation of the parts by two countries. Pakistan occupied one part and called it “Azad Jammu and Kashmir” but gave it Interim Constitution under the dictates of Pakistan while as if it was liberated part of Jammu and Kashmir Nation, it ought to have maintained for its administration the Constitution of Jammu and Kashmir Act, 1939, contrary to it, this part carried with itself the Constitution of Jammu and Kashmir Act, 1939 but amended even its structure, the features of Nation, without required majority and till date poor people have not come to realize the hypocrisies of



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its leaders. Pakistan attempted of North Frontier Boarders of so called Azad Jammu and Kashmir but thanks to Justice Malik of Azad Jammu and Kashmir High Court who struck it down. India at the same time claiming the accession final when it has never been ratified and even the Constituent Assembly could not do it for the reason of vacant seats of so called Azad Jammu and Kashmir, never permitted to be filled up, though same can legally be filled up because the so called International Line of Control dividing the Jammu and Kashmir Nation into two can never be called a boarder even in the light of the Constitutionally provided vacancy of legislature assembly seats by this part of the Constitution because International decision with respect to this fact has to be in consonance with the local laws if not altered or amended. The LOC is only an Abates (Palyaar) which cannot prevent a legal process of one party rule here and there in that part of Jammu and Kashmir Nation. But alas our leaders are sleeping and Pakistan is friend only of its own cause as compared to the cause of common and innocent citizens of Jammu and Kashmir Nation.

5. Another factor of Stand Still Agreement is one more confusion. If the raiders were Kashmiri's, why did the two armies enter into Stand Still Agreement? It the helpers leave the people, to whom they claim to help, to solve their problem, the problem will be itself over and no more International dispute. But we are more loyal to our so called friend's and helpers than to our cause



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perhaps for the personal economic compulsions but on the contrary our friends are not loyal to us.

KPSS requests and appeals the citizens of the Jammu and Kashmir State, to come forward and get united so that 60 years old dispute could be solved in a legal and peaceful way; so that no more blood of innocents is split on the roads and borders of the State.

Sanjay K. Tickoo
President, KPSS
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