

The recent election in Kashmir has been fought under the shadow of the gun. Pro-Pakistani terrorist outfits openly issued and, at times, even carried out their threats of extermination against those who voted or stood for elections. Nevertheless, a significantly large section of people enthusiastically took part in this election at great risk to their lives.

In the rest of the country, politicians often find it difficult to get an audience to attend their election meetings. By contrast, newspaper and television coverage as well as the statewide survey carried out by the Centre for the Study of Developing Societies showed that in the insurgency ridden Kashmir Valley, election meetings were very well attended, despite the fact that several candidates lost their lives to terrorist violence. Murderous attacks were made on several election meetings with popular candidates like Mehbooba Sayeed made special targets of violence. Interestingly this is the first time a woman politician, Mehbooba the daughter of ex-Congressman Mufti Mohammad Sayeed, has emerged as a significant player in the politics of the Kashmir Valley and that too on her own strength. It is openly acknowledged that her party, People's Democratic Front, won 16 seats in the Valley largely due to her contribution. Throughout the dark days of insurgency and state repression, she was one of the few mainstream politicians who openly stood up to protest against human rights abuses, while at the same time advocating a peaceful resolution of the conflict, thus risking the ire of terrorists. She also actively intervened on behalf of victimised families, offering them help and solace. It is to be seen whether she and her party will use this mandate to work for the restoration

Why Fear People's Choice? Calling Pakistan's Bluff on Plebiscite in Kashmir.

○ Madhu Kishwar

of democracy and peace in the State by involving the secessionist groups in a meaningful dialogue and providing good governance in the State.

People Value Free Vote

An important reason for a change in mood among the people of J&K, from cynicism about the worth of Indian democracy to hopeful assertion of their democratic rights, was the visibly non-partisan conduct of the Election Commission, especially the Chief Election Commissioner, Mr James Lyngdoh. His firmness in declaring that early elections should not be pushed on the terrorised Muslims of Gujarat gave the estranged Kashmiris hope that he might well be as sincere about safeguarding the integrity of the electoral process in J&K. His subsequent visit to Kashmir and the firmness with which he asked the Army to stay out of elections played a major role in restoring people's faith in the autonomy and integrity of the Election Commission. Moral of the story? Democracy becomes meaningful only if people can trust key institutions of the State to safeguard their citizenship rights.

Democracy becomes meaningful only if people can trust key institutions of the State to safeguard their citizenship rights.

India's rulers tend to forget that the people in this country are willing to fight do or die battles for protecting the sanctity of their vote and their right to exercise it without fear or coercion. The right to bring down a government that does not deliver and inflict defeat on a party that is not responsive to people's needs and aspirations gives people a sense of power and enhances their participation and stakes in the system of governance. This is what lends vibrancy to a democracy. The fact that through the simple act of voting people could humble both the BJP, the leader of the ruling coalition at the centre as well as Abdullah's National Conference, the ruling party in the State has restored a sense of power and the much-needed boost to the political morale of the Kashmiri people. The 1977 election is likewise remembered in the Valley with respect as a notable landmark precisely because Morarji Desai, the then Prime Minister, had made known to the administrative machinery, as well as to his own party members, that he would not tolerate a rigged election. However, if the major political breakthrough achieved by the 2002 election is not followed up by honest and determined measures to put democracy on a firm footing in the state of J&K, the Indian Government would be guilty of jeopardising the future of democracy in all of India, not just in Kashmir.

The relative success of this election should not make the Indian Government complacent and feel that it has scored a point over Pakistan. No matter how well India handles the post election scenario, Pakistan is unlikely to accept any peaceful resolution of the situation, especially if it goes in India's favour. The ruling elite of Pakistan is most threatened by prospect of democracy being restored in Kashmir through a series of genuinely free and fair elections, as well as other necessary measures the Indian Government might take to heal the wounds caused by human rights abuses. The Pakistani regime is not likely to change its policy of bleeding India through various overt and covert means and disrupting Kashmir politics through terror brigades until the people of J&K are able to decisively and persistently demonstrate to the entire world that their political aspirations are significantly different from those that the Pakistani rulers wish to impose on them.

The Promised Plebiscite

A Pakistani claim to Kashmir rests on the assumption that, as a Muslim majority state, J&K should necessarily have become part of Pakistan. They call it the unfinished agenda of the Partition because they have a 'do-or-die' stake in destroying India's pluralist democracy and to establish that the Hindus and the Muslims cannot coexist peacefully.

Pakistan continually reiterates that India has gone back on the commitment Nehru made before the United Nations that the future of J&K would be decided through a plebiscite. Thus, on the surface, Pakistan uses the rhetoric of democracy and "people's right to self determination" as a stick to beat up India with, even though Pakistan itself has never been serious about holding the plebiscite on the terms

An essential pre-condition set by the UN resolution for holding a plebiscite was that Pakistan would withdraw its army and armed civilian invaders from parts of Kashmir it had illegally occupied. That is the last thing the Pakistani military establishment ever wanted to do.

and conditions agreed upon then. The plebiscite was to be held in both the Pakistan Occupied Kashmir (POK) as well as in the areas that voluntarily opted to be with the Indian Union, pending a plebiscite. Interestingly, Pakistan studiously avoids talking of plebiscite in POK. And has done its best to confine the issue of plebiscite only to the Kashmir Valley where the Muslims are a preponderant numerical majority. There is hardly ever a mention of plebiscite by Pakistani politicians in the Jammu or Ladakh regions of J&K where the Hindus and Buddhists constitute numerical majorities in the respective regions. The Muslims are positioned as a numerically significant minority in both these regions.

An essential pre-condition set by the UN resolution for holding a plebiscite was that Pakistan would withdraw its army and armed civilian invaders from parts of Kashmir it had illegally occupied. That is the last thing the Pakistani military establishment ever wanted to do. Therefore, there was no occasion for India to take the required follow up steps as preparation for plebiscite.

Pakistani Occupied Kashmir has not experienced even the limited and flawed democracy that prevailed in Indian Kashmir. The military in Pakistan has never allowed any

civilian regime in POK, or for that matter in any part of Pakistan, to have any meaningful role in governance even for those brief periods when civilian governments have been voted to power. Therefore, total withdrawal of the Army from POK has always been seen as a high-risk initiative, by the military establishment of Pakistan, which it was never willing to take.

Most important of all, the Pakistani military and intelligence establishment has acquired a deep and long term vested interest in keeping the Kashmir issue on a permanent boil. The *jehadi* rhetoric that goes with it allows them to keep their own people in a permanent state of frenzy, overshadowing all important issues related to internal politics and accountability of governance, thus allowing a much larger and excessively prominent role for the Pakistani Army in the political, administrative, cultural and even religious life of the country. In addition, the Generals can make a lot of money for themselves through kickbacks in defence deals that grow bigger and bigger with the escalating arms race in the sub-continent.

Limiting Role of the Army

However, India could well afford to take the risk of limiting the role of its armed forces in the Valley to protection of the borders and dealing with terrorist infiltration from Pakistan. If that source of support and mischief is brought under control, the civilian protest can easily be dealt with through democratic means.

The Indian Army had received wholehearted support of the Kashmiri people in driving out the Pakistani raiders in 1947. It became unpopular only after it was made to play an active role in dealing with the civilian protest during phases of Central rule after dismissal of duly elected governments in the State. Today, the

excessive use of the Army is the biggest irritant and hindrance to the return of peace in the Valley. For example, the much higher election turnout this time was in large part due to the fact that the Election Commission asked the Army to refrain from forcing people to vote. Such coercion by the Army in the previous elections had contributed to the very low turnout among the Kashmiri Muslims. This time the Army was asked to confine their presence to combating terrorist threats rather than involve themselves in electoral and political affairs. This worked in India's favour, rather than against it.

This is not to deny that even Nehru lost the nerve to honour his commitment to holding a plebiscite. It was not because his faith in democracy faltered but because he felt he would be jeopardising the fate of the Muslim minority in the rest of India if the Partition scarred Hindus felt that a Muslim majority province was being given yet another chance to effect yet another Partition and drive out the Hindus and Buddhists from the state of J&K as well, especially since their cultural, emotional and religious ties of Hindus with Kashmir are very deep.

Another secession by a section of the Muslims would have emboldened the hitherto marginalised organisations like the RSS and Hindu Maha Sabha to demand that the Partition be carried to its logical conclusion by driving all the Muslims out of India much in the same way that the Pakistanis carried out a near total ethnic cleansing of Hindus and Sikhs in the newly created Islamic Republic. Thus both India and Pakistan, for their own different reasons let the issue of plebiscite be buried for nearly three decades till a series of rigged elections in the State led to massive

Even at the height of estrangement of Kashmiri Muslims from the Indian government, even in the Valley pro-Pakistani sentiment has remained confined to a minority...

resentment in the Valley, with Pakistan getting the needed opportunity to fish in troubled waters.

Voting with Their Feet

Nevertheless, even at the height of estrangement of Kashmiri Muslims from the Indian government, pro-Pakistani sentiment has remained confined to a minority even in the Valley, while it is negligible among the Muslims of the Jammu and Ladakh regions. Even those among Kashmiri Muslims who are determinedly "anti-India" demand 'azadi' or independence for not only the whole of J & K but also Pakistan Occupied Kashmir (POK).

It is noteworthy that even when the Kashmiri Muslims boycotted elections, alleging fraud and manipulation, the economically mobile segments of the people showed which side they align themselves with for their own economic self-interest. Those who needed guns went over to Pakistan. However, all those Kashmiri Muslims engaged in

Those who needed guns went over to Pakistan. However, all those Kashmiri Muslims engaged in business voted with their feet and shifted their base from Kashmir to cities in the heartland of India such as Delhi and Bombay...

business shifted their base from Kashmir to cities in the heartland of India such as Delhi and Bombay. Thus they could be said to have voted with their feet. Their choice clearly demonstrated that they saw at least their economic interest better protected in the heartland of India than in Pakistan.

New Dimension to Plebiscite

The most important dimension of the current political scenario, however, is that when the average Kashmiri Muslim demands that the Kashmiri people be given the promised right to self determination, he or she sees it primarily as a way to win 'azadi' for Kashmir, rather than be forced to opt for either Pakistan or India. However, the terms set for a plebiscite in 1948, do not make this third choice available. As per that covenant, people can only opt for either India or Pakistan. Since that time the people of the State have become far more important as political players and stakeholders. At that time, if the Maharaja of J&K had opted for Pakistan or India, they were likely to have passively gone along with him, as did people of other states.

When Sheikh Abdullah made the tilt in favour of India, Kashmiri Muslims went along with him. Today, there is no such leader or even a group of leaders who can swing opinion one way or another on the strength of their hold over people. The citizens insist on their sovereignty and want the right to decide Kashmir's future. They have over the years opened up many new options. For example, the Simla Accord between Mrs. Gandhi and Bhutto committed the two sides to treat Kashmir as a bilateral problem and move towards accepting the present Line of Control (LOC) as the international border. This was at that time widely welcomed by the people of Kashmir. The National Conference,

which even in its battered condition won 28 seats and still has the status of the single largest party in J&K, has publicly committed itself to this position.

Similarly, there has been a consistent demand from a section of the Kashmiris for the last decade and a half that the border between POK and J&K be made porous to allow for a natural process of social integration of the two Kashmirs, uniting divided families, de-escalating tension as necessary steps towards preparing for a plebiscite. All these new options being put on the agenda by the Kashmiri people themselves can not be dismissed in favour of the old plebiscite formula, which becomes irrelevant because it was put in deep freeze and allowed to ossify, whereas the political situation at the ground level became more and more dynamic and open ended.

Those who insist on a plebiscite as the definite way of determining people's will, forget that there is more than one democratic method, and some more democratic than a plebiscite, of ascertaining people's will. Election is one of them. The very fact that the people of Kashmir have enthusiastically participated in at least four elections after 1947 and disowned or boycotted only a few, shows that they did take elections as an instrument of self assertion seriously.

As Elie Kedourie in his discussion of plebiscites points out:

There is really nothing conclusive about plebiscites except that a certain population subject to conflicting propaganda or pressures or inducements voted on a given day in one manner and not in another. The result, if accepted once and for all, has the same element of arbitrariness as any other, which may come about by reason of conquest or bargaining. (*Nationalism*, Blackwell, 1993 p 126)

“If plebiscites are justified by the same reason as elections, why should plebiscites not be held regularly like elections, and why should a population not be able to change its allegiance periodically, as it is able to change its government?”

Kedourie also argues that:

If plebiscites are justified by the same reason as elections, why should plebiscites not be held regularly like elections, and why should a population not be able to change its allegiance periodically, as it is able to change its government? (Ibid p.126)

To illustrate the point: if a plebiscite were held now not just in Indian held Kashmir but in Pakistan occupied Kashmir (POK), as well as in other parts of India and Pakistan, the results might be very different from the political boundaries that emerged from the Partition of 1947.

We have yet to develop political systems, which provide for effective mechanisms for broad based participation of the people in decision-making without the use of an unidimensional majority vote as the single decisive criterion in decision-

Some of those who were strongly “pro-India” through the 1950s and 1960s turned “anti-India” during the 1980s and 1990s... Many who looked to Pakistan as a saviour during the 1990s have been disillusioned and turned back to Indian democracy.

making on particular issues. But at the same time we must recognise the limitations of the use of the principle of majority rule when its leaders disregard minority rights that must be clearly stated and carefully observed if we seek to create acceptable, just and stable polities. Too often political leaders identify their self-defined majority not as a temporary group that has decided to vote together on a particular issue, but rather as an unfettered and unchallengeable permanent rule maker for all.

In unstable societies with deep divisions and little agreement about basic principles there must be implicit or explicit agreement on what issues may be amenable to being decided by majority vote and what issues require limitations on the will of the majority and its representatives over certain basic human rights of the minorities. These need to be sorted out on some other basis than majority rule. For instance, voting on how much the society should be spending on health, education, or transportation should under ordinary circumstances be handled through the rule of the majority by voting. However, we should not entertain the possibility of any kind assuming the right to exterminate the minority groups, or to confine them to prisons or reserved areas, or to disenfranchise them, through the instrument of majority vote.

Differing Claims & Agendas

Even at the height of the secessionist movement, it is highly unlikely that any plebiscite would have gone in favour of Pakistan because there is an overwhelming sentiment in favour of ‘azadi’. Senior journalists and politicians from Pakistan themselves admit this in private. I have personally heard important public figures from Pakistan say in private conversations that ‘if India actually agreed to hold a plebiscite, Pakistani

rulers would be caught with their pants down and would not even know where to look for cover’.

Broadly speaking, even if we do not take account of the opinion and desires of the diverse communities that inhabit the state of J&K and take into account only the inclinations of Kashmiri Muslims, there are currently three main streams of opinion among the Muslims of the Valley:

→ A small fringe led by the likes of Geelani and leaders of the Hizbul Mujaheddin who would like to secede to Pakistan. They command very little mass support in the state, which is an important reason why they stay hooked on to Pakistan sponsored terrorist brigades to achieve their political ends.

→ A very large section among Kashmiri Muslims wants ‘*azadi*’ or independence from both India and Pakistan and reunification of the two divided parts of Kashmir. The leadership of the Jammu and Kashmir Liberation Front (JKLF) has been facing murderous attacks and attempts at extermination from Pakistan government’s terror brigades ever since they made it clear that their movement was not in favour of Kashmir becoming a part of Pakistan.

→ The third section of opinion is in favour of greater regional autonomy within the Indian Union. Many of the followers of the National Conference, the Congress Party, and a host of other national parties, like the Janata Dal and the Communist parties are in varying degrees supporters of greater devolution of powers and rejuvenation of democratic institutions in the State.

It is noteworthy that the percentage of those who opt for any one of these three choices is very fluid. Some of those who were strongly “pro-India” through the

1950s and 1960s turned “anti-India” during the 1980s and 1990s. Many of the secessionist leaders of today have fought and some even won elections to the J&K Assembly. Similarly, many who looked to Pakistan as a saviour during the 1990s have been disillusioned and turned back to Indian democracy. While an overwhelming majority might vote for independence for Kashmir today because they are deeply estranged by repeated assaults on their citizenship rights, they might well opt for greater autonomy within the Indian Union five years from now, if the ruling establishment of India behaves sensitively towards their hurt and acts responsibly towards their political aspirations. This is a very likely scenario; especially considering that pro ‘*azadi*’ leaders of Kashmir have never taken the trouble to spell out the exact contours and content of ‘*azadi*’.

Slogan without Content?

‘*Azadi*’ is no doubt a very powerful and emotive slogan but it has remained precisely that: a mere slogan. Whenever I have personally tried to engage some of the Hurriyat leaders to spell out their political vision in a concrete way or asked them to explain what is it that they would do differently if they actually got ‘*azadi*’, I have been met either with silence or with evasive replies like: “We will figure that out once we get *azadi*.”

Gandhi lost out to Jinnah because he never once asked Jinnah to seriously explain what his Islamic haven would be like...who would qualify as a citizen and who would be denied the right to live there.

This is very similar to how Jinnah kept building a frenzied movement in favour of Pakistan, without spelling out even in vague a outline what it would actually entail. This is borne out even by the sympathetic and insightful political biography of Jinnah by Pakistani historian Ayesha Jalal. Gandhi, Nehru, Maulana Azad, Patel and a host of nationalist leaders lost out to Jinnah because they never once asked Jinnah to seriously explain what his Islamic haven would be like -what principle would be used to divide the geographical territories, who would qualify as a citizen and who would be denied the right to live there. Had Muslims of the sub-continent been told in advance that millions of them would be uprooted from their land of birth to realise that dream and that all Muslims would not find a place in that Land of Promise — in fact many more would have to continue living in India than would find a place in Pakistan – and with millions of Muslim families divided between these two hostile nation states — it is unlikely that as many Muslims would have endorsed Jinnah’s slogan of Pakistan as came to do so during the frenzied 1940s.

Our political leaders of today are repeating the same mistake of not asking for a similar clarification from the separatist leaders on a variety of issues. For example, under the ‘*azadi*’ dispensation, what will be the fate of the Kashmiri Pandits who have been forced out of the valley with many still living in the refugee camps of Jammu because life became too dangerous for them in Kashmir. What about the nearly 70 per cent Hindu and Sikh majority of Jammu region who will not hear of secession from India or for that matter the Muslims among the Gujjars, Punjabis and diverse other ethnic communities of the Jammu region who do not share

the aspirations of their co religionists in the Valley? What about the right to self determination of the 52 percent Buddhists of Ladakh who would like their part of J&K to be made into a Union territory because they resent the domination of Kashmiri Muslims over the politics of the State? Many Ladakhi Muslims too would rather go along with their Buddhist counterparts rather than make common cause with Kashmiri Muslims.

The Kashmiri Muslim leadership has so far shown no sensitivity towards the rights and aspirations of all these diverse groups. If theirs is indeed a movement of regional independence, why then are non-Kashmiri Muslims and non Muslim Kashmiris who together constitute more than nearly 35 per cent of the population of J&K not being included in their vision of an independent Kashmir? The people of both these regions feel as aggrieved against the domination of Srinagar in the State's polity as does Srinagar against New Delhi.

Concensual Secession is O. K!

If any region of India is to secede to Pakistan or become independent, the leaders of such a secessionist movement must demonstrate their ability to carry along a vast majority of opinion among all religious and ethnic communities inhabiting that region to endorse that option by political persuasion rather than by gun. The civilised world cannot allow repetition of the murderous solution of the 1947 variety to solve the Kashmir problem whereby millions of people were violently uprooted from their homes, villages and towns simply because in that region they constituted a religious minority. The Partition of the sub continent in 1947 proved to be a political disaster, not just because it divided people on the basis of religion, but because it also

If any region of India is to secede to Pakistan or become independent, the leaders of such a secessionist movement must demonstrate their ability to carry along a vast majority of opinion among all religious and ethnic communities inhabiting that region to endorse that option by political persuasion rather than by gun.

forced through terror and violence millions of panic stricken people to abandon their homes and hearths, neighbourhoods and all they owned. Pakistan came into existence via mass murder and ethnic cleansing. Muslim majority areas came to be declared as belonging to the State of Pakistan and Hindu majority areas brought under the charge of the Indian Union with divided families on both sides of the border – one set of relatives labelled as Pakistanis and another set as Indians - depending on whether they lived in a Muslim majority or a Hindu majority area.

If we accept the logic that, within the territory of each arbitrarily carved out nation-state, every ethnic majority of its region is entitled to unlimited rights to subjugate, eliminate or push out a minority, we will be pushed to the inexorable logic of a nation-state where tragedy after tragedy of ethnic cleansing, murderous riots, and political chaos overtake its democratic and secular features.

Minorities and Majorities

Every Indian community is a minority in some places and a majority elsewhere. For example, Hindus are a minority in Jammu and Kashmir, Punjab, Mizoram and Nagaland but a

majority everywhere else. Muslims are a minority everywhere but in Kashmir. The Sikhs are a minority everywhere but in Punjab. The Christians are a tiny minority everywhere but in Nagaland, where they are a majority. The list doesn't stop there. Yadavs as a caste may be a majority in certain rural pockets of Uttar Pradesh and Bihar, but an overall minority in the State. Jat Sikhs may be a majority in Punjab villages but are a minority in most Punjab cities. If Mazhabi Sikhs and other non-Jat Sikhs of Punjab were added to the non-Jat figures, Jat Sikhs would be a minority even within Punjab. Kannadigas living in Tamil Nadu, Gujaratis in Maharashtra, and Marwaris in Calcutta are minorities outside their own states. Not too long ago Shiv Sena, the party that today wants Muslims driven out of India, focused its energies on the demand to push Tamils out of Maharashtra.

The logic of majoritarianism, of identifying a minority group by certain supposedly objective characteristics that are in practice viewed as mostly religious, cultural, or biological, and then destroying or driving them out because they are a minority, can easily proceed in its deadly logic from group to group. Once such a process is unleashed, a descent into panic, fear, hatred, desire for revenge and sheer murderous madness follows inevitably.

Need New Plebiscite Deal

Just as a plebiscite that only offers two choices to the people of J&K—join India or join Pakistan—is altogether meaningless in a context where an overwhelming majority of those seeking self determination want the third option of 'azadi', so also a plebiscite which ignores the security concerns and political aspirations of a very substantial proportion of people of the State simply because they are at a numerical disadvantage, is a mockery of the very concept of

self determination. Therefore, today's situation demands re-framing the terms of a plebiscite or referendum to make it meet the essential requirements of democracy by giving the minorities an important voice in the decision because it affects each person's very survival.

Despite the principled reservations regarding the jurisdiction and value of plebiscites, I would still argue that the only way for India to get out of the current stalemate on this issue is to grab the bull by the horns and stop fighting a defensive battle vis a vis Pakistan. Instead of being blackmailed and terrorised at being reminded of this renege commitment, India should be actively working toward a carefully redefined plebiscite on the following lines.

To begin with, the New Plebiscite Deal should require the winning of at least a two third majority rather than a simple majority vote, as is required in ordinary elections, since a plebiscite involves a permanent and momentous decision with serious consequences for every single person living in that State. The decision of a plebiscite is irreversible whereas in elections the voters can change their choice and verdict with every round of elections. Whether the Chief Minister of J&K is from the National Conference or the Congress Party does not have the same kind of bearing on people's lives, as the decision about whether J&K becomes part of India or Pakistan. For example, many of those who voted for the National Conference in 1951 turned against it in subsequent elections. Likewise, many of those who boycotted the 1996 elections, at the call of secessionist leaders, snubbed the very same leaders in the recent 2002 elections by turning out to vote despite great risk to their lives. Thus, elections that involve less

fundamental issues allow people to respond to new options, choices and issues thrown up by a polity at different points of time. In some elections, the majority vote in the Jammu region went to the BJP - while at other times the Congress managed to win a majority vote in its favour. The victory of the BJP or Congress involves relatively small shifts in the State's politics because both the parties have to operate under the framework laid down by the Indian Constitution and Indian jurisprudence.

However, a vote in favour of Pakistan or 'azadi' for J&K drawn through a plebiscite means even those citizens who did not opt for either of those two choices have to end up living under a radically different dispensation - to be ruled the way that Pakistan is ruled. Therefore, a plebiscite must operate within a democratic framework that maintains strong and significant safeguards against the tyranny of the majority on the minority. It should, as far as possible, be carried out when tempers are not running high and when people are in a position to carefully weigh the pros and cons of their decision. The hallmark of democracy is how well it safeguards the rights of its minorities. Therefore, important safeguards must be built in and enforced before any plebiscite is held in J & K keeping in view all the varied choices and options which different sections of Kashmiri opinion have articulated in varied ways--

Democratic India has let the world gain the impression that it is afraid of people's verdict, allowing military ruled Pakistan to champion the Kashmiri right to self determination.

ranging from democratic politics to support for a certain kind of militancy and rejection of the imported variety.

Three Phase Referendum

In order to settle the issue once and for all, we should demand that both India and Pakistan prepare for a genuine three-phase referendum. However, a first necessary step would be to initiate serious discussion, public debate, and participative consultations regarding what range of choices should become available to the people through a referendum. The exercise should be concluded within a specified time frame, of say two years.

The unit for plebiscite would have to consist of the entire state of J&K (including Jammu and Ladakh) that is presently with the Indian Union as well all the Pakistan occupied areas of J&K.

It is likely that atleast the following four options would emerge out of the two year process of public hearings and dialogue:

- ⊙ 'Azadi' or Independence from both Pakistan and India for the entire and unified state of J & K.
- ⊙ Secession of Indian Kashmir to Pakistan.
- ⊙ Secession of POK to India with that region joining the existing territory of J&K as part of the Indian Union.
- ⊙ Accepting the existing Line of Control (LOC) as the permanent international border between India and Pakistan.

It is a disgrace that democratic India has let the world gain the impression that it is afraid of people's verdict and allowed military ruled Pakistan to emerge as the champion of Kashmiri right to self-determination. We must take the bull by the horns and get the UN to push Pakistan into biting the bullet and that too under the vigilant eye of the UN monitors. A likely scenario is that

even if a referendum were to be held tomorrow around these four choices, about 90 per cent of Kashmiri Muslims would opt for 'azadi' and roughly five per cent each for India and Pakistan as their first choice. However, if a referendum is held in the Valley about a decade from now, after two or three successful free and fair elections and meaningful devolution of power to the State, the proportion of those opting in favour of India would shoot up and those in favour of a total break from India will go down, while Pakistan is not likely to improve its tally. Thus, Pakistan is likely to lose its claim to Kashmir in the first round itself. However, if the Indian government fails to deliver genuine autonomy and continues with its ham handed ways, it could lose whatever little moral and political legitimacy it has today for resisting secession.

In the second phase, the international community should commit itself to the following offer to the Kashmiri leaders who stand for an independent Kashmir:

'We will facilitate J&K's secession from India under the following conditions: that the decision for secession be endorsed by a two third vote of the Muslim population of the State and at least 51 per cent vote among the Hindus and Buddhist of J&K. The rest of those who are not yet won over to the cause of secession will need to be given concrete assurance through the United Nations that their rights as a dissenting minority will be firmly protected and an effective formula for power sharing with minorities will be evolved under the new dispensation of 'Azad Kashmir'. However, the UN would retain the right to intervene in case the guarantees given to minority communities are not honoured.

A plebiscite must operate within a democratic framework that maintains strong and significant safeguards against the tyranny of the majority on the minority.

Thus, an independent Kashmir , if it ever came into existence would have to agree to limited and conditional sovereignty vis a vis the UN with regard to the rights of minorities and institutionalising democracy. This would include a provision that if the UN monitors find that the promises made at the time of 'azadi' have not been respected the UN would have the right to enforce a new democratic mandate in the State'.

The Kashmiri Muslims are not likely to have problems with the enhanced role of the UN because they have been vociferously demanding the active involvement of the UN in the affairs of Kashmir. We will only be giving them a generous dose of their self-prescribed remedy.

Other necessary steps involved in the Plebiscite would be as follows:

→ Withdrawal of armies from both sides of Kashmir for five years at the end of which a plebiscite would be held under UN auspices.

→ Both sides to allow free access of people across the Line of Control during the plebiscite campaigning, including the right to campaign and propagate their view point through television, cinema and other media, provided no hate speech or violence is used in the process.

The mechanics for differentiating the ballots of the three religious communities would be as follows: Three colour ballot papers - say white for the Muslims, blue for the Buddhists and green for the Hindus.

Minus all the above mentioned safeguards, it is likely that a Muslim dominated independent Kashmir might simply exterminate or drive out the non-Muslim population of the J&K State as happened in Pakistan where the few thousand surviving Hindus, Sikhs and Christians live under terror facing brutal forms of discrimination in every walk of life. Therefore, pre-emptive measures are needed right at the start of the plebiscite process to place firm limits on what the winners of the plebiscite can do and not do in the area of human, democratic, and citizenship rights so that the wellbeing of minorities is not endangered if the plebiscite result goes against their wishes.

The international community is not likely to object to these safeguards for minorities since the key litmus test of a democracy is what institutional mechanisms exist for the protection of the interests of minorities. These safeguards become all the more essential considering that none of the Muslim majority nation states of our times have shown adequate regard for the rights of non-Muslim minorities. Today many other countries , including some in Europe, are facing similar challenges. The deal proposed for Kashmir would set a healthy new precedent for working out democratic solutions for minority-- majority relations and an effective formula for power sharing which might well become a model for many other countries where ethnic minorities find themselves trapped in similar vulnerabilities.

Acknowledgement

I am indebted to my colleagues Dhirubhai Sheth and Berny Horowitz for their very useful feedback on an earlier version of this draft and for sharing the responsibility for whatever shortcomings are still left in this revised version. □