Argumente und Materialien
zum Zeitgeschehen 41

Subrata K. Mitra/Bernd Rill (Hrsg.)

Indien heute

Brennpunkte seiner Innenpolitik

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The Kashmir Crisis and the Soul of India

Alyssa Ayres/Šumit Ganguly

I wandered over the Himalayas which are closely connected with myth and legend and which have influenced so much our thought and literature. My love of the mountains and my kinship with Kashmir especially drew me to them, and I saw there not only the life and vigor and beauty of the present but also the memoried loveliness of ages past.

Jawaharlal Nehru,
The Discovery of India[1]

What does Kashmir mean for India? Until 1989, the obvious answer was: a paradise, a land of myth and legend. Today, with the secessionist armed conflict entering its fourteenth year and India and Pakistan overt nuclear states, the answer is more likely: ground zero in India's own battle with terrorism. The rest of the world views this lost paradise only as a nuclear flashpoint, or in other words, the most dangerous place in the world.

This kind of hyperbole has always been routine when it comes to describing Kashmir, but the circumstances are indeed extraordinary. India and Pakistan have gone to war three times over the Valley's memoried loveliness, and narrowly averted a fourth in 2002.[2] International attention, only intermittently paid to the conflict, remains largely focused on the potential for escalation of the most dire kind, as both India and Pakistan now have the capability to annihilate each other's most populous cities. But there are significant costs, of other kinds, resulting from the crisis. This chapter examines those costs for India domestically. The repercussions of the conflict are felt in a number of critical spheres that span governance, federalism, law, secularism, citizenship, human rights, India's global ambitions, and even issues of public health. Kashmir thus represents not only a coveted physical territory, but as well a crucial dimension of the founding ideology of the Indian nation state, and a key component in the most important political struggles underway in India today.[3] It cannot be overstated how significant the domestic impacts are for India from the ongoing conflict in Kashmir. Taken together, they form a thorny knot of the most contentious issues. In Kashmir, India is fighting to protect not just a piece of real estate, but the soul of the nation.

In what follows, we explore the key impacts of the Kashmir crisis on India beginning with a consideration of the Indian Constitution. We look as well at legal provisions that affect the kinds of personal rights accorded to citizens. We then turn to an examination of the way Kashmir serves as a barometer of three kinds: one regarding secessionism, another regarding the place of Muslims in the Indian polity, and most importantly, the idea of secularism as a tenet of national governance. We then sketch the more recent fallout of ongoing conflict in Kashmir for US-India relations in the wake of September 11th. Finally, in recognition of the lasting effects of human suffering this crisis inflicts on citizens of India-Kashmiris as well as

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1 Epigraph taken from Nehru, Jawaharlal: The Discovery of India, New York 1946, p.39.

2 1948, 1965, and 1999; the 1971 war was not focused on Kashmir.

3 For discussions of the importance of Kashmir to India's founding ideology, see Ganguly, Šumit: The Origins of War in South Asia: the Indo-Pakistani conflicts since 1947, Boulder 1994; see also Ganguly, Šumit Conflict Unending: India-Pakistan Tensions Since 1947, New York 2002, pp.5, 8-10.

non-Kashmiris, we review some key dimensions of the human costs of conflict which should never be ignored.

1. Legal Frameworks

1.1 India as a federation, Article 370, and autonomy

India is a federation of states, though for much of its fifty-six years of independence the country functioned in a highly centralized way, with power concentrated in New Delhi and one party, the Indian National Congress, dominating national politics. This centralized modality has been gradually changing over the course of the past decade. Politically, the twin processes of the decline of the Congress party and the rise of "single-state" parties throughout the country are creating a new calculus of coalitions, which enhances the ability of states to pursue their own agendas more aggressively.[4] Economically, the post-1991 reforms are gradually creating a regulated rather than a planned economy, which is scaling back the involvement of the central government. These changes are notable for bringing about a greater devolution of power to the state level such that some states, Andhra Pradesh famously, now negotiate directly with multilateral agencies and multinational corporations. This increasing autonomy for states within the framework of the Indian polity is generally regarded as a positive development on the road to a more empowered democracy.

How does Kashmir relate to this devolution of power? For Jammu & Kashmir (J&K),[5] "autonomy" means something quite specific, and has become in recent years the object of explicit resentment. Preventing politico-legal autonomy for J&K is a recurrent agenda item for the Bharatiya Janata Party, alongside the building of a Ram temple at Ayodhya and the establishment of a Uniform Civil Code (i.e., the elimination of differential personal laws based on religion) nationally. We provide a bit of background to this contentious issue to illustrate how it fits uncomfortably and crucially within a framework of debate about governance and federalism in India writ large.
The state of J&K nominally retains a special legal status in the Constitution of India through Article 370. This Article clearly delineates political autonomy for the state in all matters save defense, foreign policy, and communications, and it also limits rights to property ownership to citizens of the state.[6] This autonomy was part of the condition for J&K's accession to India in 1947, an accession which took place under unusual circumstances of duress.[7]

We cannot say for certain what precisely transpired in October 1947. We do know, however, that Article 370 was to be a temporary provision until some later formulation would be agreed

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4 See Echeverri-Gent, John: Politics in India's Decentered Polity, in: Alyssa Ayres/Philip Oldenburg (Eds.), India Briefing: Quickening the Pace of Change, New York 2002, pp.19-53.

5 The official name of the state in which the Kashmir Valley is located is "Jammu and Kashmir" or "J&K".

6 Internally, the property rights limitation raises a number of perplexing problems; for example, should residents who migrated from areas of today's Pakistan at Partition be entitled to land ownership? This is not yet resolved.

7 The story of this accession is so contentious that it is well beyond the scope of this essay to go into it. It involves a diffident maharaja, an invasion by Pakistani tribesmen, and an Indian government willing to push back the tribes change for accession. For a consideration of the many varied versions of the accession, see Ganguly, Šumit: The Crisis in Kashmir: Portents of War, Hopes of Peace, Cambridge 1997, pp.6-13; and also Ganguly, Š.: Conflict Unending, pp.16-23.

upon. A time limit on "temporary" was never explicitly defined,[8] but in any event autonomy through Article 370 did not last long: its erosion began with the 1953 dismissal and imprisonment of Sheikh Abdullah, the first head of the state assembly. In December 1964, special provisions of the Indian Constitution (Articles 356 and 357) were extended to cover J&K as well; Articles 356 and 357 provide legal basis, should a state be deemed unable to effectively govern itself, for the central government to summarily dismiss the state assembly and place it in a sort of political-receivership known as President's Rule. Under President's Rule, a state can be administered directly by the centre until the situation becomes appropriate for fresh elections. In March 1965, shortly after the extension of Articles 356 and 357 to J&K, the Kashmiri Legislative Assembly – in efforts to recalibrate the state toward greater integration with India – reduced the status of the state's political leadership by renaming the head of state "Governor" instead of "Head of State" (Sadr-e-Riyasat), which also transformed the role into one subject to appointment by New Delhi instead of J&K.[9] By 1975, the Kashmir Accord between Sheikh Abdullah and Indira Gandhi reaffirmed J&K's integral part in the Indian union, while also reasserting Article 370's validity, but the extension of Articles 356 and 357 to the state was never repealed. By this point, it was clear that Kashmir was no longer functioning, legally or otherwise, as a politically autonomous unit of the Indian federation as originally envisioned for it per Article 370, and this erosion began quite early.

This backdrop provides greater context for the contentious autonomy wrangling that re-emerged in the summer of 2000. While the militants active in the armed conflict in the state either want freedom or incorporation with Pakistan, a third option could exist: the transformation of the Line of Control to an international boundary, retaining a territorial status quo, and a restoration of the state's legal status to its pre-1953 state of autonomy.

This may have been the carrot Prime Minister Vajpayee ultimately had in mind when he "sent feelers" in 2000 to members of the All-Parties Hurriyat Conference (an umbrella organization of militant groups), perhaps hoping to hold out the promise of a restoration of full autonomy if peace and stability, and an end to secessionist demands, could be brought about. Press accounts of these months portray then-Chief Minister Farooq Abdullah as concerned that talks between New Delhi and members of the Hurriyat would freeze him out. Perhaps equally to quell the widespread opinion that his government, a coalition member of the federal government, was merely a stooge of New Delhi, he initiated a J&K assembly resolution that demanded the restoration of autonomy back to its pre-1953 level under Article 370.[10] This demand was met by New Delhi with a nearly-instantaneous rejection.

Since that summer, Article 370 has become a much higher profile political agenda item of the BJP and associated Hindu nationalist organizations. The Rashtriya Swayamsevak Sangh (RSS, "National Volunteer Association") has always backed the elimination of Article 370 but this sentiment gained new vigour after the J&K assembly resolution to restore it. An October 2001 article in The Organiser, the RSS's official publication, argued that Article 370 should be eliminated because it is the reason that a "psychological barrier" lies between Kashmir and the rest of India, and that terrorism arises from this barrier. Article 370 joined the building of

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8 For the complete text of Article 370 of the Constitution of India, see Ganguly, Š.: Conflict Unending. pp.148-49.

9 For a more complete overview of the de facto abrogation of Article 370, ibid., pp.35-6; see also Chowdhari Tremblay, Reeta: Kashmir: The Valley's Political Dynamics, in: Contemporary South Asia, Vol.4, No.1 (March 1995), pp.75-98.

10 For a good overview of the autonomy rollercoaster of 2000, see "The Obstinacy of Kashmir", in: The Economist, July 8, 2000, (Vol. 356, Issue 8178), pp.36-8.

a Ram temple in Ayodhya and the establishment of a Uniform Civil Code as a trio of frontline issues the BJP planned to use for state-level electioneering in early 2003. The party has been forced, however, to back away from this plan because of the objections of other parties (the Samata Party and the Telugu Desam Party, notably) which are part of the central government coalition along with the BJP.[11]

What has been interesting about this public debate is the way that J&K's legal status has now been analogized with differential personal laws as a kind of 'politics of pandering,' a term often used in Indian political discourse to indicate concessions given to Muslims in order to "secure" the "Muslim vote" in elections. Yet the changing nature of governance in India suggesting greater autonomy for all states is the national path, at least based on political and economic developments elsewhere throughout India. Indeed, part of the political solution to quell secessionist armed conflict in the northeast states has included new amendments to the Constitution granting greater autonomy to Nagaland and Mizoram (Articles 371 A and G).[12] If India is to continue deepening its democracy, the autonomy issue will have to be resolved not only for the sake of J&K, but because the national reframing of the relationship between the states and the centre is of vital importance. The Article 370 debate in this sense represents a double bind: the idea of autonomy for J&K is bandied about as part of an unjust appeasement via non-uniform law and autonomy, yet greater autonomy is exactly the direction the national framework seems to be moving toward.

1.2 Citizenship, rights, and national security

Aside from achieving global notoriety as a possible nuclear flashpoint, Kashmir's other dubious reason for worldwide fame has been the Indian government's atrocious track record of human rights violations. Groups like Human Rights Watch, Amnesty International, Physicians for Human Rights, and India's own National Human Rights Commission and South Asian Human Rights Documentation Centre have published in disturbing detail reports about forced disappearances, extrajudicial killings, and the use of torture as well as psychological ill-treatment as routine interrogation techniques. It is also true that militant groups themselves are flagrant rights violators, using rape as a tool of intimidation, not to mention targeted assassinations of those who part ways with their agendas. We will discuss the human costs of these forms of physical and psychological violence below. Here, we flag the legal bases that created a context for human rights violations to take place with virtual impunity, for it is the existence of these legal dispensations that eroded what would in any other circumstances be an expected set of basic individual rights in a liberal democracy. As such, the experience of Kashmir, though an extreme case, is but one end of a continuum in a national debate about citizenship and rights in the context of national security.[13]

There are a number of legal provisions created to give latitude to the armed forces, police, and other counter-insurgency organs during states of emergency in India. For Jammu and Kashmir, measures enacted specifically to target insurgency are the Armed Forces (Jammu

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[11] See, for example, Vyas, Neena: BJP Does an About-turn on Ideological Issues, in: The Hindu, January 23, 2003.

[12] Article 371 (A and G), while remarkably similar to Article 370, appear not to have risen to the national political agenda and appear not to be the object of any resentment.

[13] Post 9/11, this debate has taken on new salience not just in India but in the United States and many other countries around the world as governments and citizens alike review the balance between security and individual rights to privacy and due process.

and Kashmir) Special Powers Act of 1990, Jammu and Kashmir Disturbed Areas Act of 1990, and the Public Safety Act for Jammu and Kashmir of 1978 (PSA), In addition, a national anti-terrorism law, the Terrorist and Disruptive Activities Act ("TADA", 1985/7), though now lapsed, was during its tenure a powerful provision for counter-insurgency operations in the state. Of significance here is the fact that after widespread condemnation for its draconian provisions and derogation of individual rights, TADA was allowed to lapse in 1995. However, it forms the legal basis for the continued detention of people charged under the provision as well as for some newer arrests of individuals accused of involvement in cases that took place while TADA was still in force.[14]

The first aspect of these legal provisions that has been widely abused lies in the extraordinary powers granted to police and counter-insurgency forces to detain any suspect at will. Under the PSA statute, a man could be picked up under suspicion of involvement in anti-national activities (broadly defined) and held in a jail or other place of detention for up to twenty-four months. Detention under the PSA requires neither a formal judgement in a case, or even any case at all, to be lodged against a suspect. This is known as "preventive detention," and runs counter to international conventions on civil rights and accepted norms of due process; it is, however, wholly legal in India as per Article 22 of the constitution, which permits preventive detention in states of emergency.[15]

Under TADA, suspicion of involvement in terrorist activities (again, broadly defined) similarly permitted security forces to detain individuals at will. Though TADA charges involve actual cases heard in courts, the glacial pace of the court system in practice created a situation in which men remained detained as under-trials for lengthy periods, sometimes five to seven years, without receiving a complete trial or judgement in their case.

The obvious corollary problem resulting from these often arbitrary and lengthy detentions in a penal environment in which ill-treatment is widely employed as an interrogation method is that thousands of people experienced various forms of torture in the name of safeguarding national security. Compounding such a clear erosion of norms of rights and due process, legal provisions were enacted which allowed for this use of force with impunity. In the case of the Armed Forces (Jammu and Kashmir) Special Powers Act, members of the armed forces are fully empowered to use extreme force if they deem it necessary, and effectively cannot be prosecuted for their actions, including summary executions, if carried out in the spirit of containing insurgency. It hardly stretches the imagination to envision ways to misuse these provisions,[16] and their extensive abuse has been widely chronicled in human rights reports on Kashmir stretching back over a decade now.

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14 See "Preventive Detention and Individual Liberty: SAHRDC's submission to the National Commission for the Review of the Working of the Constitution." New Delhi: South Asia Human Rights Documentation Centre, 2001. p.32, note 22.

15 That the practice of preventive detention has been widely abused is an accepted fact; the final report of the National Commission to Review the Working of the Constitution recommended that further safeguards of due process be built into Article 22. Some rights groups argued that Article 22 should be eliminated entirely.

16 For an overview of the uses of preventive detention in Jammu & Kashmir, see "India: Punitive Use of Preventive Detention Legislation in Jammu and Kashmir," Amnesty International Report ASA 20/10/11 (available at http://web.amnesty.org/aidoc/aidoc_pdf.nsf/Index/ASA200102000ENGLISH/$File/ASA2001000.pdf); for a very thorough review of preventive detention in India outside the context of Kashmir, see Jinks, Derek P.: Anatomy of an Institutionalized Emergency: Preventive Detention and Personal Liberty in India, in: Michigan Journal of International Law (Winter 2001): pp.311-370.

As argued elsewhere, while these provisions may have been designed to fight a difficult insurgency and limit pro-Pakistan and secessionist groups, their practical application, i.e., arbitrary detentions and appalling rights violations carried out with no punitive consequences, served instead to further fuel already-sharpening grievances of Kashmiris.[17]

But the conundrum of individual rights versus national security is not limited to Kashmir, nor are India's security-related laws. The laws have analogous counterparts that are in force throughout the rest of India: the National Security Act of 1980 (analogous to the PSA, though the period of preventive detention is limited to three months), the Armed Forces Special Powers Act (in force in the northeast), and now the new successor legislation to TADA. The new Prevention of Terrorism Act (POTA) was enacted in the wake of the attack on India's Parliament in December 2001, and once again offers potential latitude for the preventive detention of virtually anyone deemed a threat to national security.[18]

Kashmir is thus a state in the crossfire of a contentious debate about human rights, national security, and the limits of citizens' rights under extraordinary circumstances. This is a debate that is important to all of India, for it probes the limits of the assumed contract between citizens and their government in a liberal democracy. It is certainly true that states of emergency that threaten the well-being not only of national integrity but of fellow citizens alike might necessitate restrictions on personal liberties, but under what contexts, and for how long? What kind of safeguards can a country adopt to prevent the abuse of wholesale powers? These are matters, in other words, of the nation's constitutional integrity, one which should protect the freedoms that Indian citizens fought for as part of the independence struggle from British rule. The answers to these questions have not been resolved in India, though the creation of a National Commission for the Review of the Working of the Constitution[19] is some indication of how critically important it has become to reframe that integrity such that it cannot be compromised. In this sense, the crisis in Kashmir has a powerful effect on the rethinking of the legal foundations of the nation state itself.

2. The power of precedent

The above discussion delineated the ways in which Kashmir represents an encapsulation of contentious questions of governance and rights in India. We turn here to consider three very powerful potential effects of the ongoing crisis in Kashmir on India. These are all linked to notions of precedent, and the legitimate fears of what a change from the status quo might unleash throughout the country. Deviation from the status quo, many fear, would catalyse a cascading "demonstration effect"[20] throughout India that could destroy the Indian nation state. Let us consider the intertwined fears in turn.

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17 See Ganguly, Š: The Crisis in Kashmir, pp.89-90.

18 For an excellent summary of the immediate misuses of POTA – detention of political opposition and Dalits, for example – see the section on India in In the Name of Counter-Terrorism: Human Rights Abuses Worldwide. New York: Human Rights Watch, 2003. (March 23). http://hrw.org/un/chr59/counter-terrorism-bck4.htm#P252_51825

19 Recommendations of this Commission to the government, based on the submission of background papers from institutions across the country, are available online at http://lawmin.nic.in/ncrwc/ncrwcreport.htm

20 See Ganguly, Š: The Crisis in Kashmir, pp.128-30.

2.1 Internal dominoes of secession

If we take India not as an historical or territorial given or an age-old polity, but instead as the contemporary product of a powerful twentieth-century nationalism,[21] we can better understand the intellectual as well as emotional force of the internal dominoes argument. Viewed through this logic, the createdness of the Indian nation state comes to the forefront, allowing us to recognize that its strength as a polity (and as an idea) depends on its ability to successfully accommodate the considerable diversity within. Virtually every region within India can draw upon an "internal" version of history that emphasizes local ties, customs, even language as opposed to a translocal Indian polity. In this sense, Kashmir is no different. The great power of twentieth-century Indian nationalism was to forge a grassroots anti-colonial freedom movement that united these many regions under the umbrella idea of an India ruled by Indians.

Post-independence India has not been without internal struggles. At different points, the country has had to deal with often violent secessionist demands from all four corners: Tamil Nadu in the south; Assam, Manipur, Mizoram, and Nagaland in the northeast; Punjab in the northwest, and Kashmir in the north. Periodic uprisings in Andhra Pradesh, Bihar, Uttar Pradesh, and West Bengal – as the Marxist "Naxalite" movement – form occasional outbursts of armed violence as well.

A widespread concern is that any change in the status quo in Kashmir would unleash the temporarily quelled (or, in the case of the northeast states, ongoing) secessionist forces throughout the rest of the country, thus bringing about the disintegration of India. This is a substantial concern that all proposed solutions must confront. As the highest profile armed secessionist struggle in India (Nagaland is the longest-running, but is little known outside India), all eyes are literally on Kashmir. Despite the fact that J&K's inclusion in the modern Indian nation state took place under specific circumstances not paralleled with other regional states in India, it still represents a formal "test case." If Kashmir were to secede, it would create an internal precedent that others may, rightly or wrongly, draw upon to further their own political causes.

2.2 The safety of India's Muslim minority

In the current climate, a more substantive fear than that of internal secessionist dominoes is the fear of potential anti-Muslim reprisals. The insurgency in Kashmir has given way from a demand that at one time emphasized political independence, to one that now displays an increasingly radical Islamist agenda.[22] Most observers attribute the change to the rising presence of foreign militants who, according to Indian Army statistics, comprised sixty-two percent of the militants killed in 2002 compared with 0.2% in 1991.[23] Pakistan is the primary source of

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21 For an insightful argument along these lines, see Khilnani, Sunil: The Idea of India, New York 1998.

22 See: Jammu and Kashmir Liberation Front Deplores 'Talebanization' of Kashmir, in: Financial Times Information / Asia Africa Intelligence Wire / BBC International Monitoring January 16, 2003. For an analytic consideration, see Blank, Jonah: Kashmir: Fundamentalism Takes Root, in: Foreign Affairs, Vol.78, no.6 (Nov/Dec 1999), pp.36-53.

23 See Pandit, Rajat: Army Bracing for Spurt in Infiltration, in: Economic Times, April 14, 2003. Pandit quotes Indian Army sources as saying that in 1991 only 2 of 844 militants killed were foreign; in 2002, 1,063 of 1,707 killed were foreign.

support for these militants, a fact denied by Pakistan but openly claimed by the groups themselves as well as confirmed by the United States.[24]

Thus an insurgency which used to be framed in terms of independence and self-rule for the people of Kashmir, an explicitly populist appeal, now associates itself (or has been dragged into association) with foreign militant groups whose recent actions included the actual decapitation of young women venturing in public without a burka.[25] This Taliban-style agenda includes the virtual exclusion of women from visible public life, Islamic law, and the elimination of Hindus. These radical social changes using violent force bear no resemblance to the Kashmir constituted by a syncretic culture of Kashmiriyat; indeed, these radical social changes bear no resemblance even to pre-1989 predominantly Muslim Kashmir.[26] This 'Talibanization' of the conflict represents a significant shift in the ideological terms of debate, and means that the Kashmir crisis, now more than ever before, has become an icon for larger Hindu-Muslim conflict within India.

As an icon of a larger ethnic conflict, therefore, the Kashmir crisis has recursive effects on the rest of India. India is in the grip of enormous socio-political upheaval, with the normative ideologies of the nation forged under Gandhi and Nehru undergoing a new revisionism that projects the (overwhelming) Hindu majority as a victimized minority, one victimized by Muslims. When the insurgency in Kashmir first arose, despite the fact that it did not espouse a radical Islamist agenda, it employed an exclusivist image of the kind of Kashmir that was fighting for aazaadi, (freedom), one that did not include Kashmiri Pandits. Selective killings of Pandits took place in the early 1990s and Kashmiri insurgents threatened Pandits with death if they remained in the Valley. Some three hundred thousand fled to refugee camps in Jammu and Delhi; virtually none have been able to return. This act of ethnic cleansing understandably added to the list of grievances that Hindu nationalists were able to summon as evidence of the mistreatment Hindus continue to face in their homeland.

For over a decade, in fact since the post-Ayodhya riots of December 1992, a powerful argument against granting a plebiscite/referendum for Kashmir has been that any change in the status quo could unleash unthinkable violence on Muslims throughout the rest of India. Now, following the massacre of more than 2,000 Muslims in Gujarat in 2002, that argument has taken on new force. Everything that happens in Kashmir gets repackaged as proof that Muslims are not patriotic Indian citizens (despite overwhelming evidence to the contrary throughout most of India) and fuels further antipathy toward Muslims throughout the rest of India. This process of potentiating future revenge on an entire community must be considered as an increasingly significant factor in the search for future solutions. Not only is the insurgency in Kashmir not what it once was in 1989; India, too, is a changed polity. The ongoing crisis in Kashmir further fuels negative sentiments on the part of Hindu nationalists toward not just Kashmir but Muslims in general, and the increasing reality appears to be that Muslims elsewhere in India, 140 million people, have a pivotal stake in seeing Kashmir resolved peace-

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[24] See, for example, the Lashkar-e-Tayyaba publication openly available online at http://www.jamatdawa.org/data3/zerbfeb03/index.htm; for U.S. view, see Rajesh Mahapatra, "U.S. Ambassador Says Militant Infiltration from Pakistan Territory into Indian Kashmir is Up," Associated Press September 19, 2002; for Valley infighting which results, see also "Kashmir group Hizb-ul Mojahedin [sic] accuse other groups of harboring terrorism" in The Telegraph (Calcutta), December 13, 2001.

[25] See Praveen Swami, "Through the Valley of the Shadow of Death" in Asia Times, January 9, 2003. Available online at http://www.atimes.com/atimes/South_Asia/EA09Df02.html

[26] These developments represent the destruction of one of the world's most unique composite cultures, and is reason enough for despair. It may not be possible to recover 'kashmiriyat.'

fully.[27] Their own well-being might well be affected in unspeakable ways by developments in Kashmir.

2.3 India as a secular polity

Perhaps the most important effect of the Kashmir crisis on the rest of India is its implication for the normative basis of the Indian nation state. States are not the culmination of bureaucratic paperwork; rather, the legalities of states are the formal expression of ideas. As the only Muslim-majority state in India, the inclusion of J&K within India was an important demonstration of the capabilities of Indian secularism. It showed that India was not forged on the basis of religion, and that it could incorporate Muslims in a majority state as well as Muslims in a dispersed minority equally. No less importantly, J&K's inclusion within India theoretically undermined the "two nations theory" which formed the ideological basis for Pakistan.

Yet the truth is that those secular credentials have taken a terrible beating from all sides, and the crisis in Kashmir compounds it. Under the long tenure of the Congress at the centre, meddling with state politics in J&K to keep the state politically compliant became a routine feature of the relationship between India and Kashmir. By preventing a credible political opposition to develop in the state, the Indian government caused political and institutional decay which ultimately fuelled the very secessionism it was attempting to prevent.[28] Over time, the fact that it has been so difficult to include J&K as a Muslim-majority state under the aegis of the Indian polity, and that previous central governments resorted to outright malfeasance to maintain the status quo, caused some to question the viability of the secular national project as originally conceived.

With the ongoing conflict now more islamicized, and with an increasingly vocal Hindu majority within India demanding that Indian Muslims recognize through greater subordination that they are a minority within a Hindu polity, this gap has grown.[29]

The October 2002 state elections in J&K, widely acknowledged as free and fair,[30] suggest that the centre is willing to move toward dealing fairly with Kashmir, a positive development which provides some cause for hope, but the complicated back-and-forth on Article 370 along with the increasingly routine demonization of Muslims by Hindu nationalists make the situation one of great uncertainty. And we mean demonization in the most literal sense: the RSS magazine, Trikuta Lalkar, released an issue in August 2002 in which terrorism was depicted as a giant Ravana, the chief demon of the Indian epic Ramayana. The ten heads of Ravana

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27 This is the likely impetus for Imam Bukhari, the choleric spiritual head of Delhi's Jami Masjid, to have become involved as a Track II peacebroker for Kashmir. It is likely also the reason for his more recent statements directed against Pakistan-based militant groups like the Lashkar-e-Tayyaba that Kashmir belongs to India. See "India's Integrity Not Negotiable, Imam Tells Lashkar," in The Hindu, May 5, 2001.

28 See Ganguly, Š.: The Crisis in Kashmir, especially pp.37-42.

29 For example, see Mishra, Pankaj: The Other Face of Fanaticism, in: The New York Times Magazine, February 2, 2003.

30 These elections were regarded as fair, though it is important to note that the voter turnout was exceptionally low in many constituencies in the Valley as a result of a Hurriyat-sponsored boycott. See Statistical Report on General Election, 2002, to the Legislative Assembly, Jammu and Kashmir. New Delhi: Election Commission of India, 2002. Available online at http://www.eci.gov.in/ (then navigate through the state-level statistics frame). In particular, note low turnouts (3-9%) of Hazratbal, Zadibal, Idgah, Khamyar, Habbakadal, Amirakadal, Sonawar, and Batmaloo (pp.31-37).

were depicted as: Farooq Abdullah, Omar Abdullah, Mufti Mohammed Sayeed, Moulvi Mirwaiz Farooq, Shabir Ahmed Shah, Ali Shah Geelani, Syed Salahuddin, Yasin Malik, Majid Dar and Pakistan's Pervez Musharraf. If the political tenor is such that an Indian nationalist like Omar Abdullah – a Minister of State for Home up until fall 2002 – is cast as a demon simply because he is Kashmiri and Muslim, all bets are off on where Indian secularism is headed.[31] Developments in Kashmir thus both add to the ongoing debate about what secularism should mean in India, and at the same time are affected by it. This is the single most important and contentious public debate underway in India.

3. India's ambitions and Indo-U.S. relations

In the wake of 9/11, India was the first country in the world to make an offer of unconditional support to the United States. But Indian press accounts and editorials from September to October 2001 illustrate that Indian thinking and the thinking of the U.S. government were actually quite divergent. Opinion pieces such as "US Will Now Appreciate Indian Stand on Kashmir"[32] and "Osama's Shadow from Kandahar to New York"[33] highlight the belief in India that the destruction of the World Trade Center would finally make the U.S. realize what India had been facing for more than a decade in Kashmir.

A flaw in this sentiment was quickly revealed: the U.S. soon reinvigorated ties with Pakistan to prosecute the War on Terror in Afghanistan. This was a shocking affront to the budding partnership between the world's largest and world's oldest democracies. By re-conscripting Pakistan as an ally, the U.S. stopped far short of initiating a global War on Terror, in the Indian view, for the Indian position was that terrorism in India stems from Pakistan. Despite U.S. acknowledgement of cross-border terrorism stemming from Pakistan, and its detrimental effects on Kashmir and India, the United States pushed ahead with a partnership with Pakistan. Cracks in the U.S.-India relationship of "natural allies" thus emerged. The Indian leadership appears less than enchanted with U.S. practices of pursuing its own interests.

Now, with developments over the past year, the Kashmir crisis has a greater effect on Indo-US relations, complicating the bilateral ties considerably. The war in Iraq adds to this. Some two weeks following a March 2003 massacre of twenty-four Kashmiri Pandits in India, after which the U.S. cautioned India to exercise restraint, Indian Foreign Minister Yashwant Sinha declared that the doctrine of pre-emption providing the rationale for U.S. actions in Iraq could apply in equal measure for India to take pre-emptive action against Pakistan. This assertion was met with a statement from the U.S. Department of State: "Any attempts to draw parallels between the Iraq and Kashmir situations are wrong and are overwhelmed by the differences between them."[34]

With a recent resolution in the Indian Parliament deploring the U.S.-led use of force in Iraq, there may be further distance developing in the Indo-U.S. relationship. It is unclear to what

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31 See Sharma, Sant Kumar: Magazine Released by RSS Leader Likens Farooq to Ravana, in: Times of India, August 16, 2002.

32 See Vyas, Sudhir: US Will Now Appreciate Indian Stand on Kashmir, in: Times of India, September 19, 2001.

33 See Sarin, Ritu: Osamas Shadow, From Kandahar to New York, in: Indian Express, September 30, 2001.

34 See "Don't Use Iraq As a Case Against Pak: US to India," Hindustan Times April 7, 2003; available online at http://www.hindustantimes.com/news/181_227658,0005.htm

extent such distance might affect India's broader goals, but some observers in India have speculated that the Indian ambition of a permanent seat in the U.N. Security Council would be better served if it could refrain from alienating the United States.[35] At the time of this writing, it is unclear what further developments may take place in Indo-U.S. relations.

One thing, however, is certain: the ongoing nature of the Kashmir crisis has placed India in an awkward position with respect not only to the type of bilateral relationship it would like with the U.S., but the type of global role it views as its natural inheritance. Other countries do not necessarily view India as a natural leader in the world of nations.

By linking the new international language of terrorism and the War on Terror exclusively with Pakistan and its role in Kashmir, India runs the risk of undermining its global ambitions by appearing to be no more than a regional, not a global, player, and that too one unable to resolve its own problems.

4. Human costs of the Kashmir conflict on India

If the government of India contends, as it does, that Kashmir is an integral part of India, it is obligated to be concerned about the welfare of its citizens: both those who live there, and those sent to serve there. We have outlined above the legal, normative, and international dimensions of the crisis as it affects India, but would be remiss not to consider the wrenching traumas faced by Kashmiris, as well as for the troops deployed there. The conflict exacts longer-lasting, more prosaic tolls on individual people, tolls which must not be forgotten.

4.1 Death of tourism and local industries

Until 1989, tourism (domestic and international) was an important component of the Valley's economy. In 1989, for example, more than some 722,000 tourists visited the state, yielding around five billion rupees annually ($102 million). In 2001 the number of visitors was down to only 72,000.[36] The industry has been wiped out. No one goes to a lost paradise, and that causes ripple effects on the local economy. The more than 1,500 fabled houseboats, once a fantasy destination, are dusty, unused, if not entirely closed for business. A three percent occupancy rate cannot sustain them.[37] Cooks, taxi drivers, vegetable sellers, embroiderers, tailors, walnut wood carvers, carpet weavers, papier-mâché artisans, shawl-makers, and even shepherds must cope with reduced demand for their goods. One carpet merchant told the Asian Wall Street Journal that he used to sell ten rugs a month, but can barely sell one today.[38] The situation has grown so dire that the Jammu and Kashmir Tourist Development Corporation is now attempting a new marketing ploy, offering day trips and picnics to those already resident in the state since outsiders no longer visit.

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35 See Iyengar, Jayanthi: Why New Delhi Must Keep an Open Position, in: Business Line March 26, 2003.

36 See Dhume, Sadanand: Tourism in Kashmir Is a Tough Sell – Once-Thriving Industry Has Collapsed, Hurting Livelihood of Thousands, in: Asian Wall Street Journal June 4, 2002; also see: Kashmir's New Tourists: Kashmiris, in: Indian Express, December 11, 2002.

37 Ebd.

38 Dhume: Tourism a Tough Sell.

4.2 Trauma and stress take a toll

The costs of conflict on public health are severe, yet this question has not been examined in any detail in the literature on Kashmir. Incidental and anecdotal reports are the only window onto this collective tragedy. Most obviously, widespread abuses of human rights and the use of third-degree methods have corrosive effects on mental as well as physical health. Post-Traumatic Stress Disorder can affect victims of violence for years. The phenomenon known as Secondary Traumatic Stress Disorder similarly affects family members and caregivers of victims of violence. Chronic traumatic stress disorders have implications for physical health as they often manifest through chronic illnesses: ulcers, depression, hypertension, and sexual dysfunction. We can glimpse some of these effects in anecdotal reports; for example, a thriving black market for Viagra now exists in Srinagar, where young Kashmiri men as well as soldiers posted there seek the drug to remedy psycho-sexual dysfunction.[39] Among men but especially among women, fainting spells, fits of hysteria and suicide attempts are on the rise, attesting to the state of heightened psychological stress experienced by victims of this ongoing crisis.[40] In Srinagar alone, according to one account, the number of people seeking help in 2001 at the Psychiatric Diseases Hospital was 47,828-compared to 1,700 in 1990.[41] And trauma is not limited to the Valley. Some 300,000 Kashmiri Pandits, forced out of their ancestral homes and dwelling in subpar refugee camps for (in some cases) more than a decade now, are similarly experiencing traumatic stress-related health problems.[42]

There is another kind of trauma being perpetrated throughout J&K, one little discussed in the press or in academic analysis, but quite apparent to anyone who has either had a conversation with a Kashmiri or spent time in the state. That trauma is the rape of innocent women, both in the Valley and in the Jammu region alike, by militants as well as security forces. One reporter wrote in 1999 that "The most frequently-heard stories involve the violation of women's rights. For fear of reprisals, stories of rape and looting are generally hushed up, and never make it to the pages of newspapers."[43] It is difficult to ascertain the extent of this crime, for there are no surveys, and in any event it is often unreported out of a desire to protect a woman's, and her family's, honour. However, there have been enough news reports over the past fourteen years to point to what any thinking person knows to be the truth: that men armed with guns and impunity, either granted by legal dispensation or because they live in a criminal world of anonymity, sometimes act out their violent rage through sexual assault. For fourteen years innumerable, unknowable, innocent women have been violated, including having been victims of the excruciating group act of "gang rape." A Times of India interview recounts atrocities such as three dozen women, including an 80-year-old, gang raped in remote Kupwara, and a mother and daughter gang raped in Banihal.[44] The lifelong effects not only for the immediate victim but for the entire family cannot be put into words.

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39 See Bedi, Rahul: Viagra Sales Up in State Emasculated by War, in: The Weekend Australian, June 24, 2000. p.13.

40 See the recent short report by Ahmad-Shirali, Kishwar: Violence to the Psyche: Costs of.Surviving Violence in Kashmir, in: MFC Bulletin Sept/Oct 2002, pp.14-16. Available at http://www.mfcindia.org/mfc%20SEP-OCT%202002.pdf

41 See Bonner, Raymond: In a Paradise Torn by Feuding, Kashmiris Long for Independence, in: The New York Times, June 2, 2002.

42 See: Neglected by the country, KPs live in inhuman conditions, in: Press Trust of India, June 2, 2002.

43 See Sidhva, Shiraz: In the Shadow of the Gun, in: The Hindu, July 25, 1999.

44 See: BSF Gangrape Victim Gets No VIP Shoulder, in: Indian Express April 22, 2002; Has the Army Complicated the Kashmir Situation?, in: The Times of India (here, see the response by Shabir Ahmed Dar), February 25, 2001; see the brief statement from Human Rights Watch, available online at

These brief examples point to an important and large-scale effect of the ongoing crisis that must be given greater attention. When populations are subjected to severe trauma over lengthy periods, it creates a grave public health crisis. The massive surge of people seeking psychiatric help in Srinagar is a good but incomplete indicator, for rural areas have no psychiatric facility, only primary health centres unable to deal with psychological trauma. In this sense, the Kashmir crisis is taking a severe toll on residents of the Valley, who are the victims of rights abuses by militants as well as armed forces; it is taking a toll on the troops deployed there, who are, like the United States recruits, largely from segments of the Indian population for whom other career options are limited; and it is taking a toll on the refugees from the Valley, those forced to flee under threat of violence and whose well-being is now the primary concern of no one. Does India's leadership really want such severe traumas to continue?

5. Conclusion

In this chapter we have sought to go deeper into the effects of the Kashmir crisis on India, not by looking at the prospects for war, or India-Pakistan relations, but by looking carefully at internal sociopolitical changes resulting from the conflict. As we stated above, international attention is almost entirely focused on the international repercussions, for with both India and Pakistan nuclear-capable, the prospects of nuclear war command attention. But this attention has resulted in a neglect of the many important ways this unceasing crisis affects India itself.

We have thus chosen to highlight those domestic repercussions, for they are substantial and should not be overlooked or trivialized. We believe that the armed conflict in Kashmir must be resolved peacefully, and hope that our efforts here provide significant rationale for recognition of the opportunity costs of its continuation.

As we traced above, the Kashmir crisis has important implications for the type of governance India maintains for its federation; the kinds of personal liberties citizens can expect; the kind of secularism this multi-ethnic multi-religious polity must negotiate; the kinds of protections this polity can offer its minorities; the kind of role India aspires to claim globally; and the assurance of health and well-being this democracy can offer its citizens. Without greater attention to each of these issues as part of the dilemma the conflict in Kashmir presents, the great promise of independence achieved in 1947 will have been for naught.

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http://www.hrw.org/about/projects/womrep/General-41.htm ; see also "Militant Abuses in the Valley," in Behind the Kashmir Conflict: Abuses by Indian Security Forces and Militant Groups Continue, available online at http://www.hrw.org/reports/1999/kashmir/mil-abuses.htm; also in that same report, see section "Rape and Torture in Doda" regarding the prevalence of rape in Doda, which is in Jammu:http://www.hrw.org/reports/1999/kashmir/doda.htm#P187_42784