

# The Plebiscite Conundrum in Jammu and Kashmir (1947 to the Present Day)

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## Abstract

*Since 1947 the expectation that the fate of the disputed former princely state of Jammu and Kashmir would be decided by a plebiscite has been part of the narrative of the state's history. 75 years later, the plebiscite has never been held, the state remaining de facto divided between India and Pakistan, both accusing each other of illegally occupying the territory the other controls, while a significant proportion of the inhabitants of the state maintain that they have never been allowed their 'right of self-determination.' This paper examines the reasoning behind holding a plebiscite, the challenges of holding a unitary plebiscite in a state where the inhabitants of the major regions of the state have differing allegiances and aspirations and the reasons why the plebiscite was not held. It also explains why successive governments of Pakistan have clung to the notion of holding a plebiscite, whereas successive Indian governments have long since decided that a plebiscite is no longer necessary. Finally, this paper will examine whether, in a changed demographic environment, with the state de facto divided for over half the time it was ever a united administrative unit, the holding of a plebiscite would resolve the issue or whether it would create more disaffection among disappointed minorities.*

**Keywords:** Jammu and Kashmir, Kashmir Issue, Plebiscite, India-Pakistan Relations, UN.

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## Introduction

During the negotiations leading up to the transfer of power to two new independent countries (the dominion of West and East Pakistan and the dominion of India), the future of the 562 princely states comprising approximately two-fifths of the population and one-third of the land space had also to be determined.<sup>1</sup> The British directive, outlined in a Memorandum on States' Treaties and Paramountcy in May 1946 suggested that 'where adequate standards cannot be achieved within the existing resources of the state they will no doubt arrange in suitable cases to form or join administrative units large enough to enable them to be fitted into the constitutional structure. It will also strengthen the position of states during this formulative period if the various governments which have not already done so take active steps to place themselves in close and constant touch with public opinion in their state by means of representative institutions.'<sup>2</sup>

When, in July 1947, Mountbatten addressed the Chamber of Princes, by which time the partition of the subcontinent had been agreed, his expectation — to avoid the ensuing 'chaos' which would result from breaking up the economic entity of a united India — was for the rulers to come to an accommodation with the successor dominions, bearing in mind their geographical contiguity, by which, through Instruments of Accession (outlining the conditions under which they would 'accede' to or join India or Pakistan), they would surrender the three subjects of defence, external affairs and communications while retaining internal autonomy. 'The whole country is passing through a critical period,' stated Mountbatten. 'I am not asking any state to make any intolerable sacrifice of either its internal autonomy or independence. My scheme leaves you with all the practical independence that you can possibly use and makes you free of all those subjects which you cannot possibly manage on your own.'<sup>3</sup>

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<sup>1</sup> The number of 562 princely states is the traditional figure given; some were no bigger than a landed estate, others larger than many independent countries.

<sup>2</sup> "Memorandum on States' Treaties and Paramountcy," May 12, 1946, <https://www.indianewsnetwork.com/20191207/cabinet-mission-s-memorandum-12-may-1946>. <https://www.indianewsnetwork.com/20191207/cabinet-mission-s-memorandum-12-may-1946>

<sup>3</sup> Lord Louis Mountbatten's Address to The Chamber of Princes, July 25, 1947, <https://www.jammukashmirnow.com/Encyc/2019/7/25/July-25-1947-When->

By the time Pakistan and India achieved independence on 14 and 15 August respectively, a large majority of the princely states had decided where their future allegiance lay. But a number had not yet committed, negotiations taking place in the months following independence.<sup>4</sup> Of these the fate of the princely state of Jammu and Kashmir became the most contentious. Its ruler, Maharaja Hari Singh, was a Hindu Dogra but his population was majority Muslim; his state was also geographically contiguous to both India and Pakistan. Instead of choosing to join either dominion, the Maharaja preferred to leave open the option of remaining fully independent, although, as above, this scenario was not envisaged nor thought desirable by the British authorities. On August 12, he signed a 'standstill agreement' with the future Pakistani government to ensure the continued functioning of trade, services and communications. That no standstill agreement was signed with India immediately aroused suspicions among the Pakistanis that the Maharaja would be forced to accede to India once the independence celebrations had taken place. This was compounded by the realisation, when the border between what became west and east Punjab was delimited, that three of the four tehsils of marginally Muslim majority Gurdaspur province had been awarded to India, by means of which India gained access by road to Jammu and Kashmir through the Pathankot tehsil.<sup>5</sup>

As news of atrocities against Muslims in the Jammu region of the state reached the streets of Peshawar, in Pakistan's North-West Frontier Province

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Mountbatten-addressed-The-Chamber-of-Princes-to-choose-either-of-the-2-dominions-India-or-Pakistan-there-was-NO-THIRD-OPTION.&html. Earl Mountbatten of Burma (1900-79) was Viceroy of India Mar-Aug 1947 and Governor-General of India Aug 1947-Jun 1948.

<sup>4</sup> Those princely states which joined Pakistan either before or soon after independence are as follows: Amarkot (Umerkot), Bahawalpur, Khairpur, Chitral, Swat, Hunza, Nagar, Amb. Another state whose Muslim ruler initially acceded to Pakistan on September 15, 1947 was Junagadh; but, on November 10, 1947, following the accession to India of two states subject to Junagadh's suzerainty and subsequent military occupation by India, its accession to Pakistan was rescinded and the state, which was majority Hindu, acceded to India; this was approved by a referendum on February 24, 1948.

<sup>5</sup> See, Christopher Beaumont, the secretary to the partition council, chaired by Sir Cyril Radcliffe, believed the award of most of Gurdaspur to India was not related to the Kashmir issue and that it was fair: 'The Muslims were concentrated in the towns and most of the land was cultivated by the Hindus and the Sikhs,' correspondence with the author, October 1995, Victoria Schofield private collection.

(NWFP) on October 22, 1947 tribesmen from the tribal territories of Pakistan began to enter Kashmir to aid their Muslim brethren.<sup>6</sup> Fearing his state might fall to the tribal raiders, the Maharaja requested military assistance from India. Since Lord Mountbatten, who had remained as Governor-General of India, believed it would be ‘the height of folly to send troops into a neutral state, where we had no right to send them since Pakistan could do exactly the same thing, which could only result in a clash of armed forces and in war,’ Mountbatten’s suggestion was for a temporary accession to India followed by ‘a referendum, plebiscite, election or even, if these methods were considered impracticable, by representative public meetings,’ to validate the Maharaja’s decision.<sup>7</sup>

According to official Indian accounts although disputed by Pakistan and international scholars, the accession of the state of Jammu and Kashmir took place on October 26, 1947, following the Maharaja’s flight from Srinagar to Jammu.<sup>8</sup> By the terms of the accession document, as proposed for all princely states, India’s jurisdiction was to extend only to defence, external affairs, and communications; the Maharaja’s longstanding political opponent, Sheikh Abdullah and the Jammu and Kashmir National Conference (JKNC), would assume authority of an interim government.<sup>9</sup> On October 27, 1947 Indian troops were airlifted to Srinagar. As fighting continued, Mountbatten tried to effect a settlement. On December 9, 1947 the two prime ministers — Liaquat Ali Khan and Jawaharlal Nehru<sup>10</sup> — met Mountbatten in Lahore. In Mountbatten’s words, ‘Eventually, after trying

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<sup>6</sup> What role the Pakistani government played in their departure is contested. Whereas Governor-General Mohammed Ali Jinnah might have deliberately been kept uninformed, scholars agree that the Prime Minister, Liaquat Ali Khan, undoubtedly sanctioned the move to ‘liberate’ Kashmir. See Victoria Schofield, *Kashmir in Conflict* (2021), 51. Since British military officers were in command of and serving in both the Indian and Pakistani armies, with Field Marshal Sir Claude Auchinleck in supreme command of both armies, Mountbatten saw the temporary accession as the best way to avert an inter-dominion war. In 2010 the North-West Frontier Province (NWFP) was renamed Khyber Pakhtunkhwa (KPK).

<sup>7</sup> Mountbatten, quoted in Alan Campbell-Johnston, *Mission with Mountbatten*, (1972), 224.

<sup>8</sup> Lamb, *A Disputed Legacy*, 150-51.

<sup>9</sup> Sheikh Mohammed Abdullah (1905-82) known as the ‘Lion of Kashmir’ was Prime Minister of J&K 1951-53, Chief Minister of J&K 1975-77, 1977-82.

<sup>10</sup> Liaquat Ali Khan (1895-1951) was Prime Minister of Pakistan 1947-51; Jawaharlal Nehru (1889-1964) was Prime Minister of the Dominion of India 1947-50 and of the Republic of India 1950-64.

every means I knew to find common ground between the two parties, I realised that the deadlock was complete and that the only way out now was to bring in some third party in some capacity or other. I suggested that the United Nations Organisation should be called upon.’<sup>11</sup>

## **Role of the UNO**

At the end of December 1947 Nehru agreed with Mountbatten’s suggestion to approach the United Nations (UN); his complaint was lodged under Article 35 (Chapter VI) of its charter, which permitted member states to bring an issue to the notice of the Security Council ‘likely to endanger the maintenance of international peace.’<sup>12</sup> His letter to the secretary-general affirmed that ‘as soon as the raiders are driven out and normalcy is restored, the people of the state will freely decide their fate and that decision will be taken according to the universally accepted democratic means of plebiscite or referendum.’<sup>13</sup> Although Mohammad Ali Jinnah, who had assumed the position of Governor-General of Pakistan at independence in August 1947, had initially not been enthusiastic about the outcome of a plebiscite (on the grounds that ‘with the troops of the Indian Dominion in military occupation of Kashmir and with the National Conference under Sheikh Abdullah in power, such propaganda and pressure could be brought to bear that the average Muslim would never have the courage to vote for Pakistan,’) he had eventually agreed.<sup>14</sup>

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<sup>11</sup> Mountbatten, as quoted in H.V. Hodson, *The Great Divide* (Hutchison, 1969), 465.

<sup>12</sup> Charter of the United Nations Organisation, Article 35, Chapter VI. India’s application to the Security Council was despatched on January 1, 1948. There remains the belief in India that Nehru should have brought the issue to the UN under Article 51 which related to ‘individual or collective defence if an armed attack occurs.’ <https://www.un.org/en/about-us/un-charter/full-text>. See ‘Recall: When Nehru Took Pakistan to UN Over Kashmir in 1947, and What Happened Thereafter’; *Indian Express*, April 7, 2022, <https://indianexpress.com/article/explained/nirmala-sitharaman-nehru-united-nations-pakistan-kashmir-dispute-7834191/>

<sup>13</sup> Jawaharlal Nehru, as quoted in Josef Korbel, *Danger in Kashmir* (Princeton University Press, 1954, 1966), 98.

<sup>14</sup> Mohammad Ali Jinnah (1875-1948) was Pakistan’s first Governor-General 1947-48; Mountbatten to Nehru, November 2, 1947, Sardar Patel Correspondence, vol. I, doc. 72, ed., Durga Das (1971), 71-81. Jinnah’s preference was for a simultaneous

On January 20, 1948 the UN Security Council adopted resolution 39, offering to assist in the peaceful resolution of the dispute for which purpose a commission — known as the United Nations Commission on India and Pakistan (UNCIP) — was established with the objective, *inter alia*, of exercising ‘a mediatory influence likely to smooth away difficulties.’<sup>15</sup> Central to the process was the holding of the plebiscite, which — given the state’s multi-cultural, religious and ethnic composition — Mountbatten’s constitutional adviser, W.H. Morris-Jones, suggested could well have been ‘a carefully considered option,’ if only it had been considered prior to partition, rather than afterwards, when Mountbatten was ‘no longer in a position to see it through as an integral part of the partition.’<sup>16</sup>

Instead reliance was now placed on the two successor states to make good their commitment, as confirmed in another resolution of the UN Security Council on April 21, 1948, which noted ‘with satisfaction that both India and Pakistan desire that the question of the accession of Jammu and Kashmir to India or Pakistan should be decided through the democratic method of a free and impartial plebiscite.’<sup>17</sup> An immediate requirement prior to holding the plebiscite, however, was the ‘restoration of peace and order.’ In the same Security Council resolution, both India and Pakistan were requested to undertake certain preparatory arrangements. In the case of Pakistan, it was to use its ‘best endeavours’: ‘to secure the withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistani nationals not normally resident therein who have entered the State for the purposes of fighting, and to prevent any intrusion into the State of such elements and any furnishing of material aid to those fighting in the State.’<sup>18</sup>

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withdrawal of troops and for a plebiscite be held under the joint supervision of the two Governor-Generals, himself and Mountbatten.

<sup>15</sup> Resolution 39 (1948) adopted by the Security Council at its 230th meeting January 20, 1948 (Document no. S/654)

<sup>16</sup> Professor Wyndraeth Morris-Jones, “Thirty-Six Years Later: The Mixed Legacies of Mountbatten’s Transfer of Power,” *International Affairs*, Autumn (1983): 624. He was constitutional adviser to Mountbatten.

<sup>17</sup> Resolution 47 (1948) on the India-Pakistan question, adopted by the Security Council at its 286th Meeting held on April 21, 1948 (document no. S/726, dated 21st April 1948.)

<sup>18</sup> Resolution 47 (1948) on the India-Pakistan question... A. Restoration of Peace and Order, 1(a).

The Indian government was likewise informed that, 'when it is established to the satisfaction of the Commission set up in accordance with the Council's Resolution 39 (1948) that the tribesmen are withdrawing and that arrangements for the cessation of the fighting have become effective, [it should] put into operation in consultation with the Commission a plan for withdrawing their own forces from Jammu and Kashmir and reducing them progressively to the minimum strength required for the support of the civil power in the maintenance of law and order.'<sup>19</sup> The idea behind these directives was to ensure that the presence of troops did not 'afford any intimidation or appearance of intimidation to the inhabitants of the State,' without which it was recognised that it would not be possible for a free and impartial plebiscite to be held.<sup>20</sup>

A further resolution adopted by UNCIP on August 13, 1948 put forward a proposal, elaborating on the ceasefire and truce agreement, in which both governments would again 'reaffirm their wish that the future status of the State of Jammu and Kashmir shall be determined in accordance with the will of the people and to that end, upon acceptance of the Truce Agreement both governments agree to enter into consultations with the commission to determine fair and equitable conditions whereby such free expression will be assured.' Once again, the terms of the Truce Agreement required Pakistan to ensure that its troops and the tribesmen were withdrawn from the territory they had occupied. Only when they had been withdrawn, would the government of India begin withdrawal of the 'bulk' of its forces.<sup>21</sup>

Finally, following a ceasefire agreed by India and Pakistan to take place at one minute before midnight on December 31, 1948, UNCIP adopted another resolution on January 5, 1949, commending the ceasefire and affirming that 'the question of the accession of the State of

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<sup>19</sup> Resolution 47 (1948) on the India-Pakistan question... A. Restoration of Peace and Order, 2(a).

<sup>20</sup> Resolution 47 (1948) on the India-Pakistan question... A. Restoration of Peace and Order, 2(a).

<sup>21</sup> Resolution adopted by the UN Commission for India and Pakistan (UNCIP) on August 13, 1948 (Document No. S/1100, para. 75, 9 Nov 1948). The resolution was unanimously adopted. Members of UNCIP were Argentina, Belgium, Columbia, Czechoslovakia, the US.

Jammu and Kashmir to India or Pakistan will be decided through the democratic method of a free and impartial plebiscite.<sup>22</sup>

On July 27, 1949, the Agreement between Military representatives of India and Pakistan Regarding the Establishment of a Cease-fire line in the State of Jammu and Kashmir' was signed. Known informally as the Karachi Agreement, among other provisions, its terms stipulated that a UN Military Observer Group in India and Pakistan (UNMOGIP) would observe and report on complaints regarding violations of the 830 km long ceasefire line, which was agreed along a line roughly dividing the state between the two countries.<sup>23</sup> While Pakistani forces were occupying approximately one-third of the state (the large expanse of Gilgit-Baltistan and a narrow strip of land to the west of the valley which they called Azad (Free) Jammu and Kashmir (AJK), India had retained control of a larger expanse of land in the north-east, Ladakh, with its small population of Buddhists centred on Leh; the predominantly Muslim valley of Kashmir, including Srinagar, the state's summer capital; and the Muslim-Hindu region of Jammu, seat of the state's winter capital.<sup>24</sup> China (which became the People's Republic of China on October 1, 1949) was also occupying a portion of Aksai Chin in the north-east of the state.<sup>25</sup>

But the withdrawal of troops never took place. From the outset, despite statements to the contrary, there was no trust between the belligerent parties. Having fought to occupy the state, Pakistan, under the premiership of Liaquat Ali Khan (and in the absence of Mohammad Ali Jinnah, who had died in September 1948) there was no question in the minds of the

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<sup>22</sup> Resolution adopted by the UN Commission for India and Pakistan (UNCIP) on January 5, 1949 (Document No. S/1196, para. 15, 10 Jan 1949).

<sup>23</sup> "The Agreement between Military Representatives of India and Pakistan Regarding the Establishment of a Cease-fire Line in the State of Jammu and Kashmir," July 27, 1949, <http://www.commonlii.org/in/other/treaties/INTSer/1949/13.html>

<sup>24</sup> Pakistani maps and rhetoric describe the area of the state occupied by India as 'illegally occupied disputed territory'; Indian maps describe the area of the state occupied by Pakistan as 'Pakistan Occupied Kashmir' (POK). The United Nations describes the whole region as 'disputed territory.'

<sup>25</sup> In 1963 Pakistan ceded the Shaksgam valley to China. According to the 1941 Census of India, Jammu province, covering over 12,000 square miles was more populous than the valley, with 61.19% Muslims and 37.19% Hindus; the entire valley (covering 8,539 square miles and including what became AJK) had 93.48% Muslims and 4.95% Hindus. See Christopher Snedden, *Independent Kashmir*, 100-04 for a detailed analysis of the structure of J&K in 1947.



Pakistanis of leaving open to chance that Indian forces would retake that part of the state Pakistan now controlled. The suggestion, embodied in the August 13, 1948 resolution, that 'pending a final solution the territory evacuated by the Pakistan troops will be administered by the local authorities under the surveillance of the Commission' did not inspire much confidence.<sup>26</sup> The failure to withdraw militarily, however, meant that India was under no compulsion to withdraw its troops, without which the plebiscite could not be held.

In May 1950 the Australian jurist, Sir Owen Dixon, was sent to the region as the one-man successor to UNCIP. Even at this early stage, Dixon saw the difficulties of conducting a plebiscite across the state, given its cultural and religious diversity. In his report submitted to the UN Security Council on September 15, 1950 he made three suggestions: a.) either that there should be a zonal plebiscite, region by region, and that the existing government should be replaced with an administrative body of UN officers; b.) or, that areas which would unquestionably vote for Pakistan or India would be allocated to the respective countries, with a plebiscite in the valley of Kashmir; c.) or, that the state be divided along the ceasefire line. Of the three suggestions, the one which found most favour with Pakistan was the second option: allocating Gilgit, Baltistan and AJK to Pakistan, allocating Ladakh and half of Jammu to India while the other half went to Pakistan, and holding a plebiscite in the valley. But yet again the sticking point was demilitarisation. 'I became convinced that India's agreement would never be obtained to demilitarise in any such form or to provisions governing the period of the plebiscite of any such character, which would in my opinion permit the plebiscite being conducted in conditions sufficiently guarding against intimidation and other forms of influence and abuse by which the freedom and fairness of the plebiscite might be held.'<sup>27</sup>

Finally in his report, Sir Owen Dixon made the important observation, which remains relevant in the present day, whenever (as frequently happens) the UN is held responsible for not holding the

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<sup>26</sup> Resolution adopted by the UN Commission for India and Pakistan (UNCIP) on August 13, 1948 (Document No. S/1100, para. 75, 9 Nov 1948), Part II, A (3).

<sup>27</sup> Sir Owen Dixon OM, GCMG, KC (1886-1972); Report of Sir Owen Dixon, United Nations Representative for India and Pakistan to the Security Council, 1950 <https://digitallibrary.un.org/record/486273?ln=en>

plebiscite. ‘So far, the attitude of the parties has been to throw the whole responsibility upon the Security Council or its representatives of settling the dispute notwithstanding that except by agreement between them there was no means of settling it.’<sup>28</sup> When, contrary to his earlier statements in support of holding a plebiscite, Nehru and successive Indian leaders said it was no longer relevant, the UN had no mandatory authority either to force demilitarisation by either India or Pakistan, or to oblige them to hold the plebiscite.<sup>29</sup>

## De Facto Divided

Meanwhile the Indian government had been continuing to integrate that part of the state which it controlled. In 1951, following the establishment of a Constituent Assembly, elections were held, in which it was recorded that Abdullah’s National Conference won all seventy five seats unopposed, the right-wing All Jammu and Kashmir *Praja Parishad* having boycotted the elections.<sup>30</sup> When, in subsequent years the issue of the plebiscite was raised, this Constituent Assembly election was used by the Indian authorities to assert that the inhabitants of the state had had the equivalent of a plebiscite because they had had the opportunity to vote in the elections. The state of Jammu and Kashmir’s relationship with India was reinforced by the inclusion of Article 370 in the Indian constitution which guaranteed the state a ‘special status,’ granting it permission to have a separate constitution, its own flag and autonomy over its internal administration including permanent residency.<sup>31</sup> A supplementary article 35A also came into effect in 1954, permitting the state legislature to define who was entitled to ‘permanent residency.’<sup>32</sup>

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<sup>28</sup> Report of Sir Owen Dixon, United Nations Representative for India and Pakistan to the Security Council, 1950 <https://digitallibrary.un.org/record/486273?ln=en>

<sup>29</sup> A.G.Noorani, *The Kashmir Dispute 1947-2012* (OUP, 2014), 235-240 for an interesting discussion of the Dixon plan. See A.G. Norani, “No Mediator Before or Since Came so Close to Success,” 235.

<sup>30</sup> Founded in 1947, the *Praja Parishad* was politically active in the Jammu region, its members campaigning for greater integration of the state within India and opposing J&K’s special status. It had close ties with the *Bharatiya Jana Sangh*, (the precursor of today’s BJP) with which it eventually merged.

<sup>31</sup> A.G. Noorani, *Article 370: A Constitutional History of Jammu and Kashmir* (OUP, 2011).

<sup>32</sup> “Article 35A: Why a Special Law on Kashmir is Controversial,” *BBC News*, August 5, 2019, <https://www.bbc.co.uk/news/world-asia-india-40897522>. The issue had its origin in the definition of a ‘Hereditary State Subject’ law passed in 1927 to

When, in 1953, Sheikh Abdullah was dismissed as prime minister, (his statements on Kashmiris' right of self-determination alienating him from his erstwhile friend and supporter, Prime Minister Jawaharlal Nehru), for the next decade his successor, Bakshi Ghulam Mohammed — both a Kashmiri and a Muslim — continued to oversee (Indian) Jammu and Kashmir's integration within India, eroding its 'special status.'<sup>33</sup> In February 1954, the Constituent Assembly unanimously ratified the accession of the state of Jammu and Kashmir to India, which action was intended to put an end to all discussion of a plebiscite. Three years later a new constitution was approved, modelled along the lines of the Indian Constitution. In 1958, Sheikh Abdullah was briefly released from prison and the Plebiscite Front, set up by Mirza Afzal Beg, was officially launched. Contrary to Abdullah's earlier stance favouring the state being part of India, he had begun to support the idea of a plebiscite. 'Expression of the will of the people through a plebiscite is the one formula which has been agreed upon by the parties concerned and in a mass of disagreements about details, this common denominator has held the field so far...The people of the State consider the formula of plebiscite as a clear interpretation of their long cherished aspirations and as a lasting solution of the complicated problem which is facing them.'<sup>34</sup>

Re-arrested for his outspoken statements, Abdullah emerged again on the political scene when he was released in 1964. Under instructions from Nehru he travelled to Pakistan to try to agree a settlement over Jammu and Kashmir during which the proposal for a confederation was suggested but rejected by Ayub Khan on the grounds that it would invalidate partition. Further discussions could not take place because, with the announcement of Nehru's death, Abdullah returned immediately to Delhi for his funeral. Arrested again in 1965 until 1968 and exiled from the valley of Kashmir in the early 1970s, Sheikh Abdullah did not play any significant role until the mid-1970s.

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prevent an influx of non-Kashmiris obtaining employment in public services and purchasing land.

<sup>33</sup> Bakshi Ghulam Mohammed (1907-72) was Prime Minister of J&K 1953-64.

<sup>34</sup> Sheikh Abdullah, February 1958, quoted in Lamb, *Disputed Legacy*, 203. For more information on events during this period, see P.S. Verma, *Jammu and Kashmir at the Political Crossroads* (Vikas Publishing House, 1994), 112-123; A.G. Noorani, *The Kashmir Dispute*, 194-95; Victoria Schofield, *Kashmir in Conflict*, (2021), 91-93.

The September 1965 war, initiated by Pakistan's incursion into the valley of Kashmir, meant that relations between the two countries again soured. Although the 1966 Tashkent declaration affirmed a commitment to resolve their disputes by peaceful means, no actual resolution of the Jammu and Kashmir issue took place.

In Pakistan, the holding of the plebiscite remained central to the government's official Kashmir rhetoric. Setting aside the fact that, according to the UN proposals, demilitarisation had to take place first and, regardless of what the outcome could mean, (if, for example, by the slimmest of majorities, Pakistan lost a unitary plebiscite and had to surrender not only *Azad* Jammu and Kashmir but also Gilgit-Baltistan (formerly the Northern Areas), in the government's opinion the plebiscite, as outlined in the UN resolutions, was considered the way forward. What was also important from Pakistan's point of view, was the legal standing which the UN resolutions gave Pakistan, without which India's contention — that Pakistan was illegally occupying land which, because of the Maharaja's accession, was an integral part of India — might become the dominant narrative.

With this in mind, the Pakistani government had adopted a different approach in relation to the part of the state which it occupied. Instead of attempting to integrate the two regions — *Azad* Jammu and Kashmir and Gilgit-Baltistan — both regions were kept administratively distinct not only from the four provinces of Pakistan but also from each other, the idea being, firstly, that if and when the plebiscite were held, their votes would count towards the vote bank in favour of accession to Pakistan and secondly, the government could demonstrate that it had not done anything to alter the state's 'disputed' status.

Seventy-five years later, although the plebiscite has not been held, *Azad* Jammu and Kashmir retains its own administration with its own prime minister and president, albeit heavily dependent economically on Pakistan. In relation to Gilgit-Baltistan, although very briefly nominally administered by AJK, in 1949 its administration was transferred to the Pakistani government; all judicial and political powers remained under the jurisdiction of the Ministry of Kashmir Affairs and Northern Areas (KANA). In 1970, the region was merged into a single administrative unit, the Northern Areas, its regional importance increasing with the

construction of the Karakoram Highway (KKH) in the 1980s. But full integration within Pakistan remained on hold. In 2009, as part of a package of reforms, the Northern Areas was renamed Gilgit-Baltistan (GB). But its constitutional position remained unclear.

### **Changing Dynamics**

In the years since the proposal to hold a plebiscite in Jammu and Kashmir was first put forward, nothing has changed on the ground which would facilitate holding it according to the proposals set down by the UN. Neither India nor Pakistan has withdrawn their troops, both regarding the territory they are occupying as legally theirs and both accusing the other of illegally occupying the remainder of the state. From Pakistan's point of view, as above, it was administering a part of the 'disputed' territory until its fate was decided by the plebiscite; from India's point of view, on account of the Maharaja's accession, the entire state was an integral part of India.

During this time, certain developments have taken place which have changed the dynamic and made holding the plebiscite even more challenging than had the issue been resolved immediately after independence.<sup>35</sup> The main developments are as follows:

1. The first development — in addition to the reluctance by both countries to withdraw their forces prior to holding the plebiscite — was India's changed attitude, even though, had the plebiscite been held on a unitary basis and gone in India's favour, it would have gained the one-third of the state under Pakistan's control. But once the Indian leaders became concerned that the plebiscite might not go in their favour, their rhetoric changed and their support for holding the plebiscite was withdrawn; as stated above, failing India's agreement to resolve the issue by means of the plebiscite, there was no mandatory mechanism to enforce that it was held.

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<sup>35</sup> I have only listed the major developments; there have been numerous shifts both domestically and regionally which affected how both India and Pakistan reacted to the unresolved J&K issue

2. Pakistan's signature of the Mutual Defence Assistance Agreement with the United States (US) in May 1954, followed by its membership of the Baghdad Pact the following year, signified another major development. As a result Nehru withdrew his earlier agreement with Prime Minister, Mohammad Ali Bogra that a plebiscite administrator would be appointed by the end of April 1954, at a time when, as stated by Indian constitutional lawyer, A.G. Noorani, 'it seemed that the two sides were edging towards a regional plebiscite.'<sup>36</sup> From Pakistan's perspective its defence arrangements had no bearing on the unresolved issue of Jammu and Kashmir; Nehru, however, claimed that Pakistan's action had upset the subcontinental balance of power and that 'all our problems will have to be seen in a new light.'<sup>37</sup>
  
3. The next major shift took place in 1972 when, following Pakistan's loss of its eastern wing which became independent Bangladesh, the prime ministers of India and Pakistan, Indira Gandhi and Zulfikar Ali Bhutto respectively, signed the Simla (Shimla) agreement.<sup>38</sup> Although the agreement focused mainly on the restoration of peace after the war, a specific clause enabled India to distance itself even further from a UN-backed plebiscite. This clause 1. (ii) said that India and Pakistan agreed 'to settle their differences by peaceful means through bilateral negotiations or by any other peaceful means mutually agreed upon between them.' Even though the concluding part of the clause suggested that the way was still open for both parties to use any 'assistance mutually agreed upon,' it was the first part of the clause which enabled India to develop a narrative which suggested that, since the two countries had agreed to resolve their problems bilaterally, the UN was no longer necessary; as time passed this developed into an outright rejection of any third party

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<sup>36</sup> Noorani, *The Kashmir Dispute*, 195; Bogra-Nehru Negotiations, <https://storyofpakistan.com/bogra-nehru-negotiations/>

<sup>37</sup> Nehru to Prime Minister, Muhammad Ali Bogra, November 10, 1953, as quoted in Sarvepalli Gopal, *Jawaharlal Nehru*, vol. II, (1979), 185. CENTO was a military alliance which included the US, Iraq and Iran. The Soviet Union, which had initially kept neutral in its statements in relation to Jammu and Kashmir claimed that the US was using the issue to keep a foothold in the region.

<sup>38</sup> Indira Gandhi was Prime Minister of India 1966-77, 1980-84; Zulfikar Ali Bhutto was President (1972) and then Prime Minister of Pakistan (1973-77). See text of the final draft of the Simla agreement in A.G. Noorani, *The Kashmir Dispute*, 142-46.

mediation or facilitation which has persisted to this day. That Jammu and Kashmir was not actually mentioned in the particular clause became lost in the Indian rhetoric about bilateralism. The only mention of Jammu and Kashmir came later in the document, under the section relating to the establishment of peace, when another clause 4. (ii) affirmed that the ceasefire line (renamed the line of control (LoC)) would be respected 'without prejudice to the respective positions of each side' and that neither side would seek to alter it 'unilaterally, irrespective of mutual differences and legal interpretations.'<sup>39</sup> In hindsight this development was critical, lulling the international community into believing that they did not have to concern themselves with Jammu and Kashmir because India and Pakistan would resolve the issue bilaterally.

4. Another development which assisted India's position was the return of Sheikh Abdullah to the valley of Kashmir as chief minister. Released from detention, his 'Kashmir Accord' with Indira Gandhi, agreed in February 1975, once more endorsed India's position that a plebiscite was no longer necessary and strengthened India's hold on the territory it controlled.<sup>40</sup> For almost ten years until his death in 1982, what has been described as a 'golden age' prevailed in Kashmir with tourists flocking to the valley to enjoy its beauty; but beneath the surface disaffection remained. One young Kashmiri, Shabir Shah, who had been politically active since the late 1960s, took particular exception to the Simla agreement, which he said did not include the views of the 'sons of the soil'; he also denounced the Indira Gandhi-Sheikh Abdullah accord.<sup>41</sup> The rigged elections to Jammu and Kashmir's legislative assembly in 1987 provided another stimulus to political dissent in the valley; this was coupled with the popularisation of 'freedom fighting,' mirroring the insurgent war in Afghanistan against the Soviets. As a result a new generation of Kashmiris began talking again about their right of self-

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<sup>39</sup> The clause concluded: 'both sides further undertake to refrain from the threat or the use of force in violation of this line.' In 1998-99 Pakistani soldiers infiltrated across the line of control initiating the Kargil war.

<sup>40</sup> David E. Lockwood, 'Kashmir: Sheikh Abdullah Reinstatement', *The World Today*, vol. 31, no. 6 (June 1975): 249.

<sup>41</sup> Shabir Ahmad Shah is the founder and president of the J&K Democratic Freedom Party/Peoples League. He has spent over 30 years in jail. Interview with the author, Srinagar, April 1995.

determination. Numerous political parties developed militant wings to fight for Kashmir's 'liberation', which movement Pakistan supported officially, morally and diplomatically (and unofficially materially). Instead, however, of hoping to achieve their self-determination by means of the plebiscite, their strategy was to wage a 'just' war against a growing Indian military presence in the valley.

5. A fifth major shift, coincident with the disaffection in the valley, was the rise of the independence movement (as distinct from the demand to join Pakistan). Although the demand for independence pre-dated the beginning of the insurgency against the Indian government in 1989-90, events worldwide gave it a new impetus; the break-up of the Soviet Union and the reunification of Germany showed that boundaries could still be re-drawn. As the independence movement gained momentum, there was increasing demand that a 'third option' should be included in the terms of the plebiscite, when and if it were to be held. 'When we talk about our right of self-determination, no restrictions can be put on our choice. There are not two choices, the third option of independence is also there,' stated veteran Kashmiri political leader, Abdul Ghani Lone, in 1995.<sup>42</sup> 'The people should be given right to accede to India, Pakistan or to become independent,' noted Yasin Malik, who had joined the Jammu and Kashmir Liberation Front (JKLF), later becoming its president. 'And whatever the people decide, we will accept this democratic decision because we believe in the democratic process.'<sup>43</sup> The demand for independence added a new dynamic. Hence forward not only would consideration have to be given to the majority of the people voting to remain within India or to accede to Pakistan, but an 'end game' which might result in a majority voting for

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<sup>42</sup> Abdul Ghani Lone (1932-2002), interview with the author, Srinagar, 5 April 1995. He had entered politics as a member of the Congress Party; in 1978 he formed the Peoples' Conference to press for greater political autonomy. He was assassinated in 2002.

<sup>43</sup> Yasin Malik(b.1966),interview with the author, Srinagar, 5 April 1995. He has been politically active since his youth and is currently president of the Jammu and Kashmir Liberation Front (JKLF). In 1995 he renounced the armed struggle and offered to engage in political negotiations. In 2020 he was arrested; following trial for an attack in 1990 on 40 Indian Air Force personnel, in which four men died, he has been condemned to life imprisonment.



independence. Were there to be such an outcome, not only would India lose its two-thirds of the state, but Pakistan would lose its one-third, both countries having to relinquish regions in the north-east and north-west which they consider vital to their strategic location — both of which are essential repositories of the waters of the Indus river and its tributaries. Given India's opposition to a plebiscite, the demand for independence had a greater impact on Pakistan's rhetoric than it did on that of India. Whereas, from an Indian perspective there was still no question of holding a plebiscite and risking the potential loss of territory (either to Pakistan or to an independent state), the independence movement put Pakistan in an awkward position. How could the advocates of the Kashmiris' right of self-determination put limits on that self-determination by excluding the inhabitants' right to become independent? But that was the action successive Pakistani governments felt obliged to take in their own national interest. There was to be no third option. But, with independence being floated as a viable option, in order not to lose adherents, the rhetoric became vaguer, greater emphasis being placed on forcing India to grant the Kashmiris' right of self-determination rather than talking about the end game. 'It requires a measure of sagacity to avoid entering a debate on this issue before India has granted the right of self-determination to the Kashmiri people,' stated Pakistan's foreign secretary, Najmuddin Sheikh, in 1995.<sup>44</sup> The focus of Pakistan's statements was also on the wishes of the ethnic Kashmiris rather than those of the other inhabitants of the state; however, among analysts and experts, the debate about the 'third option' meant that henceforward it had to be viewed as a legitimate alternative aspiration if, and when a plebiscite were held.<sup>45</sup>

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<sup>44</sup> Najmuddin Sheikh (b.1939), interview with the author, Islamabad, March 28, 1995. When, while visiting AJK in 2021, Prime Minister, Imran Khan said the inhabitants could 'Opt for Independence', opposition leader Shahbaz Sharif condemned Khan for deviating from Pakistan's historical stance on the issue. "Shebaz Condemns Imran's Remarks on Kashmir's Independence as 'Deviation from Pakistan's Position,'" *Dawn*, <https://www.dawn.com/news/1636672>

<sup>45</sup> Syed Rifaat Hussian, "Resolving the Kashmir Dispute: Blending Realism and Justice," *The Pakistan Development Review*, Winter (2009): 1007-35. In a long list of proposed solutions for the Kashmir dispute, he lists one of the 'cons' against holding the plebiscite: 'does not allow third option.'

6. The sixth major development came from Pakistan itself. In 2003, Pakistan's military ruler, General Pervez Musharraf, embarked on a peace process with India, when for the first time, Pakistan officially suggested that there might be an alternative way to resolve the issue. Instead of insisting on holding the plebiscite, he proposed a four-step approach. India and Pakistan should start a dialogue, accept the centrality of the Kashmir dispute, eliminate whatever was unacceptable and then arrive at a solution acceptable to both countries and to the people of Kashmir. Yet again the 'people of Kashmir' were narrowly defined as those living in the valley, but his approach marked a significant change and was later elaborated on in a series of talks, which, according to former foreign minister, Khurshid Mahmood Kasuri, brought the two countries closer than they had ever been to reaching an agreement.<sup>46</sup> Unsurprisingly the old-school Kashmiri political activists rejected Musharraf's approach, leading him to clarify his position by stating that the plebiscite remained an option but he was suggesting alternatives.<sup>47</sup> For the next two years, during which time a ceasefire along the line of control was agreed, there seemed a distinct possibility that some resolution of the issue might be found, a tangible development taking place on April 7, 2005 with the opening of the route across the line of control between Srinagar and Muzaffarabad and the inauguration of a fortnightly bus service for those inhabitants able to obtain approval from officials on both sides of the LoC. But yet again the internal dynamics between and in both countries meant that no agreement could be reached. Musharraf's initiative had, however, shown that Pakistan might be prepared to consider an alternative resolution of the issue rather than by holding a plebiscite.

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<sup>46</sup> General Pervez Musharraf (b.1943) was chief executive of Pakistan from 1999 and president from 2001-08. He was Chief of Army Staff 1998-2007. See Khurshid Mahmood Kasuri (b.1941), *Neither a Hawk Nor a Dove* (2015). He was Pakistani Minister of Foreign Affairs of Pakistan 2002-07.

<sup>47</sup> Christopher Snedden, "Would a Plebiscite have Resolved the Kashmir Dispute?," *Journal of South Asian Studies*, vol. XXVIII, no.1 (April 2005), <https://www.tandfonline.com/doi/abs/10.1080/00856400500056145>

7. A seventh development was the first (and only) opinion poll to be held throughout the state since the ceasefire in January 1949; conducted in September-October 2009 and published the following year, the purpose of the poll was to establish current attitudes in Kashmir on both sides of the LoC to alternative scenarios for the resolution of the conflict. Although lacking the legal standing of a formal plebiscite, the poll signified the first time the inhabitants across a wide section of the state had been asked to give their opinion on issues affecting their daily lives, including their future allegiance. As noted by Senior Research Fellow, Robert Bradnock, in his introduction to the report, the poll took as its starting point the assumption that Kashmiri opinion represents ‘a vital foundation for the region’s political future peace and stability, and for wider global security.’ The poll’s strength, however, was also its weakness. Undertaken in secret, some areas could not be polled which inevitably meant the responses were not fully representative. The key revelation was the diversity of opinion in the state, confirming Sir Owen Dixon’s belief that, only a zonal plebiscite would provide a true reflection of the peoples’ wishes. Together with concerns about unemployment, economic uncertainty, lack of consultation, the poll revealed that almost half of those polled on both sides of the line of control wanted independence.<sup>48</sup>
  
8. The Indian government’s action on August 5, 2019 abrogating Article 370 of the Indian Constitution (embodied in the Jammu and Kashmir Reorganisation Act which became effective on October 31, 2019) represented the eighth major development in relation to the plebiscite. Far from ever conceding that a plebiscite should be held, the entire state (including notionally the one-third occupied by Pakistan) was bifurcated into two new Union Territories: Jammu & Kashmir and Ladakh. Not only had Prime Minister Narendra Modi contravened the terms of the 1972 Simla Agreement and altered the *status quo* unilaterally, but there had been no consultation with the inhabitants of the state. The change effected by the revocation of the Article 35A pressaged the arrival of many non-Kashmiris into the

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<sup>48</sup> “Kashmir Paths to Peace: Robert Bradnock,” May 2010, [https://www.chathamhouse.org/sites/default/files/public/Research/Asia/0510pp\\_kashmir.pdf](https://www.chathamhouse.org/sites/default/files/public/Research/Asia/0510pp_kashmir.pdf).

valley (and surprisingly into Jammu), which would alter irrevocably their demographics, effectively nullifying any chance of ever holding a plebiscite which would reflect the will of the inhabitants of the state as of 1947.<sup>49</sup> The Jammu and Kashmir Reorganisation Act also abolished the ‘Jammu and Kashmir Grant of Permit for Resettlement in (or Permanent Return to) the State Act,’ which had been passed in 1982 by Sheikh Abdullah, providing for former residents and their descendants who had fled to Pakistan between 1947 and 1954 to return to the valley. Prime Minister Imran Khan’s reaction to events was outright condemnation, while being powerless to force India to retract, as was the international community which also condemned India’s unilateral non-consultative action.<sup>50</sup> ‘India’s attempt to further change status of Indian Occupied Jammu and Kashmir is against the resolutions of UNSC and against wishes of the Kashmiri people,’ stated President of Pakistan, Arif Ali’s *Twitter* handle.<sup>51</sup> However, one consequence was an alteration in the status of Gilgit-Baltistan. In 2020, the Pakistani government announced that GB would become Pakistan’s fifth province, a conscious U-turn from its previous position that no alteration in its status would take place pending holding the plebiscite. To date no formal integration has taken place and, like AJK’s status, as outlined in its Constitution, Gilgit-Baltistan’s new status would only be temporary pending resolution of the Jammu and Kashmir issue.<sup>52</sup>

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<sup>49</sup> Narendra Modi (b.1950) has been prime minister of India since 2014. There had been numerous population shifts with Kashmiris from the valley fleeing to Pakistan, the United States and the UK. In the wake of the mass killings in Jammu in 1947 thousands of Kashmiri Muslims from Jammu fled to Pakistan, which altered the demographic balance in favour of the Hindu population in Jammu. Likewise the flight of the Pandits in 1990 meant that the small representation of Hindus living in the valley became virtually non-existent.

<sup>50</sup> Imran Khan (b.1952) was Prime Minister of Pakistan 2018-22.

<sup>51</sup> Arif Alvi, President of Pakistan since 2018, “Pak Condemns Abrogation of Article 370, Says will Exercise ‘All Options’ to Counter it,” <https://www.thestatesman.com/world/pak-condemns-abrogation-article-370-says-will-exercise-options-counter-1502785873.html>

<sup>52</sup> Abhijnan Rej, ‘Gilgit-Baltistan to Become a New Province of Pakistan, Announces Khan Government,’ *The DIPLOMAT*, November 2, 2020, <https://thediplomat.com/2020/11/gilgit-baltistan-to-become-a-new-province-of-pakistan-announces-khan-government/>

## Conclusion

In the current climate, there is no likelihood of a plebiscite ever being held in Jammu and Kashmir. Even a change of political leadership in India would be unlikely to accede to a demand its forebears have spent decades resisting, whether the Congress Party or the BJP has been in power and despite the fact that, prior to 2019, numerous talks were held between the two countries in an attempt to build confidence and eventually agree a settlement.<sup>53</sup> Furthermore, regardless of misplaced expectations about the authority the UN has to oblige India to hold a plebiscite, without India's acquiescence, as stated above, the UN has no authority to force either India or Pakistan to hold a plebiscite.

Insofar as Indian policy objectives are concerned, India controls (now more firmly than ever since the August 5, 2019 abrogation of Article 370) the region which it wants to retain; as emphasised by political scientist and academic, Christopher Snedden, 'as things currently stand, India is most likely to retain Kashmir. Pakistan and the anti-India/pro-Pakistan militant groups lack the capabilities to eject Indian forces from Kashmir, which region remains vital for India in terms of national pride and strategically in relation to resupplying Indian forces in Ladakh.'<sup>54</sup> And, despite inflammatory statements by Indian officials claiming that the entire state is part of India, there is no realistic expectation of a change to the territorial *status quo* regarding the regions of the state controlled by Pakistan (nor indeed those by China), notwithstanding India's official map of the two Union Territories which shows the entire former state as part of India, including the regions occupied by China. By contrast, the government of Pakistan's demand for the plebiscite remains as steadfast as always, (albeit, as during the 2004-07 discussions, potentially as a negotiating position from which a compromise could be reached). When, in April 2022, Shabaz Sharif assumed the office of Prime Minister of Pakistan in succession to Imran Khan, he, too, invoked the UN resolutions, "Why do we want our

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<sup>53</sup> See A.G. Noorani, *The Kashmir Dispute*, 184-204 and Asma Shakir Khawja, *Shaking Hands with a Clenched Fist: the Grand Trunk Road to Confidence Building Measures between Pakistan & India* (National Defence University, Pakistan, 2018) for a full account of confidence building measures and bilateral negotiations.

<sup>54</sup> Christopher Snedden, *Independent Kashmir, An Incomplete Aspiration* (Manchester University Press), 318.

coming generations to suffer. Come, let's resolve the Kashmir issue in line with UN resolutions and Kashmiris' expectations," he stated in his inaugural speech, "so that we are able to end poverty on both sides of the border."<sup>55</sup>

In the forefront of these established positions lie the aspirations of all the inhabitants of the former princely state. What do they want in their collective diversity? Uppermost in importance one must ask, if hypothetically the plebiscite were to be held throughout the state (as envisaged in 1947, without the third option), would it provide a solution, or would it create more disaffected minorities, eager to assert their right of self-determination against the majority? Would the two main protagonists — the governments of India and Pakistan — accept the outcome if, by a majority vote, the decision went against their wishes (just as the United Kingdom government had to accept the majority vote for exiting the European Union in 2016)? For both India and Pakistan the stakes remain high, the prospect of relinquishing any territory unthinkable. And what of the inhabitants of the different regions? If the unitary vote went in favour of Pakistan, would it be fair to take Ladakh and Jammu with them (if the people voted otherwise?) Would those in the valley be unanimously content to join Pakistan or would those who formerly accepted their status as part of the Indian Union prefer to continue to fight for greater autonomy within India, or indeed independence?

If — again hypothetically — the vote went in favour of India, would it be acceptable to take the inhabitants of Gilgit-Baltistan with them, when, for decades they have been wanting to join Pakistan? And what about the small population of *Azad* Jammu and Kashmir whose inhabitants have not been vociferous in demanding their right of self-determination — where do their aspirations lie? Moreover, after seventy-five years, are the demographic changes so great (exacerbated by Indian government's recent actions) that a true reflection of peoples wishes can no longer be ascertained? In view of the drawbacks, which Sir Owen Dixon identified

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<sup>55</sup> Shahbaz Sharif , Prime Minister of Pakistan, " Good Relations with India Cannot be Achieved Without Resolution of the Kashmir Issue, says Shehbaz Sharif," *First Post, Press Trust of India*, April 11, 2022, <https://www.firstpost.com/world/good-relations-with-india-cannot-be-achieved-without-resolution-of-the-kashmir-issue-says-shehbaz-sharif-10544941.html>

so many decades ago, is holding onto the demand for a plebiscite actually providing an obstacle to resolution by other means? Has it just become a bargaining tool? Or should one look again at Dixon's suggestion to hold a plebiscite only in the valley where disaffection has been the greatest, there has been the most suffering and loss of life, densest military occupation and greatest human rights abuses?

Until these fundamental questions are answered there will be no resolution and the new *status quo* between the nuclear neighbours will remain. And without an honest reckoning, the plebiscite conundrum will persist, the problem of reconciling the accepted democratic method of allowing each individual to choose his or her political allegiance with the inherent challenge that the majority decision could (and probably would) be resisted by the minorities, claiming their right of self-determination. As Dixon pointed out in 1950 the issue was complicated by the fact that the princely state of Jammu and Kashmir — established in 1846 — was 'not really a unit geographically, demographically or economically,' but 'an agglomeration of territories brought under the political power of one Maharaja.'<sup>56</sup> His thoughts were echoed in 1997 by Indian author, Sumantra Bose, who suggested the need to find a middle ground between 'communal compartmentalisation and the chimera of a non-existent oneness.'<sup>57</sup> In the present day that challenge remains.

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<sup>56</sup> Report of Sir Owen Dixon, United Nations Representative for India and Pakistan to the Security Council, 1950, <https://digitallibrary.un.org/record/486273?ln=en>

<sup>57</sup> Sumantra Bose, *The Challenge in Kashmir* (Delhi, 1997), 177.