

INTERNATIONAL THE NEWS

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A killing similarity in thinking — I

Saturday, June 07, 2008

Jammu and Kashmir Council for Human Rights (JKCHR) joins the people of Pakistan in their sense of achievement on turning a new page in their history of participatory politics on 18 February 2008. Civil society succeeded to act as an instrument of change to elect a popular legislature and to secure an independent judiciary, supremacy of constitution and rule of law.

JKCHR played its institutional role in furthering the cause of the civil society in Pakistan. We enhanced the constituency of support at the UN and made contribution on the 'Independence of Judiciary' in Pakistan and Azad Kashmir. JKCHR submitted a Universal Periodic Review on Pakistan to the UN. It covers a broad spread of concerns of the civil society.

We hope that the constituency of change and the accruing benefit would be able to travel to Azad Kashmir and impact the quality of life in Jammu and Kashmir and Gilgit and Baltistan.

At the same time we wish to point out that the important questions of Rights Movements, loss of a generation and the massive violation of human rights in Kashmir seem to have disappeared from the radar of national interest.

The higher burden of responsibility of the Government of Pakistan as a party to the Kashmir dispute under UNCIP resolutions and as a member nation of UN to the question of self-determination could not be discharged unless the various disciplines of political and civil society opinion act as a watch man.

In this regard I wish to submit the following for consideration:

KASHMIRI LEADERSHIP AND MUSHARRAF FORMULA

The Rights Movement of Kashmir has graduated through 131 years. However, a new political culture has emerged in the last 18 years. The decision of a section of Kashmiri leadership to support the imposition of emergency by General Musharraf on 3 November 2007 in Pakistan makes their ability for an independent and mature judgement suspect.

The leaders of the Rights Movement of the people of Jammu and Kashmir turned their backs on the struggle launched by the lawyers of Pakistan to regain the independence of judiciary and on the struggle of civil society to regain the supremacy of Constitution, Parliament and Rule of Law in Pakistan.

Hurriyat adopted a constitution on 31 July 1993. The constitutional pledge made to the people on 31 July 1993 has cost a generation and people have suffered an unprecedented violation of human rights, never witnessed during the 131 year Rights Movement.

It is intriguing to point out that since the first visit of one faction of APHC in June 2005 to Pakistan they seem to have changed their horses mid stream and are supporting a new out of the box, 4-point proposal of President Musharraf. While as we see that 'sky is the limit' offer made by Indian Prime Minister Narasimha Rao in 1996 embeds more relief and advantage than the 4-point proposal of President Musharraf.

Musharraf and National Conference approaches remain identical. National Conference has been advocating that Kashmiris have not signed the instrument of merger with India and they should be able to retain their self-rule.

What President Musharraf has proposed in 2005/2006 after the death of a generation, massive violation of human rights, dishonouring of Kashmiri women, disappearances, torture and custodial deaths, imprisonments, loss of homes, and making Kashmir a sick and mistrusting society, never seen in the 131 years of Rights Movement, Dr Farooq Abdullah or any other political discipline with a little support from outside could have achieved without firing a single bullet and losing a single soul.

The use of the instrument of paid and proposed politics in Kashmir has ultimately brought us to President Musharraf's 4-point agenda, which include his proposals, that is, "... demilitarise the identified region or regions and curb all militant aspects of the struggle for freedom. This will give comfort to the Kashmiris, who are fed up with fighting and killing on both sides" and "self-governance or self rule, without having an international character and remaining short of independence." (Page 303 In The Line of Fire by Pervez Musharraf).

President Musharraf's proposal to "curb all militant aspects of the struggle for freedom" raises a serious question with regard to the three announcements of a ceasefire in July 2000 by Hizb, November 2000 by Prime Minister Vajpayee and November 2001 by the then APHC chairman. Political response of the APHC and its support base in Pakistan remained averse to these three announcements of a ceasefire.

If Hizb had been allowed to enter into a few rounds of negotiations with the Government of India, it would have amounted to the recognition of Hizb by a sovereign state as a legitimate Kashmir army. It would have created an estoppel in favour of Hizb and India or any other country in the world could not label it as a terrorist organisation. The people of Kashmir have a right to ask that if the Hizb ceasefire of June 2000 and Prime Minister Vajpayee's ceasefire in honour of Ramzan in November 2000 were a conspiracy and against the interests of the Rights Movement, then what was the rationale embedded in the Hurriyat ceasefire of November 2001 and the proposal of President Musharraf, which proposes to "curb all militant aspects of the struggle for freedom."

President believes that "This will give comfort to the Kashmiris, who are fed up with fighting and killing on both sides."

As a consequence institutions and individuals sponsored by the establishment in various capitals were given a revised task to work against the title of self-determination. They readily offered themselves for President Musharraf's desire to "sell" his "purely personal idea" on Kashmir to "the public." In fact Kashmir is jointly controlled even today and Musharraf formula in the long embeds the perpetuations of status quo.

AZAD KASHMIR AND 38 YEARS: Government of Azad Kashmir continues in its neglect for the last 38 years in the discharge of its specified constitutional obligation in respect of self-determination. President of Azad Kashmir has a constitutional duty to perform under Act 1970 and Act 1974 in regard to self-determination. Wisdom of Article 8 of Act 1970 and Article 11 of Act 1974 has to be carried beyond its literal meaning, that is, from individual specific, to institution specific, to encompass the broad spread of the jurisprudence of Kashmir case.

The numerical jurisprudence of the presence of 2.5 million Kashmiri refugees living in Pakistan (1.5m) and Azad Kashmir (.5m) and the role of 12 refugee members in the Azad Kashmir Legislative Assembly has failed in its substantive merits. Refugees have been denied their due role in the participatory politics of Azad Kashmir and the 12 seats are fixed by the ruling party in Islamabad. Establishment has a key role in deciding the outcome of these 12 seats.

Kashmir case has been turned into a super market of private interests. Public funds used by the Liberation Cell, other departments of AJK Government and various departments and institutions in Pakistan and legislative tenures have been squandered. In addition to Pakistan 57 countries of the Islamic World had pledged at the Islamic Summit of December 1994 held in Casablanca, Kingdom of Morocco, a generous support for the humanitarian assistance to the Kashmiri people. The benefit has not travelled to the victims in the valley and at other places. There is no transparency and accountability.

PAKISTAN AND 30 YEARS: Pakistan failed to agitate Kashmir under "The India Pakistan question" at the UNSC agenda for 30 years and 9 months from 5 November 1965 until September 1996 when it attracted a simplification process under rule 11 of the rules of procedure of UNSC. Items which were not discussed between 1991-1995 were proposed for a deletion by 15 September 1996 and Kashmir was listed as item 6 in the list of 50 items proposed for deletion from the agenda.

Self-determination of the people of Kashmir suffered serious erosion in its character on 15 September 1996. It is no more on the UNSC agenda in the manner in which it continued to be for 48 years from 6 January 1948 to 15 September 1996.

On 27 August 1996 JKCHR made a representation to the Security Council, on the deletion of Kashmir from UNSC agenda. It urged upon the president of UNSC that the decision under rule 11 of the provisional rules of procedure of the SC had caused a serious prejudice to one of the basic principles — Article 1 (2) of UN Charter. The decision luckily provided that "A matter will, however, be provisionally retained in the list of matters of which the Security Council is seized for a period of one year if a member of the UN notifies its objection to its deletion before 15 September 1996." Kashmir under, "the India-Pakistan question" has lost its original character at the UNSC agenda and is retained on the agenda through an annual reminder by a member state.

President Musharraf while addressing the 61st Session of the United Nations General Assembly on September 19, 2006 skipped any reference to self-determination.

The diplomatic misjudgement of the president was further incremented by Riaz Mohammad Khan Foreign Secretary and leader of Pakistan delegation in his address at the 62nd Session of the UN General Assembly on 2 October 2007. Khan also nudge passed the issue of self-determination.

It is the failure of these institutions and of other broad spread on Kashmir that UN Secretary General did not include Kashmir in his first Annual Report for the General Assembly in 2007.

A section of Kashmiri leadership during the heights of President Musharraf's rule decided to change their horse's mid-stream. As desired by President Musharraf, a majority except Syed Ali Shah Gilani and a few more gave up on Hurriyat constitutional discipline and decided to sell "outside the box" solution to public. It is an appreciable new contribution to the political vocabulary of Kashmir. However, the idea cannot override the jurisprudence of the Kashmir case under UNCIP resolutions and the Constitutional discipline set under Article 257 of the Constitution of Pakistan.

A surrogate broad spread on Kashmir remains fully responsible for eroding the fundamental character of right of self-determination and for creating a trust deficit in the Kashmiri community. A paid and proposed political leadership is exposed to an easy disposal as a toxic waste by the masters in Delhi or Islamabad. Unlike Ireland, East Timor and Kosovo, the Kashmiri leadership is short-listed in India and Pakistan. Therefore, they act as proxies and play a non-Kashmiri dulcimer.

If Kashmiris had insisted or the Government of Pakistan had allowed the UN jurisprudence to take its shape in Azad Kashmir and Gilgit and Baltistan, the Indian refusal to accept the UN mechanism in Jammu and Kashmir would have amounted to an occupation and use of force by the UN and Kashmiris, to undo the occupation would have become legitimate. The argument of occupation has failed because the bilateral agreements between India and Pakistan accept the respective positions of each other.

— Dr Syed Nazir Gilani

(Secretary-General JKCHR)

To be concluded

NOTE: Views reflected in this article do not necessarily reflect the newspaper's policy.

A killing similarity in thinking — II

PROPOSALS

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1. A true friend of the people of Kashmir and a true advocate of self-determination would always assure that living numbers in Kashmir are saved for a final count in self-determination. Right to life precedes right to self-determination.

2. It is important that government and the people of Pakistan in their support to the people of Jammu and Kashmir should remain guided by a higher burden of responsibility in accordance with article 257 of the Constitution of Pakistan and other Trust Obligations assumed under UNCIP Resolutions. They need to remain neutral in the best interests of the people.

3. Government of Pakistan should treat all factions of APHC, non-APHC and every school of opinion in Kashmir on either side of LoC in equity, with a duty to fairness, as is due for a party to the dispute and with a higher burden of responsibility embedded in the process for future relations in accordance with Article 257 of the constitution on the one hand and Trust Obligations assumed under UNCIP Resolution on the other.

4. Political leaders, institutions and other individuals sustained by the two budgets of Azad Kashmir and Pakistan or sustained by funds raised through public appeals, need to remain accountable and transparent in their public and private conduct. Any departure from the title to self-determination or any subservience in the advance of private interests and against the interests of Kashmiri people or breach of the constitution adopted in July 1993 or any declaration made in this regard should be considered as a criminal offence against public trusts.

5. The practice to propose and dispose politics in Kashmir breeds corruption. The symbiosis of corruption is broad spread and alarming. It needs to be stopped.

6. Many institutions and individuals have made Kashmir a super market of their private interests. The scope of associate criminal liability embraces many identifiable individuals and institutions situated in various jurisdictions. It is time to look at persons and their criminal ability in respect of 'actus reus' and 'mens rea'.

7. Prime Minister of Pakistan, who is also the chairman of AJK Council and nominates six members from amongst federal ministers and members of parliament on the council shares higher burden of constitutional responsibility in the affairs of Azad Kashmir in particular, and in the affairs of other parts of the state in general. He inherits a direct trust responsibility under UNCIP resolution for assuring a freely expressed will of the people of the state through the democratic method of free and fair plebiscite under the auspices of the United Nations.

8. The constituency of change in Pakistan and benefit has to extend to Kashmir. Benefits of change in Pakistan cannot reach Azad Kashmir and impact life in Jammu and Kashmir and Gilgit and Baltistan unless steps are taken in accordance with the jurisprudence embedded in the trust obligations of the Government of Pakistan.

9. There is a need to understand that the right of self-determination precedes the process of accession to Pakistan. The process has to be allowed in accordance with the jurisprudence of UNCIP resolution and the wisdom of article 257 of the Constitution of Pakistan. This jurisprudence does not disturb the respective positions taken by India and Pakistan since Tashkent Declaration. It should be accompanied by a neutral dispensation towards every school of opinion in Kashmir.

10. Kashmir is not a dispute. The two sovereign claims of India and Pakistan have made it a dispute. It embeds the 'right to self-determination of a people'. A dialogue on Kashmir has its discipline and jurisprudence. It can't be free-styled with no-holds-barred. India has to follow a discipline under the bilateral agreement of October 1947 and other international commitments under UNCIP Resolutions. Pakistan has to follow a constitutional discipline under Article 257 and trust obligations under UNCIP Resolution. Post 1990 political schools in Kashmir (APHC and others) have a political discipline for themselves and they have to follow that.

11. An out of the box solution would mean stripping the people of Kashmir of their right to self-determination, recognised by 194 countries of the world and for the realisation of which we have a UN mechanism. It would mean an action at war with Article 257 of the Constitution of Pakistan and the Trust Obligations assumed by the Government of Pakistan under UNCIP resolutions in Azad Kashmir and in respect of self-determination. A walk away from UN resolution would make Pakistan a non-party in the dispute and the dispute would revert back to only two parties, namely, India and the people of Kashmir.

12. A walk away by APHC from the constitutional discipline adopted on 31 July 1993 would make them criminally liable for leading a generation to death and or other sufferings endured by every man and woman in the cause of self-determination.

13. President Musharraf's offer to "curb all militants aspects of the struggle for freedom," makes him an imperial king. He is not a state subject and has no right to dispense the Rights Movement, in the manner of a colonial ruler. People of Kashmir and the territory have not been colonised. Government of Pakistan has Trust Obligations in the area and members of the government have to be guided by the constitutional wisdom.

14. There is a killing similarity, between a policy on Kashmir seen in 1947 and one in 2005. The prime minister of Pakistan on 24 October 1947 in his letter cabled to the British prime minister admits that the Government of Pakistan had proposed to India to "make a joint war" on the resistance movement in Kashmir. The prime minister of Pakistan also disapproves the British prime minister's proposal that the president of the "International Court of Justice" should be privately asked to find out whether he is of the opinion that it would be practicable and he would be willing to try to get together a small team of international experts, not connected with India, Pakistan or the United Kingdom, in the event of a joint request being preferred by the Governments of India and Pakistan for this to be done."

The prime minister of Pakistan replied that, "Your suggestion of having recourse to International Court of Justice appears to be based on an inadequate appreciation of realities in Kashmir." Fifty-three years later in 1990 and since after, the term "ground realities" has been profusely used to disable a fresh in put on Kashmir.

President Musharraf's proposal in 2005/2006 has a killing similarity with Kashmir policy as on 24 October 1947.

The killing similarity between the proposal of October 1947 and 2005 is a sufficient evidence to cause a concern in regard to an imperial and colonial approach on Kashmir. Therefore, it is the duty of every Pakistani and Kashmiri schools of politics and discipline of life to seriously consider their right to intervene and interfere in all matters that affect the life of a common man and woman in Kashmir.

Those who have decided to sell the 4-point formula of President Musharraf or act as the reflexes of the establishment need to be reminded of another non-Kashmiri and non-Pakistani version on Kashmir. Frank P Graham UN Representative for India and Pakistan reported to Security Council on 17, and 31st January 1952 and described the people of Kashmir as "... people of legend, song and story, associated with snow capped mountains, beautiful valleys and life giving waters... The people of Jammu and Kashmir through a free and impartial plebiscite would signal through the darkness of these times a ray of hope that not by bullets but by ballots, not through conflict of armies but through co-operation of peoples, is the enduring way of people to determine their destiny and way of life." We have to encourage the people of Kashmir to negotiate for themselves and save them from being negotiated by India and Pakistan. Kashmiris have to defend their title to self-determination, while as India and Pakistan have sovereign interests embedded in Kashmir. Government of Pakistan has a higher burden of responsibility under UNCIP resolutions and in accordance with the process of accession identified in Article 257 of the constitution.

— Dr Syed Nazir Gilani

(Secretary-General JKCHR)

Concluded

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