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Kashmir, self-determination, and human rights

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Who am I to talk about Kashmir?

I'm an activist for peace and justice, and a travel journalist. I think that part of the ethical responsibility of travellers is to speak up about what we see, not just go home and forget about the places we've visited – especially when we visit places with few foreign observers other than tourists. Tourists play an increasingly important role as citizen human rights observers.

The focus of my human rights activism is the USA, although that's not today's topic. And I don't claim to be a historian or an expert on current events in Kashmir.

What I can offer is a perspective on Kashmir in terms of contemporary norms of human rights, democracy, and self-determination, rather than explanations of contemporary policies rooted in what I think is irrelevant ancient history.

The big picture, about which we'll hear more from some of tonight's other speakers, is that since 1989, India has maintained a military occupation of the Kashmir Valley by more than half a million soldiers, police, paramilitaries, and other armed "security" forces brought in from outside Kashmir.

This occupation has had all the typical attributes of any military occupation, in unusually intense and prolonged form. For most of the last 25 years, the Kashmir Valley has been

under various flavors of *de facto* or *de jure* martial law, with soldiers everywhere, army camps next to every village, checkpoints on every city block, curfews, house to house searches, legalized arrest and detention without trial, and official suspension of many of the norms of democratic governance and civil liberties.

Since the departure of the principal non-Muslim population group, the Hindu Pandits, in the 1990s, essentially all of the remaining population in the Kashmir Valley -- other than the occupation forces -- has been Muslim. That has allowed the Indian forces to define the entire valley as a free-fire zone in which the Kashmiri Muslim population is considered and treated as the enemy: presumed to be either "militants" or their sympathizers, and fair game for summary killing. Military and paramilitary forces have effectively complete impunity for any actions against civilians, which have come to include systematic torture of detainees, rape of civilian women, collective reprisals (against families, neighborhoods, and villages), shooting to death of children who throw stones at soldiers, and attacks targeting medical personnel, human rights activists, and journalists.

To put the death toll in perspective, this month (October 2014) the Kashmir Valley has suffered from its worst natural disaster in a century: a 100-year flood that has killed perhaps 500 people. But on average, several times this many Kashmiris have been killed by Indian "security" forces in Kashmir every year for the last 25 years -- a total of at least 50,000 out of a population of around 7 million people in the valley.

What has **not** happened, throughout this time, and still isn't happening, is any plebiscite, referendum or negotiations on self-determination for Kashmiris or any change in Kashmir's status.

Fundamentally, as I see it,

1. What is going on in Kashmir is best understood as a Kashmiri **nationalist** struggle for self-determination (despite efforts to frame it as a dispute about history, as a dispute about "terrorism", as a dispute between secularism and religious fundamentalism, as a dispute between Hindus and Muslims, as a dispute between India and Pakistan, and so forth); and
2. Self-determination is a human rights issue (and not an issue that can be separated from human rights).

Self-determination is itself one of the most widely recognized and fundamental human rights. "The principle of ... self-determination of peoples" is recognized in Article 1 of the U.N. Charter. Article 1 of the International Covenant on Civil and Political Rights (to which the USA, India, and Pakistan are all parties) provides that, "All peoples have the right of self-determination. By virtue of that right they freely determine their political status.... The States Parties to the present Covenant... shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations."

There are "liberals" and "reformers" within India, and some foreign human rights activists, who want to separate self-determination from (other) human rights. But that's not possible. You can't have a velvet-gloved occupation. Maintaining power by force, over popular opposition, requires brute, and brutal, use of force -- regardless of whether that opposition is itself violent, nonviolent, or a mix of both. Some say that self-determination is a "political question" on which human rights activists should remain "neutral". But that denies the status of self-determination as itself a human right. The (other) human rights issues in Kashmir cannot be resolved without addressing the human rights issue of self-determination.

The central demand of the Kashmiri nationalist movement is "Azaadi", often translated as "Freedom". But what exactly does that mean? While some outsiders profess confusion, Kashmiris themselves have been remarkably precise, consistent, and coherent: Their central unifying demand for decades has been for a plebiscite on the status of Kashmir, as was promised by the government of India (including in repeated statements by its first Prime Minister, Jawaharlal Nehru), by the government of Pakistan, and by resolution of the U.N. Security Council supported by India, Pakistan, and all of the Permanent Members including the USA.

Neither "azaadi" nor self-determination necessarily means independence for Kashmir. To demand the right to decide is not to presume what that decision would be, only that the decision should be made (1) by Kashmiris themselves and (2) at the ballot box through electoral means. To put it another way, the question is not *how* Kashmiris should vote, but *whether* they should have the right to vote on this specific question.

If the central Kashmiri demand is for the holding of an election, what are the circumstances in which human rights, including the right to self-determination, require that such an election be held?

Plebiscites or referenda on independence or national status aren't so uncommon. We've seen them ratifying independence for Eritrea, East Timor, and South Sudan, even when the results seemed a foregone conclusion by the time those elections were held. We've also seen them voting down independence, at least for the time being, in Scotland, Québec, and Puerto Rico -- more than once in each of those places. In each of these elections, a simple majority vote was defined in advance as that which would constitute a sufficient basis for independence or other fundamental change in status.

It's less obvious, and has been much less discussed, what threshold showing of the possibility that a majority might vote for independence or some other change in status is sufficient to entitle a population to have such a vote. But I would argue that Kashmir passes any such test. Not because it is clear that a majority of Kashmiri people would vote for independence, but because there is a reasonable possibility that they might, and because a majority clearly want the chance to find out the result of such a vote.

So if it's that simple, why has there never been such a vote in Kashmir?

Basically, India doesn't allow Kashmiris to vote on their future status because India fears that it might lose such a vote. This is an essentially undemocratic -- indeed, anti-democratic -- policy.

Of course, India doesn't say this. What are India's excuses for denying Kashmiris their human right to vote on their status, and how do those excuses stand up against the norms of human rights?

1. India says that the Maharajah (hereditary monarch) of Kashmir "acceded" to India in 1947. But this is irrelevant to the human rights of the Kashmiri people today, both because of the inability of any monarch to determine the rights of the people (even if he were some sort of "benevolent" despot rather than, as historians universally portray the Maharajah of Kashmir, debauched, incompetent, selfish, and widely reviled by all communities of Kashmiris), and because of the inability of any person or people to sign away the human rights of subsequent generations. The moral bankruptcy of the Indian argument from monarchist "accession" is perhaps most clear by comparison to Scotland. I was travelling in Scotland for much of this past summer, during the run-up to last month's referendum on independence. I never heard anyone try to tell the Scottish people, "Generations ago your Queen acceded to England, so that settles Scotland's status forever, and you never get to vote on whether you think differently today than your Queen did back then." Anyone who said that would have been laughed at -- or worse.
2. Next, India falls back on a claim that, "The pre-conditions for the referendum have never been met." That's true, but equally irrelevant to Kashmiris' rights. In 1948, with the agreement of both India and Pakistan, the U.N. Security Council adopted its Resolution 47, providing for a plebiscite on the status of Kashmir, under U.N. observership, after the withdrawal from Kashmir of both Indian and Pakistani armed forces. India and Pakistan have been pointing fingers at each other ever since as to which is to withdraw first, while the U.N. has never sent more than a token observer mission. But from the perspective of the rights of the Kashmiris, it doesn't matter whether India or Pakistan or both have broken their promises. There's nothing that Kashmiris were supposed to do, in order to be entitled to a plebiscite, that they haven't done. Of all the ways that the dispute between India and Pakistan over Kashmir has prejudiced the rights of Kashmiris, this is perhaps the clearest. If the real problem were that Pakistan and/or India won't withdraw its troops, then both should welcome an increased U.N. observer and peacekeeper presence to facilitate this. In reality, of course, India -- which controls the most valuable and populous region of Kashmir -- is happy to have the excuse of Pakistan's non-withdrawal to justify indefinite postponement of the plebiscite. If India and Pakistan can't work out between themselves how to create the conditions for a free and uncoerced plebiscite in Kashmir, that's a reason for international involvement. Indeed, a central Kashmiri demand has been for an increased U.N. observer presence, and the U.N. office in Srinagar has been the focus of marches and rallies by as many as a million Kashmiris during those times

when street demonstrations have been possible. The international community, including human rights advocates, should listen to what Kashmiris themselves have been asking for. Here in the U.S., we can and should lobby the U.S. to push for such action in the U.N. Security Council -- where it has already been authorized by the terms of Resolution 47 -- and with India and Pakistan.

3. India says that the Kashmiri people have already voted (although indirectly) for accession to India, because the elected legislature of the Indian state of Jammu and Kashmir supports accession to India. But members of that legislature must take an oath of allegiance to India before assuming their seats -- which is why, among other reasons, most advocates for independence have boycotted these elections, as have many voters.
4. Some people in India and elsewhere raise the specter of a "domino theory": If Kashmir becomes independent, it will encourage "separatists" elsewhere in India, and perhaps in other countries. But Kashmiris have no duty to sacrifice their own national aspirations to Indian (or any other) "national unity". Some people think that larger multi-ethnic federations are preferable to smaller and perhaps more homogenous nation-states. I've met people, for example, whose national identity was as Yugoslav or Soviet, and who would have preferred that Yugoslavia and/or the USSR had each remained a single country. But the place to make that argument is to Kashmiris, as part of the plebiscite campaign, as an argument for why Kashmiris should vote to remain in (or become part of) India. These arguments were made, successfully, in the plebiscite campaigns in Québec and Scotland. But this is not a basis for denying Kashmiris the right to be the ones to weigh and vote on this question.
5. Some people fear that, "Independence for Kashmir will lead to Balkanization." Smaller and smaller splinters may seek independence, as did first Serbia and Montenegro from Yugoslavia, then Montenegro from Serbia, and so forth. Where will this end, once it begins in Kashmir? There is a certain fractal character of Kashmir. But that's a complicating factor, not something that should be taken as a barrier completely precluding any plebiscite. Consider, for example, the situation in Belgium, where there are majority-Flemish neighborhoods within the majority-French metropolitan region of Brussels, which is itself located within, and entirely surrounded by, the main body of majority-Flemish territory. And that's not to mention French Flanders, where my Hasbrouck ancestors are from. Despite those complications, Flanders could be one of the world's next independent countries, and most people expect that ways can, and of necessity will, be found to deal with these problems. The main regions within Kashmir are largely geographically distinct and contiguous, and a plebiscite could (and probably should and would) be held by regions. There is nothing inherently wrong with small countries, if their peoples choose independence. There is growing recognition that small countries can be viable, especially within larger regional federations (e.g. Malta within the European Union). If what you don't want is another Yugoslavia in terms of communal conflict, then the things to be doing now are (A) beginning to

work seriously on the practical details of a plebiscite by regions in Kashmir, and (B) working to maximize the chances that the eventual independent state in the Kashmir Valley (which may end up also including some other sections of Jammu and Kashmir) will respect internal diversity. Further postponing the plebiscite will not improve the chances for communal harmony either now or later.

6. As its final fallback, India claims that it is, "Protecting democracy, secularism, and minority rights". But even if this were India's real military goal in Kashmir -- rather than merely holding onto territory -- **India has failed**. Kashmir is more segregated, and the communal problems are worse, than they were in 1989 before India sent the army into populated areas in large numbers. Kashmiri Hindus (Pandits) don't feel any safer returning to the Kashmir Valley today than they did when they left more than 20 years ago. The Indian army has failed to provide a solution, but has been at least part of the problem: All independent outside observers have documented the extreme anti-Muslim bigotry of the Indian forces in Kashmir. India is voicing the logic of the U.S. in Vietnam: "We had to destroy the village to save it." But this isn't a village, but a region of at least 7 million people (depending on how you draw the borders and how much, if any, of the Kashmiri diaspora you count). Indians will say that while things haven't changed yet, "There's light at the end of the tunnel." Most people, unlike me, aren't pacifists, and in some circumstances are willing to give war a chance. But how much of a chance, and for how long? Eventually, as the U.S. learned (or failed to learn) in Vietnam, even those most committed to armed force as the only way to "solve" problems and "resolve" disputes sometimes have to admit failure, pack up their troops and war toys, and go home. After 25 years of brutal occupation, that time has come for India in Kashmir.

This is perhaps the place to consider what happened in Kashmir in 1989, when the most recent (and still ongoing) phase of the Kashmiri conflict began. Many Indians think, "Kashmir largely acquiesced to accession to India between 1947 and 1989, so why can't we restore that order?"

This question reflects, I think, a misreading of the nature of the change in Kashmiri attitudes that occurred in 1989. It assumes, mistakenly, that what changed in 1989 was the degree of desire for self-determination, often characterized from an Indian perspective as "alienation from India".

By coincidence, I was travelling in Kashmir in 1989, on both sides of the line between Indian and Pakistani control, as well as elsewhere in India and Pakistan and in Chinese-controlled East Turkestan.

What I saw and heard -- exactly at the moment when the sea change in Kashmiri popular sentiment was beginning to occur -- was something different. People didn't describe themselves as formerly loyal Indian citizens who were in the process of losing faith in India's government, but as lifelong Kashmiri nationalists whose desires, long suppressed or dismissed as hopeless, were beginning to seem possible. "A moment comes, which

comes but rarely in history, ... when the soul of a nation, long suppressed, finds utterance," as Nehru famously said on the eve of Indian and Pakistani independence. I was privileged to witness such a moment in the Kashmir Valley in 1989, and I will not forget it. Nor, more importantly, are Kashmiris likely to do so.

If the desire for self-determination or a plebiscite had not existed before 1989, and had been solely a response to events then and thereafter, it is conceivable that a way might be found, even after 25 years of bloodletting, to return to the conditions of seeming quiescence that prevailed before 1989.

But given that the desire for self-determination had been present all along since 1947 (although often below the surface, invisible to Indians or most others outside Kashmir), the hopes that were (re)kindled in 1989 for the realization of those longstanding aspirations will not so easily, if at all, be extinguished.

It is perhaps difficult for people of my own older generation to remember, or for those of you of college age today to imagine, the climate of growing hope for self-determination at that time, especially as viewed by people in that part of the world.

Decolonization -- the central process of self-determination in most of the world -- reached its peak with the largest number of countries becoming independent in 1960, the year I was born, and declined thereafter. Borders of post-colonial states drawn by the former colonial powers were frozen by Great Power and Cold War stalemate, and almost no changes were made for many years.

The reunification of Vietnam in 1975 and the Iranian revolution of 1979 were both seen as successes of popular national struggles to overthrow neocolonial U.S.-puppet regimes. They gave national liberation movements of widely varied character, especially in Asia, new hopes. The success of the Afghan people in overthrowing a similarly neocolonial Soviet-puppet regime brought the new wave of national liberation to Kashmir's doorstep in 1989, on the eve of the outbreak of the current Kashmiri struggle.

As the new wave of Kashmiri nationalist activism developed, Kashmir's formerly Soviet neighbor states became independent in 1992. Russian and other Eurocentric observers (including most Moscow-based journalists and many foreign scholars) described this process as the "collapse" or "breakup" of the USSR. But as I travelled across the former USSR in 1992, from Asian to European Russia as well as in Uzbekistan and Kazakhstan, I saw and heard that process celebrated in Central Asia (at least initially) as the belated coming of decolonization and self-determination to Russia's colonies in Asia.

My point is not that you or I have to interpret these events this way today (although in general I do), but that this is the way they were widely perceived on the ground in the region at that time.

It was in this context that Kashmiris began to believe, for the first time in years or perhaps decades, that "azaadi" might be achievable, that there might be a point to trying

to struggle, and that they might be next in line for national liberation. While the struggle has waxed and waned and been pursued in different ways by different Kashmiris at different times since then, I don't think anyone can put the genie of Kashmiri hopes back in the bottle from which it escaped in 1989 and over the next few years.

So if fundamental principles of human rights, including those of democracy and self-determination, entitle Kashmiris to a free plebiscite and, if necessary, international observers and peacekeepers to facilitate it, why is there so little concern for Kashmiri self-determination by foreign governments and activists for peace, justice, and human rights?

First, the right to self-determination is inherently and implicitly threatening to all existing states. It's like immigration policy: every country wants to gain its own independence, and then close the door to new countries coming after it, especially from within its current territory. All the great powers have skeletons in their closets: China in Tibet and East Turkestan, Russia in Chechnya, the USA in an archipelago of colonies from Puerto Rico and the U.S. Virgin Islands to American Samoa. The right to self-determination is recognized in the U.N. Charter and the ICCPR, but governments are hesitant to spell out what it means. No currently sovereign government really wants to pay more than lip service to this right, and it has clearer support in the discourse of political theory and ethics than in law. The fact that existing states can't be expected to champion self-determination anywhere -- except for the most opportunistic reasons -- places a special responsibility on individuals, NGOs, and civil society to be that champion.

Second, India has successfully incorporated its preexisting Hindu fundamentalist and Islamophobic war on Kashmir, and the demonization of the Islamic threat that has been India's central national and internal security meme since 1947, into the new global crusade against Islam being waged by other countries and motivated by other religions. That's enabled India to market its war on Kashmir and against Muslims throughout India as part of the "War on Terror", and sell itself to the USA as an ally in that war -- the same way that China has done with its occupation of East Turkestan, but with more success in India's case. There's nothing new in using "because terrorism" as the excuse for occupation: it's the same argument that is or was used by England in Northern Ireland, Israel in Palestine, and white South Africa in the black townships -- in all of which places there was some amount of terrorism carried out by elements of the national liberation movements (in addition to, and in the face of, the state terrorism of the occupation forces). Have some Kashmiri Muslims taken up the the gun? Yes. (Although very few in recent years, as we will hear from other speakers later tonight.) Have some foreign Islamist fighters come to try to help them? Yes. Does that justify, under principles of international law and human rights, the "collective retaliation" that India has practiced against all Muslim Kashmiris, or the denial of their right to self-determination? **No**.

Third, India has had remarkable success, through a wide variety of deliberate mechanisms and historical accidents, in shaping the discourse around Kashmir.

Most Americans know almost nothing about India, and many could name only one individual Indian: Gandhi. India benefits greatly from an unwarranted international (and especially American) public image as a peaceful, Gandhian nation. Even many somewhat more knowledgeable Americans don't realize, and would be surprised to learn, that India's current government is in the hands of a party much more closely linked to the successful Hindu fundamentalist conspiracy to assassinate Gandhi than to any Gandhian legacy or to contemporary Indian Gandhian activists or organizations.

India makes field work in India unusually difficult for foreign journalists and researchers, generally requiring them to have a local Indian sponsoring organization unless they want to carry out their work in India semi-clandestinely on tourist visas. India is one of only two countries, of more than fifty I have visited including police states with far worse reputations than India's for interference with journalists, that refused to issue me a visa, once I declared my occupation as "writer", until I signed a statement that I would be visiting solely as a tourist and did not intend to write about my trip (which was, at the time, a true statement). India justifies this as a defense against foreign Orientalist misinterpretation of Indian affairs, and argues that there are plenty of qualified Indian journalists and academics capable of interpreting India to the world, as indeed there are. But the result of these visa obstacles for foreigners is that most reporting from India for foreign news organizations is carried out by Indian stringers or local hires, who are less likely than foreign citizens (who fill otherwise similar roles as correspondents in China and other countries) to disagree with personally, or to challenge in their reporting, national consensus or government policy on issues such as Kashmir.

The large diaspora of "Non-Resident Indians" (NRIs) and "Persons of Indian Origin" (PIOs) serves as an effective overseas propaganda army for the Indian government's position on Kashmir. There are at most a few thousand people of Kashmiri ancestry in the USA, compared with several million -- a thousand times as many -- Indo-Americans. Other Americans who become curious about an issue they are told relates to a place in India are likely to seek out and rely on Indo-American acquaintances as sources.

Finally, public sympathy for the Indian government's position benefits greatly from the framing of the Kashmir question as one of "India versus Pakistan". Most Americans know even less about Pakistan than they do about India, and don't know any Pakistani-Americans. But the more knowledgeable Americans or other foreigners are about Pakistan, the less credibility they are likely to give Pakistan as an advocate for democracy or human rights in Kashmir (or anywhere else). That's not just because Pakistan's arguments about Kashmir, despite being different from India's, are so obviously self-serving, but because they are so obviously hypocritical when measured against Pakistan's own dismal record on issues of democracy and human rights. Pakistan has seesawed between military and civilian dictatorships, while even during periods of nominally elected government the real power has been held by an essentially feudal aristocracy. India's enduring caste hierarchy could be subject to similar criticism, but most Americans don't know that. Most Americans, forced to choose between India and Pakistan, would side with India. Most foreigners have no idea that the real party whose rights are at issue is neither India nor Pakistan, but the Kashmiri people themselves.

The USA has articulated values of democracy and self-determination that remain important, even if the USA has rarely upheld them. Similarly, there are Gandhian and Nehruvian values that remain worthy aspirations, even if India has often failed to practice them. For those of us within and without India who want to see India fulfill its promise to set a positive example of respect for the right of self determination -- on which India was founded -- and human rights, the place to start is in Kashmir.

Will things be better in an independent Kashmir, if Kashmiris are eventually given a choice, and if some regions within Kashmir choose independence? Maybe, maybe not. But Kashmiri people are entitled to make that choice for themselves.

(Even if things get worse after independence, that doesn't mean that Kashmiris will want to bring back Indian martial-law rule. Even those who most strongly supported independence for Eritria, for example, agree that that despite significant and enduring accomplishments in some areas, Eritria's post-independence government has made terrible mistakes. But I have never heard anyone -- neither abroad nor during my visit to Eritria, where despite the pervasive presence and popular fear of the secret police we heard strong private criticisms of the Eritrian government -- suggest, "Let's put the Ethiopian government back in control of Eritria.")

Nehru may have said it best in 1951: "Kashmir has been wrongly looked upon as a prize for India or Pakistan. People seem to forget that Kashmir is not a commodity to be bartered. It has an individual existence, and its people must be the final arbiters of their future."