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When is the Right of
Secession Justified?

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When is the Right of Secession Justified?

Introduction

In 1989–90, the Valley of Kashmir erupted in a series of violent protests. The scale and the intensity of the protests involving bomb explosions, closures, strikes, arson, attacks on government offices, bridges and buses, and murders, took everyone by surprise. It seemed to have even astonished the Jammu and Kashmir Liberation Front (JKLF) which had initiated and spurred the popular unrest in the Valley. For instance, on 1 March 1990, a crowd of more than one million from every part of the Valley, many wrapped in shrouds, gathered at the headquarters of the UN Military Observers Group in Srinagar and there was only one demand on their lips—freedom or *azaadi*.¹

If the JKLF was astonished at the intensity of anger against the Government of India (GOI), presumably the members of the Indian political establishment were also taken aback. The political elite seemed to have forgotten that the accession of the state to India in 1947 was disputed by many. They also seemed to have forgotten the special conditions on which the state had acceded to India. But now the people of Kashmir had stood up, spoken back to history, and refused to accept the way in which their state had been treated since 1947, through a combination of corruption, mis-governance, electoral mismanagement, closing off of the political space to new political agents, and violations of democracy by the Government of India and the regional government. This paved the way for the slide into political violence.

Initially the JKLF led the violent uprising in 1990.² But the Kashmiri organization lost control over the insurgency in a short span of time, and organizations from

Lecture delivered at the India International Centre on 30 March 2012 by Neera Chandhoke.

outside the country practically hijacked the revolt. The entry of third parties into the region could have been expected, given the history of India–Pakistan tensions over Kashmir since 1947. Yet it is important to note that Pakistan did not succeed in its endeavours till the 1990s when the citizens of the Valley completely lost trust in the political system. General dissatisfaction, the repression that was launched by the Indian state upon the protestors, and the outbreak of violence opened the doors to foreign mercenaries, mainly from Pakistan and increasingly Afghanistan, to enter the Valley, hijack the struggle, and subordinate it to their own ends.

Till today the spectre of violence continues to loom large over Kashmir. Since the outbreak of militancy in 1989, Kashmiris have been living by the gun or under the shadow of the gun. The youth between 15 and 30 years of age are searching for a safe future. The middle-age population, from 31 to 45 years, have spent their youth in cages of fear, stalling their progress and engendering a type of middle-age syndrome in IJK (Indian Jammu and Kashmir). This below-45 age group comprises half of the population in IJK—those whose lives have been shaped by the death, humiliation and fear that have come with the Kashmiri struggle for *azaadi*. Their memories are fresh. They have lost their loved ones and suffered economically and socially. Mothers continue to wait in side roads if their children do not return after sunset.³

The tale of the Kashmir tragedy could have been foretold as early as 1953. The Government of India, desperate to prevent further balkanization of the country, embroiled in a war that was not of its own making with Pakistan, pilloried in the UN by major Western powers that had turned against India, and pressurized by right-wing forces to integrate Kashmir into the country, was to adopt extremely short-sighted policies in the Kashmir case. In retrospect it is surprising that the GOI did not realize that it was not dealing with a population that had been rendered acquiescent under princely rule. It was dealing with a people that had mobilized against the misrule of the monarch since the 1930s. This politically aware population witnessed a series of cataclysmic events in the aftermath of 1947, the terror and the atrocities inflicted by raiders from Pakistan in 1947, the disruption that followed war between India and Pakistan on Kashmiri soil, and the partition of the community and of the homeland between two, and then three countries. Above all, this population bore witness to the breach of contractual and constitutional obligations by the Government of India.

Yet the Kashmiri people were prepared to give democracy a chance. But it was precisely democracy that was compromised and denied to them.

Forty-three years after the accession of the state to India, the people of the Kashmir Valley revolted against institutionalized injustice. The widespread belief that the state of politics could deliver to the people of the state neither democracy nor justice generated secessionist demands. 'Though nothing can be immortal, which mortals make; yet, if men had the use of reason they pretend to, their Common-wealths might be secured, at least, from perishing by internall diseases' wrote Thomas Hobbes.⁴ But reason was not a constitutive aspect of the Kashmir policy of the Government of India. The Commonwealth, consequently, could not be properly secured. And the resultant demand, that of secession from India, came to rock the political landscape of the Valley.

The case of Kashmir is rather unique mainly because of the context of the secessionist movement; that is, formal democracy in India distinguishes the Kashmir case from, say, Bangladesh, that is extreme injustice. But the text; that is the use of violence by the state and by the movement distinguishes Kashmir from Quebec where violence lasted but a short time. In effect, Kashmir represents what should be an *anomaly in democratic theory*, the use of violence by a formally democratic government. And it represents an *anomaly in conflict theory* inasmuch as conflict has occurred in an electoral democracy.

It is this mix of circumstances that demands reflection on the issue of when secession is justified, if so why, and if not why. In order to do this, we need to extricate the Kashmir problem from anxious expressions of an over-ripe Indian nationalism, as well as from the regional context. Unthinking and unreasonable nationalism can deflect reasoned consideration of issues, such as justice, which is crucial to the project of living together in a political community. When it comes to nationalism, we should take our cue from Rabindranath Tagore. 'I am willing to serve my country,' states Tagore's protagonist Nikhil, 'but my worship

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I reserve for Right, which is far greater than any country. To worship my country as a god is to bring a curse upon it.' Nationalism if employed in the wrong cause, or if harnessed to defend or rationalize institutionalized injustice, can cause more harm to the nation and to its people than critical interrogation of the entire project. One of these critical interrogations is the question of secession.

Secession and the Global Order

In the period that followed the end of the cold war, the collapse of actually existing socialist societies inaugurated an era of hyper ethno-nationalist movements, especially in the region of the Balkans and the Caucasus. Countries dissolved, federal systems melted away, and a number of new states emerged out of the debris of old ones, often through armed struggle, ethnic cleansing and genocide. The scale as well as the pace at which existing states broke, and new states were created, was quite unprecedented in history. Whereas the growth in the membership of the United Nations from (the original) 51 member states in 1945 to 149 in 1984 was due to decolonization, the increase in membership from 151 in 1990 to 193 at present is essentially due to secession.

In the 1990s the processes of state breaking and state making exerted a profound domino effect across the world, and a new lease of life was infused into dormant separatist movements; the Kashmiris, the Nagas and the Bodos in India, the Chechens in Russia, separatist movements in Azerbaijan (Nagorno-Karabach) and Moldova (Trans-Dniester), Baluchistan in Pakistan, West Papua in Indonesia, the Oromos and the Somalis in Ethiopia, the Kurds in Turkey, and till May 2009 the Tamils in Sri Lanka, and South Ossetia and Abkhazia in Georgia. Regions in Canada, the United Kingdom and Europe, such as Quebec, Scotland, Catalonia, the Basque country and Corsica continue to demand independence off and on. Given the cascading effects of secession, it is not surprising that the concept was practically catapulted onto the academic agenda of political philosophers.

Secession is about the breaking away of a piece of territory from the mother state through renunciation of political obligation to and sovereignty of the said state. Yet there is another dimension to secession. A new state acquires personality as an international actor only when other states and the UN recognize it. Oddly enough, international

law and the United Nations have simply not taken a position on the issue. Though the members of the United Nations were divided along a number of lines, notably ideology, between 1945 and 1990, practically all member states had arrived at a somewhat overwhelming consensus on one crucial issue: that borders of member states were sacrosanct. This tacit understanding underscored processes of decolonization. To date the United Nations remains committed to upholding the territorial integrity of member states. Once a country attains freedom from colonial domination by virtue of the principle of self-determination, further breakaways are not tolerated.

The reluctance of international law and the UN to recognize secession has, arguably, bred at least one anomaly, and one normative problem. The anomaly is as follows. Even if the UN does not recognize a new state born out of secession, individual countries have proceeded to do so. The Government of India, for instance, recognized Bangladesh in December 1971, three years before the UN admitted the state into its forum. Or consider Kosovo. Kosovo was declared a UN Protectorate at the end of the 1990s, at the time that NATO-bombing drove out Serbian militants who were trying to cleanse the province of majority Muslim Albanians. About 10 per cent of the population in Kosovo is Serbian. On 17 February 2008, Kosovo's Parliament declared independence from Serbia by unanimous vote without the sanction of the UN, even though the territory was an international protectorate, and even though Serbian representatives, as well as representatives of other minorities, boycotted the proceedings. The Act proclaimed an independent Republic of Kosovo, and the government solicited recognition by other countries. Ten days later Germany recognized the new country. By 1 October 2011, 81 out of the 193 member states of the UN including important countries of the European Union, the United Kingdom, France, the US and Canada, formally recognized Kosovo, even though the erstwhile parent state Serbia, has refused to recognize the new state.

The UN, however, has not recognized Kosovo because the Security Council remains divided on the issue. The People's Republic of China has expressed concern over the declaration of independence, and Russia has rejected the resolution as illegal. In his earlier avatar as the President of Russia, Putin had stated that Kosovo must be seen as a universal case, which would set a precedent for other breakaway regions in other parts of the world. Putin feared that the recognition of Kosovo would exercise a domino effect on separatist movements in Russia's neighbourhood. Abkhazia's

and South Ossetia's bid for independence would be strengthened, separatism in the Trans-Dniester and the Karabach Mountains which are the cause of dispute between Armenia and Azerbaijan would be reinforced, and the Hungarian minority in Slovakia would be encouraged to declare independence.

But Russia altered its own position in August 2008. In 1991, even as the once mighty Soviet Union broke up, former constituent units of the federation had been given the option to establish independent states. Georgia, a former constituent of the federation of the Soviet Union, subsequently attained the political status of an independent state. Within a year, the territory of South Ossetia in Georgia embarked on a short but bloody war with the latter. South Ossetia and Abkhazia, a former autonomous prefecture and an autonomous republic of Georgia respectively, declared independence from Georgia in 1990–1991. Both breakaway territories claimed that they had been forcefully transferred to Georgia by Stalin, and that they had the same right to independence as other Soviet Republics had been granted after the break up of the Soviet Union. Since 1992, Moscow had held that Abkhazia and South Ossetia were integral parts of Georgia.

In August 2008, Russian forces were rushed into South Ossetia in order to repulse Georgia's massive offensive against the breakaway territory. These forces took full control of the regional capital Tskhinvali, and managed to push Georgian troops beyond the conflict zone. In the meanwhile, the other breakaway territory of Russia, Abkhazia, launched a military operation to oust Georgian forces from the Kodori Gorge, a demilitarized zone where Georgia had deployed troops in violation of a 1994 ceasefire agreement. Georgian President M. Saakashvili declared a state of war on the ground that Georgia had come under total military aggression, and called for an immediate ceasefire. Till October 2011 only six and five member states of the United Nations have recognized Abkhazia and South Ossetia respectively. Contrary to the policy adopted in the case of Kosovo, the US and the European Union have condemned Russian intervention in the internal affairs of Georgia.

The anomaly in international law and practices can be now summed up as follows. De facto states can be established, and other states can extend recognition to this state, but the United Nations does not feel obliged to do so, because it does not recognize secession. Consequently, though de facto states exist in international

space, they lack an essential attribute of stateness; that is recognition by the UN, and in many cases recognition by other governments. As far back as 1991, the Somali National Movement declared North Somalia independent and confirmed the formation of the Independent Republic of Somaliland. Northern Somalia has not been recognized by the UN, or by any country, even though the territory has governed itself fairly successfully since unilateral independence. The same position prevails in the case of the Turkish Republic of North Cyprus, the Trans-Dniester Republic that is nominally a part of Moldova, Abkhazia and South Ossetia, and the Nagorno-Karabach region of Azerbaijan that is nominally united with Armenia.

This is a constituent part of a highly unequal global order. The uncomfortable fact is that powerful countries have made haste to recognize *some* breakaway states even if the UN does not do so. An equally discomfiting feature is that the recognition of de facto states by powerful Western states has proved purely arbitrary and self-serving. Important Western countries have rushed to recognize Kosovo, but denied recognition to the free zones established by the Polisario Front, or to the Government in Exile declared by the Saharawi Arab Democratic Republic in Western Sahara, which has been annexed by Morocco. The existence of the Independent Republic of Somaliland has not been recognized by individual states. Nor have important countries recognized the right of the Palestine people to the establishment of a state of their own.

If the UN system does not recognize a de facto state for reasons of liberalism (non-institutionalization of human rights and protections for minorities, for example), what is the status of this state? Is it, or is it not a state? Or is it a second grade state? Further, if in the future a de facto state that has not been recognized by the UN commits human rights violations such as ethnic cleansing of minorities, upon which agency does the responsibility to intervene in the cause of human rights fall? Do some states fall into a twilight zone, where they exist uneasily between proto-stateness and statelessness? Or are states graded in the international firmament? Not only are some states more powerful than others in international forums, some of the relatively new states are not even proper states.

The normative problem can be identified as follows. If an attempt to secede is successful, and if the erstwhile parent state recognizes the new state, the new state is recognized by the UN. If powerful countries, particularly members of the Security

Council back a new state, it is also likely to be recognized by the United Nations. But in the case of unsuccessful secessions, or in the case of de facto states that are not recognized by powerful countries, the UN is not so obliged. As far as politics in the realist vein go, international practices and the provisions of international law on the issue of secession take the proverbial cake. However, what we want to know is whether secession is justified and why groups want to break away irrespective of whether they will win or lose the battle. This does not help anyone to take a principled stand on the issue of secession, for we simply do not know which side we should be on. But secession is not only about partitions and divisions, about the breaking of states and the formation of new states. It is ultimately about the kind of state that does or does not provide justice to its people. But international law does not ask these questions of secessions and leaves decisions to the battlefield.

The refusal of international law to recognize secession serves to push the reasons for, or the justification of, secession under the metaphorical carpet. This does not help anyone to take a principled stand on the issue of secession, for we simply do not know which side we should be on. The formal position of the UN on secession is, as a matter of course, shaped by the compulsions of 'real' politics. We can hardly expect that member states, which guard their territorial borders so jealously and so zealously, will participate in any decision that sanctions the dismemberment of their own territory and results in the division of their populations. But secession is not only about partitions and divisions, about the breaking of states and the formation of new states, about the recognition or non-recognition of these states, or about sovereignty and about challenges to sovereignty. Discussions about secession are ultimately about the kind of state that does or does not provide justice to its people. Therefore there is paramount need to develop principles that can or cannot justify secession.

When is Secession not Justified?

Separatists tend to legitimize secession on the plank of national self-determination as is the case with Kashmir. Yet the connection between nations and secession just does not hold. It is not entirely clear why 'nations' are entitled to their own state. More significantly, the concept of the nation is far too problematic. Logically we can hardly grant and institutionalize a right when the status or even the credibility of the rights holder is itself uncertain.

Consider for instance that by the time President Woodrow Wilson enthusiastically sought to apply the principle of national self-determination to reorder a war-shattered world in the period post the First World War, the concept of the nation was neither self-evident nor free of inconvenient ambiguities. For one, no one conception of the nation onto which the flag of self-determination could be pinned could be found in the history of the modern world. There are nations and nations, and it is hardly possible that members of different groups conceptualize what it means to be a nation in quite the same way. Neither can these members feel exactly the same way about their constitutive political contexts. Nor should we expect them to do so, given the plurality of political affiliations, causes and modes of belonging that human beings subscribe to. The nation that was constructed by the bourgeois revolutions in England, France and the United States was quite distinctive from the sort of nation that nationalities within multinational empires had begun to construct in the 19th century. The former sort of nation, as conceptualizations of nations and nationalism came to believe, was predominantly civic, the latter was termed organic or cultural.

Take India. By the beginning of the 20th century, leaders of anti-colonial struggles, inspired by the political revolutions wrought in England, in the United States and in France, argued that the nation is a distinctive form of political community. This political community gives to its members a sense of belonging through the grant of popular sovereignty and rights, a relationship to the state mediated by legal entitlements, and the creation of ties that are predominantly civic in nature. This was the kind of nation that India's first Prime Minister Jawaharlal Nehru conceptualized and dreamt of—secular, democratic, civic and developmental. In 1933, that is at a time when the freedom struggle challenging British colonialism had begun to dominate the political space in the public domain, Nehru was to write in the *Bombay Chronicle* thus. 'Whither India? Surely to the great human goals of social and economic equality, to the ending of all exploitation of nation by nation, and class by class, to national freedom within the framework of an international cooperative socialist world federation.'⁵

Other leaders, however, focussed their dreams of the nation around their own religious community, and correspondingly conceived of their nation as nothing more than the political expression of their religious identity. In 1932, Veer Savarkar, the prime

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ideologue of the Hindu right, cast the political category of the Indian nation in the mould of the majority religion—Hinduism. The Hindu, he wrote, 'inherits the civilization of the country as represented in a common history, common heroes, a common literature, a common art, a common law, and a common jurisprudence, common fairs and festivals, rites and rituals, ceremonies and sacraments.'⁶

Western theories of nationalism infer that whereas civic nations are defined in terms of a shared commitment to the public institutions of state and society, ethnic nationalism emphasizes common descent, shared traits, customs and practices. Whereas the idea of the civic nation was best conceptualized by Ernst Renan and the ideology of the French Revolution, the concept of ethnic nationalism was articulated by Johann Gottfried Herder and German Romanticism—an ideology that arose in reaction to the Enlightenment and its commitment to reason.

Yet this distinction might well be overstated. In India both civic and organic nationalism developed in resistance to British colonialism, in the same territory and at roughly the same time, that is in the 1930s. Therefore, whether civic and romantic concepts of the nation can be seen as entirely distinct from each other, either in terms of territorial origins or in terms of conceptualization, is debatable. In India, at Independence, the Nehruvian notion of a nation bound by civic ties took root and was institutionalized through the constitution, laws and rights. But at the same time even this civic nation needed selective historical memories, memorials, icons and symbols, films, music, the national sport of cricket, and above all, the vocabularies and the imaginaries of the nation to hold people together.

The case is not all that different in Europe. Populations in France, the US and the UK have proved to be nationalist, racist and exclusive when it comes to immigrants. This prejudice is but a surface manifestation of a deeper belief that some people belong to the nation; others do not, even if they share the same civic rights. All nationalisms, howsoever moderated they may be by constitutionalism and civic sentiments, show a frightening tendency to chauvinism when it comes to people who, it is held, do not belong. Whatever be the exact mix of cultural and civic nationalism, nations and

nationalisms are plural and contradictory concepts. If these concepts and ideologies create civic ties that bind people, it is these very ties that can prove repressive and exclusionary. For this reason alone, an uncritical endorsement of the idea that nations are entitled to their own states becomes that much more difficult, that much more in need of justification, and that much more debatable and open to doubt.

Further, it is indeed difficult to judge whether a group falls within the category of a nation, or whether it belongs to a lesser order of being such as an ethnic, a religious or a linguistic community. This difficulty arises primarily because we are not speaking of one group of people who live in a society. We are speaking about groups who live in these countries along with other groups, and whose identities cannot but be entangled with other identities in multiple ways. The process of 'living together' generates shared languages, whether this language is of sports and films, of holidays, of commemorative symbols, or indeed of politics, and of the market. And shared languages presume a shared meaning system. It follows that political practices that seek to construct a nation have to first extract the relevant group, or the proto-nation, from the jumble of shared languages and crisscrossing cultures, and then endow this group with a distinctive identity that distinguishes it from other groups.

The processes by which an ethnic group transforms itself into a nation are multiple, complex and self-reinforcing. But above all these processes are political. Unlike the Greek goddess Aphrodite, nations do not emerge from the sea fully fashioned.⁷ Nations are conceived, constructed and constituted through intentional processes that are indisputably political. Nor do these entities become politically significant or politically relevant at random, or because of happenstance. The construction of nations through political processes might well be in response to serious provocations, such as injustice or institutionalized discrimination, or the need to define the identity of a group against others.

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When we focus only on the nation or take this political unit as a given, we miss out on the 'big picture': how nations are constructed for different reasons, to take advantage of political opportunities for instance, and how identities are consolidated and hardened as a result. Therefore the political route that leads to the 'construction' of a nation, an ideology called nationalism, and the demand for a state of one's own can rapidly descend into narrow chauvinism, and, often, exclusionary discourses that lay down who belongs and who does not belong. The narrowing down of moral obligations to one's own immediate community, and the renunciation of obligation to others to whom we are bound by reasons of a common citizenship if not a common humanity, are intrinsic to the construction of a national self that seeks to attain a distinct political personality, and an independent political status.

In sum, the numerous, crisscrossing and often contradictory transactions that construct nations and attendant ideologies of nationalism have proved fluid and mutable. The ideology of nationalism is experienced strongly at some times and mildly at others, becomes active in constructions of the 'self' and 'others' on some occasions and becomes irrelevant at others, invokes special obligations from members in some decades and does nothing of the kind on others, proves politically compelling in some periods and is not all that compelling on others, and becomes politically relevant in discrete historical periods and just irrelevant in others.

Therefore, although the days when the flag of nationalism was hoisted aloft to make a case for a state of one's own might not have vanished in the mists of time, national self-determination, at least since the end of the Second World War, is no longer an accepted claim in political philosophy. There is no special reason why nations ought to have a state of their own as a matter of right. Such states might even prove alarmingly exclusive and intolerant of their own minorities. Moreover, the idea that a linguistic or religious nation should have its own state is counterproductive, because diversity within the group is artificially flattened out, and differences, contestations, debates, compromises and dialogues are practically ruled out. Not only is the state granted enormous leeway, it no longer has to justify its own policies except in terms of the needs of the nation. None of this produces democracy. It might even produce deceptive grounds for legitimizing the state, grounds that have little to do with justice or democracy. The idea that nations have a right to their own state has to be dispensed with along with the idea of the nation state and all its little vanities.

When is Secession Justified?

If a case for secession has to be justified, it must be constructed on grounds other than national self-determination. Secession is, arguably, a right that yields to justification only in certain and very specific circumstances, that of institutionalized injustice. And this is the difference between other rights and the right of secession. A defence of rights begins with the assumption that these rights supervene onto conceptions of what it means to be human. Secession is justified when core moral rights have been irrevocably infringed and a group that is settled on a piece of land has been subjected to institutionalized injustice.

It is in this precise context that we can wonder whether secession in Jammu and Kashmir is a *prima facie* right, considering that the Government of India has subjected the people of J&K to institutionalized injustice. Institutionalized injustice has taken two forms: that of violating the contract that gave to the state special status in the Indian federal system, and that of violating the basic civil liberties of the inhabitants of the Valley.

However, rights are never absolute; they have to be weighed against relevant considerations that have a bearing on the right in question. For instance the basic right to freedom of expression is limited by the laws of libel, hate speech, incitement to violence and pornography. Similarly, the right of secession has to be weighed against the following considerations at least.

One of these considerations is that of minority rights. In plural societies, secession negatively affects the interests of minorities living in that territory. According to the 2001 census, Muslims form 66.97 per cent of the population, Hindus 29.63, Sikhs 2.04 per cent and Buddhists 1.2 per cent. The Muslims constitute a majority in the state but the community is divided by language and sect. Sunni Muslims live mainly in the Kashmir Valley and in two districts in Jammu; in Poonch Muslims speak Punjabi and Kargil is peopled by Shia Muslims. Jammu and the foothills are dominated by Hindus, and Leh by Buddhists. For all these groups as well as for numerous smaller groups such as Gujjars, Bakkarwals, Kashmiri Pandits, Dogras and Buddhists, the state of Jammu and Kashmir is their homeland.⁸

The demand for separation from India has erupted mainly in the Valley of Kashmir, and in the two Muslim dominated districts of Jammu. But though the Muslim

community forms an overwhelming majority of the population in Kashmir, for the Kashmiri Hindus and the Sikh community the Valley is home as well. In the wake of the 1990 popular uprising in the Valley, 95 per cent of the Valley's 150,000 to 160,000 Hindus were forced to leave their homes and their work places because they were threatened by poster campaigns, the use of Islamic slogans during processions, and newspaper declarations that J&K was poised to be an Islamic state.⁹ Notably Sikhs and moderate Muslims have also been forced to leave the Valley that has been their home for centuries.¹⁰

More significantly, the demand for secession by militant Muslim groups in the Valley has propelled the politicization of other identity groups. In many cases this is not new. The Buddhist community in Ladakh had begun to assert a distinct identity as far back as the 1930s, when the Muslim-dominated National Conference had mobilized to challenge the discriminatory policies of the Hindu ruler. The Buddhists held that they preferred to be governed directly by the Government of India, or be amalgamated with Hindu majority regions in Jammu, or join East Punjab, or be reunited with Tibet. With the outbreak of militancy in the state, the Buddhist population in Ladakh began to agitate for union territory status under the direct control of the Government of India.

In Jammu, the predominantly Hindu community has, from the time of accession, been uncomfortable with the idea that the state of J&K had been granted a fair amount of autonomy within the Indian federation, given that the state is dominated by the Muslim community. Developments after 1947 fuelled suspicions that the Government of India preferred to deal with the Muslim leadership in the Valley, and neglect the interests of other religious groups. The Hindu community was not only anxious about the shift of power in the state from a Hindu ruler to the Muslim-dominated National Conference, they were also apprehensive that the party leadership would discriminate against the community in the pursuit of righting historical wrongs. These fears led to the politicization of the Hindu community under the leadership of the Hindu right. Since the early 1950s, the religious right has demanded that Jammu and Kashmir should be firmly integrated into the Indian Union, that Article 370 should be abrogated, that Kashmiri domination over Jammu should end, that the distinction between state subjects and Indian citizens should be removed, and that the Supreme Court should be given full jurisdiction over the state.

Whether the politicization of identities in Jammu and in Ladakh on religious lines is politically desirable or not is a relevant question, but that is not the issue at hand for this argument. The issue is different; that of competing identities. If some Muslim leaders in the Valley strongly subscribe to secessionist agendas, Ladakh and Jammu demand either autonomy from the Valley or firmer integration of the state into the Indian Union. Over the years the regional divide has been exacerbated, generating both plural and incommensurable voices on the future of the state, and to the intensification of intra-state tensions. Ironically, whereas the Valley-based Muslim leadership calls for either independence or restoration of regional autonomy, it opposes the grant of sub-regional autonomy to other groups.

Matters have become even more complicated because the former residents of the Kashmir Valley, the exiled Hindu Kashmiri community, has begun to agitate for a separate homeland comprising the region to the East of the Valley and the North of river Jhelum.¹¹ The homeland should, it is claimed, have the status of a Union Territory governed by the Central Government. The other group that has demanded autonomy from Kashmir is the Gujjar community that constitutes 9 per cent of the state's population. The Gujjars who form the third largest community in J&K are Muslim nomads. They were granted in 1991 the status of a Scheduled Tribe and given the benefits that follow the grant of this status. These measures have led to the politicization of the Pahari people who speak a distinct language, who consider themselves as possessing a separate identity. The group has begun to demand separation from the Valley and for a distinct political status. The residents of the Chenab Valley have also come forth with a claim for an Autonomous Hill Council. In sum, not only is there no consensus on the issue of secession in the state, different groups of residents conceptualize the future of the state in different ways. To put the point across plainly, there is simply no consensus on secession in the state of Jammu and Kashmir.

Let us now reflect on the two factors that have a significant bearing on the right of secession. One, even if the leadership commits to minority rights, groups other than the Muslim majority simply do not subscribe to the project of secession. Two, all of these groups have begun to lay claim to (i) a distinct administrative status within the region, and (ii) closer integration of the state into the country. In other words, not only do these groups desire a dilution of the special status granted to the state,

they also desire a looser form of sub-federalism within the state, with some units being administered directly by the Central Government. We can, of course, hold that only the Valley of Kashmir should be allowed the right to secede. But this course of action carries adverse implications for the moderate Muslims who do not share the aspiration for a separate state, as well as for the Sikhs and the Hindus for whom the Valley is home. Since the end of the 1980s, most of the minorities have been practically forced out of the Valley. However, given their historic links with Kashmir, should they not be consulted on the future of the Valley? Do the rights of the secessionists outweigh the rights of minorities completely?

The Problem of Conflicting Rights

What we see here is the making of a serious moral dilemma born out of the conflict between the right of secession demanded by one group, and the rights of other groups in the territory not to secede. Conflict between rights is of course not peculiar to the right of secession alone; such conflict is endemic to rights. Since rights are asserted and claimed in a context that is indisputably social, and one that is marked by a scarcity of resources, the rights of one person or group affect the rights of other persons and groups. How do we trade off one right with the other? Consider a particularly troublesome example here. How do we weigh the right of, say, a forest community not to be displaced from its habitat (in the forest) by a large irrigation project, against the rights of a community of poor farmers which will benefit from the development project in the form of irrigation and electricity generation to development. If the state upholds the right of the former group, the rights of the latter group are irrevocably affected, and vice versa.

Two courses of action can be adopted to resolve the issue. It can be argued that the right claimed by the forest dwellers is more significant than the rights of other groups who need power and irrigation, because the former's basic right of freedom to live and work in its own habitat is more significant than the latter's right to benefit from large irrigation projects. But then these subsistence farmers are economically impoverished, and the only way to secure their right of life is to secure the basic preconditions of livelihood, in this case irrigation for agricultural activities. Non-realization of the rights of both groups will, in effect, harm them. But the realization of even one right truncates the right of the other. What is then to be done?

The only option is that the clash between two important rights is resolved in the following manner. The scale of the large development project is trimmed down so that fewer forest dwellers are displaced. Those who are unavoidably displaced should be offered alternative habitats, as well as compensation for harm. The reduced scale of the development project of course means that there will be less irrigation provided to subsistence farmers. The advantage is that the rights of both agents are realized, albeit to a lesser degree than initially envisaged. The trade-off in this case is not between two sets of rights. The trade-off is between the full realization of the good that the right is a right to, and a realization of a reduced scale of the good.

Most conflicting rights claims are resolved in this manner. In a world of scarce resources and conflicting claims, rights cannot be too resistant to modifications, as well as to reductions in the scale of goods that the right is a right to. When the rights of two agents conflict, to uphold the right of one agent at the expense of the other is simply unacceptable. Some kind of a balance can be achieved only when the good to which both agents have rights are scaled down somewhat. This might be a better solution to the problem than upholding the rights of one group at the expense of another group. The one alternative to the right of secession, which, if realized, will harm other agents, is to fulfil the substance of the right within the existing state in the form of self-government or regional autonomy. For, the rights of the minorities will have to be weighed against the rights of the secessionists. There is no option. At this point hard decisions will have to be made. The mobilization of minority identities within the region that is under dispute, and the putting forth of different and incommensurate demands, cannot but neutralize the right of secession.

The Second Moral Consideration: The Role of Third Parties

The case of the Kashmir Valley throws up a second dynamic that has to be taken seriously and pondered over even more seriously. Theories of secession tend to assume two parties to a conflict: the state and the group that claims the right of secession. Then these theories proceed to examine whether P has the right and for what reason. But in many parts of the world, conflicts that arise out of contested secessions do not only involve two parties. Even the mere hint of an armed confrontation offers ready invitation to all kinds of agents who profit from

wars or proto-wars, from the sellers of destructive weapons to mercenaries on sale, to interested neighbouring countries, to diasporic communities, and to other states which might subscribe to a particular mission, e.g., the establishment of a theocratic state.

Take Jammu and Kashmir. Protests over violations of contractual obligations, lapses of democracy in the state, and the closing off of the political space to new political agents from 1990 to 1993 were short-lived. By the early years of the 1990s, deeply disillusioned with the indiscriminate employment of violence by militant groups, the Kashmiri leadership decided to abjure violence and return to modes of peaceful agitation. Three years earlier the Kashmiri leaders had resorted to direct action because they were profoundly disturbed about the lack of political and economic opportunities in the state, and particularly so about the bad faith exhibited by the Indian government. But over time, these leaders also became extremely uncomfortable with the violence that had been unleashed in the valley by armed agents originating from outside the Valley, the targeting of Hindus that forced members of the community to leave, sabotage, calls for jihad, and the institutionalization of a climate of profound intolerance. In 1993, these leaders formed a political coalition to fight for the rights of the Kashmiri people and disassociated themselves from the armed struggle.

But the decision to renounce violence, far from putting an end to militancy and armed struggle, actually exacerbated the situation. Explosions of anger and resentment at the decline and degradation of democratic and federal institutions in the 1980s paved the way for the infiltration of agents from outside the country, who were more than eager to profit from the generalized anomie. By the early years of the 1990s, the Kashmiri-led movement was practically hijacked by an extremist group, the Jammu and Kashmir Hizb-ul-Mujahideen that had been built up by the intelligence agency of the Government of Pakistan. In contrast to the objectives of the JKLF that led the movement in 1990, that of uniting the two parts of Jammu and Kashmir and setting up of a sovereign state, the Hizb was a fundamentalist organization that wanted to integrate J&K into Pakistan. By the end of the 1990s, even the Hizb was sidelined by even more hard-line Islamic organizations. As Islamist organizations in the Valley succeeded in harnessing extremist political passions to their own objectives, relatively moderate forms of protest politics were soon sidelined by fundamentalist groups wedded to the establishment of an Islamic state. They proposed to establish

an independent state through the use of extensive violence, not only against the state, but also against innocent citizens of the region.

Two aspects of these developments are significant for our argument. One, even if individual Kashmiris are involved in militancy, the objectives of militancy in influential circles of the leadership is not about institutionalized injustice, but about an ideology that is intolerant at best. This section of the protest movements has succeeded in overshadowing those Kashmiris who seek the restoration of civil liberties and lifting of coercive laws. Two, and this point needs to be noted, if much of the struggle in the Valley is no longer about the institutionalized injustice that the people of the state have been subjected to, and which can justify secession, how do concerned people in civil society approach the issue. Dominant sections of the armed struggle now aim at the establishment of a doctrinaire and intolerant Islam in a region that has been known for traditions of toleration, of a soft Sufi Islam.

The followers of one of Kashmir's Islamist patriarchs, writes one analyst, claim that the secularization of culture in Kashmir constitutes a civilizational threat, and that India is engaged in a conspiracy to undermine Jammu and Kashmir's Islamic character. In 2008, the patriarch Geelani stated that 'the people of Kashmir should, as their religious duty, raise their voice against India's aggression'. He further asserted that to 'practice Islam completely under the subjugation of India is impossible because human beings in practice worship those whose rules they abide by.'¹² It is clear that the dominant argument that seeks to justify secession and the establishment of a new Islamic state is neither about the infringement of the core moral rights of the people of the region, nor an argument for a fuller democracy in a new state. The statement is about the founding of a theocratic state. Are we as concerned democrats and citizens of India obliged to support this cause, or to criticize it? Should we be extending our support to leaders who are frankly illiberal?

Even if we take the other leaders who advocate secession into account, it is no longer clear what the goals of these competing agents are. Today it is difficult to figure out what the people of Kashmir, as distinct from the agents who purport to speak for them and fight on their behalf, want. Do they want more democracy, more development, a return to the position mandated by the Delhi Agreement of 1952, withdrawal of the Indian security forces, a stop to human rights violations, enforcement

of penalties for the violators of these rights, or all of these measures? Do they want unification of Indian Kashmir, Pakistani Kashmir, the Northern Territories and the area held by China and subsequently independence from India, Pakistan and China? Or is the armed struggle only about the establishment of an Islamic state in the territory, either as part of India and Pakistan or as an independent country as espoused by dominant leaders?

The important point is that the cause that the armed agents and their supporters espouse has little to do with the original grievance of the people of the Valley: infringement of the constitutional autonomy of the state, violation of democratic rights to participation and representation, and infringements of the core moral right to life and liberty. These issues are on the anvil, but are sidelined by hard-liners who seek to impose a rigid code of religious fundamentalism and exclusion, and who seek a separate state for the purpose. How can we justify the right of secession when the objective as articulated by the leadership might have nothing to do with our initial concern—institutionalized injustice?

The right of secession is, arguably, rendered weak if third party agents take over the separatist movement and subordinate the ideology and the strategy of the movement to their own objectives. If the struggle among these dominant sections is not about the institutionalized injustice that the people have been subjected to, the Government does not owe anything to agents that are not its own citizens, against whom the Government has neither practiced discrimination nor violated its own contracts, and who fight for causes that have nothing to do with the original issue at hand.

The Third Moral Consideration: The Use of Violence

The third moral consideration that we have to take seriously when considering the right of secession is the nature of the separatist movement. One of the essential preconditions laid down by liberal philosophers is that the secessionists must commit to the establishment of liberal constitutional democracy in the new state. Given the peaceful nature of the secessionist movement in Quebec, and the till yet understated movement for independence in Scotland, we can expect that the separatist movement will be prepared to commit to these norms. Matters are quite different in cases of armed struggle, particularly when third parties committed to intolerant ideologies proceed to mastermind the war. Not only are these leaders

extremely illiberal, the level of violence employed by these third party elements against the state as well as against the people of the Valley is extraordinary, even by standards set by global terrorism. Can we, in such circumstances, really trust armed militants from the outside, who subscribe to an intolerant version of Islam, to set up a state that will put liberal democracy and minority rights at the centre of its political arrangements?

The problem of third party agents, the hijacking of original grievances in favour of another agenda, and the extensive use of violence, complicate the issue in Kashmir immeasurably and prevent the formulation of a clear right of secession. Even if some of the militants are home-grown, the problem remains the same. Besides the fact that armed militants are more likely to pick up their AK 47s if asked to negotiate with the Government on the terms and the conditions of secession, they have shown remarkable insensitivity to the rights of the very people in whose name they fight.¹³ Given the shadow of violence that hangs heavy over contested secessions, our anxiety about injustice cannot stop short at the act of justifying secession, we need to be equally, if not more, concerned with the political fate of those who will live in a state of their own. We might be unable to, as Banquo says in Macbeth, 'Look into the seeds of time, And say which grain will grow, and which will not',¹⁴ but this does not mean that we cannot make intelligent estimates. If third party involvement in the conflict prevents clear comprehension of, or a resolution of the issue, the nature of the armed struggle raises doubts about the intention or the political will of the militants to establish democracy in the new state. If the route to the independence of Kashmir or any other disputed territory lies through violence practiced by armed militant groups that subscribe to a militant Islam, the future of the people in the new state that is sought to be established is completely undetermined. We cannot be certain that the political community that will be set up will be more or less democratic than the one they are exiting, what the rights of minorities will be, and whether the political community will be able to create the necessary preconditions for justice. In any case, the introduction of an extremist and intolerant religious fundamentalism is a matter of some genuine concern. If this form of fundamentalism is wedded to the project of an independent state, there is even more cause for concern.

To wrap up this section of the argument, if there is any reasonable doubt that the new state will be more democratic, more tolerant, more open and more committed

to justice than the existing state, because the separatist movement used violence, the right of secession does not hold.

This is not to suggest that the demands or the grievances of the secessionists are wrong. They have to be met satisfactorily and in ways that would forestall secession. For instance, minority groups can be given justice through the institutionalization of minority rights and ethno federalism. These two institutions allow protection of minority identities and also enable groups to possess a considerable degree of control over their affairs. The realization of self-determination within a democratic community possesses an additional advantage insofar as it prevents ghettoization. Even as groups who prefer to live among their own have the option to do so, they are able to interact with a variety of other groups.

The creation of institutions that seek to establish the preconditions of self-determination also helps negotiate the thorny problem identified above: that of the clash of rights. If self-determination is a right, there is nothing that dictates that this right can only be realized through the establishment of a state of one's own. Self-determination can be realized within a given state. If the preconditions for self-determination are established, the option of secession might well become redundant. This is important because a scaled down version of self-determination can help mitigate conflicts of rights and yet achieve the promises the concept holds.

This as a matter of course holds good only when there is enough evidence that the parent state intends to reverse institutionalized injustice, and that there is will to do so, compensate the victims, and institute conditions favourable for the realization of core moral rights. If the violation of basic rights is not irrevocable, and if formal democracies offer opportunities for reversal of historical wrongs and for the institutionalization of justice, then this right does not hold.

Conclusion

There is reason to believe that instead of rushing to acclaim secession, we should ponder on the demands and the grievances of the secessionists, and respond in politically innovative ways on how the faults and the flaws of a formally democratic, but an imperfectly just, order can be addressed and negotiated. The demand for secession in the Kashmir Valley, to phrase the point starkly, poses a challenge to

existing imaginations, the way we analyze problems and the remedies that we suggest. In other words, if secession is a response to certain conditions that prevail in a given state, the challenge is to neutralize these conditions. The answer to secession is not to hype up immoderate nationalism. In the final instance the vital issue is not only the sanctity of territorial borders. The issue is whether these borders contain a political community that is organized on principles of democracy and justice.

Finally, the right of secession has to be taken seriously both by its practitioners and its defenders, and justified rigorously. Though in much of the literature acts of secession are likened to divorce, the analogy seems to be a rank misfit. Howsoever painful a process divorce may be, howsoever badly the act may scar the consciousness of erstwhile partners, it still does not involve the same scale of dislocations, violence and major infringements of human rights as secession does. The right of secession can best be likened to the right of euthanasia. Secession can be conceived of as a contingent right in precisely the same way as euthanasia is a qualified right. The right to life is inalienable, and no one has the right to take her own life. Yet when the health of persons is so impaired that they live a life below the threshold of what we consider distinctively human, when their future seems to be ridden with nothing but pain and suffering, some states allow the terminally ill to choose to put an end to their misery. But just because a case can be made out for the right to put an end to one's life, or authorize someone else to do so in very special circumstances, it does not mean that we defend euthanasia *per se*, except in the very last instance. What is needed is the investment of more energy into finding a solution to the problem, more funds for medical research, and more energy into preventive medicine. Euthanasia might be a last option when everything fails, but easy resort to premeditated and intentional death is best avoided. Similarly, even though secession might become a necessary course of action, it is best that the invocation of this right is forestalled through the deepening of democracy and the realization of self-determination.

It follows that it is well-nigh impossible to arrive at a clear-cut conceptualization of the right of secession in cases of contested secessions. However, hesitations and the insertion of numerous ifs and buts into an argument is not necessarily a bad thing. Uncertainty and contradictions mark most discussions on themes that relate to a right on the one hand, and harmful consequences of the assertion of this right on the other, from hate speech to pornography. And when it comes to secession, these

hesitations and fear of harm becomes accentuated. If contradiction is a feature of political practices in general, these contradictions and irreconcilable tensions are constitutive aspects of any practice such as secession, which cause harm. As W.H. Auden was to write in another context:

Whether conditioned by God, or their neural structures, still
All men have this common creed, account for it as you will:-
The Truth is one and incapable of contradiction;
All knowledge that conflicts with itself is Poetic Fiction.¹⁵

Contradictions, in sum, are not only a feature of poetic fiction; they can permeate political practices, as well as reflections on how to resolve the problems that follow in the wake of these practices.

NOTES

1. Wajahat Habibullah, 2008, *My Kashmir: Conflict and the Prospects of Enduring Peace*, Washington D.C: United States Institute of Peace, p. 74.
2. The JKLF had been formed in 1964 in Pakistan-occupied Kashmir. It was transformed into a volatile political agent only at the turn of the 1990s.
3. Inpreet Kaur, 2006, 'Warring Over Peace in Kashmir', in Waheguru Pal Singh Sidhu, Bushra Asif and Cyrus Samii, *Kashmir: New Voices, New Approaches*, pp. 13-32, see p. 15.
4. Thomas Hobbes, 1651, 1988, *The Leviathan*, Amherst, New York: Prometheus Books, Chapter XXIX, p. 170.
5. Jawaharlal Nehru, 1980, 'Whither Freedom?' in S. Gopal, *Jawaharlal Nehru: An Anthology*, pp. 19-22, see p. 21, New Delhi: Oxford University Press.
6. Savarkar, 1949, *Hindutva: Who is a Hindu?* (4th edition), note 40, p. 81, Pune: Gokhale Press.
7. According to Greek legend, Cronus, the leader of the Titans, at the behest of his mother Gaia, the Goddess of the earth, committed parricide by killing his father Uranus. Subsequently, Cronus threw his father's genitals into the sea. Out of the sea foam or aphros that followed this act, emerged Aphrodite.

8. On the Pakistani side of J&K, Balti, Shina, Khowar, Burushashki, Wakhi and Pahari speaking people are part of the state, and in the Northern Areas Ismaili, Sunni, Shia and NurBakshi sects live together.
9. Most of the groups that carried out ethnic cleansing had come into the Valley from the outside, for example the Jaish-e-Muhammed and the Lashkar-e-Taiba.
10. Alexander Evans, 2002, 'A Departure from History: Kashmiri Pandits—1990-2001', *Contemporary South Asia*, vol. 11, no. 1, pp. 19-37.
11. *The Hindu*, 30 December 2007, p. 5.
12. Praveen Swami, 2009, 'Kashmir's Rising Tide of Hate', *The Hindu*, 17 June, lead article, p. 10.
13. Violence is not only the prerogative of militant groups in contested secessions, states are equally guilty of massively violating the rights of their people.
14. William Shakespeare, 1994, 'The Tragedy of Macbeth', in Stanley Wells, Gary Taylor, John Jowett and William Montgomery (eds.), *The Oxford Shakespeare: The Complete Works, Act I, Scene iii*, pp. 975-1000, see p. 978, Oxford: Clarendon.
15. W.H. Auden, 1945, *The Collected Poetry of W.H. Auden*, New York: Random House, Dedication page.

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