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Mapping Transitional Justice in Kashmir: Drivers, Initiatives, and Challenges

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I. Introduction

This paper analyses the substance and achievements of the peace and development initiatives designed to facilitate the transition from conflict in the Kashmir region within the framework of transitional justice. It applies a broad understanding of the concept of transitional justice, including not only legal mechanisms to promote accountability, end impunity, and restore the rule of law, but also the socio-economic measures that assist the realisation of sustainable peace and development.

Transitional justice has a special significance in Kashmir, a region that has witnessed one of the most protracted conflicts in the world. India and Pakistan have both claimed control over the region since the late 1940s. The conflict became even more complex in the late 1980s, when a violent movement for independence emerged on the Indian side of Kashmir (the state of Jammu and Kashmir). Unlike the inter-state conflict between India and Pakistan, this internal dimension had a direct bearing on the people of the region who were caught between the militants and security forces. The perceptible decline in militant violence in the region in the late 1990s, however, engendered the requisite atmosphere to initiate measures for peace and development. Since the decline in violence, a series of steps have been introduced, ranging from attempts to end the impunity of security forces to engaging diverse voices in the region. Other perspectives within various academic and policy circles have considered probing violations of internationally accepted norms of conduct, institutional and administrative reforms, and reconciliation among Muslim, Hindu, and Sikh communities.

I argue that if these measures are implemented effectively a durable peace can be secured in the region. The abovementioned measures, however, have never been presented together because they have each been posited on different occasions and at different levels. These initiatives have neither been documented as part of a single process nor have they been analysed in a single framework in academic or policy circles. In this paper I attempt to document the scattered initiatives by analysing them within the broader framework of transitional justice. Thus, this paper is an attempt to conceptualise a transitional justice framework in the Kashmir region to document and analyse the efficacy of various measures taken by the Indian government towards redressing the grievances of the people of Jammu and Kashmir. As conflict-ridden societies have employed different models of transitional justice to promote sustainable peace, and as there clearly is no one-size-fits-all model, the paper also examines the existing mechanisms in Kashmir that can be conceptualised within a transitional justice framework.

The costs of the Kashmir conflict are considerable, ranging from serious human rights violations to widespread structural underdevelopment. Thus, the framework for smooth transition will need to be comprehensive, addressing past victimisation as well as prospective empowerment. I argue in favour of a comprehensive transitional justice framework for Kashmir since a purely legal approach will be inappropriate because the costs of the complicated and protracted conflict are immense. Kashmiri society has suffered irreparable damages due to the ongoing violence, with wider and often irreversible consequences for the region's social, economic, and cultural dynamics.

The basic premise on which this paper pivots is that an effective all-inclusive transitional justice process will bring sustainable peace in the region. The transition in Kashmir is still in its nascent stages, and it is therefore too early to make a complete assessment of the overall transitional initiatives. This paper does not aspire to be either exhaustive or definitive about the process of transition in Kashmir. Yet, it is an attempt to draw some tentative conclusions both as to the extent to which transitional justice has been attempted in the region and the challenges these measures confront. There are a number of specificities in the Kashmir experience whose discussion will also enrich broader transitional justice discourse. The present analysis has been confined to the Indian state of Jammu and Kashmir because the Pakistani side has not seen the sort of militant violence that is of concern to the transitional justice processes discussed here, and further, because comparisons between the two sides are generally difficult to make.¹

In Section I, I discuss the all-inclusive character of the transitional justice process as employed in this paper, since the concept of transitional justice does not revolve around a single discourse but is fluid and comprises multiple features that sometimes overlap and at other times are exclusive of each other. This leads to a brief discussion of the nature and scope of the Kashmir conflict in Section II so as to highlight the economic and humanitarian costs. Section III deals with the peace process, which it argues has created the required space to initiate durable and effective transitional justice measures. The initiatives in place and the challenges they confront are addressed in Section IV. The concluding section argues that in order to make any transition in Kashmir durable and effective, the initiatives taken must be effectively implemented and many other complementary measures should be introduced. It is also crucial to conceptualise the initiatives and steps taken in the region within a transitional justice framework. Analysis of the efficacy of initiatives taken within the transitional justice framework will have a two-fold significance. First, it will widen the academic discourse on peace in Kashmir. Second, it will have policy implications in terms of making the initiatives already undertaken more effective and initiating new measures that can play a crucial role in bringing peace and development to the region.

I. Inclusive Transitional Justice

¹ For details on Kashmir under Pakistan's control see Debidatta Aurobinda Mahapatra and Seema Shekhawat, *Kashmir Across LOC* (New Delhi: Gyan Publishing House, 2008).

The origin of transitional justice as a concept can be traced to the establishment of the International Military Tribunal at Nuremberg, various programmes in Germany to counter the impact of the Nazi regime, and the trials of Japanese soldiers in response to the human rights abuses and atrocities of the Second World War. Transitional justice gained momentum in the late 1980s in response to political changes in Latin America and Eastern Europe and the subsequent demands for justice for past abuses. Initially, the focus in cases like the military juntas in Greece (1975) and Argentina (1983) was on retrospective justice. Later, various truth commissions were also set up in different parts of the world, including Guatemala (1994), South Africa (1995), and Peru (2001) with mandates to deal with past human rights violations.

Transitional justice has recently received greater attention in both academic and policy-making circles, albeit with marked shifts in its nature and scope. The changing values of transitional justice have meant that the field encompasses more than just the law and its practitioners—today, a range of disciplines, from economics to philosophy, have developed niches in the field. The commonly accepted premises of transitional justice frameworks include contributing to accountability, an end to impunity, the reconstruction of state-citizen relationships, and the creation of democratic institutions, all of which are crucial for addressing the grievances of victims.² New challenges emanating from the complex conflict environment (as discussed further below) have meant that the discourse has needed to address not only transitions from authoritarianism to democracy—the original context of transitional justice—but also from conflict to peace.

For conflict-ridden societies particularly those facing unrest due to ethnic and religious factors, challenges transcend the standard settling of past abuses—this, for example, is well documented in Nepal and Sri Lanka, both of which are post-conflict states. In such states, the common legacies of human rights abuses prevail. There are large numbers of victims who are displaced, marginalised, disabled, widowed, and orphaned—all of whom have robust claims for retributive justice that demand attention.³ The problems are always complex and variegated, encompassing factors ranging from economics to physical and psychological health, all of which means that legal measures alone cannot facilitate the transition away from conflict. And though transitional justice is not a concept that is current in conflict discourse, those who advocate its holistic approach to rehabilitation and reconciliation are growing in numbers. For example, Louise Arbour, former United Nations High Commissioner for Human Rights, argues that in order to make ‘the gigantic leap that would allow justice, in its full sense, to make the contribution that it should to societies in transition’ there is a need to integrate economic, social, and cultural rights into the transitional justice framework.⁴ Ruben Carranza,

² Louis Bickford, “Transitional Justice,” in Dinah L. Shelton, ed., *The Encyclopedia of Genocide and Crimes Against Humanity* (MI: Macmillan Reference USA, 2004), vol. 3, pp. 1045-1047.

³ Pablo de Greiff, “Articulating the Links between Transitional Justice and Development: Justice and Social Integration,” in Pablo de Greiff and Roger Duthie, ed., *Transitional Justice and Development: Making Connections* (NY: Social Science Research Council, 2009), 30.

⁴ Louise Arbour, “Economic and Social Justice for Societies in Transition,” Second Annual Transitional Justice Lecture, Center for Human Rights and Global Justice, New York, 25 October 2006. Cited in Pablo de Greiff and Roger Duthie, ed., *Transitional Justice and Development: Making Connections* (NY: Social Science Research Council, 2009), 19.

Director of the Reparations Program at the International Center for Transitional Justice, rightly adds that ‘addressing poverty and social inequality must be regarded as among the strategic goals of any transitional justice undertaking’.⁵

Transitioning to peace, then, not only requires remedying past grievances but also a series of particular measures. In post-conflict Nepal, for example, the integration of ex-combatants has emerged as a major challenge. Any apathy towards this integration process can lead to lapses in the peace momentum gained after the Maoists entered into the mainstream political process. Similarly in Sri Lanka, rehabilitation of displaced Tamils and their reconciliation with Sinhalese communities have emerged as crucial issues of concern. Economic reconstruction and sustainable development need to be an integral part of the overall process of transitional justice to defuse the conflict situation gradually because poverty and under-development can fuel violence. Development deficits not only contribute to the generation of many conflicts but also play a crucial role in prompting the systematic human rights violations that transitional justice measures seek to address. The relationship between conflict and development is strong, and is a two way process: conflict retards development; and equally, failure in development substantially increases proneness to conflict. There arises a ‘conflict trap’—a cycle of conflict-related violence and economic retardation.⁶ Development, thus, cannot be reserved solely for peace and conflict-free environments. Studies from conflict-affected areas suggest that economic reconstruction contributes positively to long-term peace and harmony.⁷ Amartya Sen argues that development should be understood beyond economics as ‘a process of expanding the real freedoms that people enjoy’. He elaborates that ‘social developments’, including ‘more education, better health care, finer medical attention and other factors’, are ‘developmental’ because besides promoting economic growth and contributing to individual incomes they help people to lead freer and more fruitful lives.⁸ Unless human development measures are undertaken in post-violence situations, the long-term aims of transitional justice measures in terms of peace cannot be guaranteed. Ensuring human development to guarantee human rights thus cannot be excluded from the overall process of transitional justice. Pointing to South Africa and Rwanda as examples of countries in which justice will remain partial until the socioeconomic inequalities are addressed, Rama Mani argues that effective peacebuilding efforts must incorporate three reinforcing dimensions of justice: legal, rectificatory, and distributive.⁹ The need is, as de Greiff argues, to recognise victims, both direct and indirect, not primarily as victims but as rights-bearers.¹⁰ Transitional justice has to be

⁵ Ruben Carranza, “Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?” *International Journal of Transitional Justice*. 2 (3) 2008: 329. Also see James L. Cavallaro and Sebastian Albuja, “The Lost Agenda: Economic Crimes and Truth Commissions in Latin America and Beyond,” in Kieran McEvoy and Lorna McGregor, ed., *Transitional Justice from Below: Grassroots Activism and the Struggle for Change* (Oxford: Hart Publishing, 2008).

⁶ Paul Collier and A. Hoeffler, “On Economic Causes of Civil War,” *Oxford Economic Papers*. 50 (4) 1998: 563-73.

⁷ Gerd Junne and Willemijn Verkoren, *Post Conflict Development: Meeting New Challenges* (London: Lynne Reiner, 2004).

⁸ Amartya Sen, *Development as Freedom* (Oxford: Oxford University Press, 1999), 295.

⁹ Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (Cambridge: Polity/Blackwell, 2002).

¹⁰ de Greiff, ‘Articulating the Links...’

seen in the overall perspective of providing those caught in conflict situations their human rights by not only addressing the past human rights violations and restoring rule of law but also ensuring their right to a peaceful future.

The field of transitional justice is increasingly becoming incorporated into the peacebuilding programmes of the United Nations and many other national and international organisations. The transitional justice framework is continuously enriched by the innovation of both past- and future-oriented practices that often go beyond the legal sphere. This diversity grants a high degree of flexibility in tailoring the broad framework to particular contexts and has helped make transitional justice one of the most central concepts in conflict resolution discourses. The scope of the concept has been further extended by arguments that transitional justice measures might apply not only to violations of civil and political rights, but also to contraventions of economic, social, cultural, and environmental rights. I take on board this more inclusive understanding of transitional justice and argue that Kashmir represents a case where the application of this broader transitional justice framework would contribute to a permanent and positive peace.¹¹ A purely legal conception of transitional justice in terms of accountability, punishment, rule of law, and end of impunity would be insufficient for a smooth and effective transition from conflict in Kashmir; it is crucial to address the socioeconomic aspects and broader causes of conflict in Kashmir.

II. Synopsis of Kashmir Conflict and Costs

The Kashmir conflict is one of the most protracted conflicts between two sovereign states, both of which possess nuclear weapons. The conflict over the princely state of Kashmir between India and Pakistan has persisted since October 1947, when after independence both countries staked claim to the area. The conflict has led to the division of the Kashmir region, with one part remaining within India and the remainder divided between Pakistan and China. The total area of the Kashmir region is 2,22,236 square kilometers, including 101,387 square kilometers with India, 78,114 square kilometers under the control of Pakistan, and 42,735 square kilometers under Chinese control, 5,130 of which were later handed over by Pakistan.¹² The conflict has two broad and related dimensions: the external, in which India and Pakistan are antagonists, with four wars fought between them since 1947; and the internal, arising from a separatist movement in the Indian part of Kashmir.¹³ The primary focus of this paper is the internal dimension of the conflict, characterised by violent militancy in Jammu and Kashmir, particularly in the Kashmir Valley, which is predominantly inhabited by Sunni Muslims. The valley witnessed a surge of popular support for independence from India in 1989–90 that later spread to other highland areas of Jammu and Kashmir, including Poonch and Rajouri. Analysts have offered a number of overlapping theories to account for this rise in

¹¹Johan Galtung has written extensively on the concept of 'positive peace.' For instance see, Johan Galtung and Carl G. Jacobsen, *Searching for Peace: The Road to Transcend* (London: Pluto Press: 2000).

¹² <http://www.jammu-kashmir.com/basicfacts/tour/regions.html>

¹³Seema Shekhawat, "Intricacy of External and Internal Dimensions of Kashmir Problem," in Avineet Prashar and Paawan Vivek, ed., *Conflict and Politics of Jammu & Kashmir: Internal Dynamics* (Jammu: Saksham Books International, 2007).

militancy; their arguments include such factors as unfulfilled promises of self-determination made by India, the dilution of regional autonomy by the central government, lack of democracy, religious extremism, and Pakistani intervention.¹⁴

The tangible and intangible costs of militant violence in Kashmir include far-reaching economic, cultural, and social devastation in the region.¹⁵ On the economic front, the conflict has affected important sources of livelihood (e.g. tourism). It is estimated that the state lost twenty-seven million potential tourists between 1989 and 2002, totalling US \$3.6 billion in lost in tourism revenue.¹⁶ Other main sources of livelihood, including agriculture, horticulture, and handicraft industries, are sufficient only for subsistence rather than for business growth or profit. As of December 1996, militant activities were estimated to have caused \$4 billion in damages.¹⁷ The essential infrastructure—roads, communications, and drinking water facilities—remains underdeveloped in Jammu and Kashmir because of the impact of militancy on the state resources.

The costs of conflict go far beyond economic losses. Even by conservative estimates, thousands of civilians have lost their lives. The number of missing people also runs into the hundreds. Civilians have suffered from pervasive violence, fear, and coercion and have become indirect victims through the arrest, torture, disappearance, and loss of their loved ones. The conflict has created an atmosphere in which violence is an integral part of day-to-day life in Kashmir, inducing a sense of resignation and frustration among people and negatively affecting their physical and mental health. The conflict has also led to large-scale population displacement among several demographics in Jammu and Kashmir.¹⁸ The displacement of the Hindu minority group called Kashmiri Pandits from the Kashmir Valley in the late 1980s created the first group of internally-displaced people.¹⁹ The insecurity engendered by militant operations in the region also led to an

¹⁴The paper does not go into details of the conflict and its multiple dimensions as its main argument does not necessitate such a study. The literature on Kashmir conflict is vast. See, for instance, Sumit Ganguly, *The Crisis in Kashmir: Portents of War, Hopes of Peace* (New Delhi: Foundation Books, 1997); Alastair Lamb, *Kashmir: A Disputed Legacy, 1846-1990* (Hertingfordbury: Rexford Books, 1992); Victoria Schofield, *Kashmir in the Crossfire: India, Pakistan and the Unending War* (New Delhi: Viva Books Pvt. Ltd., 2004); Balraj Puri, *Kashmir: Towards Insurgency* (New Delhi: Orient Longman, 1993); Debidatta Aurobinda Mahapatra and Seema Shekhawat, *Conflict in Kashmir and Chechnya: Political and Humanitarian Dimensions* (New Delhi: Lancer's Books, 2007).

¹⁵For a detailed study on the costs of Kashmir conflict see, Debidatta Aurobinda Mahapatra and Seema Shekhawat, 'The Peace Process and Prospects for Economic Reconstruction in Kashmir,' *Peace & Conflict Review*, 3 (1) 2008: 1-17. Seema Shekhawat, 'Fragile Kashmir, Costs and Hopes for Peace' *Journal of Alternative Perspectives in the Social Sciences*, 1 (3) 2009: 976-981; Debidatta Aurobinda Mahapatra, 'Symbiosis of Peace and Development in Kashmir: An imperative for Conflict Transformation,' *Conflict Trends*, (4) 2009: 23-30; Also by the same author 'Conflict and Development in Kashmir: Challenges and Opportunities' in Hari Dhungana and Marty Logan, ed., *Sustainable Development in Conflict Environments: Challenges and Opportunities* (Kathmandu: Centre for International Studies and Cooperation, 2007).

¹⁶Strategic Foresight Group, *The Final Settlement: Restructuring India-Pakistan Relations* (Mumbai: 2005), 69.

¹⁷ *Ibid*, 70.

¹⁸ Seema Shekhawat, "Displacement in Jammu and Kashmir," *Kashmir Images*, 19 June 2006.

¹⁹ Seema Shekhawat, "Conflict Induced Displacement: The Pandits of Kashmir," *Conflict Trends*, (4) 2009: 31.

exodus of many Kashmiri Muslims and Sikhs.²⁰ Militancy in other areas of Jammu and Kashmir, including Poonch, Rajouri, Doda, and Kishtwar, has also led to significant numbers of unregistered displaced people.

III. Transition from Conflict

In the 1990s, geopolitical changes brought about by the end of the Cold War altered the dynamics of international relations with implications for conflicts around the world. The rising profile of transitional justice in this decade brought a new perspective to pacification and transition in conflict-prone regions. Conventional armed disputes have been transformed by the intensification of globalisation and increasing acceptance of peaceful means for conflict resolution.²¹ The multiple players involved in the complex Kashmir conflict—India, Pakistan, Kashmiri people, and the international community—have been influenced by these developments. The result has been the historic peace process in the region. A multi-pronged strategy for conflict resolution has evolved, which included the initiation of dialogue between India and Pakistan as well as between New Delhi and Kashmir. These talks gathered momentum with the accession of the National Democratic Alliance (NDA) to government in India in 1998. The NDA government furthered peace efforts, notably with a historic bus journey from New Delhi to Lahore on 20 February 1999 with Indian Prime Minister Atal Behari Vajpayee on board.

In October 2003, India proposed a series of confidence-building measures aimed at improving communications by road, rail and sea between India and Pakistan. On 26 November 2003, India announced a ceasefire on the dividing line in Kashmir. Since its creation in 1949, this area had remained tense, experiencing border-shelling and firing throughout times of active conflict and periods of peace.²² Despite reports of occasional violations, the ongoing ceasefire is significant as the first formal ceasefire agreement between India and Pakistan since the outbreak of militancy in Jammu and Kashmir in late 1980s.²³ Its continuation to date has brought perceptible normalcy to border areas and its inhabitants, who have borne the brunt of the conflict.²⁴ On the sidelines of the 2004 South Asian Association for Regional Cooperation (SAARC) summit meeting, India and Pakistan expressed their willingness to engage in a composite dialogue aimed at the peaceful settlement of all bilateral issues, including Kashmir.²⁵ Since then, Indian and Pakistani officials have met a number of times to discuss issues of common concern, and

²⁰ Seema Shekhawat, *Conflict and Displacement in Jammu and Kashmir: The Gender Dimension* (Jammu: Saksham Books International, 2006). 64-66.

²¹ Debidatta Aurobinda Mahapatra, "A Perspective on Peace in Kashmir," *ICFAI Journal of Governance and Public Policy*. 2 (4) 2007: 31.

²²The border dividing Kashmir between India and Pakistan is disputed and remains tense. For details on this issue see Seema Shekhawat and Debidatta Aurobinda Mahapatra, *Contested Border and Division of Families in Kashmir: Contextualizing the Ordeal of the Kargil Women* (New Delhi: WISCOMP, 2009), 17-27.

²³The onset of militancy and cross border infiltration from Pakistan controlled Kashmir had made the border more tense and rigid. *Ibid.*, 25-27

²⁴ *Ibid.*, 22-25.

²⁵ For a detailed account of peace process in Kashmir see, Debidatta Aurobinda Mahapatra, "Prospects of Peace in Kashmir," *Kashmir Affairs*. 3(1) 2008, 36-41.

have agreed to cooperate in many areas.²⁶ In October 2009, during a visit to Jammu and Kashmir, Indian Prime Minister, Manmohan Singh, acknowledged ‘[w]e had the most fruitful and productive discussions ever with the government of Pakistan during the period 2004-07 when militancy and violence (in Jammu and Kashmir) began to decline. Intensive discussions were held on all issues including on a permanent resolution of the issue of Jammu and Kashmir’.²⁷ However, this dialogue process was adversely affected in the aftermath of the 2008 Mumbai terror attacks when India accused Pakistan of not taking stern action against terrorist supporters based in Pakistan.²⁸ This development was a setback to the peace process, but there is an overall perception that the peace process between the two countries is beneficial and should continue.

Alongside Indo-Pak negotiations regarding Indian side of Kashmir, India launched a major peace mission to involve the civilians as well as separatist groups in the internal peace process. On 19 November 2000, India announced a unilateral ceasefire in Jammu and Kashmir aimed at persuading militants to renounce violence and join the peace process. This ceasefire initiative was extended twice, and lasted until 26 February 2001. However, since then, New Delhi has refused any further ceasefire extensions. This has been partly due to alleged violations of the original ceasefire by militants. New Delhi should consider negotiating a joint ceasefire with the militants, and use such a ceasefire period to consolidate a transition towards peace in the region. In 2001, Jammu and Kashmir held its first panchayat elections in more than two decades. These elections were a turning-point in light of Jammu and Kashmir’s electoral history. In 1996, after nearly six years of the President’s rule, Jammu and Kashmir state assembly elections returned the National Conference to power. This party had governed singlehanded, or in coalition with Indian National Congress, since the start of electoral politics in Jammu and Kashmir in 1951. In 2002, elections brought unprecedented change to the state assembly’s composition by bringing a coalition of the People’s Democratic Party – Indian National Congress into power. Jammu and Kashmir held its most recent state assembly elections in 2008.²⁹ Despite calls from separatist groups, such as the Hurriyat Conference, and advocates of a Pakistan union or an independent Kashmir to boycott the polls, an overwhelming number of Jammu and Kashmir residents took part in these elections. The 2008 elections saw 61.49 per cent of Jammu and Kashmir’s electorate voting, as compared to the 43.69 per cent who voted in the 2002 election.³⁰ These democratic exercises are significant because a lack of democracy is considered a major reason for the onset of militancy in Jammu and Kashmir in the late 1980s.³¹

²⁶For a chronological description of India-Pakistan peace process see <http://www.rediff.com/news/peacetalk.html>

²⁷ ‘Show sincerity in eliminating terror: PM tells Pak,’ *Daily Excelsior*, 28 October 2009.

²⁸ Debidatta Aurobinda Mahapatra, “Ugly Face of Terror,” *Journal of Alternative Perspectives in the Social Sciences*. 1(2) (2009): 459-462. Also by the same author, “The Terror Attack that Shook the World,” 15 April 2009. http://www.eposweb.org/index.php?option=com_content&task=view&id=29&Itemid=

²⁹ Debidatta Aurobinda Mahapatra, ‘Elections in Trouble-torn Kashmir and Regional Dynamics for Peace in South Asia,’ 29 December 2008. <http://en.fondsk.ru/article.php?id=1833>

³⁰Vijay Kumar, ‘2008: Election of many firsts in Jammu & Kashmir,’ 26 December 2008. http://www.groundreport.com/World/2008-Election-of-many-firsts-in-Jammu-Kashmir-2008_2/2877780

³¹ Shekhawat, *Conflict and Displacement in Jammu...*, 51-56.

IV. Assessing the Initiatives

The initiation of elections and the peace dialogue process has resulted in a decline in violence, making the prospects of transition from conflict in Jammu and Kashmir appear feasible. Since then, the Indian government has implemented a series of additional initiatives. This section critically evaluates these initiatives.

Engaging Separatists

There are various separatist organisations operating in Kashmir, and the most prominent of these organisations is the Jammu and Kashmir Liberation Front (JKLF), which was responsible for spearheading the separatist movement. Currently, the JKLF, under the banner of All Party Hurriyat Conference (APHC), remains separatist in orientation but does not advocate violent means. Militant separatist organisations active in J&K include the Hizb-ul Mujahidin (HM), Harkat-ul Ansar (HA), Jaish-e-Mohammed (JeM) and the Lashkar-e Toiba (LeT), all of which have headquarters and centres in Pakistan and Pakistan-controlled Kashmir. The Indian government has taken the crucial decision to initiate dialogue with all non-violent separatist groups in J&K. Indian Prime Minister Manmohan Singh stated, '[w]e would be happy to engage in dialogue with any group which is interested in talking. That option remains. We will welcome even those who are not in the political mainstream. If they have any views, they are welcome to give'.³² In 2004, New Delhi started talks with the moderate faction of APHC, which has renounced violence. This year, two rounds of talks took place between the APHC and the then Deputy Prime Minister of India, Lal Krishna Advani. These talks continued even after New Delhi saw a change in government that resulted in the assumption of power by the Indian National Congress led United Progressive Alliance (UPA). In fact, talks were elevated to the highest level, and Prime Minister Manmohan Singh participated in two rounds of talks. During the second round of these talks, which took place on 5 September 2005, Prime Minister Singh assured APHC separatist leaders of the Indian government's commitment to provide 'a life of peace, self respect, and dignity' to the people of Jammu and Kashmir.³³

In December 2009, New Delhi and the APHC reaffirmed their commitment to the dialogue process. This declaration took place despite an assault orchestrated by opponents of the dialogue process on senior Hurriyat leader Fazal Haq Qureshi. Qureshi supports negotiated settlement of the Kashmir issue and the continuation of dialogue with New Delhi. The later months of 2009 witnessed a noticeable change in New Delhi's strategy as it engaged in 'quiet diplomacy' with the Hurriyat, raising public expectations of concrete results in near future. On 2 December 2009, when questioned in the Indian Parliament's Lower House, the Home Minister, P. Chidambaram, explained his strategy of dialogue and negotiation, 'I am in favour of quiet talks, and quiet diplomacy far off from the glare of the media'.³⁴

³² 'Human rights violations in J-K will be dealt with firmly: PM,' *Indian Express*, 17 June 2009.

³³ 'Committed to ensuring a life of peace in Kashmir: Manmohan,' *The Hindu*, 6 September 2005.

³⁴ 'Govt favours quiet talks on Kashmir: Chidambaram,' *The Hindu*, 2 December 2009.

As well as introducing dialogue, India also took another far-reaching step by not restricting the abovementioned dialogue to only the separatist faction and New Delhi. For the first time, the Hurriyat leaders were allowed to visit Pakistan and Pakistan controlled Kashmir in order to interact with their counterparts as well as other groups, thus allowing a widening of the dialogue process. The Indian government's acquiescence to the Hurriyat leaders' requests to visit the part of Kashmir that has been under the control of Pakistan since 2005 can be described as a step in the right direction for reaching both a generalised peace in the region and an 'honourable and durable solution' to the Kashmir issue.³⁵ During their visit to Pakistan and Pakistan controlled Kashmir from 18-27 January 2007, the Hurriyat delegation, which was led by Mirwaiz Umar Farooq, met with important dignitaries including the then President of Pakistan and the President and Prime Minister of 'Azad Kashmir', or 'Free Kashmir'.³⁶ During deliberations as part of this visit it was decided that efforts needed to be made to unite the moderates of undivided Kashmir and thus to drum up support for the peace process.³⁷

A sustained dialogue process with the moderate section of APHC, along with attempts towards bringing other separatists groups to the negotiating table, can undoubtedly be considered significant for moving towards achieving the goal of peace in the region. Reiterating his offer of dialogue with separatists, Prime Minister Singh said: 'We are willing to engage in serious discussions with every group, provided they shun the path of violence ...I made an appeal yesterday [28 October 2009] for dialogue, and I hope it will be reciprocated in the spirit in which it was made'.³⁸ India's current policy of refusing to hold dialogue with groups who partake in violence leads to the exclusion of militant groups from the negotiating table. Bringing militant groups into the negotiations is indeed a challenging task, but its importance for achieving sustainable peace in the region cannot be ignored.

Acknowledging and Engaging Intra State Diversity

The state of Jammu and Kashmir is highly diverse in terms of history, ethnicity, religion, culture, society, and geography. Also the three regions of the state – Jammu, Kashmir valley, and Ladakh – have different regional aspirations. Broadly, while people of Jammu are largely in favour of the integration of the state with India, Ladakh takes this further by aspiring for a Union Territory status within India. Kashmir valley comprises divergent aspirations in political terms: those who want to be independent from both India and Pakistan; those who want Kashmir to join Pakistan; and those who favour the status quo, i.e. to remain with India. These varying aspirations do not only refer to regional differences, and there is in fact diversity within regions which have led to sub-regional demands revolving around distinct cultures, ethnicities and languages, to name but a

³⁵ For a detailed account on Hurriyat visit of June 2005 see Debidatta Aurobinda Mahapatra, 'Reflections on the Hurriyat Visit,' *Mainstream*. 63 (33) 2005: 6-8.

³⁶ The term 'Azad Kashmir' is used by Pakistan to refer to one part of undivided Kashmir under its control; the other part is called Northern Areas.

³⁷ "Mirwaiz, POK govt form working groups on J&K," 21 January 2007. <http://www.rediff.com/news/2007/jan/21jk1.htm>

³⁸ 'New chapter in J&K peace process,' *The Hindu*, 29 October 2009.

few.³⁹ It is in this context that, for the first time since the onset of the conflict, this diversity of voices and aspirations has caught the attention of New Delhi and is being approached as a possible avenue for achieving a tangible peace. In order to understand and appreciate the diversity of voices New Delhi initiated a series of round table conferences to which leaders of diverse groups within the state were invited. Three round table conferences were held (the first in February 2006 in New Delhi, the second in May 2006 in Srinagar, and the third in April 2007 in New Delhi) and designed to accommodate varied voices – for example representatives of political parties, ethnic groups and opinion leaders from all the three regions of Jammu and Kashmir- on a single platform. Notably, the Prime Minister of India headed all of the three conferences. In a statement adopted at the 3rd round table conference, the participants acknowledged that the three meetings between leaders of diverse sections of Jammu and Kashmir who had stakes in a peaceful Kashmir had helped to ‘evolve a better understanding of the issues and problems that affect the lives of the people of Jammu and Kashmir. It had produced an environment in which the citizens of all parts of the State could hope to lead a life of dignity, self-respect and fulfilment without fear of war, and want or exploitation and discrimination’.⁴⁰

Though this development could be considered highly significant, the non-participation of separatists and the non-inclusion of many other groups—particularly the displaced, with the exception of the Kashmiri Pandits, and women—the round tables lacked an all-inclusive character. With discussions almost entirely monopolised by the mainstream political parties, it became difficult even for the groups that were included in these conferences to articulate their voices effectively. It was expected that over time the strength of those who had been included in the conference would increase, and thus eventually all groups with a stake in peace in Jammu and Kashmir would get a fair chance to raise their concerns. However, this did not occur. The meagre results achieved by these dialogues have suffered setbacks as there have been no further round tables since 2007, despite the Prime Minister’s assurance of the continuation of the dialogue process. In his closing remarks on 24 April 2007 Prime Minister Singh said:

The purpose of this Roundtable process is to tap into a wide range of opinion and views that exist across the political spectrum and I believe that purpose is certainly being achieved..... The Roundtable process has moved substantially forward in delivering on the vision of a Jammu & Kashmir.... A vision of a Naya (new) Jammu, Kashmir and Ladakh which is symbolised by peace, prosperity and people’s power. I am sure that this dialogue process is the best way forward. Lasting peace will not come through instant deals. It will come only when the stakeholders—the people themselves—become the torchbearers of peace. This Roundtable is such a transparent process which ensures widest participation among all segments of opinion in the state. We are not trying to mechanically impose solutions from above.

³⁹ Zafar Choudhary, “Understanding Kashmir Roundtable: A Viewpoint from Jammu,” 14 July 2006. <http://www.chowk.com/articles/10736>

⁴⁰Statement Adopted at the 3rd Round Table Conference on Jammu and Kashmir, 25 April 2007. <http://www.satp.org/satporgtp/countries/india/document/papers/thirdgol.htm>

Rather, this process is throwing up possibilities which are representative in character.⁴¹

There is an urgent need not only to resume this process but also to make it inclusive because the accommodation of diverse aspirations is crucial for achieving peace.

Establishment of Working Groups

During the second round table conference in Srinagar in May 2006 the Indian Prime Minister announced the establishment of five working groups responsible for looking into various contentious issues. A close study of the activities of these working groups clearly indicates how they espouse, albeit implicitly, a broad vision of transitional justice with wider legal, political and socioeconomic implications. The first working group focused on confidence building measures (CBMs) across segments of society in the state, the second on strengthening relations with Pakistan controlled Kashmir, the third dealt with economic development of the state, the fourth aimed at providing good governance to people, and the fifth looked at strengthening relations between New Delhi and Jammu and Kashmir. The first four working groups submitted their reports before the third round table held in April 2007, while the fifth working group submitted its report in December 2009.

The principal agenda of the first working group was to improve the conditions of people affected by militancy-related violence. In its report, the working group emphasised the necessity to curtail human rights violations; provide relief assistance to the victims of violence; rehabilitate vulnerable groups, like widows, orphans and displaced people; and reintegrate ex-militants. A major recommendation was the revocation of the Armed Forces Special Powers Act (AFSPA) and the Disturbed Areas Act.⁴² The second working group recommended people-to-people contact; facilitating and increasing trade and commerce; and opening new routes between the two parts of Kashmir.⁴³ The third working group, which aimed to promote inclusive growth and balanced economic development of all three regions of the state, recommended, among other things, reconstruction and maintenance of existing physical assets; investment in physical infrastructure, particularly power and roads; investment in social infrastructure; and the creation of a favourable atmosphere for private investment.⁴⁴ The fourth working group recommended the effective implementation of Right to Information Act; the introduction of e-governance; setting up committees for time-bound performance appraisal of key government departments, such as the Revenue Department; and simplification of procedures in departments with which the public frequently interacted. It favoured greater

⁴¹ Prime Minister's closing remarks at Third Roundtable Conference on Jammu and Kashmir, 24 April 2007. <http://pmindia.nic.in/speech/content.asp?id=528>.

⁴² 'Confidence Building Measures across Segments of Society in J & K,' Report of the Working Group I, January 2007. http://www.hinduonnet.com/nic/jk/jkreport_1.pdf.

⁴³ 'Strengthening Relations across the Line of Control,' Report of the Working Group II, January 2007. http://www.hinduonnet.com/nic/jk/jkreport_2.pdf.

⁴⁴ 'Economic Development of Jammu and Kashmir,' Report of the Working Group III, March 2007, http://www.hinduonnet.com/nic/jk/jkreport_3.pdf.

transparency, efficiency and accountability in the process of governance.⁴⁵ The fifth working group submitted its report in December 2009 and recommended granting autonomy to Jammu and Kashmir to the extent that it was possible to do so. The report has generated debate within political circles, with many stakeholders criticising it for being inconclusive and politically motivated.⁴⁶

The recommendations made by the first four working groups were discussed during the third round table, which endorsed the approach suggested by the groups.⁴⁷ However, several recommendations are yet to be acted upon and others have been only partially implemented. The clearest example of a lack of action is the response to the recommendation of the first working group to return and rehabilitate displaced people. The state government has been mooting the idea of returning the displaced Kashmiri Pandits to their homes in the Kashmir valley for a long time, but the process has been slow. The return of the Pandits is not an easy task to accomplish given the diversity of views within the displaced community, including many who do not wish to return. It is necessary to accommodate the varied voices of the displaced Pandits and thus make serious efforts to facilitate their return or resettlement. Aside from the Pandits, there are numerous other categories of displaced person; their recognition, as well as their rehabilitation, remains a core issue that must be factored into the transition process.

The comprehensive implementation of the recommendations of the working groups would undoubtedly go a long way to facilitate the transition process in Kashmir. Since the recommendations are not legally binding, it is the sole prerogative of the Indian government as to when and how they will be implemented. Given that the Indian Prime Minister appointed the working groups and received reports from them, it is arguable that Prime Minister Singh's government is earnest in making peace efforts in Kashmir. However, the delay in the effective implementation of these recommendations may be cause for pessimism among peace advocates and may ultimately hinder the journey towards peace.

Zero Tolerance of Human Rights Violations

One of the core objectives of transitional justice is to prevent human rights violations and bring to justice the perpetrators of past violations. Like many other conflicts, the conflict in Kashmir has been marked by serious human rights violations. Both the militants and security forces have violated the human rights of civilians; while violations committed by militants only occasionally come to light, those committed or allegedly committed by the security forces are frequently highlighted by the media and non-governmental human rights organisations. Allegations of custodial killings, arbitrary detentions, fake encounters, crackdowns, and rape by the security forces have repeatedly been publicised by Kashmiri leaders, activists and media.

⁴⁵ 'Ensuring Good Governance in Jammu & Kashmir,' Report of the Working Group IV, March 2007, http://www.hinduonnet.com/nic/jk/jkreport_4.pdf

⁴⁶ 'Jammu, Ladakh parties reject Working Group's report,' *The Tribune*, 25 December 2009.

⁴⁷ Prime Minister's closing remarks at Third Roundtable

Human rights violations by militants can only be dealt with if the militants are apprehended and prosecuted. In part, this process is being frustrated by abuses committed by security forces, which have reduced the confidence of people in the government and created an environment in which militants can perpetrate violence. Although the basic task of Indian security forces in Jammu and Kashmir is to maintain law and order, the army and police are given unbridled powers under acts like AFSPA and the Disturbed Areas Act. These powers have been misused on many occasions, and human rights violations by the security forces must be dealt with seriously.

While New Delhi initially refused to comment with respect to allegations of human rights violations, there has been a significant shift in its approach towards the issue. As mentioned earlier, during the third round table the Indian Prime Minister expressed concerns over human rights violations by armed forces personnel and promised to take steps to minimise such violations. The Prime Minister's promise was reiterated by other leaders who echoed the statement that India has a zero tolerance approach to human rights violations and that effective action will be taken in all cases of abuse. Jammu and Kashmir Chief Minister Omar Abdullah, while addressing his first meeting of the Unified Command on 14 January 2009 to review the security situation in the state, also expressed the principle of zero tolerance towards human rights violations. He said that the authorities must investigate any rights violation in a transparent manner and administer quick punishment if needed. He urged troops not to cordon off areas unnecessarily and to avoid making 'needless' arrests.⁴⁸ In June 2009, in a speech in Jammu and Kashmir the Home Minister of India, P. Chidambaram, called upon security personnel to respect the human rights of Kashmiri people. The Defence Minister of India, A. K. Antony, also reiterated the government's policy of 'zero tolerance, stating:

Our Armed Forces personnel must be conscious of the respect for human rights all the time. They must follow the twin ethics of 'minimum use of force' and 'good faith' during operations. Though the constraints of the security forces are understandable, the security forces too must bear in mind that the process of winning the hearts and minds of people is never an easy one.⁴⁹

Although a court of inquiry found three army personnel guilty of killing civilians in Kashmir in March 2009, and later initiated court martial proceedings against them, no reports indicate substantial decline in human rights violations following this proclaimed policy of 'zero tolerance'. However, despite poor implementation, the policy does represent an acknowledgement by the Indian government of security forces' atrocities in Kashmir. Full implementation of this policy could be a significant assurance to people caught in the conflict that New Delhi is earnest to facilitate transition processes in the region.

⁴⁸ 'CM for zero tolerance,' *The Tribune*, 15 January 2009.

⁴⁹ 'Antony asks forces to be alert,' *The Hindu*, 12 January, 2010.

Although Jammu and Kashmir has a State Human Rights Commission (SHRC) that investigates human rights violations, it is perhaps best described as a ‘toothless tiger’⁵⁰ because it lacks substantial powers and resources such as staff and funding. Justice Abdul Qadir Parray, the former Chairperson of SHRC, observed in 2002 that ‘cases of human rights violations in Kashmir at the hands of security forces are gathering dust in the official chambers of L.K. Advani (then Home Minister of India). Our commission is only a recommendatory body and has not been provided with enough powers to force implementation’.⁵¹ This weakness needs to be addressed by the government. Strengthening institutions like SHRC should be urgently considered as a vital step in providing justice to the victims of human rights abuses. Debates involving the withdrawing of special powers accorded to security personnel in order to minimise human rights violations are also important: the Jammu and Kashmir Chief Minister has argued that the decline in violence could contribute towards crucial political changes, including a phased revocation of the AFSPA.⁵² Gradual withdrawal of the AFSPA, a policy that allows the Army to carry out searches without warrant and to detain people, could be a key measure that has the potential to gradually win public confidence. However, due to occasional escalations in violence, it is too early to predict whether and when the Act will indeed be revoked.

Withdrawal of Armed Forces

Following violent militancy, armed forces in Kashmir were deployed on a large scale starting from the late 1980s. By establishing bases in public places such as parks, gardens, public schools, and even health centres to carry out their operations, they created considerable inconvenience for people as they carried out normal activities.⁵³ Therefore, redeployment of armed forces and their subsequent withdrawal from the state have factored into the dialogues and deliberations surrounding the ongoing peace process. The state government also formed a committee examining the vacation of government buildings, especially health and educational institutions, which currently house security forces. Furthermore, New Delhi is considering both expanding the role of state police in maintaining law and order and gradually phasing out central paramilitary forces. In January 2010 the Indian Defence Minister pronounced “with the improvement in the security situation, time has now come for the State Police to be given far greater responsibility, particularly in major towns in tackling the threat of terrorism in the state.” However, he added that “the handing over of the responsibility must be meticulously planned and undertaken in a gradual, phased manner.”⁵⁴ The visibility of the issue was heightened after two militants seized a hotel in the heart of Srinagar on 6 January 2010. The ensuing gun battle between security forces and militants continued for two days, eventually leading to the death of two civilians, one security force personnel and both militants. Although this event likely affected the prospects of the withdrawal of forces from Kashmir, no government officials have stated that the idea has been completely shelved. Clearly, apprehension over the potential return of violence with the withdrawal

⁵⁰ J&K State Human Rights Commission: ‘The healing can begin here,’ 28 September 2005, <http://www.hrdc.net/sahrdc/hrfeatures/HRF127.htm>.

⁵¹ Quoted in Ibid.

⁵² ‘We’ll revoke AFSPA, says Omar in J-K assembly,’ *Indian Express*, 26 February 2009.

⁵³ Debidatta Aurobinda Mahapatra, ‘Poonch for Peace: An Eye Witness Account,’ *Kashmir Times*, 6 May 2007.

⁵⁴ ‘Antony asks forces to be alert,’ *The Hindu*, 12 January 2010.

of security forces still exists in the minds of state and central leaders. Therefore, it will likely take a long time before forces are ultimately withdrawn from the region.

Economic Development and Employment

Given the enormity of the damages that the violence has wrecked, transitional justice in Kashmir must be inclusive and account for socioeconomic development of the people and the region. This is complicated by the fact that repercussions of past violence impact both the path of development measures and popular psyches. Recently, New Delhi increasingly realises that peace attempts and development must accompany each other. To this end, India continues to initiate development measures despite stray incidents of violence. The Indian Defence Minister, A. K. Antony explained that Jammu and Kashmir ‘succeeded in receiving maximum financial support from the Centre and a massive development process has been launched as such. Sporadic militancy related incidents and law and order incidents should not hamper the development process’.⁵⁵ India also continued investing in crucial sectors and projects, such as infrastructure, assistance for small-scale industries and establishing incentives for private industries.⁵⁶ For instance, on 15 June 2009 the incumbent Chief Minister of Jammu and Kashmir, Omar Abdullah, invited private companies to invest in key sectors like agriculture and power in an effort to replace the idea of Jammu and Kashmir as a state beset by militancy.⁵⁷ It is also worth mentioning that the Jammu and Kashmir government has declared 2010 as Visit Kashmir year to attract Indian and foreign tourists to the state.

Continued economic initiatives like these are beneficial in two ways. First, they help address economic grievances of residents, thereby contributing to the transition process. Second, they can reduce the chance of future conflict, as economic deprivation is one of several factors that generate violence. For example, former Jammu and Kashmir Chief Minister and current member of Cabinet in New Delhi, Ghulam Nabi Azad cited unemployment as a major reason for militancy: according to him 80 per cent of militancy would end ‘if we are able to give employment to the youth’.⁵⁸ For these reasons, it may prove both costly and imprudent to wait for the conflict to be fully settled before initiating processes of economic development; rather, ensuring that peace processes and development initiatives go hand in hand could potentially enhance the goal of conflict resolution. Challenges presented by decades of conflict in Kashmir need to be transformed into opportunities by making conscious efforts in the areas of economic growth and development. The state has tremendous advantages, given its rich endowment of flora and fauna and its history of vibrant economic trade with neighbouring regions including China, Central Asia and West Asia via the famous Silk Route.⁵⁹

⁵⁵ Ibid.

⁵⁶ Prime Minister of India, Manmohan Singh outlined the policy of peace through economic reconstruction for Kashmir in the conference on ‘Global Participation in India’s Economic Development’ in New Delhi on 9 January 2007, in which he invited private sector industries to invest in the state. For details see, *State Times*, 10 January 2007 and *Kashmir Images*, 10 January 2007.

⁵⁷ *Daily Excelsior*, 16 June 2009.

⁵⁸ ‘Unemployment, the root cause of militancy: Azad,’ *The Hindu*, 6 February 2006.

⁵⁹ Debidatta Aurobinda Mahapatra, *Central Eurasia: Geopolitics, Compulsions and Connections* (New Delhi: Lancers Books, 2008), 149-155; Also by the same author “India’s Central Asian Connections,” *Journal of Eurasian Studies*. 1 (2) 2009:137-146.

Facilitating Intra-Kashmir Dialogue

A key to sustaining the transition process from conflict towards durable peace is the necessity of continued dialogue among all the stakeholders. This involves facilitating a democratic process involving Kashmir's people. Until recently, the dialogue process was almost entirely confined to the official level, whether it was between New Delhi and Islamabad, New Delhi and Jammu and Kashmir, or Pakistan controlled Kashmir. Now, the focus has shifted towards the people with the launch of the intra-Kashmir dialogue. This dialogue has given rise to optimism in Kashmir that both the countries are working with the people towards reaching a consensus for solving the Kashmir problem. Today, civil society has realised that the dialogue process can only be facilitated with the participation of the people and with the backing of the both the governments.

The interactions among civil society members of both parts of Kashmir in the form of 'heart-to-heart' talks in New Delhi on April 2007 and September 2005, demonstrated historic occasions to express opinions on a single platform. Though there was no complete unanimity on all the issues, participants did arrive at a consensus on peace being the only solution to end conflict in the valley. Talks with the leaders of both the sides, gave an impression that the people wanted the violence to end. K. D. Sethi, the veteran octogenarian journalist and one time general secretary in Sheikh Abdullah's National Conference party, pointed out that the people of Kashmir wanted peace and brotherhood among themselves. Justice Abdul Majeed Mallick, former Chief Justice of 'Azad' Kashmir High Court, who led a delegation from Pakistan controlled to Jammu and Kashmir in August 2005, expressed optimism that the current wave of interaction would help to resolve the conflict as in his opinion the people were more capable in steering the transition process than the political parties which often were unwilling to compromise their position. The governments of both countries have allowed the people to have direct talks with each other without any explicit involvement of themselves. There is a need to continue such dialogues and to broaden their base so as to also accommodate dissident views. Direct continuous talk among the people with minimal governmental interference is the way forward for conflict resolution.

Opening Intra-Kashmir Routes

The intra-Kashmir dialogue became a reality with the reopening of Srinagar-Muzaffarabad, the first traditional intra-Kashmir route in 2005, which facilitated visits of delegations from civil society groups and common people from both sides of Kashmir. The involvement of people in the transition process, thus gained momentum in 2005 and 2006. These years were not only characterised by 'bonhomie' between India and Pakistan, but also by the re-opening of the traditional intra-Kashmir routes that had been closed since the late 1940s. The commencement of the bus service between the winter capital, Srinagar, and Muzaffarabad, the capital of 'Azad Kashmir' was much heralded. The development introduced a new era in the region as the earlier state-centric approach to resolving the conflict was replaced by a more people-centred approach. The opening of the Srinagar-Muzaffarabad route and later of the Poonch-Rawalakote route in 2006,

assisted in according fluidity to the border and provided an opportunity to revive the previous sentiments of belonging and fraternity that was shared by people in the region before the division. These humanitarian measures have also facilitated the reunification, though on a temporary basis, of many divided families separated with the creation of borders decades back. The demand to open other intra-Kashmir routes including Kargil-Skardu, Suchetgarh-Sialkot, Noushera-Mirpur and Mendhar-Kotli to bring more people into contact, has increased, particularly, after the opening of the two routes.

The economic dimension of the opening of the intra-Kashmir routes cannot be ignored as both parts of Kashmir possess enormous potential for cooperation, and in many ways complement each other. Two events are of particular relevance in this context. On 31 December 2006, the then Jammu and Kashmir Chief Minister Ghulam Nabi Azad stated that some sort of 'joint management' with Kashmir across the Line of Control is possible in the fields of tourism, trade and water resources, which could pave the way for a lasting solution to the Kashmir issue. On 10 February 2007, Sardar Attique Khan, the then Prime Minister of 'Azad Kashmir', offered to supply gas and electricity to Jammu and Kashmir and invited entrepreneurs from 'all regions and religions' to invest in 'Azad Kashmir.' He also invited doctors and engineers from Jammu and Kashmir and asked universities in Jammu and Kashmir to admit students from 'Azad Kashmir.' Many trade potentials exist between the two parts of Kashmir. Trade has commenced via the two opened routes but at present it is largely symbolic. Intra-Kashmir trade can take a more concrete shape with a more flexible and economic approach on the part of both India and Pakistan. Increased intra-Kashmir economic activities can play a crucial role in transcending politics of the conflict with people rather than the governments at the centre of facilitating transition.

V. Conclusion

The initiation of comprehensive measures that focus on the Kashmiri people as crucial for resolving conflict is not a diminutive achievement. But, it does serve as an indication of the entanglement between the recognised peace process and the yet to be recognised transitional justice approach in Kashmir.

The initiatives described above are not explicitly recognised as transitional justice measures by the parties involved. Rather, they have largely been initiated separately, without their acknowledgement within the ambit of a broader framework of inclusive transitional justice. My argument of interlinking transitional justice with peaceful conflict resolution measures attempts to recognise the need for understanding the aforementioned initiatives as transitional justice initiatives by all the stakeholders. This would enable the identification of each of the measures as part of a comprehensive regime aimed at bringing peace and stability to the region.

A single framework would ensure that the measures are analysed collectively and individually, thereby, which will have important policy and academic implications towards fostering peace in the region. The outlined approach not only emphasises the urgency of implementing the recommended measures but also highlights the shortcoming of the previous measures for ushering peace in the region.

In the context of the Kashmir region, it needs to be appreciated that the transitional justice measures discussed here are in their initial phases. There is a need to move beyond formulating normative principles towards the actual implementation of measures and recommendations in order to facilitate the transition process. The smooth and transparent execution of the measures would prevent the relapse of violence in Kashmir. The effectiveness of this transition depends upon the introduction of the new measures to supplement the existing ones. Measures such as setting up a truth and reconciliation commission and making development pro-people would enable an inclusive transitional justice approach to address the concerns of the Kashmiri people, thereby, arriving at the goal of conflict resolution.

The transitional justice framework can provide a critical analytical and policy tool. Though the concept of transitional justice is only in its nascent stage in Kashmir, and is yet to be accepted as a potential solution to the Kashmir conflict, it is the framework that offers the most potential for an amicable and sustainable solution to conflict in Kashmir. Dubbed as one of 'the most dangerous potential nuclear conflicts in the world', the region is yet to witness peace in its last sixty-three years of existence. Indeed, there is a realisation between the conflicting parties of the cost and dangers involved in the continuing violence. In spite of the Mumbai terror attacks of November 2008, the dividends of the past will likely ensure the continuing negotiation of the peace process between India and Pakistan. The first official talks between the two countries since the Mumbai attack, held on 25 February 2010, generated hopes for sustainable peace in the region. In the case of Kashmir the previous approach of undermining the power of humanitarian peace building, partly owing to the ignorance of the political leadership for assessing the impact of conflict, and partly to an ethnocentric view of the state, has now been rejected in favour of a people-centred approach. Adoption of this humanitarian transitional approach complemented with a genuine effort to implement the multiple complimentary measures described in this paper, is the way towards making transitional justice a reality in Kashmir. A subtle base has been established for a smooth transition. The imperative now is to build up on that base in a gradual and sustainable manner.

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