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Indo-Pak Complex Nuclear Posturing: An Analysis of Bumpy Road from Kargil to Parakram (1999-2001)

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Abstract

The historical track of Pak-India relations can be analyzed and discussed in the realistic perspective of wars and interludes of peace, cooperation and conflict throughout their diplomatic history. The descriptive, qualitative and comparative study discusses Pak-India relations in the context of the Mumbai attacks of 26/11, 2008 with its prospects, aftermaths and implications. What are the major reasons, issues, actors and mindset working behind the strained relationship of Pakistan and India? What kind of efforts have been made from both sides to address the challenges and how these confidence building measures were spoiled by certain events, incidents and border clashes like the Mumbai attacks of 26/11 in year 2008, the violation of cease fire line across the LoC and ongoing trust deficit based propaganda related to the narration of cross border terrorism and the state terrorism. How the Pak-India trade relations have been sabotaged by the hardliner lobbyists in Pakistan and India and? what were the major factors which did not allow to flourish the liberal trade relationship between Pakistan and India under the parameters of World Trade Organization. The question still exists is peace possible and challenges can be solved through Pak-India bilateral dialogue diplomacy to bring the durable stability in the region in the post 26/11 environment.

Keywords: Pak-India Relations, Mumbai Attacks, Stand Off, Implications, Conflict & Peace

Introduction

The November 2008 Mumbai Terrorist Attacks, commonly known as 26/11 constitute one of the most audacious acts of terrorism that has ever occurred in India Those attacks had a unique dimension as they sought to especially target US, UK and Israeli nationals and interests in Mumbai. Consequently, several foreign nationals lost their lives, and the attacks assumed a true international character. Prosecutions for those responsible for the planning and execution of 26/11 have occurred in India, the United States, and are also occurring in Pakistan. References

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to these prosecutions are made throughout the course of the paper. Importantly, investigations by the Indian and US investigative agencies in connection with 26/11 have brought to light the role played by certain officials belonging to Pakistan's governmental agencies in the planning of those attacks. Thus it is of great importance to assess issues of State Responsibility so that both, India and Pakistan's legal rights and responsibilities on the international stage can be clarified. The analysis is carried out in three stages. In Part I, I consider the judgments handed down by certain Indian courts in the trial of the only surviving member of the group of ten men who executed 26/11, Mohammad Ajmal Mohammad Amir Kasab. It is India that possesses the best writ to raise any potential international claim, and it is thus imperative to closely consider India's perception of 26/11. Part II will analyse whether 26/11 can be considered to constitute an international wrong as opposed to a breach of domestic law. Part II will study the various treaties entered into by the States of the South Asian Association for Regional Cooperation that seek to regulate terrorism, and also consider the customary law status of international terrorism with the aim of reaching conclusions whether 26/11 can be said to constitute an international wrong. Part III will then deal with the issue of attribution of conduct to a State. First, 26/11 will be analyzed in accordance with the laws on State Responsibility that are applicable when the wrong is committed by elements of the governmental authorities. Second, I will consider responsibility for 26/11 assuming that it was perpetrated by private actors without any State involvement. In reaching the final conclusions, this paper highlights the problems with the regulation of terrorism under international law in the context of State Responsibility, and shows that much work needs to be done to clarify and consolidate those rules. Pak-India relations remained under the clouds of emerging geostrategic and regional developments in the post 9/11 era. The incidents like the terrorist attacks on Indian Parliament in December, 2001, the nuclear confrontation, the Indian cold start strategy towards Pakistan, the Pak-India border escalation and the persistent conflict of Kashmir continued to generate antagonism between Pakistan and India. The New Delhi administration traditionally alleged the Kashmiri freedom struggle as a terrorist movement aggravated and infiltrated by Pakistan. Consequently, both the nuclear state of South Asia arrived at the danger of severe conflict and reached on the brink of war. Although the major powers like United States, Russia, China, Japan and European Union played mediatory role to restrain Pakistan and India from any possible conventional and nuclear collusion. On the whole the horizon of Pak - India relations remained in the darkness of conflict and controversy due to eventual developments in the region during 2004-2008. India faces the real prospect of another major terrorist attack by Pakistan-based terrorist organizations in the near future. Unlike the aftermath of the November 2008 attack on Mumbai, in which 166 people died, Indian military restraint cannot be taken for granted if terrorists strike again. An Indian retaliatory strike against terrorist targets on Pakistani soil would raise Indo Pakistani tensions and could even set off a spiral of violent escalation between the nuclear-armed rivals. Given Washington effort to intensify pressure on al-Qaeda, the Taliban, and associated militants operating from Pakistani territory, increased tensions between India and Pakistan would harm U.S. interests even if New Delhi and Islamabad stop well short of the nuclear threshold because it would distract Pakistan from counter terror and counterinsurgency operations, jeopardize the U.S. mission in Afghanistan, and place new, extreme stresses on Islamabad. The threat of another Mumbai-type

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attack is undeniable; numerous Pakistan-based groups remain motivated and able to strike Indian targets. Many of these groups have incentives to act as spoilers, whether to disrupt efforts to improve Indo-Pakistani relations or to distract Islamabad from counter terror crackdowns at home. Thus the immediate risk of terrorism may actually increase if New Delhi and Islamabad make progress on resolving their differences or if Pakistan-based terrorists are effectively backed into a corner.

The Occurrence of 26/11 Terrorist Attacks

The Pak-India peace efforts, conflict resolution, approach, train diplomacy, cricket diplomacy and bus service were interrupted and undermined by the Mumbai terror attack on November, 26, 2008, which killed over 150 people in Taj Mahal Hotel Mumbai. India directly alleged Pakistan's involvement and support to the Lashker-e-Taiba, one of the extremist and militant Pakistan-based organizations. Assaults happened and started murdering individuals in Mumbai. There was with doubtful character, the massacre witnessed that they were very young. The reality that it was evidently, desired to impose greatest harm, the main plausibility was they murdered many individuals (Khalid, 2013). The Indian authorities completely did not relate the cruelty likewise shod to the entire disappointment of framework, intelligence agencies, Research and Analysis Wing (RAW) nor did Confederation of British Industry (CBI) have any earlier piece of information of the attack. It likewise highlighted the need to search internally instead of focusing on Islamabad as it were. (Cheema, 2008). "The assault by shooters a year ago could have been forestalled by the Indian naval force, they monitor current assets, and worsening security had been brought down at the entrance. Regardless of the possibility that standoff has stopped. After the fact, because of inaccessibility in the event that they didn't need to hold up, for 60 minutes at the Mumbai airplane terminal (Navalakha 2009).

The Indian Stand Off after 26/11 Attacks

The incident of 26/11 widened the gap in the process of normalization and peace in South Asia due to the loss of about 160 Indian and International lives. There was a great global fear that the New Delhi would retaliate with a punitive and inflictive military and air force strike which could initiate an open war between Pakistan and India along with opportunity of a probable nuclear clash in the region. The Indian media experts recommended and perceived the use of a special force of smart bombs against Pakistan but the result was extra ordinary restrained from the Indian side. (Raghvan, 2008). The new Delhi administration did not follow the mobilization of military forces to uproot the camps of Lashkar e Taibah working inside the Pakistan as it was rejected by the civilian authorities in new Delhi. India decided to launch a global diplomatic pressure policy against Pakistan through China, Saudi Arabia and United States immediately after the terror incident of Mumbai Taj Mahal hotel (Nayak & Krepon, 2012). The Manmohan Singh administration had to face severe criticism inside the India due to going easy on Pakistan and to bow down against the American pressure. It was the nuclear deterrence did not allow India to invade any military and air force adventure against Pakistan. The former Indian chief of army staff General Shankar Roy Chaudhry stated that the treat of early nuclear first use from Islamabad was a

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serious consideration for the conventional military strikes of India. The Indian decision maker adopted non-nuclear approach towards Pakistan due to international community involvement on diplomatic front because the Indian leadership decided to use military force as the last resort and efforts mounted first to put up global pressure against Pakistan's terror sponsoring role regional and global environment. Pakistan additionally showed perspective and scrutinized the specialists to un-blame the finger at Pakistan all alone was discontent. The truth of the matter is that they are experiencing the nearness. Numerous disasters happened because of the folds. "On the off chance that Mumbai assault emerges as a result of the way that the equipped shooters put the Samjhauta Express blast"(Monis, 2009). The predisposition overwhelmed the Mumbai viewpoint; it disregarded and filled with counter Pakistani opinions. Despite the fact that the Indian experts have specified commonly the view that the officeholder included in the Mumbai assaults. They are key criminals, yet it additionally affirmed the involvement of Inter-Services Intelligence. Notwithstanding, to acknowledge to face substance with a more extensive point of view, and to comprehend the main people and players that are depicting hindrances in normalization of relations in both states.(Narang, 2010).

International Implications

The Mumbai attacks of 26/11 increased the constrained between Pakistan and India as an edition of their bilateral conflicting relationship. The existing situation after the Mumbai attacks in 2008 led international community to put a huge pressure on Pakistan to take punitive actions against different terrorist groups working inside the Pakistan with different names involved in certain terror prone activities in regional and global environment. (Fadia, 2011).Consequently, Pakistan was declared as the epicenter of the terror metrics by the Indian media and responsible government authorities. The New Delhi administration and Indian intelligence agencies reveled to the world the that several terrorist groups are responsible to spread terrorism inside India and across the world with the collaboration of Pakistan's military and government agencies. The HuM, LeT and JeM were the major responsible terror organizations operating from Pakistan as the associate groups of Taliban and Al-Qaeda. The Indian stake holders believed that all of the Jihadi groups in Afghanistan and Pakistan have been articulated and supported by Inter Services of Intelligence as Pakistan's leading intelligence agency.(Sasikumar, 2019).The Indian government and International community took a serious notice of the Mumbai terrorist attacks in November 2008, operated by Lashkar-e-Taibah through a spectacular coordinating bombing and shooting assault. The LeT recruited certain sentimental volunteers through the innovation of Jihad. The LeT made Indian Occupied Kashmir as its focal area of operations since its formation in 1987 under the throes of Islamic ferment. The Indian government declared LeT as the biggest menace and the most dangerous terrorist group working in the region of South Asia as the associate party of Al-Qaeda. The LeT becomes devastating organization due to its global vision and international ambitions with a peculiar ideology of Islamic revanchism while working with other international terrorist groups. The Indian political authorities perceived that LeT is a loyal organization with Pakistan and aims to protect its domestic and international interests. It possesses diversified network to mobilize its resources and zealot members on the behalf and dependence of the state of Pakistan. LeT involves in promoting terrorist activities along with slogan of social development

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inside the Pakistan. It aims to generate ability to target its destination. LeT becomes a major threat to India due to hierarchal and cohesive structure that is more attractive to conduct the violence and social developments program simultaneously. The threat from LeT exist in the region due to its proficiency in science and technology and to exploit the state vulnerabilities in order to moderate its political aims and objectives With the Mumbai attack, LeT demonstrated that it has the ability and the will to internationalize its targets. LeT now has now assumed a larger role in the larger jihadi landscape. Like some of the other militant groups in Pakistan, LeT is believed to have considerable reach into Pakistani diaspora populations, raising a number of concerns for countries with Pakistani expatriate communities. More than ever, India and her partners need to forge more robust counterterrorism and law enforcement links. For the policy-relevant future, Pakistan will remain a destination where individuals radicalized abroad can go to obtain training from militant groups. Thus, containing the threat posed by militants in Pakistan is an international challenge with few mechanisms to support it. The Indian government successfully pre-vailed upon the United Nations to take action against LeT and key leaders. While the United Nations may have little impact upon LeT's ability to act, China's vote was necessary to secure this vote. As China has long been seen as Pakistan's most reliable partner, this vote may have some impact in Islamabad (The News, 2009).

Hurdles & Developments in the post 26/11 Environment

Pakistan and India could not address their mutual conflicts and issues existing along back due to certain misgivings, trust deficit and bilateral propaganda towards each and other. Even the SAARC forum was seen a platform only to express peripheral. The element of mistrust remained intact between Pakistan and India despite certain efforts of Zardari led government during 2008-2013 could not produce fruitful result in the wake of Mumbai attacks. The New Delhi administration continued to take a serious view and action of the Mumbai attacks on its integrity and sovereignty. The Indian complain through media channels, leadership and political parties threatened Pakistan through the possible surgical attacks. The rational worked in respect of the nuclear capability of Pakistan and India which did not allow any misadventure in the region. The political and strategic quarters of Pakistan and India exposed and probable nuclear holocaust and advised dialogue diplomacy to settle their conflicts. Consequently, the bus service, trade, social interaction, people to people contact resumed in the post 26/11 environment. Thus, it marks the utility of neoliberal aspect of economic cooperation and security in the region of South Asia. Pakistan and India agreed to bring some relaxations in visa services, religious tourism, and trade activities at a low scale through Wagah Atari Border, furthermore both Pakistan and India also encouraged sports diplomacy during PPP's regime 2008-2013. The sports activities like Kabaddi and Cricket encouraged the positive gestures which led Prime Minister Yousuf Raza Gillani visit to India to watch Pak-India World Cup Cricket match at Mohali Therefore, these developments have been considered as the significant measures and offered opportunity to bring peace, stability and resumption of bilateral dialogues to address the existing disputes.

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The Prospects of Conflict & Peace in the Region

Despite a huge propaganda campaign launch by India the efforts for peace continued from different social and political quarters in both countries along with their armies remained indulge in cross firing at the line of control and working boundary. The high-level diplomacy discontinued but on the other side certain signals were given from both sides to resume the bilateral talks and dialogue diplomacy. Therefore, the situation has been caught between wars and wishes, cooperation and conflict, from Kargil to Cricket and from 26/11 to the restoration of bus and sports diplomacy. On the whole phenomenon of the wars and wishes remained dominant and the question stands still is peace possible in South Asia? The hardliner mindset continued to work a lot in respect of exploit the sentiments, emotions and religious extremism in the region. Both the countries remained engaged to play blame game towards each and other i.e. state terrorism, cross border terrorism, reciprocal propaganda, hateful use of print and electoral media, preaching of religious ideologies which resulted further hatter, animosity and antagonism between Pakistan and India. Consequently, the bilateral relation strained in terms of intensification of the situation and endangering the peace process in South Asia.

Role of the Major Powers

The United States, China, Saudi Arabia, Russia intervened in the Pak-India conflicting situation created by the Mumbai attacks of 26/11 and proceeded diplomatic mediation through their respective diplomatic and good offices. The United States emphasized on the prevention of terrorist activities across the line of control, working boundary and International border and to put utmost energies and potential to avoid the incidents like Mumbai attacks in future. The progression of Great Power interests in the Pak-India Strife can be better comprehended by the degree to which worldwide and regional forces have utilized each other to propel their political and vital destinations. The US has assumed a critical role in Pak-India relations. The US approaches towards Pakistan and India are guided by its own particular advantages in the area. During the cold war era, the US favored Pakistan on Kashmir to serve its own particular geo-political war interests. The US gave financial and military assistance running into billions of dollars to Pakistan to maintain its war in Afghanistan against its opponent power-USSR. It took a gander at the other way while, Pakistan utilized a similar cash and balances in maintaining its campaign of cross border terrorism against India. (Jahuri, 2013).

The Future Aspect of Mumbai Attacks

The vast majority of India's security issues versus Pakistan could be followed back to the US tilt towards Pakistan to detriment of India. Its strategy towards both states has constantly disturbed the adjust of force in South Asia. Numerous companions turned as enemies and vice-versa. India came nearer to the US. Both the nations felt that there is the requirement of security participation and the best dangers to their security are characterized more by elements with frail and falling flat states than by the borders amongst strong and powerful ones. However, the US kept on managing Pakistan and India independently inside the casing work of its own advantages in both the states. On the protest by Pakistan, India was kept at arm's length to the extent the security issue in Afghanistan was concerned. India's share in Afghanistan was confined just too helpful and monetary improvement as

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was craved by Pakistan. The Pak-India relations have been attributed in the pendulum of ups and downs due to certain unwanted and vicious incidents and developments in the region (Telis, 2012). The Indian increasing role in Afghanistan as the new strategic partner of the United States, containment of China, India-Iran diplomatic ties, the strategic defense agreements and cooperation generated the grave concerns to Pakistan. On the whole the desire of peace, stability and conflict resolution remained under the clouds of a dominant clergy in Indian policy making authorities at New Delhi. (Ishtiaq, 2013).The Pak-India relations have been attributed in the fabrics of misperception, distrust, reciprocal propaganda, state terrorism and cross border terrorism. Both the states remained adhered to their traditional stand off towards each and other. Although the major states like China, Russia, Iran and the United States got opportunity to mediate the existing conflicting relationship between Pakistan and India but it could not be achieved due to the emerged regional geo strategic environment as India ever claimed to take action over terror sponsor organizations inside Pakistan through the surgical strikes. India again put a severe pressure on Pakistan to bring the culprits of Mumbai attacks into the book through using the law of extradition. Pakistan initiated the judicial procedure against the alleged organizations involved in Mumbai attacks and decided to outlaw further extremist organizations working inside Pakistan along with freezing their financial accounts and external sponsors. On the whole the Pak-India bilateral trust deficit remained as intact during PPP government 2008-2013 on their traditional norms.(Jones, 2007).The larger issues raised by the aforementioned discussion relate to the manner in which the rules on attribution should develop, and whether or not State Responsibility has a role to play in a 26/11 circumstance in the first place? It bears mentioning that the principles propagated by Nicaragua, which were confirmed in the Genocide case were created in the Cold War era where the ICJ was arguably rendering its decision mindful of the sensitivities of that time. As was observed, the Nicaragua test makes it almost impossible to attribute private conduct to States. Although the US armed, financed and operational zed the contras, it yet was not held responsible for its actions. (Hussain 2015). That is undoubtedly a result that is contrary to instinct. It is the motivation to bring the law in line with modern realities that could have perhaps driven the ICTY to propose a test that was easier to establish. It has been recently suggested that, in cases of terrorism, the test of attribution should involve a causation standard. According to that standard, if there can be established a causal link between the act of terrorism, and the State's action/inaction, then private conduct could be in principle attributable.(Allen, 2008). It cannot be said that such a causation test constitutes the law presently in force. Further, the causation standard will not be of much use in circumstances where States are unable to effectively control its internal affairs. Such a standard would render States responsible in circumstances where they cannot be expected to meet their international obligations for purely practical reasons. The issues raised by 26/11 present challenges that cannot be resolved satisfactorily regardless of the kind of test used to establish attribution. Pakistan is the home for several radical institutions/persons who operate from Pakistani territory. It is becoming increasingly apparent that those very radical elements are increasingly out of Pakistani control. Moreover, elements of the Army/ISI sympathize with those

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radical elements with the result that Pakistan is increasingly becoming a greatly
divided State.(BBC world service, 2018).

Conclusion

The political dialectics among the leadership of Pakistan and India has ever victimized the peace process and normalization during and after the cold war environment. The hard-liner decision makers, extremist elements and ideological pressure groups have exploited each and every situation to create uncertain and sensational nature of the reciprocal relationship. Consequently, both neighboring nations have to suffer from bilateral wars, negative propaganda, distrust which generated numerous social, economic and geo-graphic issues. The Pak-India mutual relations are adhered with an important issue of nuclear race in South Asia started by Indian nuclear underground tests in 1974. Although Pakistan presented its reservations about Indian nuclear program during 1970s but could not create an obvious deterrence that was properly managed in May 1998 when India tested its nuclear explosion and led Pakistan to follow the suit. Pakistan India remained engaged with one another on the both ends of flaring up the conflict and conflict resolution. The nuclear tests of Islamabad and New Delhi guided to begun another era of détente in the world politics especially in South Asian perspective. The Kargil crisis of 1999, the Agra Summit 2001, the military escalation of 2002, the Lahore Declaration, the Katmandu peace process in the form of hand-shake diplomacy, the cold war strategy, the strategic restraints regimes, the GDMO's hotlines, Kashmir talks, the bus, train, cricket diplomacy, Mumbai terrorist attacks 26/11, bilateral proxy war in the wake of post 26/11 carnage, the composite dialogue, role of major powers in respect of Indo- Pakistan strained relations in respect of the strained and emerged geostrategic environment of South Asia along with the bilateral trade diplomacy are the important developments in Pak-India ties during Pakistan People's Party regime 2008-2013. Despite the desire of leadership of Pakistan and India that the bitterness of the past should be forgotten but the Indian leadership had left no trace of friendly relationship, which produced the conflicts between the neighboring countries. The study reveals that the region of South Asia has been considered as the flashpoint due to acquiring the status of nuclear powers by both Pakistan and India with the unsettled Kashmir issue. The major states of the global politics particularly, the United States was desirous for normalization of hyper and tense situation. Therefore, the heads of the governments and states tried to play a positive role of normalization peace building and stability in South Asia through different international forums. The leadership from Pakistan and India could not continue the lasting efforts to generate diplomatic and persistence peace-oriented environment. The findings of the study reveal that Pakistan and India have been caught through the following bilateral challenges on the way of their permanent peace building programs.

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