

# Hearings on Religious Freedom in India and Pakistan: Dr. Ghulam Nabi Fai Prepared Testimony

September 18, 2000

I am deeply honored by the opportunity to address this esteemed vanguard of religious liberty abroad. Countless immigrants have come to the United States fleeing religious persecution, beginning with the Puritans. Protection of religious liberty was enshrined in the Free Exercise Clause of the United States Bill of Rights. It has served as a beacon for so many international human rights covenants and promises.

The Universal Declaration of Human Rights, for instance, stipulates in Article 18: "Everyone has the right of freedom of thought, conscience, and religion." Four Freedom Messages of President Franklin D. Roosevelt to Congress on January 6, 1941, is quite relevant when he declared that the second "is freedom of every person to worship God in his own way everywhere in the world."

I do not wish to disparage the general utility of these pronouncements in protecting freedom of religion, but they are more like musical pitch than specific libretto, setting a tone presumptively friendly to religious freedom, but subject to override to accommodate reasonable secular objectives. Parents, for instance, may not withhold critical live-saving medical treatment from their children even if their motivation is religious. Churches, mosques, or synagogues may not be constructed without government permission in the middle of streets or thoroughfares. Freedom of religion similarly does not endow a creed to block access to public congregations even when the motivation lies in scripture. And freedom of religion customarily offers protection against adverse action by government, not private individuals or organizations.

Discriminatory treatment on the basis of religious beliefs seems a recurring and elusive problem. Countless human rights covenants condemn the discrimination, but implementation is often problematic. In this decade, there seems to have been waves of discrimination against individuals of Kurd ethnicity in Iraq. Ditto Kosovars in Kosovo, Serbs in Croatia, Croats in Serbia. A comprehensive listing of oppressed religious minorities would make the depressive reading.

All this is overture to surveying freedom of religion in India, which she claims is a secular democracy. In the last two decades, India's treatment of its minorities has been far from satisfactory. More than often, it is minorities, both the Muslims and Christians of India who have borne the brunt of these abuses, which range from discrimination to unlawful detention to organized pogroms. Minorities in India are discriminated against on a regular basis when it comes to education, employment, admissions and advancement.

In its Annual International Report, Amnesty International criticizes India for "Attacks on members of religious minorities - most notably Muslims and Christians - continued to increase. There were widespread allegations that attacks were carried out directly by, or in connivance with, right-wing Hindu groups.

Human Rights Watch noted that, "Military-led cordon-and-search operations in Muslim neighborhoods continued to result in violations of fundamental civil rights, including the detention, torture, and summary executions."

Mr. Chairman, the focus of my submission is neither India nor Pakistan but a territory, which according to the international agreements between India and Pakistan, negotiated by the United Nations and endorsed by the Security Council does not belong to any member state of the United Nations. This territory is known as Kashmir and the United States officially considers it as a disputed land and not the one belonging to either India or Pakistan

Religious persecution and discrimination on the basis of faith in Kashmir are systematic, deliberate, and officially sanctioned. Far from seeking to rectify its atrocious human rights record, India has legalized its state-sponsored terrorism in Kashmir. It has given its occupation forces powers to shoot to kill and the license to abuse the Muslims of Kashmir in whatever ways they like in order to suppress the popular movement for basic human rights and human dignity.

The information compiled by the international human rights and humanitarian organizations establish the following:

A massive reign of brutal suppression against the Muslims of Kashmir has been launched by Indian Army since January 1990. Various estimates are given of the death toll of civilians so far. Making due concession for unintended exaggerations, the figure runs into tens of thousands. Countless individuals have been maimed and thousands of women molested and assaulted. Despite a faint murmur of protest in international press, India has felt no pressure whatsoever to desist from its semi-genocidal campaign. Not a word of condemnation has been uttered at the United Nations; not even a call on India to cease and desist from committing its atrocities. This is not merely a case of passivity and inaction; in practical effect, it amounts to an abetment and inducement of murderous tyranny.

All available evidence of India's religious discrimination in Kashmir indicate one thing: that the Indian Government is systematically targeting innocent people of Kashmir for death. They beat up the elderly, rape women, defile young girls, raze villages, destroy families and murder young boys. These tactics have no military purpose whatsoever. Their only imaginable purpose is to terrorize a people into submission.

The abuses are so extensive as to extend beyond those directly affected, reaching every men, women and child in the Valley of Kashmir. The civilians live under the constant threat of abuse. The overwhelming presence of 700,000 Indian military and paramilitary forces serves as a constant reminder to Kashmiri Muslims that they are not free people but a people subjugated and enslaved against their will. Harinder Baweja, an Indian Hindu Journalist of "India Today" said it well, that everywhere there is pain in Kashmir. There is darkness everywhere. Kashmir has lost its magic.

Indeed, to speak of humanitarian tragedies and injustice without mentioning Kashmir is like reciting the Holocaust without mentioning Auschwitz. Yet the United States has chosen to turn its eyes away. To paraphrase from Shakespeare, Hath not a Kashmiri eyes? Hath not a Kashmiri hands, organs, dimensions, senses, affections, passions? Fed with the same food, hurt with the same weapons, subject to the same diseases, healed by the same means, warmed and cooled by the same summer and winter, as other people of the world? If you prick us, do we not bleed? If you tickle us, do we not laugh? And if you poison us, do we not die? Then why has the United States and the international community fiddled for more than a half century while tens of thousands of Kashmiris have been massacred, raped, plundered, abducted and mutilated?"

Let me substantiate my thesis with the following few facts:

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### Restricting the Pilgrimage to Makkah (Haj):

One of the five pillars of Islam is the Haj to Makkah if financially or otherwise feasible. Without any legitimate reason, India has restricted Kashmiri leaders, from travel to Saudi Arabia to perform this religious duty. The suppression of religious freedom and the freedom of travel flagrantly violates the Universal Declaration of Human Rights and a host of companion of human rights covenants. In 1998, Mir Waiz Umar Farooq, a prominent Muslim religious leader, and Moulvi Abbas Ansari, a senior member of the All-Parties Hurriyet Conference, were removed from a plane scheduled to take them to Makkah to perform their religious pilgrimage. Earlier, professor Abdul Gani Bhat, currently the Chairman of the All Parties Hurriyet Conference was de-plane at New Delhi airport when he was on his way to Makkah to perform his pilgrimage. Human Rights Watch has documented a similar incident regarding Mian Abdul Qayoom, then president of the Jammu and Kashmir Bar Association.

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### Bombing of a religious gathering:

In May 2000, a religious gathering addressed by Mr. Ansari was bombed by Indian government forces in hopes of dividing Sunni and Shiite Muslims in Kashmir.

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### Destruction of mosques and school closures:

Since 1990, hundreds of mosques have been destroyed and hundreds of Islamic schools closed. Schools and educational foundations operated by the Jammu and Kashmir Jamaat-e-Islami were initially ordered shut in 1975 by the Kashmir administration of Sheikh Mohammad Abdullah, and was repeated in 1990 by Kashmir Governor Jag Mohan. More common is the intentional destruction of mosques under the government pretense of counterinsurgency operations in Kashmir.

A nine-month siege of Hazratbal shrine-cum-mosque (which houses a relic of the Prophet Muhammad) by the Indian army beginning in October 1993 ended only because the intercession of the Organization of Islamic Conference. During the siege, homes were vacated and occupied by the military, residents and university staff and students nearby were subject to curfews, torture, electric shocks and intimidation. Protestors were subject to indiscriminate attacks by security forces leaving approximately 100 dead and 300 injured.

My cousin, Shabir Siddique, operated 200 educational schools in Kashmir. International press reported that he and eighteen Kashmiri youths were abducted in November 1993 from the Shrine during the siege, sealed in a house, and burnt alive by the Indian military. Shabir's two sons and daughter still ask today, shaking with grief, what was Daddy's crime? The silence from India speaks volumes of guilt.

In May 1995, India's Border Security Force burned a Sufi shrine, a six hundred-years-old mosque, a great cultural heritage and historical monument and the surrounding town of Charar-e-Shrief, a vast overreaction in an attempt to apprehend foreign militants.

On June 24, 2000, the Indian army burnt residences, school buildings, the local mosque, and copies of the Holy Quran in Baramulla during a siege of the village of Doragrarn Pattan.

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Forced conversions:

In May 2000, Hindu security force and pro-government militants forced Muslims to convert in the Doda village in Jammu. Coerced conversions have likewise been reported in villages adjacent to the Himmachal border in India. Local police on May 25, 2000 abducted and murdered three Muslim laborers at Chatroo in Doda after they defied a command to worship idols in a Hindu temple.

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## Rape of Muslim women:

Indian military and paramilitary forces in Kashmir systematically rape women because of their Muslim creed. India has used Rape as a weapon of war in Kashmir. Insurgencies against India's rule in Punjab, Assam, and Tamil Nadu have not occasioned the same war crime of rape.

Mubeena Begum, a newly married bride from Badasgam, Anantnag, was traveling to her husband's home by bus on the wedding day. The Indian army interdicted the bus, emptied it from the guests, killed her husband, and raped the bride. That is the Indian Army's concept of a wedding present for Kashmiris.

A pregnant young woman, Zarifa Bano of Kunun Pushpora, Kupwara, was raped by four Indian soldiers, and she gave birth to a baby with broken leg two weeks later.

The constant disturbances and fear of molestation and rape in Kashmir have changed the entire life pattern of the inhabitants particularly that of the Muslim women and children. The entire concept of childhood has undergone a radical change in the Valley. Schools have been converted to army camps. The children do not attend kindergarten and they do not play with toys, the way normally children do. Neither are they brought up under the care of their parents in a free atmosphere. The memories and recollection of their childhood consist of an atmosphere of terror, an atmosphere of dissatisfaction, an atmosphere of an anxiety and an atmosphere of unrest, insecurity and uncertainty.

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## Exodus of Kashmiri Pandits:

I have listened with pain to many horrifying stories of Kashmiri Hindu community. They are integers and not factions of Kashmiri culture. This community has been deranged and uprooted. More than 100,000 Kashmiri Pandits subsist in refugee camps outside their homeland. They are in pain. They are suffering in these refugee camps. A refugee camp knows no boundary. A homeland cannot be recreated in a refugee camp. A homeland is a compendium of experiences and emotions, a wealth of traditions and memories. Mr. chairman, our minority community is the clear victim of

the tragedy of Kashmir. Jagmohan, then Governor of Kashmir and now the Cabinet Minister of Vajpayee Government wanted this minority community out to portray the movement in Kashmir as communal and not the one based on freedom and justice. The resistance of occupation in Kashmir is not communal and should not be. Only Jagmohan made this Pandit community flee and desert Kashmir at its hour of trial

The Government of India has declined either to punish or to investigate seriously instances of persecution of Muslims in Kashmir or elsewhere.

India aims to frustrate a full examination of religious persecution in Kashmir by denying unfettered access to the electronic media and international human rights organizations, particularly, Amnesty International, International Educational Development and Humanitarian Law Project. I would strongly urge this Commission to seek permission to make an on-site uncompromised investigation, not a staged visit to Potemkin villages. A denial of free access by the Government of India would speak volumes about its persecutions. As Supreme Court Justice Louis D. Brandies exhorted, sunshine is the best disinfectant.

#### Distinguishable Characteristics of Kashmir Situation:

With regard to United States foreign policy, religious freedom is simply one component of a host of other legitimate elements, including national security, foreign trade, the rule of law, and free enterprise. I do not believe there is some magical legal incantation that will in all circumstances best promote religious freedom abroad. If I were to suggest anything, it would be a requirement similar to environmental impact statements in the National Environmental Policy Act of 1972 that mandates preparation of a religious freedom impact statement for every United States government action that could significantly affect the free exercise of religion in a foreign nation.

However, U.S. policy makers should know that there are certain characteristics of the situation in Kashmir which distinguish it from all other deplorable human rights situations around the world.

\*\*\* It prevails in what is recognized - under international law and by the United States - as a disputed territory. According to the international agreements between India and Pakistan,

negotiated by the United Nations (through a commission set up for the purpose) and endorsed by the Security Council, the territory's status is to be determined by the free vote of its people under U.N. supervision. The unresolved dispute caused two wars in the not-so-remote past between India and Pakistan.

\*\*\* It represents a Government's repression not of a secessionist or separatist movement but of an uprising against foreign occupation, an occupation that was expected to end under determinations made by the United Nations. The Kashmiris are not and cannot be called separatists because they cannot secede from a country to which they have never acceded to in the first place.

\*\*\* It has been met with studied unconcern by the United States. This has given a sense of total impunity to India. It has also created the impression that the United States is invidiously selective about the application of the principles of human rights and democracy. There is a glaring contrast between the outcry over the massacre in Tiannanman Square, on the one side, and the official silence (barring some faint murmurs of disapproval) over the killing and maiming of a vastly greater number of Muslims in Kashmir and the systematic violation of the 1949 Geneva Convention.

\*\*\* It is a paradoxical case of the United Nations being deactivated and rendered unable to address a situation to which, under U.S. leadership, it had devoted a number of resolutions and in which it had established a presence, though with a limited mandate. The United Nations Military Observers Group in India and Pakistan (UNMOGIP) is one of the oldest peace-keeping operations of the U.N.; the force is stationed in Kashmir to observe the cease-fire between India and Pakistan.

All these peculiarities of the Kashmir situation become more baffling in view of the fact that the mediatory initiative which would halt the violations of human rights and set the stage for a solution would entail no deployment of American troops, no financial outlays and no adversarial relations between U.S. and India.

Past U.S. Involvement:

In this context, the following considerations are most pertinent for an assessment of the dispute by the members of the American policy makers.

\*\*\* When the Kashmir dispute erupted in 1947-1948, the United States championed the stand that the future status of Kashmir must be determined by the will of the people of the territory and that their wishes must be ascertained through an impartial plebiscite under the supervision and control of the United Nations. The U.S. was a principal sponsor of the resolution which was adopted by the Security Council on 21 April 1948 and which was based on that unchallenged principle. Following the resolution, the U.S. as a leading member of the United Nations Commission for India and Pakistan, adhered to that stand. The basic formula for settlement was incorporated in the resolutions of that Commission adopted on 13 August 1948 and 5 January 1949.

\*\*\* These are not resolutions in the routine sense of the term. Their provisions were negotiated in detail by the Commission with India and Pakistan and it was only after the consent of both Governments was explicitly obtained that they were endorsed by the Security Council. They thus constitute a binding and solemn international agreement about the settlement of the Kashmir dispute.

\*\*\* The part played traditionally by the United States Government is apparent from:

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The appeal made by President Truman that any contentious issues between India and Pakistan relating to the implementation of the agreement must be submitted to arbitration;

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The appointment of an eminent American, Admiral Chester Nimitz, as Plebiscite Administrator;

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The bipartisan expressions of support for the U.S. position from statesmen as different otherwise as Adlai Stevenson and John Foster Dulles;

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The appeal personally made in 1962 by President Kennedy to the President of Ireland to the effect that Ireland sponsor a resolution in the Security Council reaffirming the resolutions of the Commission;

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The forceful advocacy by the U.S. Delegation of points regarding the demilitarization of Kashmir preparatory to the plebiscite at countless meetings of the Security Council from the years 1947-48 to 1962 and its sponsorship of twelve substantive resolutions of the Council to that effect;

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The protracted negotiations conducted by another distinguished American, Mr. Frank Graham, from 1951 to 1958 in the effort to bring about the demilitarization of Kashmir, making possible the holding of a free and impartial plebiscite.

\*\*\* President Clinton's recognition of Kashmir's centrality to avoiding nuclear war and proliferation in the region. He has said that the Kashmir is the most dangerous place in the world.

\*\*\* All this may be regarded as history but there is no reason why, when the human, political and legal realities of the dispute have only not changed but have become more accentuated with the passage of time, it should now be regarded as irrelevant. It is no less relevant to the settlement of the dispute than the termination of the Indonesian mandate was to the question of East Timor or than the circumstances of the incorporation of Lithuania, Latvia and Estonia in the Soviet Union were to the reassertion of their independence.

U.S. Policy Options:

I believe that the United States can, and should, lead the effort to achieve a fair and lasting settlement of the dispute

- fair to the people most immediately involved and fair to its own commitments to democracy and human rights. By doing so, the United States can strengthen the principles of a just world order. It will also earn the gratitude of generations in Kashmir, in Pakistan and even in India itself. All of us know that the role of the United States is like that of a supporting actor, but not a star. It has been generally unhelpful in the past by playing simple spectator, and insisting that a deluxe invitation must be delivered by India before it would consider mediation, facilitation, or even moral suasion. That seems akin to me of awaiting an invitation from Slobodan Milosevic before intervening in Bosnia and Kosovo, or from Indonesia's Suharto or Habibbe before asserting an international presence in East Timor. Why should India be crowned with a veto power? I have never received any convincing explanation, only a subtext suggestive of India's alluring economic markets.

The Clinton administration has two choices before it. One is to continue confining itself to warning both Pakistan and India against going to war with each other. This policy bases the no-war prospect in South Asia on a very precarious foundation. The prospect of a nuclear exchange in that vast Subcontinent cannot be dismissed in the event of hostilities breaking out between the two countries.

The second option is to play a more activist, mediatory, role in regard to Kashmir by initiating a peace process. This can take the shape of a quadrilateral dialogue (- U.S., India, Pakistan and Kashmir -) or an appropriate use of the newly?developed procedures and mechanics at the United Nations. In neither case would the handling of the dispute be a rehash of the old arid and acrimonious debates at the U.N. The U.S. by itself or through the U.N. would supply the catalyst that is needed for a settlement. There are alternative courses of action which can be spelled out and involve a sequence of interactive steps over a period of time. None of them would put the peace process in the strait?jacket of rigid adherence to old texts. But if a solution of the problem will be a graduated process, consisting of incremental measures, the violence in Kashmir needs to be brought to a quick end in order to set the stage for a solution.

In this regard, the United States Administration must understand that:

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bilateral India-Pakistan talks can never resolve the Kashmir conflict. That formula has proven utterly bankrupt for more than 50 years, and nothing has changed but the faces;

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it is implausible to believe that India and Pakistan will either cap or renounce their respective nuclear genies after they have escaped the South Asian bottle unless the chief source of antagonism - Kashmir - is resolved;

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she must assume the position as a leader and take an active role in finding a lasting settlement on Kashmir. It is obvious that no settlement can last if it is not based on justice for the people of Kashmir and recognition of their inherent rights;

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the Governments of India and Pakistan should include the Kashmiri leadership - the All Parties Hurriyet Conference that represents the broader spectrum of the opinion of the people of Kashmir - with the peace process;

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an appointment of a special envoy on Kashmir is indispensable - a person of an international standing, like President Carter, Lady Thatcher or President Mandela is of an utmost importance.

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she should initiate an intra-Kashmiri dialogue at a location outside South Asia with the participation of the leadership of the All Parties Hurriyet Conference (APHC), the Kashmiri Pandits, the Dogras, the Buddhists, and the prominent political parties of Azad Kashmir. The Indian government must be persuaded to issue travel documents to the leaders of the APHC.

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the safety of those leaders who travel abroad and who participate in human rights conferences must be guaranteed. A disturbing trend is now apparent. When Kashmiri human rights activists are invited or attend United Nations and other human rights fora, the Indian Government punishes those individuals either directly or through family members or professional associates. The latest example is Mr. Abdul Majid Banday, Mr. Muhammad Amin Bhat and Mr. Raja Tufail, [all human rights activists] who were on their way to Geneva to attend the United Nations Commission on Human rights, and whose passports were confiscated and were denied the right to travel aboard. My own friend and Chairman of the Kashmir Commission of Jurists, Jalil Andrabi was about to embark by air to attend a session of the United Nations Commission on Human Rights, Geneva. But in an instant, he was car jacked by the Indian Border Security Forces and his corpse left floating in the Jehlum river. Mr. Andrabi's body was mutilated beyond recognition. His assassination was meant as a horrifying message to human rights defenders in Kashmir. We seek US Government support for unfettered access of those who speak out against human rights violations to international fora.

#### Policy Options for India, Pakistan and Kashmiri Leadership:

I would like to propose seven points to be considered by all parties to the dispute, Governments of Pakistan and India and the Kashmiri Leadership [All Parties Hurriyet Conference], if peace needs to be restored in Kashmir.

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The Kashmir dispute must not be resolved militarily. The presence of over 700,000 Indian military and paramilitary forces have made the life of an ordinary Kashmiri like hell. There can be no progress in talks if they are not accompanied by practical measures to restore an environment on non-violence in Indian Occupied Kashmir. In the past, India has not desisted from its human rights violations while announcing its interest in talks. India has to be told that peace cannot be held, nor continued as long as terror reigns over Kashmir. Kashmir issue is a political issue and needs to be resolved through peaceful political negotiations. Negotiations cannot be carried out in an atmosphere of violence and uncertainty. Therefore, all military activities must come to an end.

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There cannot be and should not be any preconditions from any party, other than commitment to negotiations. Conditions like the talks within the Indian Constitution will never let launch a peace process.

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All parties to the dispute must get seriously engaged in search of a final settlement. The talks can only be useful if they reflect a sense of urgency and prepare the ground for an earnest effort to frame a step-by-step plan of settlement. Mere continuance of talks - and that too, at a leisurely pace - will in no way defuse the situation. Unintentionally though, it will mock the agony of the people of Kashmir rather than assuage it.

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The neutral outside mediation has to be considered. Since bilateral negotiations between India and Pakistan have proven sterile for over half a century, I strongly believe that third party mediation and intervention is absolutely essential to resolve the conflict and save the entire region from a nuclear holocaust. The United States and the United Nations have proven effective in many situations of the world. However, alternatively, a person of an international standing like President Nelson Mandela could be appointed either by the US or by the UN as a mediator to facilitate the negotiations between all parties concerned.

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We do not need to invoke principles because, principles can easily be twisted and they can lend themselves to various interpretations. But the principles that are involved in the Kashmir dispute shall remain guiding force in any final settlement. It is the inherent right of the people of all zones of Kashmir to decide their future according to their own will and that it is impossible to ascertain the will of the people of Kashmir except through a fair and impartial plebiscite, free from any condition of coercion, intimidation or compulsion.

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Since we are concerned at this time with setting a stage for settlement rather than the shape the settlement will take, we believe that it is both untimely and harmful to indulge in, or encourage, controversies about the most

desirable solution. Any attempt to do so at this point of time amounts to playing into the hands of those who would prefer to maintain a status quo that is intolerable to the people of Kashmir and also a continuing threat to peace in South Asia. We deprecate raising of quasi-legal or pseudo-legal questions during the preparatory phase about the final settlement. It only serves to befog the issue and to convey the wrong impression that the dispute is too complex to be resolved. Such an impression does great injury to our cause.

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Last and perhaps the deciding factor is that the peace will not come to Kashmir without justice and justice shall not prevail without sacrifices. Each party to the dispute will have to be ready to make some concessions and compromises to find a lasting solution of the long awaited tragic dispute.

Conclusion:

The solution of these sufferings and pain in Kashmir is both urgent and vital. It is far more populous and vital area than other trouble spots in the world. The pain felt by the people of Kashmir is no less devastating than that felt by the people of East Timor. The mass rapes by the Indian occupation forces are no less humiliating in Kashmir than in Bosnia. The torture and imprisonment in Kashmir is no less intense than it was in Kosova. In fact, the pain, suffering and humiliation in Kashmir is intensified because the people of Kashmir have been under occupation for over half a century.

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