

Resolution of the Kashmir dispute: a way forward

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The State of Jammu and Kashmir is located in the heart of Asia, with historical links to both South and Central Asia. Kashmir is the only State in the world which shares its borders with three nuclear powers, i.e., India, Pakistan and China. The State spreads over 86,000 square miles, more than three times the size of Belgium, the Netherlands and Luxemburg combined. It is larger than 103 sovereign countries of the world. The population of Jammu and Kashmir is 17 million (estimate), including 1.5 million refugees in Pakistan and 1.1 million expatriates. The size of its population is larger than that of 125 member States of the United Nations.

Introduction

The Kashmir issue, simply, is the Kashmiris assured by the entire international community represented by the United Nations that they would be able to decide their future by a free vote. Until now, this assurance has not been honoured.

The Kashmir question is one of the oldest unresolved international problems in the world. The experience of six decades has shown that it will not go away and that an effort is urgently required to resolve it on a durable basis. It is indisputable that, whatever be the rights and wrongs in the equation as far as arguments go, real populations with a pronounced sense of identity of their own, with their sufferings and their aspirations rather than just legal title and merit are involved.

Background

When Great Britain was liquidating its empire in the subcontinent, it partitioned British India into two independent countries, i.e., India and Pakistan. As this settlement also meant the end of British paramountcy over the autonomous principalities, called states. These were supposed either to merge with one of the two countries in accordance with the wishes of the people and the principle of partition or to remain independent. Kashmir was a predominantly

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Muslim-majority state. Besides, it was far more contiguous with Pakistan than with India. It was, therefore, expected either to accede to Pakistan or to remain independent. But the Maharaja (ruler) was Hindu and he rejected the first option and could not manage the second.

Faced with the insurgency of his people, joined by a few hundred civilian volunteers from Pakistan, the Maharaja fled the Capital, Srinagar, on October 25, 1947, and arranged that India send its army to help him crush the rebellion. India, coveting the territory, set one condition on its armed intervention: the Maharaja must sign an Instrument of Accession to India to which he agreed. However, India did not wait for his signature and flew its troops into the State. An eminent British historian, Alastair Lamb, convincingly suggests that the document is fraudulent.

Though long planned and swiftly executed, the annexation of Kashmir could not be a simple affair for India. By ostensibly preserving the principle that in cases of conflict between the rulers and their people's wishes, the latter must prevail; India attached a condition to the transaction with the Maharajah: the accession was made subject to 'reference to the people.'

The stipulations were echoed by icons of India's politics. Mahatma Gandhi amplified on October 30, 1947, that, "[Kashmir's] accession [to India] was provisional upon an impartial plebiscite being taken by Kashmiris." Pandit Jawaharlal Nehru, India's celebrated first prime minister, declared on January 2, 1952: "We have taken the issue to the United Nations and given our word of honour. We have left the question of final solution to the people of Kashmir." Nehru also said on November 2, 1947, "We have declared the fate of Kashmir is ultimately to be decided by the people. That pledge we have given not only to the people of Kashmir but to the world. We will not and cannot back out of it."

Kashmir question at the United Nations

The right to self-determination of people is a basic principle of the United Nation Charter which has been reaffirmed in the Universal Declaration of Human Rights and applied countless times to the settlement of many international disputes. The applicability of the principle to the specific case of Jammu and Kashmir has been explicitly recognized by the United Nations. It was upheld equally by India

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and Pakistan when the Kashmir dispute was brought before the Security Council. With the establishment of India and Pakistan as sovereign states, Jammu and Kashmir was not part of the territory of either. The two countries entered into an agreement to allow its people to exercise their right to self-determination under impartial auspices and in conditions free from coercion from either side. The agreement is embodied in the two resolutions of the United Nations Commission for India and Pakistan (UNCIP) explicitly accepted by both governments.

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.

There are certain characteristics of the situation in Kashmir which distinguishes it from all other deplorable human rights situations around the world.

- i. It continues to prevail in what is recognized under international law as a disputed territory.
- ii. 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 a determination 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 in the first place.
- iii. It is a paradoxical case of the United Nations being deactivated and rendered unable to address a situation to which 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 peacekeeping operations of the U.N. The force is stationed in Kashmir to observe the cease-fire between India and Pakistan.
- iv. Indian delegate at the Security Council, N. Gopaldaswami Ayyangar, said on January 15, 1947, that “the question of the future status of Kashmir, whether she should withdraw from her accession to India, and either accede to Pakistan or remain independent, with a right to claim admission as a Member of the United Nations – all this we have recognized to be a matter for unfettered decision by the people of Kashmir, after normal life is restored to them.”

Position of democratic powers

When the Kashmir dispute erupted in 1947-1948, the United States, Britain and France 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 Resolution Number 47 which was adopted by the Security Council on April 21, 1948, and which was based on that unchallenged principle. Following the resolution, the U.S., as the leading member of the United Nations Commission for India and Pakistan, adhered to that stand.

The United States, Britain and France have traditionally been committed supporters of the plebiscite agreement as the only way to resolve this issue. They sponsored all of the Security Council resolutions which called for a plebiscite. Their commitment was indicated by a personal appeal made by America's President Harry Truman and Britain's Prime Minister Clement Atlee that differences over demilitarization be submitted to arbitration by the Plebiscite Administrator, a distinguished American war hero: Admiral Chester Nimitz. India rejected this appeal and later on objected to an American acting as the Plebiscite Administrator.

U.S. position

The part played traditionally by the U.S. government is apparent from:

- a) The appeal made by President Harry Truman (Democrat) that any contentious issues between India and Pakistan relating to the implementation of the agreement must be submitted to arbitration;
- b) The appointment of an eminent American, Admiral Chester Nimitz, as Plebiscite Administrator;
- c) The bipartisan expressions of support for the U.S. position from statesmen as different otherwise as Adlai Stevenson (Democrat) and John Foster Dulles (Republican);
- d) The appeal personally made in 1962 by President John F. Kennedy (Democrat) to the President of Ireland to the effect that Ireland sponsor a resolution in the Security Council reaffirming the resolutions of the Commissions;
- e) 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

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- sponsorship of twelve substantive resolutions of the Council to that effect;
- f) The protracted negotiations conducted by another distinguished American, Frank Graham, from 1951 to 1958 in the effort to bring about the demilitarization of Kashmir so that holding of a free and impartial plebiscite could be made possible;
 - g) The pronouncement made by President Bill Clinton (Democrat) in 2000 that Kashmir was the most dangerous place in the world;
 - h) The clarification made by President George W. Bush (Republican) on February 22, 2006, that the United States supports a solution to Kashmir dispute acceptable not only to India and Pakistan but also to “citizens of Kashmir”.
 - i) The statement of Candidate Obama (Democrat) on October 30, 2008, “We should probably try to facilitate a better understanding between Pakistan and India and try to resolve the Kashmir crisis so that they [Pakistan] can stay focused not on India, but on the situation with those militants.”
 - j) Candidate Obama also said on September 25, 2008, “I will continue support of ongoing Indian-Pakistani efforts to resolve Kashmir problem in order to address the political roots of the arms race between India and Pakistan.”

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.

Current U.S. engagement

It is commonly acknowledged that, with India and Pakistan both being nuclear-weapon states directly confronting each other, this dispute is potentially the most dangerous in the world. It should, therefore, be a major interest of the U.S. to prevent this dispute from exploding into a conflict, which can be catastrophic for a large proportion of the human race. Yet, ever since the start in 1989-90 of the popular uprising in Kashmir against alien military occupation, which accentuated the character of the dispute, the U.S. has been content with playing often a passive, at times a tentatively advisory and marginal role.

It has remained unmoved by the killing of anywhere between 65,000 (India's figure) and 100,000 (popular estimate) people in Kashmir, accompanied by acts of rape and torching of localities. It has declared that it will not exercise mediation unless both parties ask for it. Since India is uncompromisingly

opposed to U.S. mediation and since the United Nations also has been made inactive, the result is the total absence of a guiding hand towards a just, peaceful and lasting resolution of the conflict.

It is symptomatic of the U.S. approach that greater emphasis is placed on the "reduction of tensions" between Pakistan and India than on the settlement of the core issue of Kashmir. This gives importance to superficial moves and temporary solutions even though it is known that such moves and solutions do not soften the animosities of the parties nor allay the life and death concerns and anxieties of the people most directly affected.

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It is hard to understand why, contrary to its traditional principled stand on the Kashmir dispute, the U.S. has been in recent years treating the problem as if it were an uncharted terrain about which no road map exists. The United Nations had at its inception devoted immense labour and thought, extending over a hundred meetings of the Security Council with active U.S. participation to its solution. The fact cannot be dismissed that the terms of settlement the United Nations worked out did elicit the signed agreement of both India and Pakistan.

True, sixty-four years have passed since the resolutions were passed, but as many years have gone since the Charter of the United Nations was adopted. Lapse of time does not invalidate international agreements. However, India, Pakistan and the freedom-loving Kashmiris must signify their willingness to consider any arrangement which conforms to the same principle as did the United Nations resolutions and may be more feasible in the changed circumstances of today.

The current uprising

Kashmir could not remain untouched by the tide of freedom that rolled across the world in the late 1980's, sweeping away the Soviet military invasion of Afghanistan in 1988 and Iraqi occupation of Kuwait in 1990, South Africa's 70-year-old rule over Namibia in 1990 and unpopular establishments in Eastern Europe. Inspired by it and also encouraged by the emergence from limbo of the United Nations as a central peace-making agency, the people of Kashmir

intensified their struggle against the unwanted and tyrannical Indian occupation. Their uprising entered into its current phase in 1989.

The scale of the popular backing for it can be judged from the established fact that virtually all the citizenry of Srinagar (Capital city of Kashmir) - men, women and children - came out multiple times on the streets to lodge a non-violent protest against the continuance of Indian occupation. The fact that they presented petitions at the office of the United Nations Military Observers Group shows the essentially peaceful nature of the aims of the uprising and its trust in justice under international law. At times, the number of people in these peaceful processions exceeded one million. India has tried to portray the uprising as the work of terrorists or fanatics. Terrorists do not compose an entire population, including women and children; fanatics do not look to the United Nations to achieve pacific and rational settlement.

The human rights situation in Kashmir

Kashmir continues to bleed. We see the horrendous brutality, unstopped and unpunished barbarities unleashed against the defenseless population. A deliberate, systematic and officially sanctioned massive campaign of brutal oppression launched against the people of Kashmir is still on the rise. There is a deliberate targeting of youth in flimsy hopes to crush a legitimate and popular uprising against occupation. The gravity of the situation in Kashmir can only be imagined but not explained. Whatever be the level of violence committed by over 700,000 Indian military and paramilitary forces, the far more important and poignant aspect of the situation is the acute suffering of the whole population caused by frequent curfews, disruption of normal life, arrest and detention of innocent civilians by the occupation authority. This is a situation without precedent in the South Asian subcontinent.

The abuses are so pervasive as to extend beyond those directly affected. The pattern of abuses reaches every man, woman and child in the Valley of Kashmir. The people live under the constant threat of the abuses. The prevalence of military personnel and bunkers serve as a constant reminder to Kashmiris of the potential for them to fall victim to such horrible occurrences.

The silence of world powers

For many reasons, the world powers have remained silent on the human rights situation in Kashmir. That silence has had deadly consequences for the people of Kashmir. The situation in Kashmir has been met with studied

unconcern by the United States and other world powers. This has given a sense of total impunity to India. It has also created the impression that the world powers are invidiously selective about the application of the principles of human rights and democracy.

It has been most unfortunate that since the beginning of the resistance in Kashmir in 1989, India has taken full advantage of U.S. policy, regardless of the intent of that policy. Pronouncements to the effect that India and Pakistan must settle the dispute bilaterally have been taken by Indian policy-makers as endorsement of their stand. They may not like the balancing statement that the U.S. regards the whole of Kashmir as disputed territory and regard it as immaterial.

Tripartite negotiations

The history of past sixty-four years testifies to the fact that the bilateral talks between India and Pakistan have been always fruitless. In fact, any attempt to strike a deal between any two parties without the association of the third party, will fail to yield a credible settlement. India and Pakistan tried at Tashkent in 1966 and at Simla in 1972. These agreements failed because they sought to bypass the primary party – the people of Jammu and Kashmir. Similarly, the agreement between Sheikh Abdullah and Nehru in 1952; and the pact between Sheikh Abdullah and Indira Gandhi in 1975; sought to bypass Pakistan, leaving the basic issue of Kashmir unsettled. So, the time has come that talks be tripartite.

To regain much of what has been lost, the people of Kashmir have been determined to develop a political consciousness to present their peaceful objectives to the international community. This consciousness is embodied in the All Parties Hurriyet Conference (APHC), which represents the broader spectrum of the opinion of the State of Jammu & Kashmir. The stated objective of APHC is to determine a peaceful and lasting solution to the conflict through dialogue, with the participation of all parties, India, Pakistan and the leadership of the people of Kashmir. APHC's view is one of inclusion. APHC believes that there is nothing to be gained by isolating groups with varying opinions. Their agenda for peace is based primarily on building confidence among the parties to the conflict.

Line of Control as an international border

An indication of the misplaced focus is the wrong-headed talk about the "sanctity" of the line of control in Kashmir. It is forgotten that this line continues to exist only because of the international agreement which had been concluded between India and Pakistan with the full support of the United States. This line was originally formalized by that agreement as a temporary cease-fire line pending the demilitarization of the State of Jammu and Kashmir and the holding of a plebiscite to determine its future. As long as it will remain clamped down on the state, it will continue to impose a heavy toll of death on the people of the land. They have had no hand in creating a line which has cut through their homes, separated families and, what is worse, served as a protecting wall for massive violations of human rights. They are not resigned to its becoming some kind of a border.

Autonomy as an option

Equally distressing has been the reported canvassing by some quarters of the idea of autonomy for Kashmir within the Indian Union. Kashmiri leadership has the support of mass opinion for its stand that this is totally unacceptable as:

- (i) It would be liable to revision or repeal by the Indian legislature, with or without a change of Administration;
- (ii) Most importantly, it would not be incorporated in an international treaty or agreement with the expressed support of all states neighbouring Kashmir as well as the permanent members of the Security Council;
- (iii) Kashmiris have had the experience of a limited autonomy, which was first practiced under a personal understanding between Nehru and Abdullah and later provided for by Section 370 of the Indian Constitution. It was eroded and eventually whittled away by force of circumstances.

Brokering a deal

There are suggestions in some quarters that the United Nations should broker a deal on Kashmir between India and Pakistan. Kashmiris wish to stress that their land is not a real estate that can be parcelled out between two [non-resident] disputants but the home of nation with a history far more compact and coherent

than India's and far longer than Pakistan's. No settlement of their status will hold unless it is explicitly based on the principles of self-determination and erases the so-called line of control, which is in reality the line of conflict.

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Indian intelligentsia

Of late, there have appeared positive signs of a change in Indian thinking on Kashmir. As a matter of fact, there have always existed saner elements in India who have questioned both the ethics and the practical advantage of India's intransigence on Kashmir. As they have received little support from outside, they have remained mostly subdued. But the apparent failure of India's policies, the tattered regime it maintains in Indian-occupied Kashmir and the losses it has incurred to sustain in Kashmir despite the deployment of an overwhelming force to brutalize the people into submission – all these seem to be bringing home to more and more people in India, even in its army, that the game is not worth it. But this constructive trend will vanish if the U.S. is seen as tolerant of India's obduracy and unmindful to healthier opinion in India itself about what is best for India.

Arundhati Roy, an eminent scholar and Booker Prize winner from India said at Asia Society, New York, on November 11, 2011, "More than 700,000 troops were concentrated in the tiny valley, with check points at every nook and corner of Kashmiri towns and cities, the huge Indian presence is in sharp contrast with 160,000 U.S. troops in Iraq." She also wrote in daily *Guardian* on September 29, 2011. "... the state human rights commission was finally shamed into officially acknowledging the existence of 2,700 unmarked graves from three districts in Kashmir. Reports of thousands of other graves are pouring in from other districts. Perhaps it is insensitive of the unmarked graves to embarrass the government of India just when India's record is due for review before the UN human rights council."

Vir Sanghvi, former editor of *Hindustan Times*, New Delhi wrote in the *Hindustan Times* on August 16, 2008, "Why are we still hanging on to Kashmir if the Kashmiris don't want to have anything to do with us? ...I reckon we should hold a referendum in the Valley. Let the Kashmiris determine their own destiny. If they want to stay in India, they are welcome. But if they don't, then we have no moral right to force them to remain. .It's time to think the unthinkable."

Columnist Swaminathan Aiyar wrote in *The Times of India*, New Delhi, “We promised Kashmiris a plebiscite six decades ago. Let us hold one now, and give them three choices: independence, union with Pakistan, and union with India. Let Kashmiris decide the outcome, not the politicians and armies of India and Pakistan.”

Gautum Navlakha, editor of *Economic and Political Weekly* said, “long and short of it is that Indian state has become its own worst enemy. There is no point blaming Pakistan, fundamentalists, human rights activists and the usual alibis used by the Indian state. It is time to accept the reality that the people of J&K have no confidence in the Indian state.”

Pankaj Mishra wrote on August 14, 2010, that the protesters in Kashmir have a broader mass base than the Green Movement had in Iran. But no colour-coded revolution is heralded in Kashmir by Western commentators. He wrote in “The New York Review of Books” on December 8, 2009, “The Road to stability in Pakistan and Afghanistan runs through the Valley of Kashmir.” He also wrote in the *Guardian* on August 13, 2010. “...the killing fields of Kashmir dwarf those of Palestine and Tibet. In addition to the everyday regime of arbitrary arrests, curfews, raids, and checkpoints enforced by nearly 700,000 Indian soldiers, the Valley's four million Muslims are exposed to extra-judicial execution, rape and torture; with such barbaric variations as live electric wires inserted into penises.”

Role the United Nations can play

I believe that the United Nations 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 Nations 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.

The United Nations 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 with regard to Kashmir by initiating a peace process. This can take the shape of a polygonal dialogue – U.S., China, India, Pakistan and Kashmir – or an appropriate use of

the newly developed procedures and mechanisms 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 UN 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 straitjacket of rigid adherence to old texts. But if a solution of the problem will be a graduated process, consisting of incremental measures, the violence from all sides in Kashmir needs to be brought to a quick end in order to set the stage for a solution.

A way forward

Once again, Kashmir is living proof that it is not going to compromise, far less abandon, its demand for Azaadi (freedom) which is its birthright and for which it has paid a price in blood and suffering which has not been exacted from any other nation of the South Asian subcontinent. Compared to the sacrifice Kashmir has had to endure, India and Pakistan themselves gained their freedom through a highly civilized process.

That is a most poignant truth. But even more bitterly ironical is the contrast between the complex and decades-long agony the Kashmir issue has caused to Kashmiris, to Pakistan and to India itself and the simple and rational measures that would be needed for its solution. No sleight of hand is required, no subtle concepts are to be deployed, and no ingenious deal needs to be struck between an Indian and a Pakistani leader with the endorsement of the more pliable Kashmiri figures. The time for subterfuges is gone. All that is needed is going back - yes, going back - to the point of agreement which historically existed beyond doubt between India and Pakistan and jointly resolving to retrieve it with such modifications as are necessitated by the passage of time.

However, despite the passage of decades, nothing has been irretrievably lost. The principle that the disposition of the territory in dispute must be in accordance with the will of its people can still be implemented as truly as it would have been in 1950. The plan of action that would ensure for all components of the State as it existed on August 15, 1947 equal representation and equal freedom to decide whether to continue the status quo or to opt for a new dispensation is not difficult to work out. It can be done by the UN Security Council to entrusting the All Parties Hurriyat Conference with drafting of a final political dispensation. Several binding principles should inform the process to allay security concerns of

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Kashmir's neighbours and its non-Muslim minorities, such as Sikhs, Buddhist and Hindus.

Kashmiris should be open to a constitutional dispensation that answers all of India's legitimate national security and human rights concerns. With regard to the former, they should be willing to explore permanent neutrality for Kashmir along the model of the 1955 Austrian State Treaty and a renunciation of war or the threat of force in international affairs along the model of Article 9 of the Japanese Constitution. They should be willing to consider abandoning a military force like Costa Rica, Haiti, and Panama. Moreover, they should hold no objection to providing community quotas in government offices along the lines of the 1960 Constitution for the Republic of Cyprus to safeguard against invidious discrimination of any religious or ethnic group, i.e., Pandit, Buddhist and Sikh alike.

Moreover, for an initial period of five to ten years, each minority group should enjoy a fair quota of representation in the civil service and judiciary. And, cases that raise human rights questions should be appealable to the World Court for authoritative judgments.

None of these pillars would be amendable, and Kashmir's political dispensation would be guaranteed by the United Nations Security Council. Furthermore, any resident disenchanted with Kashmir's political scheme should be entitled to reasonable relocation assistance to make a new home in either India or Pakistan.

These stipulations would guarantee that no neighbour would enlist Kashmir to advance their often competing national security objectives.

When the Secretary -General of the United Nations has certified to the Security Council that the APHC draft political charter has been faithful to its guiding principles, a plebiscite would be organized and administered in Jammu and Kashmir by a United Nations Plebiscite Administrator. A two-thirds majority would be required to ratify the constitution and to settle the conflict of Kashmir once and for all.

If independence were chosen, the United Nations Security Council would assume transitional plenary sovereignty over all of Kashmir while preparing elections for a constituent assembly, as occurred with success after East Timorese and Southern Sudan voted for nationhood.

Can any reasonable Indian, Pakistani or Kashmiri voice be raised against this blueprint resolution to the chilling Kashmir tragedy of epic proportions? Shouldn't it be at the apex of a negotiations agenda between the three chief parties to the disputed territory - India, Pakistan and Kashmiris - mediated by the United Nations Security Council?

Conclusion

Win-win solutions are further important because they safeguard against prospective bitterness or humiliation that are the fuel of new conflict. If one party to a solution feels exploited or unfairly treated, then national sentiments to undo the settlement will naturally swell. We must not belittle, embarrass, or humiliate any party. Every participant should be treated with dignity and humanity. Charity, not the triumphal, should be the earmark of the negotiating enterprise. Also, we should not sacrifice the good on the altar of the perfect. Compromises are the staple of conflict resolution. To achieve some good is worthwhile even though not all good is achieved.