



## **A STUDY OF POLITICAL AND LAWFUL CONSTITUTIONAL HISTORY OF (1947-1990) IN KASHMIR NARRATIVES**

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### **ABSTRACT**

One of the main conflicts prevailing in South Asia today is that of the row over Kashmir. It has always been the key subject of debate both regional and globally due to the long history of war, the states involved in the conflict and their geopolitical role. It is necessary to engage in historical analysis in order to understand the present situation. The photograph of the conflict is incomplete with the selective evidence selected from both Indian and Pakistani historians and to some degree from kashmiri scholars. The chronology of various political activities should not only be tracked, but also discussions and studies should also be investigated. The paper attempts to analyse many accounts of the past in Kashmir from 1947 to 1990 about political and constitutional changes.

**KEYWORDS:**Political, Lawful, Constitutional History, Kashmir Narratives, India

### **INTRODUCTION**

The most constant theme, however, is its beauty and the desire so frequently expressed that Kashmiris should live peacefully because they live in a splendid setting. The Principal States of Jammu and Kashmir, established in 1846, included many regions and principalities once independent of each other: Kashmire valley, Jammu, Ladakha, Baltistan, Mirpur, Poonch,

Muzafarabad, Gilgit, Nagar and Hunza, the smaller Kingdoms and the hills of other regions. The government occupies an area of around 84,000 m<sup>2</sup> with just one-tenth of the area in the valley. The state is currently essentially divided between India and Pakistan in the 'Line of Control' (LoC). The Ladakh portion known as the Aksai Chin is also claimed by China. It has been estimated that there is around 12 million people on both sides of the LoC. The important base of policy was the Kashmir valley of Kashmir. Although the Muslims dominate the Kashmir region, in addition to a small number of Buddhists in Ladakh, there are considerably many Hindus and Sikhs who historically lived in the Jammu Region and the valley. Kashmir has been the centre of tension between India and Pakistan for the last six decades. In Kashmir, the changes of policy between Kashmiri leadership vis-a-vis to Delhi and policy changes between India and Pakistan over Kashmir have occurred. There have been political and constitutional reform. In order to grasp the dynamics of the Kashmir dispute, we must capture the narratives of these shifts.

### **Pre-1947 period**

As an independent political body, the British Colonial Government established the present divided state of Jammu and Kashmir in 1846. The British awarded Maharaja Gulab Singh a vassal who was defeated in appreciation of the neutrality exercised at that time by the ruler of Jammu and Kashmir during the initial Anglo-Sikh war. Therefore, on the 16 March 1846, under the Treaty of Amritsar, the State of Jammu and Kashmir, by what means a selling deed, came under the law of Dogra, for a sum of Rs. 75,00,000, which amounts to a deed of sale (Lamb, 1991). The newly formed Jammu and Kashmir entity was then a sovereign entity with a sovereign superior of the British Crown in ranks of princely states, numbered 561 at the time. In political governance, it meant that Jammu and Kashmir were not ruled by the viceroy of India. His ruler was sovereign with a 'political representative' of the British crown as a certain of 'paramount authority' in all domestic affairs, both with regard to defenders and for foreign affairs. The conquest in the northeast of Gilgit and in the east of Ladakh by Maharaja Gulab Singh began. By his autocratic rule, he strengthened his grip on his kingdom (Rai, 2004). The

Doger rule was a century long, primarily undemocratic governance and dictatorship, which provoked resentment among Cashmiers in Kashmir (1846 - 1947).

### **Instrument of Accession**

The sub-continent was divided into India and Pakistan by approximately 562 Primary states. The Principal States were classified into three major categories: a) those with absolute legislative and jurisdictional authority in principle; b), those with power over which the British had some formal intervention in domestic management and c) landed landowners with very restricted governmental rights. It was the Indian Government Act of 1945 which provided a basis for either India or Pakistan for Principal States' accession. The first group rulers, or the so-called fully-powered countries comprising the Principal State of Jammu and Kashmir, had the option to join a proper dominion by signing an accession instrument which had transferred the three competences - Security, External Relations and Communication - to the domain. The Maharaja of Jammu and Kashmir displayed a reluctance to join either of the two dominions against the background of the division of the Subcontinent into India and Pakistan. He thought that if he remained independent, his interest would be better served (Bose, 2003; Malik 2005). In a press release of his deputy Prime Minister, R- Batra, it was made clear that we plan to maintain friendly ties with Pakistan and the Indian Union. Despite the persistent rumours, either India or Pakistan have no intention of joining. The Maharaja told me that its goal was to make Kashmir eastern Switzerland - a fully neutral state [I]. India was not prepared for an agreement of this kind. It could not stay independent long before the Princess State of Jammu and Kashmir. The course of events was totally changed by a 'tribal invasion' of the North West Frontier and the Maharaja's application for military support from India. On 22 October, 1947, the tribes of Afridis, Wazirs, Masuds and Swatis launched an assault along the road to the Jhelum valley and could hardly enter Baramullah, a town 40 kilometres from Srinagar with the Maharaja forces resistant. Those tribesmen in the city of St Joseph's Convent could not enter Srinagar because they were expected to engage in the looting and rape of Baramullah (Akbar, 1991). The Maharaja appealed to the government of India urgently on 24 October 1947. Before Lord



Mountbatten sent some assistance, he called for legal accession formalities that would be temporary only by representative public meetings "by referendum, plebiscite, election or even by implantable methods" (Campbell-Johnson, 1972). In the absence of a king, Sheik Abdullah, who was recently released from prison, mobilised the National Conference supporters to protect the indigenous militia of Srinagar, [iii] Hardly pressed by such events, the Maharajan signed an Instrument of Accession of 26 October 1947, On the occasion of the warning of the possible assistance of India, the Maharajah fled to the Jammu with his family and valuable land. He handed over to VP Menon, an emissary of Indian government in Jammu the text of the 'Instrument of Accession.' Before sending Indian forces, the Indian Government had insisted on accession and had legal rights to interfere in Kashmir. The first Indian airborne units landed in Srinagar on October 27, 1947 and compelled the tribesmen to retire with the assistance of the National Conference.

### **National Conference Administration 1948 - 1953**

In March 1948, Sheik Abdallah became, with the title of Prime Minister, the unqualified head of the Provisional Government of Jammu and Kashmir. Before a Constituent Assembly could be elected the new government will prevail. In implementing its Naya Kashmir plan, the Interim Government was involved. The Naya Kashmir Manifesto presented by the National Conference clearly was based on Jacobian idea of common sovereignty, which was supplemented by a generous boltshak in the socio-economic sections (Bose, 2003). Abdullah argued in the Naya Kashmir proposals strongly that the Jammu and Kashmir should be turned into an independent state and identified it as South Asian Switzerland, perhaps a free alliance with India but not part of it. This Naya Kashmir proposal can be traced, according to Widmalm (2002), to modern nationalism, articulated as separate from Indian and Pakistani nationalism. The main thrust of the agricultural reforms started immediately with the adoption of this proposal. The 1950 Major Landed Estates Law abolished the maximum land ownership at 22.5 acres, the remainder being reserved for tenants. Since most of the farm land in Kashmir was directly owned by the Maharaja or its jagirdars and a small class of landowners, who most of whom were Hindus Jammu, it gave

rise to a sense of economic power loss following the loss of political power. Akbar (1991) argues that, on the one hand, this programme of agricultural reform has been in favour of the peasant population and, on the other, has improved the farmers' relations with India because of their understanding. In 1951, plans were initiated for holding a constitutional Assembly in Srinagar by the Government of the National Conference. Pakistan objects to this motion and raises the problem in the United Nations where the Security Council, in response to a resolution at the end of March 1951, informs the authorities concerned that Jammu and Kashmir's final decision will be based on the people's will, as expressed through the democratic method of democracy and impartiality. Nevertheless, the Government of the National Conference took over and the election of the constituent assembly on 30 April 1951 was declared for 75 seats, while 25 for the Azad Kashmir region were reserved. Although the elections were to be the first "free and fair" since the rule of Maharaja was reversed, they set a horrible precedent for elections to come.

43 national conference candidates were unopposed in the Kashmir valley and Ladakh and latter retirement were made by the two non-national congressional candidates. After 13 candidates nominated were rejections, Praja Parishad representing Jammu Hindus was boycotted and the only other tolerably organised party in the state (Korbel, 1954; Lamb, 1991). For the opposition, there was no political room left. Thus, a Constituent Parliament was created by an overwhelming majority in the National Conference, and by the slogan 'one chief' (Abdullah), 'one party' (Bose, 2003). On 31 October 1951 the Constituent Assembly convened. The "Day of Destiny" was renamed Sheik Abdullah (Akbar, 1991). The founding of the Constituent Assembly has not brought the accession talks to a close. In his opening speech to the Constituent Assembly Abdullah spoke of the Kashmir status vis-à-vis India and Pakistan, apart from explaining the tasks for the constitution, the destiny of the royal dynasty and the question of compensating the former landlords.

### **Constitutional Changes and Politics of Plebiscite (1953- 1973)**

A new political age in Kashmir was after 1953. There have been several constitutional amendments to further Kashmir's inclusion in the Indian Union. The Abdullah's absence in Kashmir policy however was felt but the call for a plebiscite, backed by different religious-political parties, was not terminated. The capture of Mr Abdullah followed the detention, under the Public Safety Act, of other leaders of the National Conference including former Cabinet Minister Afzal Beg (Bose 2003). Major demonstrations accompanied the overthrow of Abdullah and the use of repressive police tactics to oppress demonstrators. Abdullah and his colleagues were primarily charged with inciting communal disharmony, facilitating hostile feelings against India and catastrophe in international correspondence (Malik, 2005). Also accused of corruption is the Abdullah administration. In Srinagar the new administration was replaced and Abdullah symphonics were weaned out of the leadership of the National Conference and by the purged Constituent Assembly in October, Bakshi received a unanimous vote of confidence. In his dual capacity as prime minister, Bakshi showed loyalty to New Delhi by not challenging whether Jammu and Kashmir were incorporated into India, and was approved by the Kashmiris as their true leader. The government of India provided Bakshi with financial assistance. He made concessions to the Cashmereis by part restoration of free trade, easing food supply, abolition of salt import duties, increased government salaries and promising corruption research and education reforms. Water schemes, medical and engineering schools, roads through the valley, tourist facilities and Banihall tunnel to boost connectivity with the Jammu (Bhattacharjea). However, the effect was mixed on the public. Mir Qasim (1992), then Minister of Cabinet remembers: the people are pleased with our work but would not forgive the Sheik and would therefore not comply entirely with our development projects. Under the Bakshi government, there have been several constitutional amendments to increase the Jammu and Kashmir's incorporation into the Indian Union. In February 1954, the Constituent Assembly adopted the recommendations of the Committee on Basic Principles established by Bakshi, including the purpose of accession. The financial and fiscal relations between Kashmir and New Delhi were



similar to those between the other Indian states (Lamb, 1991; Bose, 2003). On 14 May 1954 certain provisions in the Indian Constitution relating to basic rights became applicable in Jammu and Kashmir, provided that certain civil liberties could be suspended without any judicial review at any time in the interest of 'protection.' A draught Constitution for Jammu and Kashmir was adopted by the Constituent Assembly in October and November 1955 on the basis that 'Jammu and Kashmir is an integral part of the Union of India' (Noorani, 1990..Kashmir question). The Indian Parliament had the right to legislate on a broader spectrum of subjects than the three referred to in Article 370. (Defence, Communication and Foreign Affairs). The State Constitution recognised the authority of the Indian Supreme Court in 1956 and in 1958, when the Indian Administration Service and the Indian Police Service were authorised to operate within the State, further administrative integration had been achieved. New Delhi was turning the blind eye to corruption and nepotism by Bakshi's stance on Kashmir's inclusion in the Indian Union. For some kind of opposition, there was no political room. The Bakshi regime's vulnerable points out Puri (1993), but he (Nehru) 'argues that India's cases (on Kashmir) revolve now around him and so the Bakshi government must be strengthened, in spite of all its weaknesses.' He further quotes Nehru as saying that politics in Cashmere "revolved around personalities," and thus "there was no democracy material there." The sloga of plebiscite was sleeping for a number of years, until Mirza Afzal Beg, who became its President, relived it with the founding of the Plebiscite Front in 1955. A plebiscite under the UN control was held, armed forces of both nations withdrew from Kashmir, civil liberties restored and free elections were held. The Pebiscite Front was self-determination (Bose, 2003). When it was being crushed by the arrest of Beg and other leaders, its representatives kept making people aware of the genuineness of the right of self-determination of the Kashmiri people in public meetings (Gania, 1986). Abdullah, a member of the Plebiscite Front but a boss, defending the right of self-determination arguing in length about the legitimacy of self-determination and advising India's government to grant self-determination to state citizens under the supervision of international agencies, as the only solution to the Kashmir crisis.

## **Kashmir Accord - Plebiscite to Autonomy**

In order to pave the way for possible negotiations with Abdullah, Mir Qasim has started to loose a number of restrictions on his opponents, especially the Plebiscite Front. The return to Cashmere of Begum Abdullah was granted in April 1972, several Plebiscite members were released, and the order for Abdullah and Mirza Afzal Beg to be interned was lifted in June. Abdullah did not seem to have renounced his own self-destination as expressed in a documented discourse just after his release: his citizens and not India or Pakistan were the supreme arbitrators of the State. We won't encourage anyone to split our houses. We are his proper owners.[xxiii] His status soon changed. He criticised Bhutto openly for intervening in Kashmir politics and expressed interest in negotiations with the India government. He switched from plebiscite to more independence in the Indian Union. On 23 June 1972, at the Hazratbal Sanctuary Abdullah declared that Mirza Afzal Beg had absolute authority for any 'larger Kashmir autonomy' discussion between himself and Delhi.[xxiv] The humiliating defeat in Pakistan in 1971 and the Shimla Agreement were among the reasons behind this change in Abdullah. It also meant that Pakistan should not expect any more political or diplomatic assistance. Akbar said (1991) that the loss of Pakistan in 1971 was not so much the Shimla Agreement that Abdullah was persuaded that there is no much joy left across the frontier. It was a defeat for Pakistan. A former Plebiscite Front member claimed that 'Pakistan's default broke down all pro-self-determination citizens and Sheik Abdullah was no exception, but as leader he was expected to stand firm.'[xxv] Ganai (1984) maintains that plebiscite politics had failed to offer plebiscite dividends, at the UN and at the internal level. Furthermore, Pakistan failed in its place because of its own national and foreign contradictions. The other justification for Abdullah's criticism was his interest in reclaiming primacy. After more than twenty years without influence, he was eager to grab every opportunity that came under the Kashmir Agreement. The fact that secret talks had begun some months before the war in 1971 between the Indian government and Abdullah and Beg and Beg's declaration that they were ready for negotiations, made the Kashmiri people believe that Abdullah was changing his mind on plebiscites.



Farooq Abdullah, Sheik Abdullah's elder son, visited Azad Kashmir in May 1974 to review the mood across the frontier before the final settlement of the Kashmir agreement. Sheik Abdullah was willing to come to Pakistan to pursue a peaceful resolution of Kashmir's conflict on the basis of state people's right of self-determination." He dismissed the arguments that "The right to shape a future for Kashmir alone will be given and no alternative to the will of the people will be accepted." At a convention at Mirpur, where he was present with Maqbool Bhat and Amanuallah Khan from the Kashmir Liberation Front[xxix], he was of the opinion that Kashmir would repeatedly vote for independence in the plebiscite and not for Pakistan (Akbar, 1991). G Parthasarathi was Indira Gandhi's negotiator. DP Dhar and PN Haksar – both Kashmiri Pandits – who were always near Indira Gandhi played a key role in the final settlement for India. Beg suggested during his discussions in the run-up to 1953 the status of Kashmir, which included the transfer of the Jammu and Kashmire constitution fundamental rights clauses, the abolition of the Election Commission authority and the amendment of Article 356 in order to prevent the President's rule from unconstitutional being enforced. India has not granted any of his suggestions. The conclusion of the agreement of Beg and Parthasarathi reaffirmed, practically without amendment, the terms of Kashmir's inclusion in the Indian Republic since 1953. In the opinion of the Parliament of 24 February 1975, "Not one of those proposals could be approved (Akbar, 1991). The State was called 'the Constituent Unit of the Union of India,' while the special status of Cashmere, as enshrined in Article 370 of the Indian Constitution had remained.

### **Decade of Elections and Alliances, 1977 -1987**

By withdrawing the support of the government of Abdullah in März 1977, the state Congress Party attempted to eradicate the 'power divergence,' and demanded the appointment of their leader Mufti Sayeed as chief minister. On the request of Abdullah and by fresh elections, however, the assembly was dissolved by Governor Jha. Three days before the vote was due, Abdullah had a minor heart attack. He told the Kashmiris that, 'this election had become the referendum on their self-respect; they had a chance to prove that the world is their own destiny and nobody from Delhi will dictate their future (Akbar,1991).' The audio tapes from his speech,



captured on his bed, were played all over the valley. Abdullah was really friendly and helpful. It has also been challenged by the Congress and the Janata parties, but a strong majority has also been gained by the National Conference. So Abdullah's National Conference, which was deemed relatively free and equal in 1977, returned to power[xxxiv]. According to Akbar (1991), the results of these elections were variously interpreted by scholars as being an acceptance by the public for Kashmir of India's accession and integration, while Malik (2005) maintained that Abdullah's return was an autonomy demand and not the common mandate of the Kashmir Agreement. The oppressive character of the National Conference became clear in the following years, and the policies of its members differentiated from real concerns to voicing Abdullah's personal loyalty. The National Conference is under the jurisdiction of the Sheik Abdullah family - sons, mothers, and bondwomen. A close partner like Mirza Afzal Beg was expelled from the National Conference (Bazaz, 1978). In the early 1980's, a number of demonstrations were held against supposed regional and religious bigotry at the National Conference of Jammu and Ladakh. Abdullah's last straw was the transfer of the Relocation Bill in the House. By saying that persons who, out of fear or unforgiveness, left Pakistan in 1947 and resided in Azad Kashmir and Jammu State in 1947, continued becoming state residents, Abdullah justified the Resettlement Bill (Ganai, 1984). This Bill received no constructive signal and was ultimately rejected by the Centre. On September 8th 1982 Farooq Abdullah was proclaimed his political successor, in conformity with the destructive tradition of the Subcontinent of the fusion of dynastic and democratic politics (Bose, 2003). The new Chief Minister of State was taken over by Farooq Abdullah. The first controversy facing Farooq Abdullah as the new Chief Minister concerned the resettlement bill passed at the assembly with the assistance of his father's close associates. Governor B K Nehru returned it to the State Assembly and subsequently dropped it. But first the Center decided to create an alliance between the Congress and the National Conference to prove its legitimacy (Malik 2005).

## **Re-emergence of Self-determination movement (Azadi)**

The early days of the existing movement for self-determination, 1989-91, were marked by major public alienation protests in the form of demonstrations, strikes, riots and other forms of resistance to the Indian government. A host of activist groups appeared as violent faces of the famous wave of anti-India on this fertile ground of deep alienation. The entry of a valley-based cell by the Jammu and Kashmir Liberation Front, perhaps opened up military action in the Kashmir Valley (JKLF). It began in the late '60s, when Maqbool Bhat and Amanullah Khan founded it as the Kashmir National Liberation Front and took over an Indian airliner in 1971. (Desmond, 1995). After training in Pakistan in 1989 in order to make public statements about the JKLF manifesto and need for military resistance to Indian dominance, the JKLF cell was the so-called 'HAJY' party at centre of attention. A lot of poll officers declined to perform their duties following the militant's call to boycott the Lok Sabha by-elections in November 1989. (Bose, 2003). Some important figures have been abducted, including Rubiya Sayeed, daughter of former Union Minister of the Interior Mufti Sayeed, in exchange for the release of prisoners from militants. The resignation of Chief Minister Farooq Abdullah was followed by a strengthening of the state of Jammu and Kashmir. From absolute helplessness and uncertainty to inertia and guiltful carelessness, the Center and State Government's initial response to the Kashmiri Insurgency (Schofield, 1996). The governor, Jag Mohan, who ruled the insurgency at the outset did not follow an important but slim line between rebels, activist sympathisers and innocent civilians, according to Punjabi (1991). His recipe was to unleash the State's repressive arm to eradicate terrorism and to subjugate Kashmiris. This was catastrophic, forcing the community to become anti-Indian and turning Kashmiri's most apolitical citizens into aggressive militant supporters. A policy of self-determination was long dominated by the JKLF, which consistently promoted the common concept of democracy, secularism and self-determination among the whole population of Jammu and Kashmir. A number of major militant groups started operating in the valley, primarily in Srinagar, Anantnag, Baramulla and Sopore, apart from the JKLF by 1990-91.

## CONCLUSION

The Hizbul Mujahideen - the Frontal organisation of the Jamat-i-Islami Kashmir, were among the militant groups that had been part of this MUF. In order to join the Islamic Republic of Pakistan, the Islamist groups articulated the Muslim valley movement for the self-determination of the Islamic Movement against the Hindu Indian state. The Islamist voice within the Kashmiri Self-Determination Movement opposed the call for an independent Kashmir based on secular nationalism by nationalist groups like the JKLF. The contemporary freedom is not a monolith, it has been differently conceived by secular nationalistic outfits, such as the JKLF and Islamists such as Jamat-i-Islami. The militant aggressions against government buildings, bridges, buses, police knowledge killings and intelligence agents all led to the government's growing paralysis. Part of the militant strategy was to bully activists in the National Conference so that they could be compelled to disassociate from the Party and potentially result in the political process being broken down. The celebrations of India and the government were observed in the wake of the valley black-outs and on October 27 (Our day, 1947 Indian forces entered Kashmir to fight against tribal attack) with the events of India Republic Day, Indian Independence Day, the birth anniversary of Newfoundland, Sheik Abdullah's death anniversary etc.

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