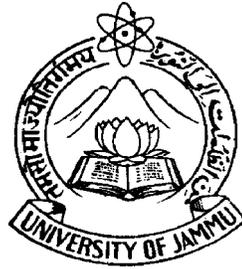


Directorate of Distance Education

**UNIVERSITY OF JAMMU
JAMMU**



SELF LEARNING MATERIAL B. A. SEMESTER - VI

SUBJECT : POLITICAL SCIENCE

UNIT : I - IV

COURSE NO. : PS-601

LESSON NO. : 1-16

PROF. DARSHANA SHARMA

Course Co-ordinator

<http://www.distanceeducationju.in>

Printed and Published on behalf of the Directorate of Distance Education,
University of Jammu, Jammu by the Director, DDE, University of Jammu,
Jammu.

GOVERNMENT AND POLITICS IN JAMMU AND KASHMIR

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Printed by : DTP Print-o-Pack / 2019 /

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B.A.
Political Science
Semester-VI
Examinations to be held in 2017, 2018, 2019

Course No. PS-601

**Title : Government and Politics in
Jammu and Kashmir**

Duration of Exam. : 3 Hours

Total Marks : 100

Theory Examination : 80

Internal Assessment : 20

Unit-I : Historical Background

- 1.1 Formation of J&K State : Geo-Political overview
- 1.2 Political Awakening in Kashmir : Reading Room Party, Muslim Conference and National Conference
- 1.3 Political Awakening in Jammu : Dogra Sadar Sabha and Praja Parishad
- 1.4 Instrument of Accession and its Background

Unit-II: Constitutional Structure

- 2.1 Basic Features of J&K Constitution
- 2.2 Special Status, Article 370 of Indian Constitution and Presidential Order of 1954
- 2.3 Permanent Residents of Jammu and Kashmir State and their Rights
- 2.4 Directive Principles of State Policy and Panchayati Raj in J&K

Unit-III: Governmental Structure

- 3.1 Governor : Appointment, Powers and Role (Section 92 of J&K Constitution)
- 3.2 Chief Minister and Council of Ministers : Powers and Role
- 3.3 Legislature : Composition, Powers and Functions of Legislative Assembly and Legislative Council
- 3.4 Judicial System : Powers and Functions of High Court

Unit-IV : Political Processes and Dynamics

- 4.1 Changing Nature of Party System in Jammu and Kashmir and Coalition Politics
- 4.2 Inter-regional and Intra-regional Demands and Politics
- 4.3 Ladakh Region : Demands and Politics with special reference to Hill Council
- 4.4 Displacement and Resettlement

Note for Paper-setter :

Theory Examination : The question paper will be divided into two sections.

Section-I : It will carry 20 marks. There will be total 08 short answer type questions in this section. Students will attempt any four questions with upper limit of 150 words in every answer. Each question will be of 5 marks.

Section-II : It will consist of 08 questions of which students will attempt 04 questions from within unit choice. The upper limit of answer to each question will be 750 words. Each question will be of 15 marks. Total marks in this section will be 60.

Internal Assessment (Total marks: 20) :

Twenty (20) marks are for internal assessment in each paper on the basis of following pattern:

- (i) Two written assignments 10 marks each

Suggested Readings:

Bamzai, P.N.K., The Development of Constitution of Jammu and Kashmir, Universal Law Agency, New Delhi, 1998

Bazaz, P.N., Struggle for Freedom in Kashmir, Pamposh Publications, Delhi, 1954

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Verma, P.S., Jammu and Kashmir at Political Crossroads, Vikas, New Delhi, 1994

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B.A., Semester VI, Political Science (Govt. and Politics in J&K)  
Unit I : **Historical Background**

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## **1.1 FORMATION OF J&K STATE: GEO-POLITICAL OVERVIEW**

**- Vishal Sharma**

### **STRUCTURE**

- 1.1.0 Objectives**
- 1.1.1 Introduction**
- 1.1.2 Historical Background**
  - 1.1.2.1 Jammu
  - 1.1.2.2 Kashmir
  - 1.1.2.3 Ladakh and Gilgit-Baltistan
  - 1.1.2.4 Dogras (1834 A.D to 1947 A.D)
- 1.1.3 Events Leading to Formation of State of Jammu and Kashmir**
- 1.1.4 Geo-Political Overview**
- 1.1.5 Let us sum up**
- 1.1.6 Suggested Readings**
- 1.1.7 Check Your Progress Exercise**

### **1.1.0 OBJECTIVES**

Dear Learner, in this first lesson of this Course, the major objective is to introduce you to the political history of Jammu and Kashmir State with special reference to the Geo-politics and conditions leading to the formation of state of Jammu and Kashmir. After going through this lesson, you will be able to:

- know how the state of Jammu and Kashmir evolved over the period;
- understand the major regions in J&K and their significance;
- comprehend the events leading to formation of Jammu and Kashmir State; and
- grasp the geo-political significance of Jammu and Kashmir.

### **1.1.1 INTRODUCTION**

The state of Jammu and Kashmir is located by and large in the Himalayan mountains and shares borders with the states of Himachal Pradesh and Punjab to the South. The state is strategically situated and a connecting link for many great nations. On the eastern side, it is connected with Tibet (China), on the western side by north western frontier province of Pakistan and Afghanistan and on the north side by the high table of lands of Chinese and Russia and Turkistan. The borders of Jammu and Kashmir, touching the territories of Pakistan, China, Tibet and Afghanistan, have an international significance. It also occupies a strategic position from military point of view and foreign affairs. Before 1846 there was no existence of Jammu and Kashmir State because the three regions of the state, i.e. Jammu, Kashmir and frontier regions of Ladakh and Gilgit-Baltistan were separate and distinct areas under different rulers. On March 16, 1846 a treaty was signed between Maharaja Gulab Singh of Jammu and the British East India Company and through this treaty the State of Jammu and Kashmir emerged as a single political entity. Maharaja Gulab Singh was the founder of Dogra rule in the State of Jammu and Kashmir and divided the state into three provincial divisions i.e. Jammu, Kashmir and the frontier regions of Ladakh and Gilgit Baltistan. Dogra dynasty ruled Jammu and Kashmir from 1846 to 1947 by four rulers namely:

1. Maharaja Gulab Singh (1846-1856)

2. Maharaja Ranbir Singh (1856-1885)
3. Maharaja Pratap Singh (1885-1925)
4. Maharaja Hari Singh (1925-1947)

### **1.1.2 HISTORICAL BACKGROUND**

One of the difficult issues related to Jammu and Kashmir state is issues involved in its history. The state of Jammu and Kashmir was evolved over the period its geographical boundaries have been changed over the period. We know that it has three main regions, Jammu, Kashmir and Ladakh. In the following section, you understand how these three regions have joined together to form the contemporary State of Jammu and Kashmir.

#### **1.1.2.1 JAMMU**

The geographical and political existence of Jammu state was a gradual expansion and the formation of Jammu principality took a few centuries. The history of Jammu can be traced back to the first century A.D. Durgara or Dugar State finds its first inscriptional mention on two copper plate title deeds found in Chamba, in the middle of the 11th century. Jammu state appears in the history through its mentioning in Malfuzat-i-Timuri the autobiography of Amir Timur, who invaded the town in 1399 A.D. In the 14th century A.D, we find the concept of ‘Jammu Raj’ covering the territory from Lakhampur to Jasrota on the banks of river Ravi in east to Akhnoor on the bank of river Chenab upto the Shivalik heights to the North of Krimchi. Raja Maldev of Jammu Raj was contemporary of Amir Timur, who is said to have been killed while fighting with Timur as mentioned in the Vansavali of Jammu Region. Raja Maldev shifted the Dogra capital from Babbapura to Jammu on the bank of river Tawi which had been abandoned by his ancestors since the times of Raja Suraj Dev (840-912 A.D) due to recurring invasions of Turks. For many centuries Jammu might have remained as an advanced post of the Dogra rulers of the Dev dynasty who ruled from 9th century A.D. to 18th century A.D.

In the Eighteenth Century Jammu was ruled by Rajput descent named Ranjit Dev (1733-1782 A.D). After the death of Ranjit Dev in 1782 A.D, a dispute aroused for the succession of Jammu Raj. The dispute gave the Sikh Darbar of Lahore an opportunity to

turn Dogra Rule of Jammu into a dependency. In 1808 Jammu was annexed to the Sikh territory under the Raja Ranjit Singh. The three grandnephews of Ranjit Dev struggling to rule Jammu. They were the sons of Kishore Singh and grandsons of Zorawar Singh, a nephew of Ranjit Dev. The three sons of Kishore Singh named Gulab Singh, Dhian Singh and Suchet Singh took services under Raja Ranjit Singh. Gulab Singh, the eldest of three brothers started his career as a trooper in the cavalry of Raja Ranjit Singh. The Dogra brothers gave proof of their valor in the battle of Chach Hazara and Hazru in which Afghans were given a crushing defeat on July 13<sup>th</sup> 1813 A.D. The Dogra brothers participated in almost all the expeditions undertaken after 1813 A.D under Maharaja Ranjit Singh. Gulab Singh and his brothers had reposed the confidence and loyalty at Lahore Durbar. Moreover, Maharaja also realized that it was futile to keep Jammu under his control as his general has miserably failed to control the rebellious spirit of Mian Dido and others. In 1820 Raja Ranjit Singh conferred the principality of Jammu to Gulab Singh the eldest of three brothers with the hereditary title of 'Raja'. From a 'King's trooper to Kingship' was a long way traversed by Raja Gulab Singh on the road to greatness which very few great men in history were fortunate to achieve. Late on the Dogra Rulers extended the boundaries of Jammu Raj. Thus, the whole of Jammu region with its twenty-two principalities came under a single ruler, for the first time in the history of Jammu. Jammu Raj was applicable to the territory from river Ravi to Jhelum and Banihal to Kathua.

### **1.1.2.2 KASHMIR**

Kashmir is an ancient principality. In the Puranas it is mentioned by the name of Gerek. Nestling the western Himalayas at an average height of 6,000 feet above the sea, Kashmir is surrounded by high mountains. These high mountain ranges represent the masculine aspect of the beauty of Kashmir. The valley of Kasmir itself may be said to consist of two parts, one comprising the plain formed by the alluvium of the river Jhelum and its main tributaries, and the other the plateaus raised above the plain. Kalhana's Rajatarangini written as a Sanskrit verse in 1148 A.D is the most important source and may be regarded as a historical text in the true sense of the world. According to Kalhana's Rajatarangini, the political history of Kashmir originated with King Gananda I (3000 BC). He was a relative of Raja Jarasand and fought a war against Lord Krishna at Mathura and was killed.

A constant flow of invasions and dynastic eruptions which brought to power ruling family was the central features of the succeeding three thousand years. After the Gonanda Dynasty, there are number of dynasties said to have ruled Kashmir.

1. Korkota Dynasty (Naga Dynasty) (625-855 A.D)
2. Utapala Dynasty (855 A.D to 948 A.D)
3. Gupta Dynasty (948 A.D to 1003 A.D)
4. Lohara Dynasty (1003 A.D to 1171 A.D)
5. Deva Dynasty (1171 to 1339 A.D)

The death of Raja Udyanadeva (1338 A.D) of Deva Dynasty ultimately resulted in the final overthrow of Hindu Political Power in Kashmir.

#### ***Shah Mir Dynasty (1339 A.D to 1561 A.D)***

Shah Mir who established the Muslim rule in Kashmir in 1339 is the real founder of the sultanate in Kashmir. Shah Mir Dynasty ruled Kashmir from 1339 to 1561 A.D.

#### ***Chak Dynasty (1561 A.D to 1586 A.D)***

From Shah Mir Dynasty the rule passed on to the Chaks, who were shias and came from the Dards of Gilgit area. Ghazi Khan became the first Chak Ruler in 1561 A.D of Kashmir.

#### ***Mughals (1586 A.D to 1753 A.D)***

Mughal Army under Qasim Khan defeated the last Chak Ruler Yaqub Shah in 1586 A.D and conquered the valley. Emperor Akbar made Srinagar his summer resort. Akbar came to Kashmir in 1579 and his finance minister introduced the revenue settlement to make it uniform with rest of the country. Akbar came to Kashmir Valley three times. During the third visit, Baltistan and Ladakh were brought under his sway. All the Mughals ruled Kashmir through Governors. After Aurangzeb the Mughal prestige started to fade and lost control of far away provinces.

#### ***Afgans (1762 A.D to 1819 A.D)***

In 1748, an Afghan ruler Ahmed Shah Abadli attacked India but did not succeed. In 1753 Abdali again invaded India and succeed to capture Delhi. In the same year he sent a

strong army to conquer Kashmir in which Mughal forces were defeated and Afgans entered Srinagar. But in the same year 1753 A.D Mughal again defeated the Afgans and captured the Kashmir and ruled the valley till 1762 A.D. Ahmed Shah Abdali re-conquered the Kashmir and Nur-ud Din was made Governor.

### ***Sikhs (1819 A.D to 1846 A.D)***

In 1819, the Maharaja Ranjit Singh of the Punjab sent a strong army under his Generals, Zorawar Singh and Gulab Singh to conquer Kashmir. A battle was fought in which Sikhs defeated the Afghans and successful in wresting Kashmir from Afghan rulers. For nearly Twenty-Seven years Kashmir was ruled by Sikh Darbar at Lahore through Governors.

### **1.1.2.3 LADAKH AND GILGIT-BALTISTAN**

Ladakh is a land of high passes, surrounded by Karakoram and great Himalayas. Ladakh had been a tributary of Tibet for centuries. Historically the region included the Baltistan, the Indus Valley, Zanskar, Lahaul and Spiti to the south, the Rudok region in the east, Aksai chin to the north east and the Nubra Valley to the north over Khardongla in the Ladakh range. The political history of Ladakh started getting documented after 8<sup>th</sup> century.

In the 8<sup>th</sup> century Tibetanization of Ladakh region began. Tibetans kept on playing the role of the major key players till 9<sup>th</sup> century in Ladakh. From 10<sup>th</sup> century onwards Lha-Chen Dynasty ruled the Ladakh.

### ***Namgyal Dynasty (1460-1842)***

The Namgyal dynasty of Ladakh was founded by Bhagan, a Basgo King, who ruled Ladakh by overthrowing the local king of Leh. He took the surname Namgyal meaning Victory. Tashi Namgyal (1555-1575) managed the repel of most of the Central Asian raiders and built a royal fort on the top of the Namgyal Peak. Sengee Namgyal (1616-1642) extended the kingdom into Zanskar and Spiti, but was defeated by the Mughals who had already occupied Kashmir and Baltistan.

King Deldan Namgyal (1642-1694) defeated the Mughal army in Baltistan and became an Independent ruler of Ladakh. During this period a religious dispute arose between Ladakh, Tibet and Bhutan which resulted in an attempted invasion by the Tibetans. Tibetans attacked Leh in 1684 and defeated the Namgyal ruler and concluded a treaty

with Ladakh. The Tibetan army retreated back to Lhasa on Dec. 1684 A.D. The treaty settled the dispute between Tibet and Ladakh, but its independence was restricted.

#### **1.1.2.4 DOGRAS (1834 A.D TO 1947 A.D)**

In 1819 A.D the Sikh defeated the Afghans and annexed the Kashmir region to the Sikh territory. Kashmir was ruled by Sikh Darbar at Lahore through Governors. The Ladakhi Ruler refused to pay the tribute money to the Governor of Kashmir and challenged the sovereignty of Sikh Rule. By the middle of 1930's Raja Gulab Singh of Jammu also realized the strategic value of holding Ladakh. However, he sent his General, Zorawar Singh to conquer Ladakh in 1834 A.D. Dogra Army under the leadership of Zorawar Singh defeated the King Tshespal Namgyal of Ladakh and annexed the Ladakh Region including Skara Lhara and Balitstan to the Dogra Territory. This way Raja Gulab Singh became the ruler of Ladakh region.

#### **1.1.3 EVENTS LEADING TO THE FORMATION OF STATE OF JAMMU AND KASHMIR**

Before 16<sup>th</sup> March 1846, there was no existence of Jammu and Kashmir State. The three regions of the state were governed separately under different rulers. After the death of Maharaja Ranjit Singh, in 1839 A.D, the Lahore darbar faced a number of problems to maintain the unity and integrity of Punjab State. Maharaja Ranjit Singh had seven sons and Kharak Singh was the eldest and the choice of Ranjit Singh to be his successor. Sher Singh was the second son but asserted a superior claim because, he was born of Ranjit Singh's first wedded wife Mehtab Kour, under these circumstances the possibility of peaceful succession was very difficult. Under the rule of incompetent successors, the grip of the central authority became weak, the army officers became supreme and provincial governors stopped to pay money to the Lahore Darbar. This led to the development of disposition in the Lahore Darbar to look to the British Government in all matters and started behaving like state of subsidiary alliance. After the death of Ranjit Singh, Raja Gulab Singh and his brothers, Dhian Singh and Suchet Singh played an important role in Lahore Darbar. Dhian Singh stood as most capable man of Lahore Darbar till his death. He maintained his grip over the civil and military affairs of Punjab state. During the same time anti-Dogra move started in Lahore Darbar. The things turned worse and it was decided to murder

the whole Dogra family in Lahore. This led to the murder of Dhian Singh first and after that Suchet Singh, Hira Singh and Mian Labh Singh were killed along with Mian Sohan Singh the son of Raja Gulab Singh of Jammu. The death of Dogras in Lahore was heading towards the disintegration of Punjabi Kingdom. Although the relations between Raja Gulab Singh and the Sikh ruler worsened. At Lahore Darbar there was no power to whom Gulab Singh could be loyal. All the chiefs, governors and rulers of Punjab were involved in intrigues and in mutual jealousy.

In November 1845, war broke out between the Sikhs and the British at Sobraon. The Lahore Darbar asked Raja Gulab Singh of Jammu to help and lead the troops. But Gulab Singh was not interested in helping the Sikhs because Lahore Darbar had already annoyed Gulab Singh by killing his brothers, son and other relatives and by attacking Jammu Raj only ten months before. The Sikh army was defeated and the British occupied Lahore on Feb. 1846. By remaining distant from the war, Raja Gulab Singh earned the gratitude of the British officers. After the Sikhs were defeated, he became the Prime Minister of the Punjab and remained in touch with the British authorities. Gulab Singh appeared as a mediator between the British and Lahore Darbar. As a result of negotiation, the Britishers demanded a war indemnity of Rupees one and half crore. The Sikh Darbar was not in a position to pay so much amount and offered to give the territories between river Beas and river Sutlej including Kashmir in lieu of one crore of rupees and the British government accepted this offer. The Treaty was concluded between Raja Dhuleep Singh of Lahore and the Britishers on 9<sup>th</sup> March 1846 in which Maharaja Dhuleep Singh ceded all his forts, territories and rights in the doab and country, hill or plain situated between river Beas and Sutlej in perpetual sovereignty to the British East India Company. Moreover, through this treaty Maharaja Dhuleep Singh also agreed to recognize the independent sovereignty of Raja Gulab Singh of Jammu.

Subsequent to the Lahore treaty, another treaty was concluded between Raja Gulab Singh of Jammu and the British on March 16, 1846 A.D at Amritsar. Through this treaty Raja Gulab Singh paid 75 lakh to the British Government for acceding the valley of Kashmir with Jammu, thus creating the State of Jammu and Kashmir with the sovereignty of Maharaja Gulab Singh. Thus, the efforts of Maharaja Gulab Singh resulted in the formation of present Jammu and Kashmir State. Maharaja had divided the State into

three provincial divisions i.e. Jammu, Kashmir and the frontier regions of Ladakh and Gilgit-Baltistan. Each division had been put under the charge of a Chief Officer who was equivalent to the status of a Governor.

#### **1.1.4 GEO-POLITICAL OVERVIEW**

The State of Jammu and Kashmir was created through the treaty of Amritsar of 16 March, 1846, under the same treaty Kashmir too was annexed with Jammu and thus, the State of Jammu and Kashmir came into existence. However, the integration between Kashmir and Jammu was merely political, and was mainly motivated by the British desire to create a buffer state between the expanding Russian and Chinese empires. The Geo-political location of this state makes it the centre of several intense international rivalries. The State of Jammu and Kashmir geographically is the most important state in Indian sub-continent with Pakistan, Afghanistan, Soviet Union, Tibet and China as its neighbours. The state of Jammu and Kashmir is situated between latitude 32°-15' and 37°-17' north and longitude 72°-35' and 80°-30' east. Within area of 2,22,236 sq.km. Geographically and politically the state of Jammu and Kashmir occupies very significant position because its borders meet with five countries in north. It also occupies a strategic position from military point of view and foreign affairs. Kashmir, Ladakh, and Gilgit Baltistan are of great strategic importance owing to the fact that to its east lies Tibet, and Sinkiang a province of China, to the north west, Afghanistan and a few miles from Afghanistan lies Russia. This strategic position of Kashmir and Ladakh regions had caused the rulers of adjoining empires to control on it. We can see the struggle of powerful nations to control this region as a centre of military strategy in the Asia. That is why it has been a constant source of conflict between nuclear powerful nations i.e. India, Pakistan and China.

The Geographical location of Jammu and Kashmir State in relation to India is however, economically most important because of its great source of reservoirs of water which feed the Indus, the Jhelum, the Chenab the Ravi and the Sutlej rivers that irrigate and fertile the vast land in North India.

We can better understand the geo-political overview of the State through its geographical divisions.

The Geographical division of State:

- (i) The Outer Plains and Sub-mountainous tract.
- (ii) The Outer Hills or Siwalik Range or Outer Himalayas.
- (iii) The Kashmir Valley or Jhelum Valley
- (iv) The Tibetan Tract of Ladakh and Gilgit Baltistan.

#### **1.1.4.1 THE OUTER PLAINS AND SUB MOUNTAINOUS TRACT**

This tract runs all along the line of Punjab state including the districts of Gurdaspur, Sialkote, Gujrat and Jhelum. Its spread in the Jammu region includes the Jammu District, Kathua, R.S. Pura, Akhnoor, Mirpur and Bhimbur. The two large streams of Ujh and Tawi, three rivers – The Ravi, The Chenab and The Jhelum and several perennial streams flow through this tract and enter Punjab. The northern portion of the region called Kandi belt has stony and sandy soil.

#### **1.1.4.2 OUTER HILLS OR SIWALIK RANGE OR OUTER HIMALAYAS**

This tract runs into the second geographical division of Jammu Kashmir state generally known as outer hills or outer Himalayas and comprising the low lying hill which is also known as Siwalik range. This tract divides the Jammu and Kashmir provinces to its south and known as Pir Panjal range of mountains.

A large part of this tract lies at an altitude of between 2000 to 4000 feet above the sea level. The first and second division of the state constitutes the Jammu region in which the Chenab river, with its tributaries, flows through Jammu region until it enters into the plains of Punjab.

#### **1.1.4.3 THE KASHMIR VALLEY**

The Kashmir Valley i.e. Jhelum Valley is, however surrounded by North-West Himalayan range. These Himalayan ranges vary in altitude from 3000 to 5000 meters. In south Banihal pass affords an exit from the valley. The only outlet for Jhelum river water is in the narrow gorge at Baramulla. The tributaries of river Jhelum carved out their own smaller valleys which are called side valleys. These valleys are relatively steeper with flat as well as

sloppy stretches of land. Some important side valleys of Kashmir were Lidder Valley, Sind Valley, Lolab Valley and Kishenganga Valley etc.

#### **1.1.4.4 THE TIBETAN TRACT OF LADAKH AND GILGIT-BALTISTAN**

The fourth division is the Tibetan tract which comprises the two big regions i.e. Ladakh and Gilgit-Baltistan. Being enclosed by Karakoram on the north and the central range of the Himalayas on the South this division is the largest but most sparsely populated division because of its high altitude and highly mountainous and barren character. This tract farms the central portion of the valley of the great Indus River which taking its source of the Manas sarowar lake in Chinese occupied Ladakh region. The Suru, Zanskar, Gilgit, Baltistan, Leh, Kargil are the important valleys and towns of this division.

#### **1.1.5 LET US SUM UP**

In this lesson you studied the events leading to the formation of State of Jammu and Kashmir. With the signing of the Treaty of Amritsar in 1846, Maharaja Gulab Singh became the ruler of Jammu and Kashmir. P.N.K. Bamzai writes “Maharaja Gulab Singh is the only Indian ruler to have carved out a state during the 19<sup>th</sup> century out of the wreckage of the great kingdom of Sikhs. Moreover, he was the only Indian ruler to have extended the frontiers of India to their natural boundary”.

Geographically, the State of Jammu and Kashmir is like a multi-storey building. Jammu is its gateway and the first storey is constituted of outer plains, Shivalik and middle Himalayas. The second storey is high mountainous range of Kashmir valley while the third one is made up of Ladakh and Gilgit Baltistan appearing at the end of steady flight of Himalayas.

#### **1.1.6 SUGGESTED READINGS**

- Justice A.S. Anand, “The Constitution of Jammu and Kashmir. Its Development and Comments”, New Delhi: Universal Law Publisher.
- K.L. Bhatia, “Jammu and Kashmir, Article 370 of the Constitution of India”, New Delhi: Deep and Deep Publications.

- Vidya Bhushan, “Constituent Assembly of Jammu and Kashmir”, Jammu: Yak Publishing Channel.
- P.N.K. Bamzai, “Cultural and Political History of Kashmir”, New Delhi: M.D. Publications.
- Y.R. Sharma, “Political Dynamics of Jammu and Kashmir”, Jammu” Radha Krishana Anand.

#### **1.1.7 CHECK YOUR PROGRESS EXERCISE**

1. Write down the factors responsible for the formation of Jammu and Kashmir State.
2. Discuss the Geo-Political Overview of Jammu Kashmir State.
3. What is the significance of the Treaty of Amritsar?
4. Write a note on strategic important of the State.
5. Analyze the role of Maharaja Gulab Singh to creation of the State of Jammu and Kashmir.

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B.A., Semester VI, Political Science (Govt. and Politics in J&K)
Unit I : **Historical Background**

1.2 POLITICAL AWAKENING IN KASHMIR: READING ROOM PARTY, MUSLIM CONFERENCE AND NATIONAL CONFERENCE

- Seema Shekawat

STRUCTURE

1.2.0 Objectives

1.2.1 Introduction

1.2.2 Historical Background: Condition of People

1.2.3 Growth of Political Awareness

1.2.4 Reading Room Party: The First Step Towards Political Awakening in Kashmir

1.2.5 Formation of Muslim Conference

1.2.6 Political Agenda of Muslim Conference

1.2.7 Emergence of National Conference

1.2.7.1 Political Role of the National Conference

1.2.6 Let us sum up

1.2.7 Check your Progress Exercise

1.2.0 OBJECTIVES

The topic deals with the origin and growth of the political awakening in Kashmir. After going through this unit, you should be able to know:

- background of politics of Jammu and Kashmir;
- developments during reign of feudal ruler that led to the growth of political awakening in J&K;
- role of Reading room and Muslim Conference in bringing about political awareness;
- the emergence of National Conference and its political role in democratic politics.

1.2.1 INTRODUCTION

The political movement in Kashmir followed the opening of two colleges – one each in Srinagar and Jammu. The initiation of Western education in the Valley led many to get exposed to the developments taking place all over the Indian subcontinent. Among the various influences on the educated youth of Kashmir was that of the Indian national movement.

There were also a number of events that led to the political awakening at that time. One such very important event that made strong impression on the minds of educated Kashmiris was the resignation of Sir Albion Banerjee, a minister under the Dogra rule. While submitting his resignation he spoke to the press and said that “Jammu and Kashmir State is labouring under many disadvantages, with a large Mohammedan population absolutely illiterate, suffering under poverty and very low economic conditions of living in the villages and practically governed like dumb driven cattle...” This led many to think about the political and the economic conditions prevailing under the princely state of Jammu and Kashmir. The exposure of the youth to the English education, the liberal political ideals, the political environment all over the subcontinent and also the rising Muslim political consciousness – all these had the effect of initiating a process in which the first kind of organised politics shaped. The Reading Room Party and the Muslim Conference were the initial expressions of such organised politics.

1.2.2 HISTORICAL BACKGROUND: CONDITION OF PEOPLE

Muslim Conference was an early response of the emerging Muslim intelligentsia of Kashmir to the situation of Valley’s backwardness and deprivation. Recorded history shows that the condition of the people of Kashmir at the turn of the twentieth century was quite pitiable. There were lot of hardships faced by them. They were heavily burdened by a

very oppressive system of taxation. As Korbel would put it 'everything and everybody was taxed'. Agriculture formed the main source of production for the majority of the rural population, and yet they did not enjoy the proprietary rights to land. Whole of the land was considered to have been the property of the ruler. 'The land tenure system had reduced them to abject poverty, as the land was held by Zamindar... Exploitation by money lenders, Numberdars and Zaildars added to the woes of the people.' A large number of Kashmiris, who were landless labourers, were working as the serfs of the absentee landlords while many others unable to earn sufficient to meet their requirements. They were heavily indebted and compelled to leave the state to work as labourers in the neighbouring Punjab. The situation of poverty was aggravated due to the insensitivity of the political regime towards the condition of its subjects. Dogra rulers, who had come to acquire political control over Kashmir in 1846 by virtue of the Treaty of Amritsar, had remained quite indifferent towards the condition of the people of the Valley.

1.2.3 GROWTH OF POLITICAL AWARENESS

Despite generally stagnant conditions, a limited process of modernisation was initiated in the valley in the decade of twenties, resulting in the creation of a small class of educated youth. This class was to assume the role of a catalyst in the process of political mobilisation of the community. As it acquired awareness about the backwardness of the community as well as apathy of the political regime, it took upon itself the task of articulation and expression of the discontent of the masses. Gradually this political consciousness began to take firm roots spreading from intelligentsia to the people of middle class. Till 1931, it erupted in a spontaneous agitation which was almost communal in its nature. It is important to note in this context that religion played an important role in the early politicisation of Kashmir. There was an alliance between the emerging political elite and the dominant religious institutions of the Valley.

1.2.4 READING ROOM PARTY: THE FIRST STEP TOWARDS POLITICAL AWAKENING IN KASHMIR

Until March 1932, the formation of political association was totally banned in the state. On the recommendation of Glancy Commission Report on 12 March 1932, the right to freedom of press and platform to the people of the State were granted. This led to the formation of various associations and organisations in the Valley.

The first effort at organising the Kashmiris was in the form of a non-political organisation – the Reading Rooms. Because of the emergence of a small class of young educated Kashmiris, there was a growing awareness around the conditions of the Kashmiris. Such awareness was aggravated because of inability of these educated Muslims to find suitable avenues for employment. In 1922, some of these educated young men felt the need to form a Reading Room.

The reason as to why a Reading Room became the basis of the first organised response of Kashmiris was the fact that there was a ban on the press, platform and public meetings in Kashmir. Hence no political organisation could be formed there. Keeping in view such a ban, the educated Muslims submitted an application to the government for formation of a reading room with the sole purpose of providing literature chiefly on religious subjects.

It was in this context that the Reading Room Party was formed in Srinagar in 1930. Of the various activities pursued by the Reading Room Party was sending representations to the government complaining against the civil services recruitment rules and fighting for the rights of Kashmiri Muslims.

The Reading Room Party, therefore, was a public body to articulate and organise the public opinion with a view to exerting pressure on Government for reforms. The party was in no case a party of a political nature, but assumed a political nature because there was no freedom of association.

The Reading Room Party that was organised by the educated Muslims had full co-operation of the two *Mir Waizes* (the religious heads) of Srinagar.

1.2.5 FORMATION OF MUSLIM CONFERENCE

Formation of Muslim Conference followed the formation of the Reading Room Party. The activities of the Reading Room Party had led to an organised political response among the emerging educated elite of Kashmir. This elite along with the religious heads were responsible for spreading some kind of political message to the common Kashmiris about the state of the local masses. Although this did not lead to extension of organised politics

from the elite to the mass of people but it did lead to some kind of spontaneous response that got reflected throughout 1931. In the month of July, there took place a very spontaneous popular political upsurge that had communal bearings but which did basically reflect the accumulated discontent in Kashmir. This upsurge became the beginning of the organisation of political response of Kashmiris. There were many occasions following the July upsurge that led to the expression of political demands of the Kashmiris. The first such occasion was the 'Kashmir Day' that was celebrated on 14th August 1931. A complete hartal was observed in the state on that day. During September, the people demonstrated against the despotic ruler in Srinagar. From spontaneous response, this response later took up an organised form with the emergence of Sheikh Abdullah as a leader.

The political expression of the upsurge in 1931 led to sharpening of the political demands in Kashmir. During various demonstrations, the Kashmiris started articulating their demands. As A. S. Anand informs us, the Muslims listed a number of grievances and demanded an increase in their representation in the public services in accordance with the percentage of the population. Added to this was the demand of 'perfect equality of rights and equality of treatment for all State Subjects.'

What provided an opportunity to the emerging political elite to represent their demands in an organised and articulated manner was the appointment of Glancy Commission. This commission was appointed immediately following the political upsurge in 1931. This Commission presented its report on 12th March 1932. The Commission dealt with various matters including the religious, educational, employment in state services, etc. and recommended that there should be no interference with religious observance, expansion of primary education, practical encouragement to Muslim students in matters of receiving education, special scholarships for Muslim students, efforts to increase the number of Muslim employees in the teaching departments and appointment of a special Muslim inspector to attend to the progress of Muslim education, grater share for Muslims in matters relating to the employment to state services. Following this report, the rights to freedom of press and platform to the people of the state were granted and the ban on the formation of political associations was lifted. The Muslim leaders began to consolidate the mass-bases of the movement.

In order to conduct the movement more methodically and with strict discipline, the emerging political leadership of Kashmir decided to establish the All J&K Muslim Conference. It was the first organised political force in the valley of Kashmir. The first annual session of the Muslim Conference was held from 15th to 17th October, 1932.

The Muslim Conference, though representing the political interest of Kashmiris, had clear-cut religion-specific orientation. It sought to represent the interest of the Muslims of the state. Moreover, it had the support of the Muslim religious leaders. Not only the religious leaders of J&K but also various Muslim organisations of Northern India, especially the Punjab, supported this organisation

The reason for the religion-specific approach of the Muslim Conference was that at the time this organisation came into existence, the discontent of people was articulated only through the religion-based organisations. The early demands that were raised by the newly emerging leadership in Kashmir were also coined in religious terms. A memorandum, for example was presented to Lord Reading, the Viceroy of India, when he visited the state in 1924, included the demands like, the grant of proprietary rights to the Muslims peasants, the grant of representation to the Muslims in the services and employment of the state, appointment of Muslims on the important posts of Governor, SPs, higher administrative posts in the Silk Factory, introduction of free and compulsory education, appointment of more Muslim teachers and Inspectors, grant of Government contracts, particularly those relating to forests, roads and construction to state nationals in general and to Muslims in Particular, restoration of mosques and other religious properties under the control of the Government and their protection from encroachment by non-Muslims.

Seen in the context of that time and the politics that had evolved at that time, the Muslim Conference was also reflecting that politics itself. However, this politics came under more liberal and radical influences at the later stage and therefore evolved itself into more mature and secular politics.

1.2.6 POLITICAL AGENDA OF MUSLIM CONFERENCE

Though a precursor to the National Conference, the Muslim Conference had not only a different political character but also a different political agenda. Among the most commonly raised demands were those related to the employment of the Muslims in the state services,

improvement in the condition of the Muslim education or the handing over of the Mosques to the Muslims. It is obvious that the expression of the Kashmiri identity at that time was manifesting on religious basis. The perceptions of the emerging class of elite were important in this context. They perceived their situation of deprivation and backwardness in terms of their Muslim reality.

The Muslim Conference, however, was the most vocal organisation to voice the discontent of Kashmiris. One of the first grievances represented by it was the failure of the Maharaja to implement the recommendations of the Glancy Commission. It was under the banner of this organisation only that the demand for 'responsible government' was made forcefully.

To begin with what remained as the most important issue for the Muslim Conference was the lack of opportunities for Muslim employment in the state services. It was only later on that other issues were raised. From the limited demands of education and employment of Muslims, the Muslim Conference started demanding about a responsible government. The working committee of the Muslim Conference passed a resolution in February 1936 demanding a new constitution and an assembly. In order to pursue its demand, it asked the people to observe Responsible Government Day throughout the state. In accordance with this resolution a Responsible Government Day was celebrated on May 8, 1936. It was on this occasion that Sheikh Abdullah, as president of the Muslim Conference made a fervent appeal to all citizens, eliciting the cooperation of other communities including the Hindus and Sikhs in the observance of the day. The response was tremendous: the Muslims, the Hindus and the Sikhs closed their ranks to make the day a success.

One of the most important achievements of the Muslim Conference was to introduce some limited element of reform in the existing political regime. In the face of pressure from agitating masses under the banner of this organisation a legislative Assembly known as Praja Sabha was established. The Muslim Conference contested the election of the Praja Sabha in 1934. It was able to capture 16 out of a total of 21 seats reserved for Muslims. It also contested the next election that took place in 1938 and was able to win 19 out of the total of 20 seats.

Later on, in August 1938, the Muslim Conference issued a charter of National Demands. The charter stated that the ultimate goal of the party was to bring about a complete change in the social and political outlook of the people and to achieve a responsible government under the aegis of the Maharaja.

The above account shows that though the first organised political response in Kashmir was through the expression of the religion-specific demands, yet the politics went much beyond this limited expression in a few years' time. Communal tensions in the state that followed the politicisation of the religious identity of Kashmiris had led to the discomfort of many leaders of Kashmir. Bamzai, a noted historian of Kashmir, notes that there was a sharp reaction to the communal outbursts. Many leaders felt that such a communalised turn of politics had shaken the roots of the traditional amity and good will between Hindus and Muslims. Therefore, the leadership decided to convert it into a more broad-based organisation. Following this decision of the leadership, the Muslim Conference converted itself into the All Jammu and Kashmir National Conference.

While assessing the role of the Muslim Conference, it is important to note that it came into existence at a time when there were limited opportunities for political expression in the State of Jammu and Kashmir. Hence, it had only the limited purpose of pursuing the Muslim interest. It was in fact, an organisation with a very limited support base – that of the middle and upper class sections of the Muslims and it was their interest that this party was virtually looking after.

1.2.7 EMERGENCE OF NATIONAL CONFERENCE

Change from Muslim Conference to National Conference did not come all of a sudden. There had evolved a feeling among the leadership of the National Conference, particularly Sheikh Mohammed Abdullah, that there was a need to expand the support base of the Muslim Conference. It was felt that the basic problem of people of the state was linked with their situation of poverty, economic hardships, exploitative agrarian system, etc. Hence there was a need to rise above the narrow communal politics and have an organisation that could be more inclusive across religions. The Muslims and non-Muslims shared common problems and there was a need to wage a common struggle against the feudal and autocratic order involving all sections of society. It was also realised that the movement against the

exploitative economic and political regime would not succeed till it becomes a mass movement and adopts a secular and liberal agenda.

In evolving such an orientation of the political leadership of the state, particularly of Kashmir, one could see at least two different kinds of influences. Of these, one was the influence of the Indian national leadership, particularly of the Indian National Congress. But more importantly, one could see the influence of the left ideology and organisation, particularly the communists.

We could clearly see the leftist intervention in Kashmir's organised politics right from the beginning. A few local educated youth who had come under the influence of Marxism were in constant contact with Indian socialists and communists like B.P.L. Bedi and K.M. Ashraf. The left leaders on their part also were taking keen interest in Kashmir. The mass movement of the toiling people in Kashmir was an interesting situation to watch and also to intervene from the leftist point of view.

The left politics of India therefore had started intervening in the organised response in Kashmir much before the formation of National Conference. It was due to such an intervention that there took place a reorganisation of various existing organisations, on leftist lines. The associational politics of Kashmir revealed the radical tendencies from the beginning. The very early groups that had emerged in Kashmir included associations like 'Free Thinkers Association', 'Study Circle'. The members of these groups were young radical educated youth who were influenced by leftist ideas. Discussion of socialist ideas in informal meetings was a major activity of these groups. It was under the influence of the radical ideas of these groups that the existing organisations like Kashmir Motors Drivers' Association, the Tonga Drivers' Association, and the Carpet Weavers Association were reorganised and brought under the banner of the Mazdoor Sabha. Mazdoor Sabha was formed in the middle of 1937 and was very active in organising the workers' movement in the Valley. Mazdoor Sabha was the first gigantic force which separated religion and politics and taught people to fight on economic issues. By the end of September 1937, due to various activities of Mazdoor Sabha, the labour movement had become effective force in the politics of the state. Besides this there were other progressive movements with leftist tendencies that had emerged in the Valley of Kashmir. These included the Youth League, the Labour Movement, the Peasants' Association, Students' Federation and Kissan Sabha.

So strong was the sway of the left politics in the Valley that no political organisation at that time could remain out of its influence. Even within the Muslim Conference, a strong left-wing group had been formed. It was this group which had become instrumental in the process of secularisation of the politics of Muslim Conference and its consequent conversion into the National Conference. The People who were inspired by left ideology included GM Sadiq, PN Jalali, NN Raina, ML Misri, MS Mehmood Ahmed Ali Shah, GM Qassa, Mohd Yousaf Dar and Dhanwantri.

Sheikh Abdullah, who was instrumental in the emergence of the Muslim Conference and in giving a shape to its politics, was also changing his orientation. The influence of the radical politics of the left which was having sweeping influence on Kashmir did not leave him untouched. He was impressed by the potential that this politics had in involving the toiling masses particularly the workers, artisans and the peasantry in the movement. He was also getting convinced that the restrictive nature of the Muslim Conference in particular had a limiting effect on the very nature of the political movement in Kashmir. So, he initiated a campaign for widening the base both of the party as well as the movement.

In 1935 Sheikh Abdullah found an Urdu weekly in collaboration with a prominent Hindu leader, Pt. Prem Nath Bazaz, in which he used to make a case for extending the ideological base and the support structure of the movement. In his presidential address to the Muslim Conference in the same year, he took special pains to declare that the movement is not communal. In 1936, on the occasion of observation of the 'Responsible Government Day' he made special appeal to Hindus and Sikhs of the state to participate in the political movement against the feudal and autocratic Dogra rule. Similarly, in his presidential address to the sixth annual session of the Muslim Conference on 26th March, 1938, he observed: "we must end communalism by ceasing to think in terms of Muslims and non-Muslims when discussing our political problems...and we must open our doors to all such Hindus and Sikhs who like ourselves believe in the freedom of their country from the shackles of an irresponsible rule"

Gradually, the politics of Kashmir, under the leadership of Sheikh Abdullah was directed towards secular and radical agenda. This kind of politics necessitated the substitution of the Muslim Conference with a more broad-based organisation. Ultimately, the Muslim Conference was converted into the National Conference. Sheikh Abdullah

was able to place a resolution to that effect to the working committee of the Muslim Conference on 28 June, 1938. In spite of the opposition of Mirza Afzal Beg and others, the working committee adopted the resolution and recommended the change in the name of the organisation. This change, according to the resolution of the working committee was to facilitate the inclusion of people belonging to all religions, castes and creed in the struggle for political emancipation. The resolution was passed by a majority of 17 against 3 votes. By this resolution the Muslim Conference was converted into the National Conference.

1.2.7.1 POLITICAL ROLE OF THE NATIONAL CONFERENCE

The National Conference was able to play very important role in the politics of Kashmir right from its inception. In continuation with the politics of the Muslim Conference, it was able to influence the political developments in Kashmir throughout the decades of the thirties and forties of the twentieth century. The effect of such developments was the broadening of political space. The organised politics of the Muslim Conference and later the National Conference was to lead to a consistent pressure on the existing structure of power with demands to make it more inclusive and people oriented. It was a result of such demands that the princely ruler was forced to introduce some limited changes in the political structure of Jammu and Kashmir. After the formation of the Praja Sabha that had to give some limited representation to the people for political decision making, there was further emphasis on changing the composition of the Praja Sabha. As a result of these changes, the number of elected members in Praja Sabha was increased from 33 to 40 thereby providing a majority for the elected representatives than to the official nominees. Praja Sabha was given the right to vote, with exceptions of certain non-votable items, on the demands made by the government for budget appropriations.

The leaders of the National Conference, however, were not satisfied with the restructuring of the Praja Sabha. They further demanded a constitution, which would fulfil their demands. They also asked for a legislature that should consist entirely of directly elected members representing the people. It was a result of these demands that the process of evolution of the Constitution of the state was initiated. On September 7, 1939, the Jammu and Kashmir Constitution Act was promulgated. The Act consisted of 78 sections and 5 Schedules.

Despite these constitutional changes that the National Conference was able to achieve, the organisation is known as the party of the “Freedom Movement” of Kashmir. As the key political organisation of Kashmir, it played the central role in organising the political movement against the Dogra regime. This was a widespread movement involving the people of Kashmir both from the urban and rural areas. One of the major demands of the movement was the demand for self-rule. This demand was a corollary of a political discourse around the issue of ‘political dignity’ which was to become the basis of construction and assertion of Kashmir’s political identity. In this discourse the need to restore the political dignity of the community, which was viewed to have been compromised due to centuries-old subjugation, was emphasised.

It was because of the goal of self-government that the National Conference leadership was not satisfied with the limited constitutional changes that were being offered by the ruler of the State. They had started claiming the right of the people to rule over themselves and in that context had started challenging the very monarchy itself. It was in pursuance of this goal that the National Conference organised its politics in the early forties intensifying its demand for self-government and transfer of power to the people of the state.

One of the important political activities organised by the National Conference was the Quit Kashmir Movement. This Movement was designed on the lines of the Quit India Movement. The major demand underlying this movement was the abrogation of the Treaty of Amritsar on the one hand and the abdication of the Dogra ruler on the other. This movement marked the highest point in the process of the politicisation of masses of Kashmir. In a number of political meetings addressed by him during the period before the Accession, Sheikh Abdullah vociferously raised the demand for complete transfer of power to the people and to consider absolutely essential the consent of the people for any decision related to the political future of Kashmir. A decision about Kashmir, he argued, ‘cannot be taken behind closed doors without approval of the people of Kashmir’.

Another important dimension of the political role of the National Conference during this period was that it was working in close collaboration with the Indian National Congress and its leadership, particularly Nehru and Gandhi. Both these leaders fully sympathised with the political goals of the National Conference and often came openly in support of its politics.

One of the overt examples of such support could be seen in the context of the Quit Kashmir Movement. When Sheikh Abdullah was arrested in view of the slogan of the 'Quit Kashmir', Nehru came to Srinagar to support the National Conference. However, he too was arrested at Domel in June 1946.

It was in the context of the close collaboration with the Congress that one can note the fact that the leadership of National Conference shared the perspective of the Congress on many issues. It also followed the politics that the Congress was organising in the context of various other states. In 1941 National Conference became a formal member of All India State People's Conference, with affiliations in most princely states. Sheikh Abdullah was elected the President in 1946 of this Conference.

1.2.8 LET US SUM UP

The study of the evolution of the political consciousness of Kashmir starts with the spontaneous political uprisings like the ones that took place in 1931. Kashmiri educated elite, however, had started organising themselves in a limited manner much before that. The first most vocal organisation was the Reading Room Party. This party was a semi-political party because it did not perceive a political role for itself beyond articulating limited demands of emerging educated classes. The effect of the existence of this party was to be felt later in the context of the formation of the first political party of Kashmir – the All Jammu and Kashmir Muslim Conference. This party had the role of providing first political platform for expression of organised political response in Kashmir. The Muslim Conference was a limited organisation. Its limitation was not only its religion-specific orientation but also its limited elite-oriented nature. It dissolved itself to make room for a more liberal and mass-oriented politics that was started with the formation of the National Conference.

1.2.9 CHECK YOUR PROGRESS EXERCISE

1. Write a note on condition of people of Jammu and Kashmir during first half of 20th century.
2. Outline the reasons for the growth of political awareness in the state of Jammu and Kashmir.

3. Briefly state the activities of Reading Room Party.
4. The political process in Jammu and Kashmir started with the formation of Muslim Conference. Do you agree with this?
5. The emergence of National Conference changed the political dynamics in the State. Explain.

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## **1.3 POLITICAL AWAKENING IN JAMMU: SADAR SABHA AND PRAJA PARISHAD**

- Vishal Sharma

### **STRUCTURE**

#### **1.3.0 Objectives**

#### **1.3.1 Introduction**

#### **1.3.2 Growth of Political Awareness**

#### **1.3.3 Dogra Sadar Sabha**

#### **1.3.4 Emergence of Praja Parishad**

##### **1.3.4.1 Jammu Agitation (1949-1953)**

##### **1.3.4.2 Praja Parishad's Party Organization**

#### **1.3.5 Let Us Sum Up**

#### **1.3.6 Suggested Readings**

#### **1.3.7 Check your Progress Exercise**

#### **1.3.0 OBJECTIVES**

This sub unit deals with the origin and growth of early political awakening in Jammu. After studying it, you should be able to understand:

- the factors which led to the initial political awakening and organization of Political parties in Jammu;
- role of Dogra Sadar Sabha and Praja Parishad in bringing about political awareness in Jammu;
- political personalities who influenced the growth of Political awareness in Jammu;
- reasons for the formation of Praja Parishad; and
- electoral performance of Praja Parishad.

### **1.3.1 INTRODUCTION**

The Jammu and Kashmir State as it exists today is the creation of Maharaja Gulab Singh. After the collapse of the Lahore Darbar, the State of Jammu and Kashmir came into being in its present form through the Treaty of Amritsar signed between the British East India Company and Maharaja Gulab Singh of Jammu on March 16, 1846. With the signing of this Treaty Dogra rule was established in the state of Jammu and Kashmir and it lasted till October 26, 1947.

Subsequent to the treaty, the state did not witness any kind of political awakening or political activity till the end of 19<sup>th</sup> century. However, beginning from the first decade of the 20<sup>th</sup> century, the political activities and awakening started in both the regions of the Jammu Kashmir State. While the Political awakening in Kashmir started with the struggle against the rule of the Maharaja, who was non-Kashmiri and non-Muslim, the political awakening in Jammu began much earlier and came under the direct influence of the national movement.

In the first decade of the 20<sup>th</sup> century two degree colleges – one in Jammu and the other in Kashmir were established for introducing the western type of education. Within a decade, the educated elite, both in Kashmir and Jammu emerged and started their demands for employment and the students of these colleges also organized and participated in various social and political movements. The non-cooperation and satyagrah movements launched by the Indian National Congress under the leadership of Mahatma Gandhi, greatly inspired the young men in the Jammu region and make them aware of the ideals of

liberty, equality, freedom and democracy. Political awakening and political consciousness, which in due course of time became the basis of the democratic process in the State, was the outcome of the impact of the Freedom movement of India.

Political awakening in Jammu grew out of many movements generated by communal concussions. While the reformist movements formed the basis of the freedom struggle in the state; the Hindu and Sikh socio-religious reform movements ultimately laid down the basis for political awareness in the state, and the Muslim socio-religious reform for the struggle against Dogra rule.

### **1.3.2 GROWTH OF POLITICAL AWARENESS**

It was under rule of Maharaja Pratap Singh that modern education began to spread. Two degree colleges – one in Jammu and one in Srinagar were established for imparting the English and western education. The impact of western type Higher education on the minds of the people of the State was deep and evolved as a strong movement for social, economic and political reform. The social reform movement led by various socio-religious organizations such as the Arya Pratinidhi Sabha, Dogra Sadar Sabha, Jammu and Kashmir Women's Welfare Association, Dharam Sabha, Anjuman-i-Islamia, Jammu, Chief Khalsa Diwan, Khalsa Young Men's Association and the Akali Movement in the Jammu, remained to be the harbinger of political awakening. The socio-religious reform movements were a necessary precursor to the political awakening in the Jammu.

#### **1.3.2.1 ARYA SAMAJ MOVEMENT**

The Arya Samaj and Arya Pratinidhi Sabha which were established towards the end of 19<sup>th</sup> century in Jammu were the earliest organizations to start the socio-religious reform movement in the state. The Arya Samaj was established in the state by the Hindus from outside the state who had come from the Punjab and other parts of India either as employees or settled for business purposes.

A number of public meetings were organized by Arya Samaj in the year 1924 and 1925, in which speeches were made in support of Mahatma Gandhi's principles and programmes, like Swaraj, non-cooperation and freedom movement in India.

### **1.3.2.2 ANJUMAN-I-ISLAMIA, JAMMU**

Anjuman-i-Islamia, Jammu was the earliest of all the Muslim associations in Jammu. In 1915, Summender Khan applied to Maharaja Pratap Singh for the permission to setup a non-political Muslim Association. On the grant of permission, a society known as Anjuman-i-Islamia was formed in Jammu to look after the education and social welfare of the Muslims. The main aim was to improve the economic, educational and social conditions of the Muslims and to protect their rights.

### **1.3.2.3 KHALSA YOUNG MEN'S ASSOCIATION**

It was one among the earliest socio-religious organizations established in 1917 in Jammu. The main aim of the organization was to improve the economic, educational and social conditions of the Sikhs of the Jammu and Kashmir State. On 13<sup>th</sup> April 1918, a public meeting was held in Jammu under the auspices of Khalsa Young Men's Association. The literary lectures delivered by various speakers at the association influenced the minds of the public. The Akali Movement in Punjab was indirectly responsible for the political awakening in Jammu. From 1921 onwards, the Sikh community of the State continued to support the Akali Movement in Punjab and this movement had a definite effect on the minds of the Sikhs of Jammu and Kashmir.

### **1.3.2.4 ANTI-BRITISH MOVEMENT IN JAMMU**

In the year 1920, Mahatma Gandhi assumed the leadership of Indian National Movement and remained as the Chief Architect of Indian Politics till Independence. During this period, Gandhiji's call for Satyagraha and Non Co-operation inspired millions of people against the British rule in India. This movement also played its role in influencing the people of Jammu region and making them aware of the ideals of freedom and self rule. Hundreds of students from different parts of the Jammu region went to Gujranwala to attend a conference of students convened by Lala Lajpat Rai to induce the students to join the non-co-operation movement. The protest and demonstrations started in Jammu upon the arrest of Gandhi in 1930. In the Prince of Wales College (Now G.G.M. Science College) Jammu, the students went on strike and raised slogans of Mahatma Gandhi Ki Jai and Maharaja Bahadur Ki Jai. In this way, the anti-British and pro Maharaja Movement started in Jammu by the

students unions and these movements provided a common platform to the patriotic urges of the younger generation. It initiated a political awakening and intellectual renaissance which made their mark in many fields of life.

### **1.3.3 DOGRA SADAR SABHA**

Political awakening in Kashmir, to start with the struggle against the Dogra rule. But in Jammu the political awakening was directly influenced by the National Freedom Movement in India, particularly Punjab. In order to widen the scope of socio-political reforms, the Dogras of Jammu organized themselves under the auspices of an association in 1904 called Dogra Sadar Sabha or Dogra Sabha. It was headed by Lala Hans Raj Mahajan. The Dogra Sadar Sabha was the first secular organization which included members belonging to various regional, religious, and linguistic communities of the state. Thus, Lala Hans Raj was successful in bringing the educated people of the state together and provided them an effective common platform to promote the socio-economic and political interest of the people of the state. Its activities, however, were mainly confined to the politics of petition and prayers, having fully accepted the government institutions as the focal point and the linchpin of the political process. However, its complete identification with Dogra nationalism and Dogra rule was unacceptable to the people of Kashmir at large.

The entire activities of the Dogra Sadar Sabha were carried in constitutional and democratic methods by the use of the platform of press and petitions. The Sabha, therefore prepared the ground for sprouting the seeds of democracy in Jammu and Kashmir State. The activities of the Dogra Sadar Sabha can be broadly divided into three phases:

- ***The first phase*** (1904-1919) was the initial period when Dogra Sadar Sabha established its base in the Jammu region. The Sabha also concerned itself with reforming the Dogra Community. It launched a campaign against social evils as a result of this a number of legislative measures were initiated to remedy them. In this phase the role of Sabha was non-political and remained loyal to the Maharaja of the State. The Dogra Sadar Sabha also served as a platform for the promotion of the modern education among the people of the state. Sabha played a very important role in the eradication of various social evils such as beggar system, child marriage, female infanticide, corruption from the society. Lala Hans Raj,

Ram Chand, Sardar Budhi Singh, Master Ram Rakha, Pt. Visheshwas and others played a great role in popularizing the activities of the Sabha by establishing its branches at several parts of the state.

- ***The second phase*** (1920-1930) marked the beginning of a new phase in the activities of the Dogra Sadar Sabha. Sardar Budh Singh who added a political dimension to the working of Dogra Sadar Sabha. He resigned from the post of a Deputy Commissioner in 1925 and joined the Dogra Sadar Sabha. He initiated the task of eradication of un-touchability, end of beggar system promotion of communal harmony and introduction of radical political reforms like the establishment of fully elected assembly. He called Dogra Sadar Sabha as Indian National Congress of the state. Dogra Sadar Sabha started pursuing the programmes of Indian National Congress in the Jammu region. In this phase the Sabha played a remarkable role in promoting the Swadeshi movement in the state and become popular among the people. The activities of the Sabha influenced the educated youth living in the towns of Jammu region. During this phase the Dogra Sadar Sabha became the first secular, social and semi-political organization in Jammu and Kashmir. Thus, the Dogra Sadar Sabha became instrumental in bringing the political awakening and social awareness among the people. However, the Maharaja banned the political activities of the Sabha in the state when it gave the call for hartal in protest against the arrest of Gandhi in 1930.
- ***Third Phase*** (1931-1947) started its activities when the ban imposed on the Dogra Sadar Sabha was lifted by the Maharaja of Jammu and Kashmir in October 1931. In this phase the Dogra Sadar Sabha openly supported the programmes and policies of Indian National Congress against British rule. During this phase Dogra Sadar Sabha started its campaigning for the freedom of press, establishment of democratic institutions and the Introduction of Panchayat system in the state. In 1934, Praja Sabha, which marked the beginning of parliamentary democracy in the state, was established. It provided a new platform to the Dogra Sadar Sabha to put the grievances of the people before the authorities and get them redressed. Meanwhile the Indian National Congress Committee in Jammu which was pursuing the anti-British movement in Jammu was asked by its leaders to stop the activities

and join the National Conference which as a regional Kashmiri movement was handicapped in spreading its influence in Jammu. In 1939, some leaders of Dogra Sadar Sabha including Sardar Budh Singh joined the National Conference. The National Conference under the leadership of Budh Singh increased its support basis in rural and hilly areas of the Jammu Province. During this phase, the Sabha started associating itself with the National Conference and subsequently, lost its glory and acceptability in the urban areas of Jammu.

#### **1.3.4 EMERGENCE OF PRAJA PARISHAD**

The political upheaval in Kashmir Valley was an important landmark in the history of Jammu and Kashmir State. One of the main political activities organized by the national conference was the Quit Kashmir Movement. The major demand of this movement was the abrogating of the Treaty of Amritsar and open opposition to Dogra rule in the Kashmir valley. Unfortunately, Kashmiri leaders during their struggle against Monarchy often insisted on calling Maharaja Hari Singh as the last Dogra ruler. They forget that Dogra was not only the name of then ruling family but also the community living in Jammu region. Thus, during the freedom struggle they alienated the Dogra Community of Jammu. The National Conference failed in its effort to extend its activities and support base in Jammu region particularly in the Hindu dominated areas. At the same time the popular sentiments in Jammu region believing the Maharaja Hari Singh as the symbol of their security against the majority community of Kashmir region. The Maharaja left the Kashmir valley on October 26, 1947, in the wake of Pakistani Tribal attack, and came to Jammu. The incident further strengthened a feeling of insecurity among the Dogra Community of Jammu region. Their feeling of resentment was further aggravated by Sheikh Abdullah's revolutionary plan for economic and social changes which adversely affected the economic interests of the people of Jammu region. In this situation the people of Jammu region decided to launch a movement to resist Sheikh Abdullah's designs and the programmes and this movement gradually took the shape of a political party called Praja Parishad.

The All Jammu and Kashmir Praja Parishad was founded in November 1947. Balraj Madhok, Hari Wazir, Lala Roop Chand Nanda and others took a leading part in its formation. Balraj Madhok was the key organizer of the party and Hari Wazir became its

first President. The party gained strength with the active involvement of Pt. Prem Nath Dogra and other prominent leaders of Jammu Region.

According to Balraj Madhok, “the objective of the party was to achieve the full integration of Jammu and Kashmir with India and oppose the “Communist-dominated anti-Dogra Government of Sheikh Abdullah”.

Praja Parishad protested against the aggressive Nationalism of Kashmir and developed a sense of regional Nationalism in Jammu. This way, the Praja Parishad played an important role in the political awakening in Jammu region.

#### **1.3.4.1 JAMMU AGITATION (1949-1953)**

Praja Parishad, which first sought the security of Dogras in the retention of the Maharaja as a constitutional head of the state had subsequently favoured full accession of the state with Indian Union. Praja Parishad even opposed to the incorporation of Article 370 in the Indian Constitution under which the state secured a special status. It also opposed convening of the state Constituent Assembly and forming a separate constitution for it.

In 1951, when the elections for the Jammu and Kashmir Constituent Assembly were held, the Praja Parishad initially contested in 29 out of 30 seats allocated to Jammu. However, the nomination papers of its candidates were rejected at a large scale on the grounds of technicality and Praja Parishad decided to boycott the elections in shortly before the polling. Consequently, All National Conference candidates were declared as winners from the Jammu Province. The party, inspite of its popularity and strong support base failed to enter in the state constituent assembly. The Praja Parishad took this issue to the streets of Jammu and organized protests against the government. Praja Parishad raised slogans of Ek Vidhan, Ek Nishan, Ek Pradhan and full integration of the state with rest of India.

On 15 January 1952, National Student Association the students wing of Praja Parishad staged a demonstration against the hoisting of the state flag along side the Union of India flag in G.G.M. Science College Jammu. The incident led to the penalization of the students which in turn resulted in hunger strike, violence,

lathi charge, firing by the police, and paralyzing the administrative machinery in Jammu city. The military was called out and 72 hours curfew was imposed in Jammu city. The entire leadership of Praja Parishad was arrested. The Govt. charged that the demonstration was organized and inspired by the Praja Parishad. On the intervention of N. Gopaldaswami Ayyanger, the then Minister of State of India who visited Jammu in April 1952 to analyse the situation and the leaders of Praja Parishad were released.

In November 1952, the Praja Parishad started a civil disobedience campaign against the Sheikh Abdullah Government for communalism, favouring the Kashmiri Muslim interests in the state and sacrificing the interests of the Jammu. The Bharatiya Jana Sangh under the leadership of Shyama Prasad Mukherjee launched a parallel agitation in Delhi to support the Praja Parishad's movement in Jammu.

In May 1953, Shyama Prasad Mukherjee along with thousands of activists made a bid to enter Jammu and Kashmir without permit. Sheikh Abdullah's government prohibited his entry and arrested him when he attempted to enter in Lakhanpur (Jammu and Kashmir). Thousand activists were imprisoned in Jammu, Punjab and other parts of India including members of Parliament. Unfortunately, Shama Prasad Mukherjee died in detention on 23 June 1953 at Srinagar. As a result, the whole India was plunged in profound grief and submerged by a kind of anti-Nehru and anti-Abdullah wave. Praja Parishad refused to believe that the death occurred in natural circumstances. A sudden open rift was developed in National Conference and Sheikh Abdullah lost majority within his five-member cabinet. He was also summoned by the Sadar-i-Riyasat, who suggested an emergency meeting of the cabinet for discussion at his palace. But Abdullah refused to attend the meeting. Sadar-i-Riyast Karan Singh, then dismissed Abdullah from the post of Prime Minister and put him under imprisonment. Bakshi Ghulam Mohammad, who succeeded Abdullah as the Prime Minister, implemented all the measures of the Delhi Agreement 1952, making further concession of powers to the Union Government. Praja Parishad on the other hand seemed to be pacified with the fall of first Abdullah Ministry and his

arrest. The Praja Parishad remained as a party of Urban Hindus and failed to develop into a mass movement especially in rural areas as a result, in the legislative Elections of 1957, even though it contested in 21 seats it won only 5 seats. In the elections held in 1962, the Praja Parishad contested 25 seats and won 3 seats. In the year 1963, the Praja Parishad got merged into the Bharatiya Jana Sangh.

### **Praja Parishad's Party Organization**

The organizational structure of Praja Parishad consisted of Primary Samitis, Mandal Samitis, Tehsil Samitis, District Samitis, provincial Samitis, General Body and the Central Committee.

**(a) Primary Samiti:** The primary Samiti was the basic unit of the party. It consisted of 25 or more primary members of the party. The Primary Samiti consisted of a President, a Secretary and a Treasurer. All the office bearers were elected by the basic members.

**(b) Mandal Samiti:** The Mandal Samiti was above the Primary Samiti. For each group of primary Samitis, there was a Mandal Samiti. Members of the Primary Samiti were elected by President of the Mandal Samiti. The President of Mandal Samiti himself nominated his executive consisting of a Secretary, a Treasurer and six members. The Mandal Samiti supervised the working of Primary Samitis under its purview.

**(c) Tehsil Samiti:** All the members of the Executives of the Mandals in a Tehsil jointly constituted a Tehsil Samiti. The Tehsil Samiti had an elected President, at least 2 Vice-Presidents, a Treasurer and nine members. They also elected two representatives for the general body with the consent of the President of Tehsil Samitis. The Tehsil Samiti was responsible for popularizing the ideology of Praja Parishad in the tehsil.

**(d) District Samiti:** All the Tehsil Samitis in a district joined their hands to constitute a District Samiti. All the members of Tehsil Samiti elected a President, a Secretary and an Organizational Secretary of the District Samiti of the party. The President of the District Samiti, with the help of Secretary and Organizational Secretary constituted a 15-member District Executive Samiti.

**(e) Provincial Samiti:** The Provincial Samiti was above the District Samiti. This was an elected body, representing all three regions of the state — Jammu, Kashmir and Ladakh. The Provincial Samiti looked after the organizational work of the party in various regions.

**(f) General Body:** The General Body was above the Provincial Samiti. It consisted of:

- (i) the President, the Secretary and the Organizational Secretary of each Tehsil Samiti as well as the elected representatives from each party constituency;
- (ii) the President, the Secretary and the Organisational Secretary of the District Samiti;
- (iii) five members nominated by the President from the other institutions affiliated to the party.

Each member of the General Body has to pay five rupees annually. It was the main Committee to run the policies of Praja Parishad. During its tenure it had the right to solve all the problems which might crop up. It had also rights to issue orders to other committees from time to time. The sessions of the general body were held once a year.

**(g) Central Committee:** At the apex of the party hierarchy, there was central committee consisting of 21 members including the President. These members were selected by the President from the members of the general body. The President of the Central Committee also selected two Vice-Presidents, one Secretary and one Treasurer. The Central Committee was responsible to the general body. It used to issue orders regarding the questions which were not defined in the Constitution. It worked to fulfil the aims of Praja Parishad. The President of the central committee was the highest functionary of the party organization.

### **Membership**

Any adult subscribed to the ideology of the party could become its member by paying four annas as entry fee. This membership fee was later on raised to rupee one.

### **Finances**

Money collected from the people who sought its membership, Five rupees of annual fee from each member of the general body, donations received from different sources, as well as money collected by selling the tickets bearing the photos of its President, constituted

the finances of the party. Expenditure incurred on various activities of the party was met out of this fund.

### **1.3.5 LET US SUM UP**

The evolution of political consciousness in the state of Jammu & Kashmir began with the social reform movements. The social reform movement led by the Dogra Sadar Sabha and other community organizations such as Arya Sabha, Jammu and Kashmir Women's Welfare Association, Dharam Sabha, Anjuman-i-Islamia Jammu, Khalsa Youndmen's Association formed the basis for the political awakening and political reform in Jammu region. The Hindu and Sikh socio-religious reform movements, ultimately laid down the basis for national awareness in the Jammu region and the Muslim socio-religious reform movements laid down the basis for the struggle against the Dogra rule in Kashmir. The formation of All Jammu and Kashmir Praja Parishad was eventually a reaction to the aggressive nationalism of Kashmir and protest of Jammu region which felt politically ignored and condemned.

Praja Parishad played an important role of providing the first political platform for the expression of organized political response in Jammu. Praja Parishad favoured closer ties between the state and Indian Union and abrogation of Article 370 which conferred a special status to the state. It out rightly rejected a separate Constituent Assembly, separate emblem and separate flag for the state and demanded the application of Indian Constitution in its entirety.

### **1.3.6 SUGGESTED READINGS**

- Y.R. Sharma, *Political Dynamics of Jammu and Kashmir* (2002).
- Narinder Singh, *Political Awakening in Kashmir* (1992).
- Ravinderjit Kour, *Political Awakening in Kashmir* (1996).
- Vidya Bhushan, *Constituent Assembly of Jammu and Kashmir* (2011).
- Surjit Singh, *The Great People of Jammu and Kashmir*.

### **1.3.7 CHECK YOUR PROGRESS EXERCISES**

1. Write a short note on Political Awakening in Jammu.
2. Explain the activities of Dogra Sadar Sabha.
3. Discuss the emergence of Praja Parishad.
4. Write a note on the Ideology of Praja Parishad.
5. Examine the role of Paraja Parishad in the Political Awakening in Jammu.

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1.4 INSTRUMENT OF ACCESSION AND ITS BACKGROUND

- Seema Shekawat

STRUCTURE

1.4.0 Objectives

1.4.1 Introduction

1.4.2 Historical Background – Instrument of Accession

1.4.3 Historical Background – basic principle and Draft Article 306-A

1.4.4 Main features of Article 370

1.4.5 Restricted Scope of Constitution of India for Jammu and Kashmir

1.4.6 Division of powers between Union and the State Government

1.4.7 Important Exceptions

1.4.8 Let Us Sum Up

1.4.9 Check your Progress Exercise

1.4.0 OBJECTIVES

The objective of this lesson is to provide a detailed understanding of Article 370 of the Constitution of India since it is the Article that is instrumental in accession of Jammu and Kashmir with Union of India. After reading this lesson, you should be able to understand:

- the basic features of Article 370;
- the constitutional relationship between the Union and the State of J&K;
- the special constitutional status of Jammu and Kashmir.

1.4.1 INTRODUCTION

Article 370 of the Constitution of India is a special provision providing for the basis of relationship of the State of Jammu and Kashmir with the Union of India. Existence of such an Article defining the special relationship between the Union of India and the state clearly indicates that the Constitution of India that came into force on the 26th January, 1950 was not applicable to the State of Jammu and Kashmir on the same basis as it was applicable to other States. To understand the reason as to why an exception was made for Jammu and Kashmir and why Article 370 of Constitution of India was specifically designed for it, it is important to trace the background in which the state had acceded to India.

1.4.2 HISTORICAL BACKGROUND - INSTRUMENT OF ACCESSION

The accession of the State of Jammu and Kashmir took place at the time when the state was invaded by the tribesman from Pakistan territory. To drive the invader out of the state the Maharaja sent a fervent appeal to Govt. of India for help. But Lord Mountbatten expressed the view in the Defence Committee meeting that as the Maharaja had not signed the Instrument of Accession, India could not take any decision in this context. It was in this background that the Maharaja signed the instrument of accession on 26th October 1947.

The Maharaja of Jammu and Kashmir was competent and lawfully authorized in deciding the issue of accession even without the consent of his subjects. However, what made the accession a complicated issue was the indecision on the part of the ruler. The cause of the delay was the ruler himself who wished to remain independent. But because of the invasion on the territory of the state, he took the decision to accede to the dominion of India.

The Instrument of Accession that the Maharaja signed transferred to the Indian dominion government, the powers with regard to defence, external affairs and

communication. The matter corresponding to these powers were enumerated in the Schedule attached to the Instrument of Accession. These were given below.

- 1) The military, air and naval forces of the dominion, armed forces raised or maintained by the dominion forces including the forces raised or maintained by acceding states attached to and operating with any of the armed forces of the dominion naval, military, and air force works and the administration of cantonments, arms ammunition, and explosives.
- 2) External affairs, treaties and agreements with other countries, extradition, admission into, emigration, expulsion from India, regulation or the movement of foreign nationals, pilgrimages to places outside India and naturalization.
- 3) Communications, posts and telegraphs, telephones, wireless, broadcasting and other forms of communication, railways, maritime shipping and navigation, admiralty, jurisdiction, major ports, port quarantine delimitation of port and port authorities, aircraft and air navigation, aerodromes, air traffic, light houses, beacons, safety for shipping and aircraft, carriage of passengers and goods by sea and air and police force of the railways.
- 4) Elections to the Dominion Legislature, offences against laws with respect to any of the matters transferred to the Dominion of India, inquiries and statistics with regard to these matters and the jurisdiction of all courts with regard to these matters.

All those states that had signed the Instrument of Accession were constitutionally integrated as the Constituent Assembly of India provided for a common framework of relationship between the Centre and the States. This process of integration and constitutional adjustment was not followed in the case of Jammu and Kashmir and the constitutional relationship between the state and the central government continued to be governed by the provisions embodied in the Instrument of Accession.

1.4.3 HISTORICAL BACKGROUND – BASIC PRINCIPLES AND DRAFT ARTICLE 306-A

In May 1949 certain broad principles related to Jammu and Kashmir were agreed upon by the state government and the Government of India. These principles that had to

define the basis of constitutional position of the state in the future federal structure of India included a number of points. Firstly, it was agreed that the division of powers between Government of India and the state would be governed by the provisions of the Instrument of Accession. This implied that the Government of India would be exercising only those powers in relation to this state as are specified in this Instrument of Accession. To determine what other powers would be transferred to the Government of India, it was decided to have a constituent assembly of the state. This Constituent Assembly, apart from being empowered to determine the scope of the powers of the Government of India vis-à-vis this state, was also empowered to frame a Constitution of the State. In its implications it meant that since the Constitution of India would not be applicable to this state, specifically in the matters other than those transferred to the Union Government by the Instrument of Accession and those matters which the Constituent Assembly of the State may decide to transfer to the Government of India – all other matters would be under the jurisdiction of the State and therefore for these matters, there was a requirement of a separate constitution of the State. Hence, it was decided that the constitution of the state would be framed by a constituent Assembly representing the people of the state.

Among other points on which there was agreement included the following: operational and the administrative control of the state armies would be taken over by the Government of India; the future of the dynastic ruler of the Dogras would be determined by the constituent Assembly of the state; provisions with regard to citizenship, Fundamental Rights and the Directive Principles of State policy, envisaged by the constitution of India, would be discussed.

The position relating to the relation of the state of Jammu and Kashmir, however became crystallized finally when the special provision 306-A was drafted for being placed before the Constituent Assembly of India. Draft Article 306-A was revised three times. It was this Draft Article 306-A which ultimately was converted into Article 370 of the constitution of India.

The position which emerged after the incorporation of Article 370 was that only Article 1 and Article 370 of the Indian constitution were to apply to Jammu and Kashmir State in their original form.

1.4.4 MAIN FEATURES OF ARTICLE 370 – TRANSITIONAL NATURE

Article 370 is included in that part of the Constitution which deals with the exceptions related to the constitution. This is a part that includes special and temporary provisions of Constitution. The idea underlying this part is that all those provision which cater to exceptional circumstances and which deal with transitional situations provisions are included in that part. Seen from this angle, Article 370 included provisions which were considered as ‘Temporary Provisions’ with respect to J&K.

This Article, as had been explained by Sardar Patel, was a device to continue the existing relationship of the Jammu and Kashmir state with the Union of India. The Article has been described as a “Temporary Provision” in the Constitution. The temporary nature of the Article arises merely because the power to finalize the constitutional relationship between the state and the Union of India had been specifically vested in the Jammu and Kashmir Constituent Assembly. The Constitution of India clearly envisaged the convening of a constituent assembly for Jammu and Kashmir State and also provides that whatever modifications, amendments or exceptions that might become necessary either to Article 370 or to any other articles in the Constitution of India in their application to Jammu and Kashmir were subjected to the decision of that assembly.

The state of Jammu and Kashmir was included as a Part B state in the first schedule of the Constitution of India, as it was promulgated in 1950. But though the state was included as a Part B state, all the provisions of the Constitution applicable to Part B state were not extended to Jammu and Kashmir. While the Constitution of the other Part B states was laid down in Part VII of the Constitution of India (as promulgated in 1950), the Constitution of Jammu and Kashmir State was to be framed by the constituent assembly of that State.

1.4.5 RESTRICTED SCOPE OF CONSTITUTION OF INDIA FOR JAMMU AND KASHMIR

Article 370 clearly reads:

‘the provisions of Article 1 and of this Article shall apply in relation to that (Jammu and Kashmir) State’.

What was implied by this article was that the scope of the Constitution of India as applicable 'on its own' was limited to only two articles of the Constitution of India – viz. Article 1 and Article 370. Article 1 says that India shall be Union of States. It further specifies that the States that are part of this Union shall be specified in the First Schedule. The list of States that are specified in First Schedule also includes the State of Jammu and Kashmir. This implies that the state of Jammu and Kashmir is a part of the Indian Union as defined by Article 1 of the Constitution. However, it further implies that its constitutional status differs from that of other states of the Indian Union. Since only Article 370 applies on its own, it means that unlike any other state of India, Jammu and Kashmir has to have its own Constitution drafted by its Constituent Assembly, and the state is to be governed under that Constitution.

However, there is also a scope for further extension of the provisions of Constitution of India to the state of Jammu and Kashmir. This has been specified in Article 370 itself. After mentioning that only article 1 and article 370 shall apply to this state, Article 370 further specifies that:

“such of other provisions of this Constitution shall apply in relation to that State (Jammu and Kashmir) subject to such exceptions and modifications as the President may by order specify.:

Provided that no such order which relates to the matter specified in the Instrument of Accession of the State. . . shall be issued except in consultation with the Government of India.”

The Constitutional relationship of the state of Jammu and Kashmir with India, as the above features indicate, is governed on a level different from the relationship which binds all other states with the Union. The only Articles of the Indian Constitution which apply of their own force to the state of Jammu and Kashmir are Article 1 and Article 370. Jammu and Kashmir State shall be applied to it with such exceptions and modifications as the President of India may specify in the order to be issued by him only with the concurrence of the government of Jammu And Kashmir State. No other state of the Indian Union is treated on this basis.

The President, acting under Article 370, promulgated the Constitution (application to Jammu and Kashmir) Order, 1950. This order was replaced by the Constitution (Application to Jammu & Kashmir) Order 1954. This order has been further amended and modified by the President from time to time, regulating the constitutional status of the state. As a result, several provisions of the Indian Constitution have been extended to the state of Jammu and Kashmir.

The constitutional position of the state under the Constitution Order, 1954 may be briefly stated as follows

- (a) The state of J&K shall continue to be governed under the Constitution of the state which came into force on January 26, 1957.
- (b) the High Court of the state shall have all powers and jurisdiction as enjoyed by the other high courts in India except that it cannot issue a writ for “any other purpose”.
- (c) The jurisdiction of the Supreme Court extends to that state (except Art. 135 and 139).
- (d) The Parliament can legislate for the state with respect to all entries in the Union list (excluding entries 8, 9, 34, 60, 79 and 97) and all entries in the Concurrent list (except entries 1,2,3,5 to 10, 12 to 15, 17, 20, 21, 27, 28, 29, 31, 32, 37, 38, 40 to 44).
- (e) A Proclamation of Emergency under Art. 352(1) cannot have any effect in relation to the state unless it has been made at the request or with the concurrence of the state government.
- (f) The provisions for imposing President’s Rule under Art. 356 applied to the state.
- (g) Provisions relating to the freedom of trade, commerce and intercourse, services and citizenship, apply to the state.
- (h) Provisions relating to the election apply to the state. The Election Commission has jurisdiction over elections held in the state under its Constitution.
- (i) The fundamental rights apply to the state with slight modifications.

According to this order, in short, the jurisdiction of the union extended to all union subjects under the Constitution of India (subject to certain slight alterations) instead of any of the three subjects of Defence, Foreign Affairs and Communications with respect to which the state had acceded to India in 1947. This order, as amended in 1963, 1964, 1965, 1966, 1972, 1974 and 1986, deals with the entire constitutional position of the state within the framework of the Constitution of India, excepting only the internal constitution of the state government, which was to be framed by the Constituent Assembly of the state.

1.4.6 DIVISION OF POWERS BETWEEN UNION AND STATE GOVERNMENT

The Division of Powers between the state of Jammu and Kashmir and the Union Govt. is determined within the provisions of Art. 370 of the Constitution of India as amended and modified by the various Constitutional (Application to Jammu and Kashmir) Orders, promulgated by the President of India from time to time. Article 370, in its original and un-amended form did not provide for the application of the provisions, the Constitution of India, underlined for the centre-state relations, to the Jammu and Kashmir state. According to its provision the powers of the Parliament to make laws for the state were limited to

- (a) those matters in the Union list and the Concurrent list, which in consultation with the government of the State, were declared by the President to correspond to matters specified in the Instrument of Accession as the matters with respect to which the Dominion legislature had the power to legislate for the state; and
- (b) such other matters in the Union list and the Concurrent list, as were specified by the President of India with the Concurrence of the Government of the State.

Clause (1) (b) of Article 370 refers to the legislative authority of Parliament over Jammu And Kashmir State. The matters over which the Union Parliament had power to make laws for the state was basically the matters already covered by the Instrument of Accession namely, “defence, external affairs, communication and the like matters”. The exclusive union powers in relation to India generally are set out in enumerated items in List I and it was obviously necessary that the items on that list corresponding to the powers surrendered by the Instrument of Accession should be settled by negotiation between State of the Jammu and Kashmir and the Union.

The President made the Constitution (application to Jammu and Kashmir) Order 1950, in consultation with the government of the state of Jammu and Kashmir. It specified the matters with respect to which the Union Parliament would be competent to make laws for Jammu and Kashmir, relating to the three subjects of defence, foreign affairs, and communications.

1.4.7 IMPORTANT EXCEPTIONS

There are exceptions to the Jammu and Kashmir when it comes to the application of provisions of Indian Constitution. Some of them have been elaborated below.

1. The powers not transferred to the union government, in other words, the residuary powers, are retained by the state. This is a very important exception in relation to this state. In the Constitution the powers of the Centre are enumerated in the Union List as well as the Concurrent List. Similarly, the powers of the states are also enumerated in the State List and the Concurrent List. The residuary powers lie with the Centre. But in relation to the State of Jammu and Kashmir, the residuary power lies with the State.

2. Article 3 of the Indian Constitution does not apply to the state of Jammu and Kashmir. In other words, no bill providing for increasing or diminishing the area or changing the name of the state or amalgamating any of its part with other state or creating any other state out of its existing boundaries shall be introduced in Parliament without an express consent of the legislature of the Jammu and Kashmir. The Parliament cannot take unilateral action against Jammu and Kashmir under Article 3 of the Indian Constitution.

1.4.8 LET US SUM UP

Although the State of Jammu and Kashmir became an integral part of the Indian union by virtue of Article 1, item 15 and 1st Schedule, the relations between India and J&K were to be governed by provision of Article 370.

It is by virtue of Article 370 that Constituent Assembly of Jammu and Kashmir was given the authority not only to frame the constitution for the state but to concur in the application of the Indian Constitution to the State and also extended the jurisdiction of Indian Parliament to J&K. Further progress about the constitutional relations between

J&K and India was contingent on the recommendation of J&K constituent Assembly. Residuary powers were reserved for the state.

1.4.9 CHECK YOUR PROGRESS EXERCISE

1. Briefly outline historical background to Instrument of Accession.
2. Describe the main features of Article 370.
3. The very incorporation of Article 370 indicates the special status of the Jammu and Kashmir within Indian Union. Explain.
4. How powers are distributed between Indian Union and State of Jammu and Kashmir.
5. What are the important exceptions given to state of Jammu and Kashmir.

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## **2.1 BASIC FEATURES OF J&K CONSTITUTION**

**- Bhawana Khajuria**

### **STRUCTURE**

#### **2.1.0 Objectives**

#### **2.1.1 Introduction**

#### **2.1.2 Historical Development of the Constitution**

#### **2.1.2 Nature of the Constitution of Jammu and Kashmir**

#### **2.1.4 Importance and Scope of the Preamble**

#### **2.1.5 Important Parts and Sections**

#### **2.1.6 Let us sum up**

#### **2.1.0 OBJECTIVES**

This Lesson deals with the basic features of the Constitution of Jammu and Kashmir. After reading this, you should be able to understand:

- the nature of the Constitution of Jammu and Kashmir;
- the relationship between the Constitution of Jammu and Kashmir and Constitution of India; and
- the basic features of the Constitution of Jammu and Kashmir

### **2.1.1 INTRODUCTION**

The main objectives of the struggle for freedom in Jammu and Kashmir during the period of 1920s to 1947 were to have a participatory form of government that represents the aspirations and interests of people. This would have been possible only through institutionalisation of the democratic principles of governance of the state. For this purpose, it was important to secure to the people of J&K the right of convening a constituent assembly for framing a constitution for the state. Though all other princely states which acceded to the Union of India agreed to be governed by the Constitution of India, but for the state of Jammu and Kashmir it was agreed to have a constitution for the state as well. This was a result of the special status of the state as guaranteed by the Article 370 of the Constitution of India.

### **2.1.2 HISTORICAL DEVELOPMENT OF THE CONSTITUTION**

The idea of convening a Constituent Assembly for Jammu and Kashmir State was conceived before the partition of India was contemplated and would have been implemented but for the invasion of the state after the partition of India by the tribesmen from Pakistan territory.

In 1948, when National Conference came in power, it was declared that, as soon as normal conditions were restored, steps would be taken to frame a Constitution for the state through a duly convened Constituent Assembly.

The Constituent Assembly was convened in September 1951. It was an event of great significance in the political history of the state. This assembly was invested with authority to frame the constitution for the state. It started its work on 5th November, 1951 at Srinagar. The main objectives which had to underlay the Constitution of Jammu and Kashmir and in accordance to which the Constituent Assembly was to proceed were outlined and defined by Sheikh Mohammad Abdullah.

One of the important points to note about the Constitution of Jammu and Kashmir is that it starts with defining the status of the State of Jammu and Kashmir within the Indian federal structure. It declares, 'The State to be an integral part of India'. This feature of the Constitution of Jammu and Kashmir is to be read along with the Article 1 of the Constitution of India by virtue of which this State is given the status of part of the federal structure.

By the application of Article 1 of the Indian Constitution this State has been recognised as part of the Union of India. It is in accordance with this principle itself as well as in accordance with the provision of Instrument of Accession, the State has accepted the sovereignty of the Indian State. To reiterate this position the Constitution of Jammu and Kashmir further states that the state is an ‘integral part of India’.

Another important point that needs to be noted is that the Constitution of Jammu and Kashmir is an important instrument which formalises the specific context of the centre-state relations with respect to the state. As the federal context of India clearly shows that the state of Jammu and Kashmir is an exception to the normal rule, the jurisdiction of the Parliament is limited with respect to the state. Moreover, unlike other states the division of powers between the centre and the state is also not followed in the same manner as in case of other states. To that extent many of the powers that are enjoyed by the Union Parliament, in relation to other states, are exercised by the state legislature. Section 5, defines the legislative and executive powers of the state.

The draft Constitution was prepared in a period of more than three years. The new constitution of the state of Jammu and Kashmir was to be enforced from January 26, 1957. The framing of the constitution was a task of a great importance in the history of the state. The new Constitution has secured for the people of the state their individual character only in so far as it is consistent with their common Indian nationality.

### **2.1.3 NATURE OF THE CONSTITUTION OF J&K**

The Constitution of Jammu and Kashmir is a written document with 158 sections and six schedules. It is partly rigid and partly flexible. Section 147 specifies these features which are unalterable or rigid. All the other sections of the constitutions are flexible, because an amendment to them can be initiated by the introduction of a Bill in the Legislative Assembly.

Preamble to the Constitution of Jammu and Kashmir, like the Preamble of the Constitution of India is the most significant part. It lays down the most important principles which are to guide the working of the state government as well as provides the vision of the political goals to be pursued by the future generation of political leaders. The Preamble has its importance because it reflects the most important principles, political values and sacred political goals that had been outlined in the New Kashmir Manifesto in 1944.

The most important part of Preamble of the Constitution of Jammu and Kashmir reads as follows:-

“We the people of the state of Jammu and Kashmir having solemnly resolved, in pursuance of the accession of this state to India which took place on the 26th October, 1947, to further define the existing relationship of the state with the Union of India as an integral part thereof, and to secure to ourselves.

*Justice* – Social, Economic and Political.

*Liberty* – of thought, expression, belief, faith and worship.

*Equality* – of Status and opportunity and to promote among us all.

*Fraternity* – assuring the dignity of the individuals and the unity of the Nation.

This preamble, as we can clearly see is an adaptation of the preamble to the Constitution of India which reads as under: -

“We the people of India, having solemnly resolved to constitute Indian into a sovereign, socialist, secular, democratic republic and to secure to all its citizens : Justice – Social, Economic and Political, Liberty of thought, expression, belief, faith and worship, Equality of status and of opportunity.”

#### **2.1.4 IMPORTANCE AND SCOPE OF THE PREAMBLE**

The preamble to a Constitution generally expresses the political values which constitution is intended to promote. The importance and real significance of preamble lies in that it functions as a mirror which reflects and explains certain basic facts which must be understood before the Act itself can be followed. The preamble also proclaims the intent and purpose of the Constitution. The preamble of the Constitution serves three purposes. Firstly, It indicates the source from which the constitution derives its authority. Secondly, it indicates the scope of the Constitution. Lastly, it states the objects which the constitution seeks to establish and promote for a proper appreciation of the aims and aspirations embodied in a Constitution. Therefore, in order to understand the nature of the constitution of Jammu we must turn to the various expressions contained in the preamble.

The expression “we the people of the Jammu and Kashmir in the preamble clearly indicates the firm determination of the people to abolish the hereditary rule under whose clutches they had lived, for decades, a life of slavery and destitution. The expression “we the people” also means the elimination of claim of any vestiges of the sovereignty of ex-ruling class. The Constituent Assembly of the state was fully justified to have taken a wise decision for elimination of hereditary rule from the soil of the state because the Constituent Assembly being a truly representative body elected directed by the people was authorized to take such a decision.

The expression, “we, the people of the State of Jammu and Kashmir adopt and give to ourselves this Constitution”, is in consonance with the concept of popular sovereignty which constitutes the basis of all power in a Parliamentary democracy like Jammu and Kashmir State. When in 1944, the National Conference started the “Quit Kashmir movement” it acted on the assumption that sovereignty flows from the people. The Magna Carta of the National Conference “New Kashmir” was based on that principle. So, when the Constitution of Kashmir was being framed it was emphasized that it was in accordance with the wishes of the people that the Constitution was being framed.

The scope of Constitution as defined in Section 3 is to further define the existing relationship of the state with the Union of India as an integral part thereof. The Constitution of J&K derives its authority from and functions within the scope of Article 370 of the Constitution of India. As such the purpose of the Constitution of J&K extends beyond providing for the structure of governance at the level of the state. It also defines the relationship of the State with the Union of India and takes it beyond the Instrument of Accession and the Article 370 of Constitution of India.

For defining the nature of the governance within the State, the Constitution of Jammu and Kashmir has been guided by the principles of democracy. For a state that had witnessed a popular political movement before the process of Constitution making, the principle of democratic governance was very important. During the period of political movement in the decade of thirties and forties, there had developed a political demand for transfer of power to the people. Popular government was the most important political slogan during the movement. Hence, it was very natural that when constitution was being drafted that it would reflect the popular aspirations and would provide for a system of

governance wherein the ultimate source of authority would lie in the people. The founding fathers of Kashmir Constitution were aware of the fact that they were functioning not as autocrats and that they were instruments of the popular will and as such were required to represent that will of the people which the Constitution enshrines. As the Constitution was considered to be a repository of the will of the people, it is considered to be a very sacred document. Accordingly, the Constitution has been made source of all power and authority in the state and all the organs of the Government have been made subordinate to it.

The scope of the constitution, besides defining the relationship with India in Section 3, extends to making provisions for “all matters except those with respect to which Parliament has power to make laws for the state. The Constitution of Jammu and Kashmir professes to secure to all its citizens social, economic, political justice. It also aims at securing equality of status and opportunity by prohibiting discrimination by the state on the ground of sex, religions, race, class and creed. The makers of the Jammu and Kashmir Constitution provided the ideals of liberal democracy. The preamble clearly proclaims the ideals of liberal democracy with a view to secure to the people not only the political objectives but also to enable them to realize the socio-economic goals. It also strives to guarantee the rights which are essential for the development of the individual and the nation viz., the Liberty of thought, liberty of expressions and belief. The makers of the Constitution were aware of the ideals which the framers of the Constitution of India had set before themselves for ensuring a new socio-economic order and a new political structure for free India.

#### **2.1.5 IMPORTANT PARTS AND SECTIONS OF CONSTITUTION**

This Constitution of J&K is divided into thirteen parts, consisting of 158 sections and six schedules. Part 1 consists of two sections. The first section deals with “short title and commencement”. The title has been given as ‘the Constitution of Jammu and Kashmir’. As regards the commencement of the Constitution, there was immediate enforcement of the sections 1, 2,3,4,5,6,7,8 and 158 while the remaining provisions of the Constitution came into force on the 26th January 1957. This day is referred to in this Constitution as the day of commencement of this Constitution. The second section of this part deals various definitions.

Part II of Chapter I deals with the relationship of the state with the Union of India, The extent of the territory of the state and the extent of the executive and the legislative powers of the state. Section 3 and Section 4 of the Constitution affirm the determined will of the people that the State of Jammu and Kashmir to remain as integral part of the Indian Union.

Section 5 of the Constitution of Jammu and Kashmir is confined to matters over which the State Legislature can legislate. The Constitution of Kashmir has been so framed that the state cannot claim any power which is not conferred upon it by the Constitution. But at the same time, it can exercise any power on those matters which it has not been directly or indirectly deprived by the Constitution. Hence so far as the extent of the legislative and executive powers is concerned, these powers “shall extend to all matters except those with respect to which Parliament of India has power to make laws for it according to the provisions of the Constitution of India”.

Section 5, dealing with the extent of legislative and executive power of the state, has been put beyond the powers of the legislature to amend. Part III deals with permanent residents of the State. In accordance with the provisions of the Constitution of the State every person who is, or is deemed to be a citizen of India under the provisions of the Constitution of India shall be a permanent resident of the State on the 14th day of May 1954, on the condition that

- (a) he has a state subject of Class I or the Class II.
- (b) having lawfully acquired immovable property in the state, he has been ordinarily resident in the state for not less than ten years prior to the date.

Among other important parts of the constitution of Jammu and Kashmir, a very significant part relates to the Directive Principles of State Policy. The chapter on Directive Principles of State Policy consists of fifteen sections, embodying policy formulations regarding economic structure of the state, material security of the citizens, protection of weaker sections including women and children. The Directive Principles as enshrined in the Constitution of the State are broader in scope as compared to those contained in the Constitution of India as these reflect the principles of New Kashmir Manifesto. However, like in the Constitution of India, the Principles do not provide automatically enforceable rights but are in the nature of important ideological principles.

### **2.1.6 LET US SUM UP**

The Constitution of Jammu and Kashmir is an important document that has multiple dimensions. Firstly, it reflects the political ethos of the political struggle that was waged during the pre-1947 period against the feudal rule. Thus, it provides very noble political goals before itself. Most of these goals as contained in the Preamble were in fact, already enshrined in the New Kashmir Manifesto. This ethos is further reflected in an important chapter of the Constitution that contain Directive Principles of State Policy. Secondly, it is an important instrument for further elaborating the relationship of the State of Jammu and Kashmir with the Indian Union. Thirdly, it also provides the structure of the governance for the State.

### **2.1.7 CHECK YOUR PROGRESS EXERCISE**

1. How Constitution of India historically evolved?
2. What is the basic nature of the India Constitution?
3. The Preamble is the heart and soul of Indian Constitution. Elaborate.

Write a note on important parts of the Indian Constitution.

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## **2.2 SPECIAL STATUS, ARTICLE 370 OF INDIAN CONSTITUTION AND PRESIDENTIAL ORDER OF 1954**

**- V. Nagendra Rao**

### **STRUCTURE**

#### **2.2.0 Objectives**

#### **2.2.1 Introduction**

#### **2.2.2 Historical Background to Special Status**

#### **2.2.3 Rationale of Special Status Under Article 370**

#### **2.2.4 Article 370 Main Features**

##### **2.2.4.1 Purpose of the Article 370**

#### **2.2.5 The Presidential Orders of 1950 & 1954**

#### **2.2.6 Article 370: Special Provisions**

#### **2.2.7 Let us Sum up**

#### **2.2.8 Check Your Progress Exercise**

## **2.2.0 OBJECTIVES**

In this lesson you will study the features, provisions and purpose of Article 370 incorporated in the Indian Constitution and Presidential Orders issued in 1950 and 1954. After going through this lesson, you will be able to understand:

- the historical background to incorporation of Article 370 in India Constitution;
- the importance of Presidential Orders issued in 1950 and 1954;
- the main provisions in Article 370; and
- the significance or insignificance of Article 370 in contemporary times.

### **2.2.1 INTRODUCTION**

Article 370 was included in the Constitution with a mature consideration by the Constitution-makers. It was a condition of Kashmir's accession to India and if that accession is sacrosanct, the condition must also be sacrosanct. Kashmir did not obviously want to join Pakistan. The Jammu and Kashmir procrastinated between independence and accession to India and chose the latter. Accession to India was conditional on J&K retaining its distinct cultural and regional identity. Article 370 assured the state all benefits of independent entity without sacrificing the advantages of being a part of the larger Indian federation. It confers maximum autonomy upon the state of Jammu and Kashmir. In pursuance of the integration many constitutional exemptions are conferred over J&K state. The state of Jammu and Kashmir was included as a Part B state in the first schedule of the Constitution of India, as it was promulgated in 1950. But though the state was included as a Part B state, all the provisions of the Constitution applicable to Part B state were not extended to Jammu and Kashmir. While the Constitution of the other Part B states was laid down in Part VII of the Constitution of India (as promulgated in 1950), the Constitution of Jammu and Kashmir State was to be framed by the Constituent Assembly of that State. Hence, the constitutional position and the special status available to the J&K state is somewhat differs from that of other states. The policy of the constitution as envisaged in the legal framework of article 370 is that the constitution was framed for the entire Union of India but any of its provisions would not apply to the territories of Jammu and Kashmir until and unless the President made an order to those effects.

Article 370 is included in that part of the Constitution which deals with the exceptions related to the constitution. This is a part that includes special and temporary provisions of Constitution. The idea underlying this part is that all those provisions which cater to exceptional circumstances and which deal with transitional situations provisions are included in that part. Seen from this angle, Article 370 included provisions which were considered as ‘Temporary Provisions’ with respect to J&K. The temporary nature of the Article arises merely because the power to finalize the constitutional relationship between the state and the Union of India had been specifically vested in the Jammu and Kashmir Constituent Assembly. However, the State’s Constituent Assembly dissolved itself on 25 January 1957 without recommending either abrogation or amendment of the Article 370. Thus, the Article has become a permanent feature of the Indian constitution. Since then it has become an important aspect as the articles incorporated in it are still guiding the state’s relations with Indian Union. Hence, in this lesson, you will be introduced to the key elements of Article 370 and also to the special status of the Jammu and Kashmir in comparison to the other states of India.

### **2.2.2 HISTORICAL BACKGROUND**

As you have studied in the previous lesson, the state of Jammu and Kashmir has a unique status in the Indian Union. Unlike other Indian states, it has a separate constitution. The current status is based on the “Instrument of Accession” signed by the then ruler of the state, Maharajah Hari Singh, with the Government of India on 27 October 1947. In pursuance of the terms and conditions of the Instrument of Accession, the state was accorded special constitutional relationship, not given to any other state. The next major milestone in cementing the special relationship was on 26 January 1950, when the new Indian Constitution drafted by a Constituent Assembly came into effect. Article 370 in the Indian Constitution defined the special relationship of the state with the Indian Union. It also defined the mechanism for managing centre-state relations with specific reference to J&K.

Some of the other important events that influenced the drafting of Article 370 were the political turmoil in Jammu and Kashmir, the United Nations resolutions calling for a plebiscite in the state on the issue of accession to India, the governments of both India and Pakistan establishing political control over the territories of Kashmir under their control, and the representatives of all the other states choosing, in India’s Constituent Assembly, to

not assert their right to separate constitutions. The ruler of Jammu and Kashmir acceded to India by an Instrument of Accession on October 26, 1947 in respect of only three subjects - defence, foreign affairs and communications. A schedule listed precisely 16 topics under these heads plus four others (elections to Union legislature and the like). Clause 5 said that the Instrument could not be altered without the State's consent. Clause 7 read: "Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future Constitution of India or fetter my discretion to enter into arrangements with the Government of India under any such future Constitution." Kashmir was then governed internally by its own Constitution of 1939.

Negotiations were held on May 15 and 16, 1949 at Vallabhbhai Patel's residence in New Delhi on Kashmir's future set-up. Nehru and Abdullah were present. Foremost among the topics were "the framing of a Constitution for the State" and "the subjects in respect of which the State should accede to the Union of India." On the first, Nehru recorded in a letter to the Sheikh (on May 18) that both Patel and he agreed that it was a matter for the State's Constituent Assembly. "In regard to (ii) the Jammu and Kashmir State now stands acceded to the Indian Union in respect of three subjects; namely, foreign affairs, defence and communications. It will be for the Constituent Assembly of the State when convened, to determine in respect of which other subjects the State may accede". Article 370 embodies this basic principle which was reiterated throughout.

### **2.2.3 RATIONALE OF SPECIAL STATUS UNDER ARTICLE 370**

It would be appropriate to recall the rationale given by founding fathers to justify the special status given to the State of Jammu and Kashmir by including Article 370 in the Constitution of India. While introducing the draft clause 306A (Article 370) in the Constituent Assembly of India, N. Gopaldaswami Ayyangar, a Minister in the Nehru Government without a portfolio, stated that the special condition prevailing in Jammu and Kashmir required special treatment. The special circumstances highlighted by him were as follows:

1. That there was a war going on within the limits of the State;
2. That there was a cease fire agreed to at the beginning of the year and that cease fire was still on;

3. That the conditions in the State were still unusual and abnormal and had not settled down;
4. That a part of the State was still in the hands of rebels and enemies;
5. That our country was entangled with the United Nations with regard to Jammu and Kashmir and it was not possible to say when we would be free from this entanglement;
6. That the Government of India had committed themselves to the people of Jammu and Kashmir in certain respects which commitments included an undertaking that an opportunity would be given to the people of the State to decide for themselves;
7. That the will of the people expressed through the instrument of a Constituent Assembly would determine the constitution of the state as well as the sphere of the Union jurisdiction over the state.

N. Gopaldaswami Ayyangar while explaining the scope of article 370 in the Constituent Assembly on 17<sup>th</sup> October, 1949 observed: “You will remember that the several of the clause provide for the concurrence of the Government of Jammu and Kashmir state. Now, these relate particularly to matters which are not mentioned in the Instrument of Accession, and it is one of our commitments to the people and the Government of Kashmir that no such additions should be made except with the consent of the Constituent Assembly which may be called in the state for the purpose of framing its Constitution”.

Explaining briefly the description of the effect of this Article, N. Gopaldaswami Ayyangar aptly remarked that the effect of Article 370 is Jammu and Kashmir State which is now a part of India will continue to be a part of India

#### **2.2.4 ARTICLE 370: MAIN FEATURES**

The position which emerged after the incorporation of Article 370 was only Article 1 and Article 370 of Indian Constitution where to apply to J&K State in their original form. Although the state became an integral part of Indian union by virtue of article 1 (and first schedule), the relations between India and J&K were to be governed by the provisions of Article 370. Article 370 on the other hand was the step towards the long cherished desire of Kashmiri leaders with regard to state autonomy. This article constitutionally promoted and

protected the concept of state autonomy. The very fact that this Article begins with the words “Notwithstanding anything with the constitution” shows that it is a self-contained provision and has a specific purpose of its own. The object behind enacting Article 370, according to the Supreme Court ruling (in the case of Puran Lal Lakhan Pal versus the President of India in 1961) was to recognize the special position of the state of J&K and to provide this special position by limiting the power of union President and Parliament. It is by virtue of Article 370 that the Constituent Assembly of J&K was given the authority not only to frame the constitution for the state but to concur in the application of the Indian Constitution and in the extension of the jurisdiction of Indian Parliament to J&K. In accordance with these provisions the competence of Indian Parliament was restricted to (a) such entries in the union and concurrent lists of the 7<sup>th</sup> Schedule to the Indian Constitution as corresponded to the subjects specified in the Instrument of Accession; (b) elaboration of which subjects was to be done by the president by an order, in consultation with the state government, additions to which were to be made with the concurrence of the state government.

Similarly, provisions of the Indian Constitution, other than Article 1, could be applied to J&K with or without modification by the president by an order, issued in the consultation with the state government, relating to matters specified in the Instrument of Accession and with the concurrence of the state government relating to the other matters. The modification or elimination of the provisions of Article 370 was provided for in clause 3. This could be done by the president by public notification. However, the recommendation of the constituent assembly of J&K State was necessary before the president could issue such a notification. The residuary powers were reserved for the state and the state Constituent Assembly which enacted in the double capacity of a Constituent Assembly and a Legislature was made the soul and decisive factor. Both the parliament and president enjoy merely a formal authority.

The core of clauses (1)(b)(i) and (1)(b)(ii) combined is that laws of Parliament on matters in the Union List and the Concurrent List can be made for J&K only after the ‘consultation’ or ‘concurrence’ of the State government depending on the subject matter of law. Under (1)(b)(i) Parliamentary laws on the subjects mentioned in the two said Lists conforming to Defence, External Affairs and Communications need ‘consultation’ with State Government; under (1)(b)(ii), Parliament’s laws on all other subjects will require the

State's "concurrence" before they are applied to the State. There is no State List for J&K because it was omitted by President's order issued under Article 370 in September 1963.

Parliament today cannot extend laws to J&K in respect of 32 entries in the two existing Lists together; neither 'consultation' nor 'concurrence' enters the picture. Moreover, seven entries in Concurrent List stand substituted for J&K, further diluting the force of the two Lists put together. Clauses (1)(b)(i) and (1)(b)(ii) prevent the possibility of Parliamentary law being extended to J&K either because the consultation with State Government was not productive or because the State Government denied concurrence to that law. In extending Parliamentary legislations, J&K has been brought within ambit of over 260 Central laws with, and not without, the 'concurrence of the State Government'. In practice any legislation of the Indian Parliament can be applied to J&K only if it receives sanction from that State's government.

The same has been clearly stated in the text of Article 370 (1) (b). "The power of Parliament to make laws for the said State shall be limited to" (1) matters in the Union and Concurrent Lists corresponding to the broad heads specified in the Instrument of Accession "and (ii) such other matters in the said Lists as, with the concurrence of the Government of the State the President may by Order specify". An Explanation defined "the Government of the State". Similar "concurrence" was required when extending provisions regarding Union institutions beyond the agreed ones. But Article 370 (2) stipulated clearly that if that concurrence is given "*before the Constituent Assembly... is convened, it shall be placed before such Assembly for such decision as it may take thereon*".

#### **2.2.4.1 PURPOSE OF THE ARTICLE 370**

The purpose of the Article 370 was clearly stated by Sheikh Abdullah while addressing the Constitutional Assembly: "in arriving at this arrangement the main consideration before our government was to secure a position for the state which would be the consistent with the requirement of maximum autonomy for the local organs of state power which are the ultimate source of authority in the state while discharging obligations as a unit of the federation". Abdullah further stated that "article 370, no doubt, has been mentioned as a temporary provisions in the constitution but that doesn't mean that it is capable of being abrogated, modified or replaced unilaterally.

The temporary nature of article arises merely from the fact that the power to finalize the constitutional relationship between the state and union of Indian has been specifically vested in the J&K Constitution Assembly”.

### **2.2.5 THE PRESIDENTIAL ORDERS OF 1950 &1954**

In pursuance of the above provisions of the Constitution the President made the constitution (Application to Jammu and Kashmir) Order, 1950 in consultation with the specifying the matters with respect to which the union parliament would be competent to make laws for Jammu and Kashmir, relating to the three subjects Defence, Foreign Affairs and Communications with respect to which Jammu and Kashmir had accede to India. Next, there was an Agreement between the Government of India and of the State at Delhi in June 1952, as to the subjects over which the Union should have jurisdiction over the state, pending the decision of the Constituent Assembly of Jammu and Kashmir. The Constituent Assembly of Jammu and Kashmir ratified the Accession to India and also the decision arrived at by the Delhi Agreement as regards the future relationship of the state with India early in 1954.

In pursuance of this, the president in consultation with the state Government made the constitution (application to Jammu and Kashmir) order 1954 which came into force on the 14<sup>th</sup> of May 1954. This Order implemented the Delhi Agreement as ratified by the Constituent Assembly and also superseded the Order of 1950. According to this order, the jurisdiction of the Union extended to all Union subjects under the Constitution of India (subjects to certain slight alterations) instead of only the three subjects of Defence, Foreign Affairs and Communications with respect to which the State had acceded to India in 1947.

The Constitutional Order, while integrating the State of Jammu and Kashmir in larger Indian Union, however, has conferred many concessions to retain its special status. For instance, the Preamble of this order states that “To article 3, there shall be added the following further proviso, namely: -

“Provided further that no Bill providing for increasing or diminishing the area of the State of Jammu and Kashmir or altering the name or boundary of that State shall be introduced in Parliament without the consent of the Legislature of that State.”.

After article 35, the following new article shall be added:

“Saving of laws with respect to permanent residents and their rights...Notwithstanding anything contained in this Constitution, no existing law in force in the State of Jammu and Kashmir, and no law hereafter enacted by the Legislature of the State:

- (a) defining the classes of persons who are, or shall be permanent residents of the State of Jammu and Kashmir; or
- (b) conferring on such permanent residents any special rights and privileges or imposing upon other persons any restrictions as respects-
  - (i) employment under the State Government;
  - (ii) acquisition of immovable property in the State;
  - (iii) settlement in the State; or
  - (iv) right to scholarships and such other forms of aid as the State Government may provide, shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens of India by any provision of this Part.”

The Presidential order is amended in 1963,1964,1965,1966,1972,1974 and 1986, to deal with situations arisen in administering the State. To summarise, the Presidential Order of 1954 links the entire constitutional position of the State within the framework of the Constitution of India excepting only the internal Constituent Assembly of the State.

#### **2.2.6 ARTICLE 370 : SPECIAL PROVISIONS**

As A.G.Noorani observes, Article 370 embodies six special provisions for Jammu and Kashmir. *First*, it exempted the State from the provisions of the Constitution providing for the governance of the States. Jammu and Kashmir was allowed to have its own Constitution within the Indian Union.

*Second*, Parliament’s legislative power over the State was restricted to three subjects - defence, external affairs and communications. The President could extend to it other provisions of the Constitution to provide a constitutional framework if they related to the

matters specified in the Instrument of Accession. For this, only “consultation” with the State government was required since the State had already accepted them by the Instrument. But, *third*, if other “constitutional” provisions or other Union powers were to be extended to Kashmir, the prior “concurrence” of the State government was required.

The *fourth* feature is that that concurrence was provisional. It had to be ratified by the State’s Constituent Assembly. Article 370(2) says that “If the concurrence of the Government of the State... be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon”.

The *fifth* feature is that the State government’s authority to give the “concurrence” lasts only till the State’s Constituent Assembly is “convened”.

The *sixth* special feature, the last step in the process, is that Article 370(3) empowers the President to make an Order abrogating or amending it. But for this also “the recommendation” of the State’s Constituent Assembly “shall be necessary *before* the President issues such a notification”.

### **2.2.7 LET US SUM UP**

Article 370 is perhaps the most controversial provision of the Constitution of India. It deals exclusively with Jammu & Kashmir State that came under the administrative control of the Government of India when the erstwhile princely State of Jammu and Kashmir signed the Instrument of Accession. Termed as the ‘umbilical cord’ of the Indian Constitution it is the only link between J&K and India. Under Part XXI of the Constitution of India, which deals with the “Temporary, Transitional and Special provisions”, J&K has been accorded special status under Article 370. Even though included in 1st Schedule as 15th state of Indian Union, all the provisions of the Indian Constitution which are applicable to other states are not applicable to J&K. Further the State has a separate Constitution, its own State Flag. All Prime Ministers of India to date have vowed to protect it to give the people of Jammu and Kashmir a feeling that theirs is a State that is different from other States in India. Yet, over the period of the time, the special status conferred to the State was eroded with many provisions of the Constitution of India are made applicable in the

state. Article 370 never came in the way if Centre wants to intervene in a particular matter seriously. As Nanda has rightly mentions, the 'core' has gone, only the 'shell' is left.

### **2.2.8 CHECK YOUR PROGRESS EXERCISE**

1. Describe the historical background to the special status concurred to State of Jammu and Kashmir in Union of India.
2. Explain the rational for granting Special Status to the State of Jammu and Kashmir.
3. What are the main features of Article 370?
4. What is the importance of Presidential Order of 1954?
5. Article 370 is perhaps the most controversial provision of the Constitution of India.

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2.3 PERMANENT RESIDENTS OF JAMMU AND KASHMIR STATE AND THEIR RIGHTS

- Bhawana Khajuria

STRUCTURE

2.3.0 Objectives

2.3.1 Introduction

2.3.2 Historical Background

2.3.2.1 Kashmir for Kashmiris

2.3.3 Concept of Citizenship

2.3.4 Concept of Citizenship as Applicable to Jammu and Kashmir

2.3.5 Special Treatment

**2.3.6 Rights of Permanent Residents – Constitution of India as Applicable to
the State**

2.3.7 Let us Sum up

2.3.8 Check Your Progress Exercise

2.3.0 OBJECTIVES

After reading this unit you should be able to understand:

- meaning of permanent resident;
- context of citizenship;
- the relation between the concept of permanent resident and citizenship;
- the rights of the Citizens and the Permanent Residents.

2.3.1 INTRODUCTION

The issue of citizenship in Jammu and Kashmir is very important. It is also confusing for those who fail to make a distinction between the rights of the Permanent Residents and those of the Citizenship. The Right of Citizenship, however, emanates from the Constitution of India. The Right of Permanent Resident emanates from the law of the State. The two get linked only to the extent that all Permanent Residents of the State of Jammu and Kashmir are also the Citizens of India. In fact, it is through their status as the Permanent Residents that they enjoy the right of Citizenship.

2.3.2 HISTORICAL BACKGROUND

Conferring some special rights to citizens of Jammu and Kashmir has not come with simple order. There is considerable struggle of the people of the state involved in this. Probably this is the one struggle that has created a unified voice across the region. You read this historical development in the following sections.

2.3.2.1 KASHMIR FOR KASHMIRIS

The background to the concept and context of the State Subject or the Permanent Residents of the State goes back to the pre-independence period, during the Dogra rule itself. The demand for the special rights and privileges for the residents of the State arose in the context of the competition faced by the dominant elite of the time from the ‘outsiders’, mainly the employees of the Darbar coming from the Punjab. The educated class of Kashmiri pundits, who were among the first to take to the English education and who monopolised most of the governmental jobs at that time, started fearing some sort of

insecurity vis-à-vis the Punjabis and they were the first to raise the issue of ‘Kashmiris’ versus the ‘outsiders’.

The first expression of the popular outburst in Kashmir, which had taken the form of resentment against the outsiders, was in the shape of the slogan of “Kashmir for Kashmiris”. Such a demand had started taking shape during the reign of Maharaja Pratap Singh. Basically, this slogan meant that as far as the matter of employment offered by the State is concerned, this should be the exclusive right of the locals, the outsiders, that means the employees coming from Punjab, should not be considered at all. Such a demand led to enactment of laws providing preference to “Mulkis” over the outsiders in the state service. The term “Mulkis” referred to the people belonging to the State. Recognition of the right of “Mulkis” in the matter of employment led to the adoption of the state subject definition rules of 1912. Later, full-fledged rules of the state-subject were enacted. These rules are known as the State–subject rules of 1927. The Maharaja’s Government promulgated a Notification in 1927 and provided a strict definition of the term State Subject. This notification read with the State Notification of 1932 provided to some extent the law of the citizenship of the state.

2.3.3 CONCEPT OF CITIZENSHIP

To understand the context of the Citizenship in Jammu and Kashmir, it is important to refer to the issue of the Permanent Residents of the State, the Delhi Agreement as well as the Constitution of India.

As explained above, before partition, a special law that came into force during the Dogra rule defined the residents of the State as the state subjects and the outsiders. During this period, the context of citizenship of the State was therefore influenced by this classification.

After independence, the state of Jammu and Kashmir enjoyed special status under the Article 370 of the Constitution of India. By virtue of this article, the scope of the constitution of India as well as the jurisdiction of Union Parliament was restricted. While only Article 1 and Article 370 applied to the State, the jurisdiction of the Parliament was limited to the matters specified in the Instrument of Accession. By Article 1 of the Constitution, the State of Jammu and Kashmir had become a member of the Union of

India. To that extent, the residents of the State who were the State Subjects also became citizens of India. But the question of the citizenship was not automatically settled. The reason for this is that the Part II dealing with the Citizenship was not automatically applied to the State of Jammu and Kashmir. For formal citizenship, the provisions of the Constitution of India dealing with the Citizenship had to be extended to this State.

The question of Citizenship however was ultimately settled in 1952 with the Delhi Agreement. The Delhi Agreement was the result of negotiation between the Government of India and the State government led by Sheikh Abdullah. By this Agreement, it was agreed that a number of other provisions of the Constitution of India, besides Article 1 and Article 370 should be made applicable to this State. Specifically, it was agreed that the provisions dealing with the Citizenship would be extended to this State.

It was the result of this Agreement that the State Subjects were formally given the status of Citizenship of India. One of the major effects of the Delhi Agreement was that the concept of citizenship was made very clear. The citizenship of the people of this state now emanated from the constitution of India. Although the provision of State Subject also continued but the context of Indian Citizenship remained paramount.

2.3.4 CONCEPT OF CITIZENSHIP AS APPLICABLE TO JAMMU AND KASHMIR

An important feature of the Indian Constitution is the uniform and single system of citizenship, it envisages for the people of the entire country. A citizen of India enjoys the status of a citizen in every part of the country and is entitled to all benefits and rights available to him. To that extent, most of the provisions related to chapter dealing with citizenship within the Indian Constitution are applicable here. However, like other provisions of the Constitution of India, the provisions related to the citizenship are applicable with certain modifications. These modifications are in response to the peculiarities of the political situation of Jammu and Kashmir. Following is elaboration of the modifications in relations to this state.

Article 6 Migrants from Pakistan: Art. 6 provides citizenship rights of migrants from Pakistan before the commencement of Constitution. For its application to this state, the division of the state in 1947 and the occupation of part of the State with Pakistan known as PoK, is kept into consideration. There is a provision for their return and claiming

the citizenship rights. Thus it is mentioned that the residents of the state who after having migrated to the territory now included in Pakistan can return to the state for permanent settlement and they are entitled to assume Indian citizenship under a permit for settlement or on a “Permanent Return issued by or under the authority of any law made by the State Legislature.

Article 7 deals with the procedure for the resettlement of emigrants from the territories included in Pakistan and its application to the State. This article generally specifies that powers to grant permits and “permanent returns” are vested with the Government of India. But in case of Jammu and Kashmir, the powers to give permits and permanent returns are vested with the Government of the State, on the basis of the resettlement issued under law made by the State Legislature. The Constitution therefore opens the door for the subsequent return and settlement in the state of those of its state subject who had migrated after the first day of March 1947.

In the context of the history of the State Subject law, the distinct feature of the Citizenship within the state is that there is a further classification here, the citizens of the state as “Permanent Residents” of the State. This classification is substantiated by the Constitution of Jammu and Kashmir. The Jammu and Kashmir Constitution classifies the citizens of the State as the permanent residents and vests them with special rights and privileges. The Constitution of the State also guarantees these rights. Section 10 of this Constitution specifies that the “Permanent Residents of the State shall have all the rights guaranteed to them under the Constitution of India.

The permanent residents of the State therefore include every person who is, or is deemed to be a citizen of India under the provisions of the Constitution of India shall be a permanent resident of the state on the 14th day of May 1954., he was a state subject of Class I and Class II. The Constitution expressly leaves to the legislature the power to make any law defining the classes of persons who are/ shall be “Permanent Residents of the State”.

Similarly, Section 10 of the Constitution of Jammu and Kashmir deals with the rights of the permanent residents of the state.

2.3.5 SPECIAL TREATMENT

A most prominent feature of the Constitution of Jammu and Kashmir as distinguished from the rest of India is the provision for special treatment of the “Permanent Residents of Jammu and Kashmir.”

The permanent residents are those who are declared to be so by any existing law of the state or who can be so declared by any future law enacted by the Legislature of the state. By virtue of the special constitutional status enjoyed by Jammu and Kashmir, the state has the privilege to have its own constitution besides being governed by the Constitution of India. It is the result of this arrangement by which this state has its own constitution, the permanent residents of the state, who are so recognised according to the law of the state, besides enjoying the rights given in the Constitution of India, also enjoy certain other rights by virtue of the Constitution of Jammu and Kashmir. These rights, however, are exclusive rights of the permanent residents and are not extended to other citizens of India.

Mainly these special rights or privileges are in the nature of restrictions that are imposed on those who are not the permanent residents of the State. These restrictions are imposed with respect to any or all of the following matters: employment under the State Government, Acquisition of immovable property in the state, settlement in the state, etc. Thus, it is only right of the Permanent residents of the state to acquire property within the state. Others do not enjoy this right. The employment under the State is also restricted exclusively for the permanent residents. Similarly, in the matter of education under the state and financial assistance to be provided for this purpose – all these are the privileges only of the permanent residents. Only they can get the right for scholarships and such other forms of aid as the State Government may provide.

Similar privilege is extended in terms of the political matters. For the State Assembly, only the permanent residents of the State enjoy the right to vote. Other citizens of India, who may otherwise be residing in this state, cannot vote for the State Assembly. Similarly, only the permanent residents can contest elections for the Assembly. This restriction, however, does not exist for Parliamentary elections.

2.3.6 RIGHTS OF PERMANENT RESIDENTS: CONSTITUTION OF INDIA, EXTENDED TO THE STATE

Part III of the Constitution of India declares the fundamental rights of the citizens. These rights were extended to the State of Jammu and Kashmir in 1954 by the Constitution order and came into force on the same day.

The provisions of the Constitution of India are applicable to state with certain modifications. In Indian Constitution, fundamental rights were originally divided into seven groups as, (a) Right to equality, (b) right to freedom, (c) right against exploitation, (d) right to freedom of religion, (e) cultural and educational rights, (f) right to property, (g) right to constitutional remedies.

Part III of the Indian Constitution defines fundamental rights of the citizens and it is also applicable to the State of Jammu and Kashmir.

2.3.6.1 RIGHT TO EQUALITY

The right to equality, which consists of 5 Articles 14 to 18, is applicable to the State of Jammu and Kashmir. Article 14 deals with equality before law and this article is fully applicable to Jammu and Kashmir. This article has two expressions of “equality before law” and “equal protection of law”.

The provisions of the ‘Right to equality’ application to Jammu and Kashmir however had certain modifications. In clause (4) of Article 15, the reference to Scheduled Tribes was omitted.

2.3.6.2 RIGHT TO FREEDOM OF SPEECH AND EXPRESSION

The application of the right to freedom of speech and expression to the State of Jammu and Kashmir is subject to two limitations. Firstly, the rights to freedom of assembly, association, movement, residence and of property are subject to the additional limitations according to which the state legislature has power to impose some restrictions on the rights of freedom of speech and expression in the interests of the sovereignty and integrity of India and security of the state. The other restrictions occurring in clauses (2) & (5) which can be construed as meaning such restrictions as the state legislature deems

reasonable, such as, security of the state, friendly relations with foreign states, contempt of court, defamation, sovereignty and integrity.

The provisions in Indian Constitution (Art. 20, 21, 22) that guarantee to a citizen and deals that rights which relating to protection in respect of conviction for offences and right to life and personal liberty are fully applicable to the state of Jammu and Kashmir.

Article 22 relating to the preventive detention applies with the modification that this power is to be exercised by State Legislature instead of Parliament.

2.3.6.3 RIGHT AGAINST EXPLOITATION

The right against exploitation is guaranteed to the citizen of India under Article 23 and 24. Both of these articles are applicable to the State of Jammu and Kashmir without any reservation. Traffic in human beings, the system of beggar, slavery and all other forms of forced labour are prohibited. Employment of children of less than 14 years in age in factories, mines and in other hazardous occupations is forbidden.

2.3.6.4 FREEDOM OF RELIGION

Freedom of religion, contained in Article 25, 26, 27 and 28 of the Constitution of India, is fully applicable for state without any reservation and restrictions. Every religious denomination is secured the right to establish and maintain religious and charitable institutions, manages its own religious affairs, right to freedom of payment of taxes for promotion of any particular religion.

2.3.6.5 RIGHT TO PROPERTY

Right to property is also applicable to the state of Jammu and Kashmir but with certain modifications. Under this right whereas only permanent residents of the state could purchase land and other immovable property in the state. Only the state subjects are entitled to the right to property in Jammu and Kashmir.

The state was also reserved the power to undertake legislation providing for acquisition of estates in land, amalgamation of two or more corporations, take over of the management of any property for a limited period.

The right to property was abolished by the forty-fourth Amendment to the Constitution of India but 44th Amendment was not made applicable to the Jammu and Kashmir required by virtue of the Constitution Order 1954.

2.3.6.6 CULTURAL AND EDUCATIONAL RIGHTS

Under this article the state will not refuse aid to an educational institution mainly on the ground that the institution is run by and functioning under the management of any linguistically based minority or any religious minority. It is an absolute right and cannot be subjected to a reasonable restriction like the Art. (19).

2.3.6.7 RIGHT TO CONSTITUTIONAL REMEDIES

The constitutional provisions envisaging these safeguards are also applicable for Jammu and Kashmir with certain modifications. Article 32 and clause (1), (2), (4) are applicable for state but not clause (3) under which Parliament can empower any other court in India to exercise jurisdiction in regard to fundamental rights in case of state.

Article 32 has been omitted in its application to Jammu and Kashmir state. Article 32 provides that the High Court of the state is empowered to issue orders and writs for the enforcements of the fundamental rights. This is not an extra-ordinary power. Under clauses (1), (2), (4) there is the right to move Supreme Court by appropriate proceedings for the enforcements of any of the rights. Article 32 cannot be suspended except as otherwise provided for by the Constitution of India and as applicable to the Jammu and Kashmir state.

2.3.7 LET US SUM UP

All benefits and rights which are available to the citizens in rest of India are also made applicable to the state of Jammu and Kashmir with modifications. This means that the permanent residents of the state are also the citizens of India. Thus they enjoy both the privileges of being the permanent residents of the state as well as Citizens of India.

The Permanent Residents of the State are those persons who a) were born and were residing in the territories of the State, b) the persons who settled in the state before the year 1865 and the persons who settled in the state before 1911 and acquired immovable

property in the state, and settled in the state for permanent residence before 14th May 1945 and c) the persons who were the state subjects and migrated to Pakistan but who may return to the state for permanent settlement.

The Constitution of India defines the fundamental rights in Part III of the provisions and these rights are also applicable to the Jammu and Kashmir with some reservations and modifications.

2.3.8 CHECK YOUR PROGRESS EXERCISE

1. Write a note on historical back ground to status of Permanent Residence conferred to citizens of Jammu and Kashmir.
2. Explain the concept of citizenship with regard to people of Jammu and Kashmir.
3. What are the Rights that conferred to permanent residents of Jammu and Kashmir?
4. Critically evaluated the status of permanent residents and the notion of citizenship with regard to the state of Jammu and Kashmir.

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## **2.4 DIRECTIVE PRINCIPLES OF STATE POLICY AND PANCHAYATI RAJ IN J&K**

**- Bhawana Khajuria**

### **STRUCTURE**

**2.4.0 Objectives**

**2.4.1 Introduction**

**2.4.2 Fundamental Rights**

**2.4.3 Need of Directive Principles**

**2.4.4 Constitution and Directives Principles**

**2.4.5 Implementation of the Directive Principles**

**2.4.6 Panchayati Raj**

**2.4.7 Evolution of Panchayats in Jammu and Kashmir**

**2.4.8 Panchayat Raj Act of 1989: Main Features**

**2.4.9 Limitations of the Panchayat Raj Act**

**2.4.10 Let Us Sum UP**

**2.4.11 Check Your Progress Exercise**

#### **2.4.0 OBJECTIVES**

Dear Learner, in this lesson, you will study two important dimensions related to democratic process in Jammu and Kashmir, the Directive Principles and Panchayati Raj system. After reading this unit you should be able to:

- understand the importance of Directive Principles;
- know in detail various Directive Principles;
- understand the Obligations of the State vis-à-vis the people;
- the evolution of Panchayats in Jammu and Kashmir;
- the main features of Panchayat Raj Act of 1989 and its limitations.

#### **2.4.1 INTRODUCTION**

The preamble of Constitution of Jammu and Kashmir proclaims the solemn resolve of the people of the state to secure to themselves, justice, social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and opportunity. It also aims at providing among them all fraternity assuring the dignity of the individual and unity of the nation. These constitutional epitomes have been adopted, elaborated and applied in fundamental rights and directive principles of state policy. The Committee on Fundamental Rights and citizenship was of the view that there should be a separate set of principles which would be fundamental in the governance of the state and should be intended as the guideline for the state for leading people towards equal opportunities, adequate minimum of a civilized standard of life and economic prosperity. Such principles were listed together, styled as directive principles of state policy and included in part IV of the Constitution of Jammu and Kashmir 1957.

#### **2.4.2 FUNDAMENTAL RIGHTS**

The Fundamental Rights is defined as the basic human rights of all citizens. These rights, defined in Part III of the Constitution, apply irrespective of race, place of birth, religion, caste, creed or gender. They are enforceable by the courts, subject to specific restrictions. The Directive Principles of State Policy are guidelines for the framing of laws by the

government. These provisions, set out in Part IV of the Constitution, are not enforceable by the courts, but the principles on which they are based are fundamental guidelines for governance that the State is expected to apply in framing and passing laws.

The Fundamental Duties are defined as the moral obligations of all citizens to help promote a spirit of patriotism and to uphold the unity of India. These duties, set out in Part IV–A of the Constitution, concern individuals and the nation. Unlike the Directive Principles, they are enforceable by law.

The Fundamental Rights, embodied in Part III of the Constitution, guarantee civil rights to all Indians, and prevent the State from encroaching on individual liberty while simultaneously placing upon it an obligation to protect the citizens' rights from encroachment by society.[19] Seven fundamental rights were originally provided by the Constitution – right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights, right to property and right to constitutional remedies. However, the right to property was removed from Part III of the Constitution by the 44th Amendment in 1978.

The purpose of the Fundamental Rights is to preserve individual liberty and democratic principles based on equality of all members of society. Dr Ambedkar said that the responsibility of the legislature is not just to provide fundamental rights but also and rather more importantly, to safeguard them.

They act as limitations on the powers of the legislature and executive, under Article 13, and in case of any violation of these rights the Supreme Court of India and the High Courts of the states have the power to declare such legislative or executive action as unconstitutional and void. These rights are largely enforceable against the State, which as per the wide definition provided in Article 12, includes not only the legislative and executive wings of the federal and state governments, but also local administrative authorities and other agencies and institutions which discharge public functions or are of a governmental character. However, there are certain rights – such as those in Articles 15, 17, 18, 23, 24 – that are also available against private individuals. Further, certain Fundamental Rights – including those under Articles 14, 20, 21, 25 – apply to persons of any nationality upon Indian soil, while others – such as those under Articles 15, 16, 19, 30 – are applicable only to citizens of India.

The realization of these fundamental rights would not be possible without creating certain conditions by the state. These conditions are vital to guide the state to ensure better living conditions for the people. Hence, these guiding values or norms are known as Directive Principles of the State Policy.

### **2.4.3 NEED OF DIRECTIVE PRINCIPLES**

The inclusion of the Directive Principles in the Constitution of Jammu and Kashmir was felt necessary for the establishment of “socialistic order of society”. In other words, the directive principles were included in the State Constitution with a view to convert Jammu and Kashmir into a welfare state by ensuring economic freedom to its citizens. The economic structure of the entire state was to be so devised as to benefit public sector, cooperative sector and private sector. For this purpose, the sources of production in the public sector were to be owned by the state; the means of production in the cooperative sector were to be owned by an individual or group of individuals and in private sector by an individual or group of individuals on condition that they will not be allowed to monopolise means of production and hoard wealth contrary to the public interests.

From economic point of view the directive principles envisage the establishment of economic democracy in which every citizen is guaranteed equal opportunity, adequate standard of living and social justice. The directives lay down that the prime object of the state shall be the promotion of the welfare of the mass of the people. The Constitution, therefore, within the limits of its economic capacity and development “guarantees work with payment for labour” subject to a basic minimum and maximum wage established by law. Even though it is a revolutionary process yet it was bound to be slow. Meant to be a policy of peaceful transformation, stage by stage to a socialistic state, the assumption underlying the Directive principles was that these would gradually abolish the exploitation of man by man. That is the reason that these principles have been declared as fundamental in the governance of the state and duty has been enjoined upon the state to apply these principles while making laws.

### **2.4.4 CONSTITUTION AND DIRECTIVE PRINCIPLES**

The chapter on Directive Principles of State Policy consists of fifteen sections, embodying policy formulations regarding economic structure of the state, material security of the

citizens, protection of weaker sections including women and children. Their implementation ultimately depends on several imponderable factors such as the availability of requisite resources and the readiness of the society to accept the socio-economic changes envisaged. It has been enjoined upon the state that it shall within the limits of its economic capacity and development make effective provision for securing to all the permanent residents, men and women, equally right to work, i.e., right to receive guaranteed work with payment for labour in accordance with its quantity and quality subject to basic minimum and maximum wage established by law. The health and strength of workers, men and women and the tender age of children are not abused and that permanent residents are not forced by economic necessity to enter avocations unsuited to their sex, age or strength. It has been enjoined upon the state that all workers agricultural, industrial or otherwise have reasonable, just and humane conditions of work with full enjoyment of leisure and social and cultural opportunities. A duty has also been imposed upon the state to see that its permanent residents have adequate maintenance in old age as well as in the event of sickness, disablement, unemployment and other cases of undeserved want by providing social insurance, medical aid, hospitals, sanatoria and health resorts at state expense. Following is the elaboration of the directives.

**Directive Principles as Fundamental to Governance of the State:** The Constitution declares the Directive Principles to be “fundamental in the governance of the state” and as such they have been kept beyond the jurisdiction of any court of law. In other words, no court has the power to declare the law made by the legislature as unconstitutional on the ground that the law does not agree with or is not in accordance with any of the directive principles of the constitution. The state has been put under an obligation to see that the directive principles of the constitution are transformed into laws to be implemented for the welfare of the state itself. This has been guaranteed by the Section 12 of the Constitution of Jammu and Kashmir.

**Aimed at Establishing a Socialist Order of Society:** Section 13 requires the state to establish a socialist order of society for the promotion of welfare of the people. The prime object of the state consistent with the ideals and objectives of the freedom movement envisaged in “New Kashmir Manifesto” was considered to be the promotion of the welfare of the mass of the people by establishing and preserving a socialist order of society wherein

all exploitation of man is abolished and a society is established where in justice, social, economic and political shall improve all the institutions of national life.

**Planned Economy:** Section 14 provides for the system of planned economy which is assumed to enable the people to grow rich both materially and culturally. The means of production where they are privately owned, according to this section, will not be allowed to result in concentration of wealth to the common detriment. This directive is consistent with the ideals and objectives of the freedom movement envisaged in the programme of new Kashmir. The main aim of the constitution makers through this section was to prevent the rise, growth and monopoly of the capitalist.

**Panchayat Institutions:** Section 15 of the Constitution declares that the “state shall take steps to organize village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.” This section is based on Article 40 of the Constitution of India and requires the state to organize village Panchayats as units of self-government. It gives a legitimate place to the aspirations of the people of Jammu and Kashmir and the programme of “Naya Kashmir”.

**Speedy Improvement of Living Conditions:** At least 80 per cent of the population belongs to the rural areas of the state. Their occupation is agriculture which forms the backbone of the state economy. The state economy is rural based. The constitution therefore directs the state to ensure speedy improvement of the living conditions of rural masses and to develop agriculture and animal husbandry for their benefit.

**Development of Rural Areas:** Section 17 requires the state to take certain steps for promoting crafts and cottage industries in the state. For this purpose the state has to initiate and execute well considered programmes for refining and modernizing techniques and modes of production, including the employment of cheap power so that unnecessary drudgery and toil of the workers are eliminated and the artistic value of products enhanced, while the fullest scope is provided for the encouragement and development of individual talent and initiative.

**Separation of Judiciary from Executive and the independence of Judiciary:** Section 18 of the Constitution of Jammu and Kashmir recommends separation of the judiciary from the executive. For this purpose the state was asked to take steps to make these two

organs of the governments, judiciary and executive, independent of each other in public service. It is also provided that the state shall seek to secure a judicial system which is humane, cheap, objective and impartial whereby justice shall be done and shall be seen to be done. The state shall further strive to ensure efficiency, impartially and incorruptibility of its various organs of justice, administration and public utility.

Judiciary in the state was separated under an Act known as Judiciary and Executives Functions Act, thus giving affect to the dictates of the Constitution. Moreover, Judges of the High Court are assured security of tenure. They are appointed by President of India in consultations with the Chief Justice of India and Governor of the State. They remain in office until they attain the age of 62 years. The legislature of the state has no role to play whatsoever in their appointment. Their removal is very difficult.

**Right to Work:** Right to work and to public assistance in certain cases is one of the cardinal features of Directive Principles of State Policy. The state pledges within its limited economic capacity and development to secure to its permanent residents, both men and women equally, 'the right to work' and 'right to receive guaranteed work with payment for labour in accordance with its quantity and quality' subject to a basic minimum and maximum wage established by law.

**Right to Education and other rights for children:** Right to free and compulsory education in certain cases is guaranteed to every permanent resident up to University standard. There is also an obligation to provide within the period of ten years from the commencement of J&K Constitution compulsory education for all children until they complete the age of 14 years.

Section 21 of the Constitution issued a mandate to the state to secure to all children the right to happy childhood with adequate medical care and attention and equal opportunity in education and employment, protection against exploitation and moral or material abandonment.

**Socially and Economically backward classes:** section 24 deals with certain interests of socially and economically backward sections. The state under this section is required to guarantee to the socially and educationally backward sections of the people special care in the promotion of their educational material and cultural interests and protection against social injustice.

Other Welfare Provisions: Section 24 of the Constitution makes it a duty of the State to make every effort to safeguard and promote the health of the people by advancing public hygiene and prevention of diseases through sanitation, pest vermin control, propaganda and other measures. State is also asked to ensure widespread efficient and free medical services throughout its territory and with particular emphasis in its remote and backward regions.

Section 25 says that the state is also under a duty to combat ignorance, superstition, fanaticism, communalism, racialism and cultural backwardness and shall seek to foster brotherhood and equality among all communities under the aegis of secular state.

#### **2.4.5 IMPLEMENTATION OF THE DIRECTIVE PRINCIPLES**

While assessing the implementation of the Directive Principles, it is important to highlight some of the important legislations undertaken by the state. The steps have already been taken to implement the principle of mass education are evident from the fact that the number of colleges had risen from 3 in 1947 to 26 in 1959. The number of primary schools had risen from 1081 to 1771, middle schools from 73 to 219, high schools from 19 to 121. A University was established in 1949 and means of communication were receiving priority in the government venture. Emporia were established in important centres of India to organize the sale of Kashmir handicrafts.

#### **2.4.6 PANCHAYATI RAJ**

The institutions of Panchayat have become key institutions for democratisation of politics in India. They have been empowered to act as the most important instruments of power of the people at the grass roots level. In the State of Jammu and Kashmir has its own Panchayat Raj Act that was formulated much earlier than some of the states in India and the Act was modified in 1989.

#### **2.4.7 EVOLUTION OF PANCHAYATS IN J&K**

The State of Jammu and Kashmir witnessed a radicalized political environment in the third and fourth decade of the 20<sup>th</sup> century. It was with the formation of the Muslim Conference in 1932 that the process of politicization of Kashmiris was initiated. The politics of the Muslim Conference however was limited to the demand of the middle-

class Muslims of the state specifically in relation to the issues of education and job opportunities. In 1938 under the leadership of Sheikh Mohammad Abdullah, this party resolved to dissolve itself and reorganized itself into a secular and more broad-based party. The new party known as the Jammu and Kashmir National Conference was to become the most important indigenous political organization of Kashmir well entrenched in the mass of Kashmiris mainly comprised of the peasantry and the artisans. The formation of this party set the stage for adoption of some of the most progressive ideals for the political movement in Kashmir. These ideals incorporated into the New Kashmir Manifesto were to become the basis for reorganization and reconstruction of the polity and the economy of the state. The cherished goal of this Manifesto was the “all-sided advance” of Kashmir along the all the avenues of the human activity regulated in a democratic manner.

The constitution structure of the state as envisaged by the New Kashmir Manifesto was to be based on democratic principle of responsible government with the elective principle applied from the local Panchayats right up to national assembly. Article 17 of the Manifesto provided that the political power shall be equitably distributed among the regions of state and would be further decentralized at lower level like districts, blocks, panchayats. The appropriate institution elected by the people shall be set up at the respective levels to exercise political power that may be delegated to them.

Besides the goal of institutionalization of democratic structure of the state with emphasis on the principle of dispersion of power and popular participation, the New Kashmir Manifesto also envisaged the goal of economic justice. It was in accordance with this goal that the state went in for the most progressive measures including land reforms of the most radical nature. These measures included, abolishing absentee landlordism and granting ownership of the land to the actual tiller, liquidation of old debts of impoverished people amounting to millions of rupees. Subsidizing and financing cottage industries and small scale manufacturing units. By providing generous state loan on easy terms for rural activities through cooperatives, the state initiated the cooperative movement by mid-sixties.

While economic agenda of the New Kashmir Manifesto was thus being pursued vigorously in the immediate post-independence period, the agenda of democratic

decentralization and the grassroots participation had to be postponed till the process of making of the Constitution of the State was complete. It was in 1957 that the Constitution of J&K came into force. This Constitution clearly reiterated the commitment of the state to pursue the ideals and objectives of the freedom movement envisaged in the New Kashmir Manifesto and committed the state to take steps to organize village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. It was in pursuance of this commitment that the Jammu and Kashmir Panchayats Act was enacted in 1958.

However, the commitment to pursue the goals of decentralized power structure through the institutions of Panchayat met almost the similar fate as other principles contained in the New Kashmir Manifesto. The political development in the decades of fifties and sixties led to sufficient distortion in the state politics with the result that the political vision of New Kashmir was completely side-lined, though the political ethos generated by it was to continue showing its impact for quite some time.

The institution of Panchayat suffered from the overall malaise affecting the politics of Jammu and Kashmir. One part of the malaise that overtook the state in general and the valley of Kashmir in particular is related to the failure of democratic forces in the state. Institutionalization of democracy was seriously affected as politics of Jammu and Kashmir was dominated by one set of political elites without any scope for articulation of discontent, dissent or opposition.

Notwithstanding the ineffective implementation of Panchayat Raj Act of 1958, the idea of Panchayati Raj continued to inspire the National Conference leadership and in the decade of eighties an attempt was made to revive the Panchayati Raj institutions in the state and bring them at par with some of the more effective Panchayati Raj Acts operational in states like Karnataka. It was in pursuance of this goal that a new Panchayati Raj Act was approved by the state legislature in 1989. This Act could not be made effective immediately due to the onset of militancy and the breakdown of the political order. The laws, regulations and the rules that needed to be formulated to make this act functional could not be drafted till 1997.

## **2.4.8 PANCHAYAT RAJ ACT OF 1989 – MAIN FEATURES**

The basic structure of the Panchayats in the state of Jammu and Kashmir is almost similar to other states of India. It adopted a three-tier system. The lowest level Panchayats are called “Halqa Panchayats” and the intermediate Panchayats are called “Block Development Councils” and at the district level the Panchayats are called as “District Planning and Development Boards”.

### **2.4.8.1 HALQA PANCHAYATS**

The Halqa Panchayats (the lower tier) are constituted on the basis of geographical congruity and population. The population of each Halqa Panchayat is restricted to 4000 in plain area and 3500 in hilly areas. The Sarpanch and Panches are elected to the office in a direct election for a period of five years. Those who are below 25 years of age are not eligible to contest either as Sarpanch or Panches. The Panchayat Fund, which is essential to carry out the responsibilities, mainly comprises of the State Govt. grants and resources mobilized internally through taxes and fees. The function of Panchayats, like in any other state, is basically to prepare and implement the plans for development.

### **2.4.8.2 BLOCK DEVELOPMENT COUNCIL**

The Block Development Council (Middle tier) comprises of a Chairperson, all the Sarpanches of Halqa Panchayats and Chairperson of the Marketing Society. The Chairperson is elected in an indirect election. An Electoral College comprising of Panches and Sarpanches of Halqa Panchayats in a Block elects one among themselves as a Chairperson to the Block Development Council for a period of five years. The main functions of Block Development Council are the construction, maintenance and supervision of inter-Halqa Panchayat communication system, administrative and technical guidance to Halqa Panchayats and review of their work and supervising various developmental programmes.

### **2.4.8.3 DISTRICT PLANNING AND DEVELOPMENT BOARD**

It is a primary policy-making body. It is a broader representative organization having a Chairperson (the State Government’s nominee), Chairpersons of the Block Development Councils, MPs and MLAs of the District, Chairman of the Town Area Committees and President of the Municipal Councils. The District Boards function as a working group for

formulation of periodic and annual plans and to formulate and finalize the plan and non-plan budget for the District.

**Table 1: Powers and Functions of the Panchayats**

| <b>HALQA<br/>PANCHAYATS</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>BLOCK<br/>DEVELOPMENT<br/>COUNCILS</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <b>DISTRICT<br/>PLANNING<br/>DEVELOPMENT<br/>BOARDS</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. To prepare plans for the development of the Halqa.</li> <li>2. To undertake measures for the implementation of the development plans.</li> <li>3. To specifically deal with the problems of soil conservation, water management, social forestry, rural industrialization, agriculture, sheep and animal husbandry, sanitation, health and other welfare programmes.</li> <li>4. Regulation of buildings, shops and entertainment houses and checking of offensive or dangerous trades.</li> </ol> | <ol style="list-style-type: none"> <li>1. Constructions, maintenance and supervision of inter-Halqa Panchayat Communication system.</li> <li>2. Administrative and technical guidance to Halqa Panchayats and review of their work.</li> <li>3. Supervise plans relating to agriculture, rural development, animal husbandry, social forestry, education and public health.</li> <li>4. Supervise and monitor poverty alleviation programmes and various developmental programmes.</li> </ol> | <ol style="list-style-type: none"> <li>1. To consider and guide the formulation of development programmes for the District and indicate priorities for various schemes and consider issues relating to the speedy development and economic upliftment of the District.</li> <li>2. To review periodically progress and achievements of developmental plans and schemes and make recommendations as it considers appropriate.</li> <li>3. To function as a working group for formulation of periodic and annual plans for the District.</li> <li>4. To formulate and finalize the plan and non-plan budget for the District.</li> </ol> |

|                                                                                                                                                                                                                                                                                                                                                                                                                             |  |                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>5. Construction and maintenance of slaughter houses, regulation of sale and preservation of meat and processing of skins and hides.</p> <p>6. Regulation of sale and preservation of fish, vegetables and other perishable articles and food.</p> <p>7. Regulation of fairs and festivals.</p> <p>8. Involvement in the implementation of universalization of elementary education and other educational programmes.</p> |  | <p>5. To lay down the policy guidelines for the Block Development Council and Halqa Panchayat.</p> <p>6. To approve the budget of the Block Development Council and supervise and coordinate their work.</p> <p>7. To undertake special measures for alleviating poverty and employment generation and extending assistance to Halqa Panchayats in this behalf.</p> <p>8. To promote and assist cooperative institutions.</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

#### **2.4.9 LIMITATIONS OF THE PANCHAYAT RAJ ACT OF 1989**

The Jammu and Kashmir Panchayati Raj Act of 1989 cannot in any way boast of either providing a formula for decentralizing power or for providing democratic environment at the level of the grassroots. When compared with the provisions of the Indian Constitution dealing with the Panchayats, specifically after the 73<sup>rd</sup> amendment, the State Act appears

to be quite retrograde. One of the greatest flaws of the Act relates to the governmental intervention in the composition of Panchayats. Unlike the 73<sup>rd</sup> Amendment of Constitution of India that provides that, “all the seats in the Panchayats shall be filled by persons chosen by direct election from territorial constituencies in the Panchayats, The Jammu and Kashmir Act provides for the principle for nominations at every level – the Halqa (village) Panchayat, the Block Development Council and the District Planning and Development Board. In fact, it is only at the level of Halqa Panchayat that the principle of direct elections is applied. However, even here there is the provision for nomination. Ironically this provision aims at compensating another very critical flaw of the Act – its inability to provide for the reservation of seats for women and the Scheduled Castes, the Scheduled Tribes and other backward communities. Unlike the 73<sup>rd</sup> Amendment Act, that provides for the reservation of seats for Scheduled Castes and the Scheduled Tribes in proportion to their population and reservation of 33 per cent seats for women through the direct election, the state Act empowers the governmental authorities to nominate women and members of Scheduled Castes and Scheduled Tribes to the Panchayats.

The principle of nomination not merely goes against the logic of maintaining the democratic nature of Panchayats but it also changes the nature of rights enjoyed by the nominated members of Panchayats. Representation to women and Scheduled Castes and Scheduled Tribes in Panchayats in Jammu and Kashmir is discretion of the state government and it is not a constitutional right for any of these groups. In fact, this discretion can be easily used to influence the autonomous nature of the working of Panchayat. The nominated women members, for instance, rather than representing women’s interest, may represent the interest of the government in the Panchayats.

Lack of financial autonomy of the Panchayats is another major weakness of the State Act. There is no provision for autonomous machinery for allocation of funds to the Panchayati institutions, which might adversely affect the financial status. This is unlike the provisions of Indian Constitution related to the Panchayats which have made it obligatory for every state to have a Finance Commission to suggest the principle which should govern the distribution between the state and the panchayats of the net proceeds of the taxes, duties, tolls and fees leviable by the state as well as to determine the principles of the grants-in-aid to the panchayats from the consolidated fund of the state.

#### **2.4.10 LET US SUM UP**

Directive Principles of State Policy have their roots deep in the freedom struggle. They epitomize the ideals, the aspirations, the sentiments, the precepts and the goals of the struggle launched by the people's representatives against the monarchical system. They are the essential part of the Constitution. They impose binding obligations upon the state. Every substantive directive starts with the words, "the state shall" and thereby imposes an affirmative duty upon the state to direct its policies towards that end. Apart from conferring power upon the state they also create rights and remedies in favour of the citizens. The values contained in the directive principles deserve a preferential consideration for the purpose of their enforcement, e.g., especially in areas such as secular principles, domestic peace, social and economic justice, right to an adequate means of livelihood, organization of village Panchayats, promotion of craft and cottage industries etc. That is what the founding fathers of J&K state really wanted as well as dreamt and this is what the state constitutionally needs today.

The institutions of Panchayats are one of the means to realize the Directive Principles since they were institutionalized at the grass-roots level to empower the people. The idea of the Panchayat system in Jammu and Kashmir has had a long history in Jammu and Kashmir though its institutionalisation has not ever matched that idea. In fact, the State was among the first ones within the country to start with radical political ideas. That is the reason that the New Kashmir Manifesto which contained these ideas, has remained the most inspiring political document for the people of Kashmir. More recently, the state has tried to give a form to the idea of Panchayati Raj institutions. In accordance with the provisions of Act of 1989, the election for Panchayats has taken place. But there are lots of problems faced by these Panchayats – the most important of these being that the elected panchayats are neither politically empowered nor they have enough financial resources to implement important decisions at the ground level.

#### **2.4.11 CHECK YOUR PROGRESS EXERCISE**

1. How important fundamental rights to citizens?
2. What is the need to incorporate Directive Principles?
3. What are the main Directive Principles incorporated in the Constitution of Jammu and Kashmir?
4. Write a note on Directive Principle in practice in the State of Jammu and Kashmir.
5. Describe the evolution of Panchayat Raj Institutions in Jammu and Kashmir.
6. Explain main features of the Panchyati Raj Act of 1989.
7. What are the major powers conferred to PRIs in 1989 Act?  
Critically evaluate the limitations of PRIs in Jammu and Kashmir.

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B.A., Semester VI, Political Science (Govt. and Politics in J&K)
Unit III: Constitutional Structure

3.1 GOVERNOR: APPOINTMENT, POWERS AND ROLE (SECTION 92)

- Shrutika Manhas

STRUCTURE

3.1.0 Objectives.

3.1.1 Introduction

3.1.2 Appointment, Qualification, Term of Office

3.1.3 Powers of Governor

3.1.4 Role of Governor

3.1.5 Section 92 of Jammu and Kashmir Constitution

3.1.6 Let us Sum Up

3.1.7 Check Your Progress Exercise

3.1.0 OBJECTIVES

After going through this lesson, you will be able to understand:

- the institution of Governor's and related legalities;
- the power and position of Governors;
- the powers and role of Governor with special reference to Jammu and Kashmir; and
- Section 92 in the Constitution of Jammu and Kashmir.

3.1.1 INTRODUCTION

India is a federation. The administration of the States is carried on in the name of Governor. The exclusive power of the Jammu and Kashmir State is vested in the head of the State, called the Governor. By the Constitution of Jammu and Kashmir Sixth Amendment Act. 1965, Sadar-i-Riyasat, which was originally conceived, has been substituted by the Governor.

3.1.2 APPOINTMENT, QUALIFICATION AND TERM OF OFFICE

Prior to sixth Amendment made in the 1965, the head of the state had to be a permanent resident of the state and had to be indirectly elected by the legislature. However, vide the sixth Amendment Act. 1965, The Governor shall be appointed by the President of India by warrant under his hand and seal.

3.1.2.1 QUALIFICATION

For appointment to the Office of Governor the Constitution of Jammu and Kashmir provides that:

1. He should be citizen of India.
2. He must have completed 35 years of age.
3. According to Section 30, he must not be the member of the either house of the legislature.

4. If member of either house is appointed as Governor, he shall be deemed to have vacated his seat in the house on the date which he enters upon his Office as a Governor.

3.1.2.2 TERM OF OFFICE

The normal term of the Governor is five years until his successor enters upon the Office. The Governor holds Office during the pleasure of the President but he may, by writing under his hand addressed to the President resign his Office. Governor to the Jammu and Kashmir (6th Amendment Act. 1965) the head of the State i.e. the Sadar-e-Riyasat, could be removed for violation of the Constitution, by an address in the legislature supported by a majority of not less than 2/3 of its total membership, recommending to the President to remove him.

3.1.3 POWERS OF GOVERNOR

Powers of Governor can be divided under four heads: 1) Executive Powers; 2) Legislative Powers; 3) Financial Powers; 4) Judicial Powers

3.1.3.1 EXECUTIVE POWERS

1. ***Executive Powers:*** According to Section 26 (2) of the constitution of J & K the Sadar-i-Riyasat (Now the Governor) is the head of the State & Exercise the executive powers of the State either personally or through officers subordinate to him.
2. ***Conduct of Business of the Government:*** The Governor is empowered to make rules for the more convenient conduct or transaction of the business of the Government of the State.
3. ***Appointments:*** In his executive capacity the Governor makes a number of appointments. He appoints the Chief Minister of the State and on the advice of the Chief Minister (C.M) he appoints other Ministers. The Governor appoints the Council of Ministers (C.O.M) to aid and advice him in the exercise of his functions. The Governor appoints the advocate General of the State to advise him on legal matters. The Governor also appoints the Chairman and the other members of the State public Service Commission.

4. ***Power of Removal:*** The Minister holds office during the pleasure of the Governor. The Governor has the power to dismiss the Council of Ministers including the C.M.
5. ***Right to be informed:*** It is the duty of the C.M. of the State to communicate to the Governor all decisions of the C.O.M. relating to the administration of the State and proposals for legislation. The Governor can himself ask for information in these matters.
6. ***Agent of the Centre:*** The Governor is the agent of the Centre. It is his constitutional duty to report to the President when the Government of the State cannot be carried in accordance to the provisions of the constitution.

3.1.3.2 LEGISLATIVE POWERS

The Governor of J & K enjoys following legislative powers:

1. Under the constitution, the Governor can summon the State legislature to meet at any time or place he deems fit; but six months should not lapse between the last sitting of the house in one session and the date house in one session and the date appointed for the sitting of the next session.
2. He can prolong of Legislature and dissolve the assembly even before the expiry of 5 years. But the Governor can dissolve the legislative assembly in the advice of the C.O.M.
3. The Governor can summon both the houses separately or together.
4. He can also send messages to either house with regard to any bill.
5. The Governor must address the State legislature at the commencement of the first session after each general election and at the commencement of the first session of each year.
6. The Governor appoints eight members of Legislative Council.
7. No bill passed by the State legislature can become an Act unless it has given assent by the Governor. The Governor can withhold his assent. He can also send

the bill back for reconsideration. He can reserve the bill for the consideration of the President. He can send back Money Bill.

8. Under the constitution there are certain kinds of Bills which the Governor has to send to the President for his approval.
9. The Government can issue ordinances during the recess of the State Legislature. The ordinance has the same force as the law passed by the State Legislature.

3.1.3.3 FINANCIAL POWERS

The Government is required, in respect of every financial year, to see that the Budget of the State is laid before the legislature. No money bill or other financial bills can be introduced in the legislative assembly except on the recommendation of the Governor. Likewise no demand for grant can be made except on the recommendation of the Governor. The Governor is also empowered to ask for supplementary additional or excess grant from the legislature.

3.1.3.4 JUDICIAL POWERS

Like the President Governor has also been given some financial powers:

1. According to Section 34 of the constitution of J & K, the Governor has the power to grant pardons, reprieves, respites or remissions of punishments or to suspend remit or commute to sentence of any person convicted of any offence e.g. law relating to a matter to which the executive power of the State extends. The Governor cannot increase the punishment.
2. District Judges, additional district judge and session judges are appointed the Governor. However, while making such appointment the Governor has to consult the High Court.
3. According to Section 110 of the constitution of J & K appointment of persons other than district judges to the judicial services of the State shall be made by the Governor in accordance with rules made by him in that behalf after consultation with public service commission and with the High Court.

4. As Chancellor ‘The Governor of a State is the ex officio Chancellor of the Universities in the State except the National Universities. In his sphere also, he is supposed to act on the advice of his Council of Minister.

3.1.3.5 COMPOSITION OF LEGISLATIVE COUNCIL

Eight members shall be nominated by the Governor, not more than three of whom shall be persons belonging to any of socially or economically backward classes in the State and the others shall be person having special knowledge or practical experience in respect of matters such as literature, science, art, cooperative movement and social services.

3.1.3.6 RIGHT OF GOVERNOR TO ADDRESS AND SEND MESSAGES TO THE HOUSE OR HOUSES

1. The Governor may address either house of legislature or both houses assembled together and may for that purpose require the attendance of members.
2. The Governor may send messages to either house, whether with respect to a bill then pending in the legislature or otherwise.
 - (a) Special Address by the Governor: At the commencement of the first session after each general election to the legislative assembly and at the commencement of the first session of each year the Governor shall address both houses of legislature assembled together and inform the legislature of the causes of its summons.
 - (b) Breakdown of constitutional machinery provision in case of failure of constitutional machinery in the State appointed to be a judge of a high court shall before he enters upon his office, make and subscribe before the Governor or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the fifth schedules.
 - (c) Academy for development of art, culture and languages : The Governor shall, as soon as may be after the commencement of the constitution establish an academy of Art, culture of the State and for the development of Hindi, Urdu and other regional languages of the State specified in the sixth schedule.

3.1.3.7 OTHER RESPONSIBILITIES/ POWERS

- (a) The Governor is Ex-officio Chancellor of the University of Kashmir, the University of Jammu, the Sher-i-Kashmir University of Agricultural Sciences and Technology, Kashmir, the Sher-i-Kashmir University of Agricultural Sciences and Technology, Jammu and Shri Mata Vaishno Devi University.
- (b) The Governor is the President of the Rajya Sainik Board.
- (c) The Governor is the President of J & K Branch of Indian Red Cross Society.
- (d) The Governor is the patron of the J & K Academy of Art, culture and languages.
- (e) All shares of the J & K State in its public sector corporation are held by the Government in the name of the Governor.
- (f) The Government is the chairman of Shri Mata Vaishno Devi Shrine Board and Shri Mata Amarnathji Shrine Board.

3.1.4 ROLE OF GOVERNOR

The Governor plays an important role as an agent of the Central Government and as an head of the state government.

The Central Government issues instructions to the State Government from time to time. It is compulsory for the State Government to follow the instructions of the Central Government It is the duty of the Governor to see that the State Government carries out the orders and instructions of the Central Government If State Government is not following the instruction then the Governor has a right to ask the State Government to carry out the orders of Central Government The Governor is neither a complete rubber stamp nor a real ruler of the State nor is he ‘the conscience-keeper of the Centre. Under normal conditions the Governor acts according to the advice tendered to him by the Council of ministers but he cannot be blind to the facts.

To Quote Indira Gandhi, “Governors can be the guide, philosopher and friend to your respective Governments, while also discharging your constitutional duties.”

According to K.M Munsli, “The Governor is the watch dog of constitutional property and the link which binds the centre of the States, thus securing the constitutional unity of India.” Pylee has rightly pointed out that “The Governor is neither a figure head nor a rubber stamp but a functionary designed to play a vital role in the administration and affairs of the State.”

In order to know the real position of the Governor, President formed a committee in 1971. The Committee concluded “The Governor is in no sense an agent of the President not even when the Government is taken over by the President. He acts independently according to the constitution.”

3.1.5 SECTION 92 OF J & K CONSTITUTION

Section 92 of the J & K constitution States that “If at any time, the Governor is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the constitution, the Governor may by proclamation (a) assume on himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by anybody or the authority in the State and (b) make such incidental and consequential provision as appear to the Governor to be necessary or desirable for giving effect to the objects of proclamation including provisions for suspending in whole or in part of the operation of any provision of this constitution relating to anybody or the authority in the State.”

Since the constitution of the States clearly says that it is in the wake of a breakdown of law and order that the Governor will assume charge, it seems to be difficult for those at the helm in the Centre to accept the demand on this ground. The Centre experts believe may not be willing to thrust any such decision on the State leading to more strain in Centre-State relations.

3.1.6 LET US SUM UP

The Governor is usually a distinguished elder statesman, who can discharge his rather perfunctory duties with dignity who is on a position to exercise what Gandhi called an “all pervading moral influence.” The Governor of a State has a dual role to

play – as the constitutional head of the State as the agent or representative of the Centre.

3.1.7 CHECK YOUR PROGRESS EXERCISE

1. What are qualifications required to be appointed as a Governor?
2. What are the main executive powers of the Governor?
3. What are the main legislative functions of the Governor?
4. Write a note on Judicial powers of the Governor?
5. The Governor plays an important role as an agent of the Central Government. Elaborate.
6. What the Governor does if he satisfied that the Government of the State cannot be carried on in accordance with the provisions of the constitution?

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## **3.2 CHIEF MINISTER AND COUNCIL OF MINISTERS: POWERS AND ROLE**

**- Nirlap Kour**

### **STRUCTURE**

- 3.2.0 Objectives**
- 3.2.1 Introduction**
- 3.2.2 Designation of Real Executive**
- 3.2.3 Appointment of Chief Minister**
- 3.2.4 Powers of the Chief Minister**
- 3.2.5 Position of the Chief Minister**
- 3.2.6 Council of Ministers**
- 3.2.7 Composition of the Council of Ministers**
- 3.2.8 Functions of the Council of Ministers**
- 3.2.9 Let us Sum Up**
- 3.2.10 Check Your Progress Exercise**

### **3.2.0 OBJECTIVES**

After reading this lesson you will be able to know:

- the importance of the executive in the government;
- the nature of the real executive in parliamentary democracy;
- the powers of the executive or chief minister;
- the composition of Council of Ministers;
- the powers and functions of Council of Ministers.

### **3.2.1 INTRODUCTION**

In a parliamentary system, as in England, the head of the Government occupies the most significant place of prominence and position. The Prime Minister of England, according to Lord Morley, is the key-stone of the Cabinet arch. Greaves remarks that “the Government is the Master of the country and he (Prime Minister) is the Master of the Government.” The Prime Minister in England is the pivot of the whole system of Government. The same position is more or less enjoyed by the Prime Minister of India, and the Chief Minister of an Indian State. Thus it may be said that the position of the Chief Minister in the political structure of the State Government is, more or less, the same as that of the Prime Minister of England or the Prime Minister of India.

The Executive in Jammu and Kashmir State consists of the two institutions viz., the Governor and the Council of Ministers headed by the Chief Minister. Whereas the Governor is the constitutional executive of the State, the Council of Ministers headed by the Chief Minister is the real executive.

### **3.2.2 DESIGNATION OF REAL EXECUTIVE - FROM PRIME MINISTER TO CHIEF MINISTER**

As we understand, the real executive in a parliamentary democracy is the council of ministers headed by the chief minister. It executes all the decisions taken by the legislature. The chief minister’s office is the important structure in a parliamentary democracy. All other executive members, that is the council of ministers or what is popularly called the Cabinet work under the supreme authority of the chief ministers.

Before the Sixth Amendment Act of 1965 was adopted by the Constitution of Jammu and Kashmir, the head of the Government in Jammu and Kashmir was designated as the Prime Minister. Section 35(1) of the Constitution in its original form provided:

“There shall be a Council of Ministers with the Prime Minister as the head to aid and advise the Sadar-I-Riyasat in the exercise of his functions.”

The Sixth Amendment to the Constitution repealed the designation, Prime Minister, and in its place was substituted the designation “Chief Minister”. The change in the designation of Prime Minister was done with a view to bring the State of Jammu and Kashmir at par with the other states of the Indian Union.

### **3.2.3 APPOINTMENT OF THE CHIEF MINISTER**

Section 36 of the State Constitution provides that the Governor shall appoint the Chief Minister. The other Ministers shall be appointed by the Governor on advice of the Chief Minister. The Constitution does not, however, mention anything about the qualification of the Chief Minister or of other member of the Council of Ministers.

The provisions relating to the appointment of the Chief Minister, or the other members of the Council of Ministers, their tenure of office etc. were provided according to the principles and the norms of responsible or cabinet form of government in which conventions had to be honoured and operated. The principle of collective responsibility as recognised by the law clearly stated that the head of the State (Governor) should invite only that person to form the government who commands a majority in the legislative assembly. But as it is not binding on the Governor to appoint the Chief Minister only from the lower house, he may also invite a member of the Legislative Council to form the Government. This is exactly happen in Jammu and Kashmir in July 1984 when Farooq Abdullah was dismissed and in his place G.M. Shah, a member of the Legislative Council, was installed. Even a person who is not a member of the either House of the Legislature can be appointed as the Chief Minister if that person has a majority support in the Legislative Assembly. This convention was put to operation in Jammu and Kashmir State in February 1975 when Sheikh Mohammad Abdullah who was not the member of either House of the State Legislature was appointed as the Chief Minister after Syed Mir Qasim has voluntarily stepped down in his favour. Recently, that is after the Assembly election of 2002, same

convention has been followed. Mufti Mohammed Syed who heads the Coalition Government is not the elected member of the Legislative Assembly.

There may arise different situations wherein the Governor is required to exercise his power of appointment of the Chief Minister in accordance with the peculiar dimensions of a situation. Such dimensions are envisaged under any one or all of the following situations:-

- (a) When there is a single party having clear majority in the Legislative Assembly, the Governor has no other choice but to appoint the leader of that party as the Chief Minister. This has been happening in most of the normal situations after the most of the Assembly elections.
- (b) When a coalition of different political parties, as a result of pre-electoral alliance, has secured a clear majority in the Legislative Assembly and informs the Governor of the name of their common leader for the appointment of the Chief Minister. A similar situation may arise in the legislature as a result of post-electoral alliance, knowing that coalition parties do have the mandate of the people to do so. In both the cases, the Governor should have no hesitation in appointing the person as the Chief Minister.
- (c) Under certain circumstances the Governor may exercise his discretion. Thus when no political party is in a position to form the government, the Governor may have his own assessment of the situation. He may seek the opinion of the Advocate General of the State as to the propriety of the claim of an aspirant for the office of Chief Minister. For example, the Governor of the Bihar in 1967 refused the claim of an aspirant for the office of Chief Ministership. Even when the Governor is satisfied that there is no possibility of any alternate government to be formed, he may recommend the Central Government to place the state under President's rule.

The Governor of the Jammu and Kashmir exercised his discretionary power recently when after the Assembly election of 2002, no single party could attain majority in the Assembly. In the absence of any party being in position to form the government, the state was to begin with under Governor's rule. But later that rule

was revoked when the coalition partners led by the People's Democratic Party-Congress combine claimed majority in the Assembly. Then the Governor invited this combine to form a coalition government.

- (d) The office of the Chief Minister may fall vacant due to the death of its incumbent. This may create a situation for the Governor. He may either appoint a Chief Minister protem or if the legislature party immediately after the death of the Chief Minister, choose another leader and submit his name to the Governor, the latter shall appoint that person as Chief Minister. This is exactly what happened in Jammu and Kashmir State in 1982 when Sheikh expired on 8 September 1982 the Governor appointed Dr. Farooq Abdullah as the new Chief Minister, after the legislature party had unanimously chosen him as its leader.
- (e) A difficult situation may, however, arise when there are several claimants in the field for the post, involving critically a question of leadership. The Governor appoints the Chief Minister only after the controversial issue of leadership is settled.

#### **3.2.4 POWERS OF THE CHIEF MINISTER**

The office of the Chief Minister of Jammu and Kashmir, like in other states of Indian Union, is recognised by law. The Constitution of Jammu and Kashmir provides that there shall be a Council of Ministers with the Chief Minister at its head. Sections 35(1) and 36, when read together, show the real executive is the Council of Ministers headed by the Chief Minister. It is the Chief Minister who is under constitutional obligation to advise the Governor in matters relating to the formation of Ministry, organisation of the working of the Council of Ministers and the dissolution of the Council of Ministers. He may be designated as the working head of the government.

With regard to the formation of ministry, it is the Chief Minister who has the final say in the matter of selection of ministers. It is he who submits the list of the Council of Ministers to the Governor for their appointment as Ministers. The Chief Minister allocates the portfolios among the Ministers. The Governor's acceptance is only a formality. It is the Chief Minister who decides the rank of the members of his Council of Ministers.

Insofar as the organization of the Council of Ministers is concerned, its size is primarily determined by the Chief Minister according to his own discretion. But, in practice, the Chief Minister's discretion may be limited by several factors which are in the nature of political necessities. Thus, while organizing his ministry, the Chief Minister may give priority to provide representation to all the regions of the state. Hence every Council of Ministers must have on it members representing Jammu Province and the frontier area of Ladakh and Kargil. He should also give representation on the Council of Ministers to important minorities such as Kashmiri Pandits and the Sikhs and to backward communities and Scheduled Castes.

The life and death of the Council of Ministers depends upon the will of the Chief Minister. There are several ways for the Chief Minister to dissolve the Council of Ministers. For example, the Chief Minister's resignation should immediately be followed by the resignation of the entire body of Council of Ministers. Also, if there may arise any difference on any issue, or on policy matter between the Chief Minister and any other minister, the latter should agree with the views of the Chief Minister, but if the Minister fails to do so, he should resign. This shows how the life and death of the Council of Ministers depends upon the will of the Chief Minister.

As the Chief Executive and head of the Government, the Chief Minister must know full details about the affairs of administration. All decisions regarding important matters are taken only in consultation and with the approval of Chief Minister.

All appointments of higher government officials are made with the approval of the Chief Minister. Even the Governor makes appointment to certain categories of higher officials to the state administration on the advice of Chief Minister.

Under Section 44 of the Constitution, the Chief Minister is required to perform the following duties:

- I. To communicate to the Governor all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation.
- II. To furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for.

III. If the Governor requires to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

The above three duties imply that the Chief Minister, as the Chief political executive, acts as a link between the Governor and the Council of Ministers.

Being the political head of the civil services, the role of Chief Minister is to conform to certain well established and well-defined conventions and norms. Most importantly, a Chief Minister must set a personal example as an eminent, honest, devoted and conscious administrator. He must encourage honest personnel in the administrative set up.

### **3.2.5 POSITION OF THE CHIEF MINISTER**

The Chief Minister is the pivot of the whole system of the State Government. He occupies a position of prominence and power. It is he who gives final shape to the Council of Ministers, distributes work among the ministers, and settles the difference and conflicts between the departments. He is a link between the Governor and the Council of Ministers. An honest, devoted and talented Chief Minister sets an example of a clean image for others to follow.

A charismatic leader like Sheikh Mohammad Abdullah was a commanding personality who always captured the imagination of the people of the state. He was considered to be a very powerful Chief Minister. He could not only make an impression for his style of governance only in the state but also at the national level. He had in fact the stature of a national leader.

Dr. Farooq Abdullah who remained the chief Minister of the state for pretty long time also had a charismatic personality and he also could become a powerful chief Minister. But rather than using his personal charisma, he used his power by completely controlling his party as well as the cabinet that he led.

The position of chief minister also depends upon the nature of the party competition. In singly dominant party system, the Chief Minister has been very powerful. But in the coalition, the Chief Minister has to carry his coalition partners along. Hence, he may have to compromise with his dominant position.

### **3.2.6 COUNCIL OF MINISTERS**

The Council of Ministers is to aid and advise the Governor on day-to-day administration. The constitution clearly laid down the principles on this regard.

- (1) There shall be a Council of Ministers with (Chief Minister) at the head to aid and advise the Governor in the exercise of the functions.
- (2) All functions of the Governor except those under section 36, 38 and 92 shall be exercised by him only on the advice of the Council of Ministers.
- (3) The question whether any and if so what advice was tendered by Ministers to the Governor shall not be inquired into any court.

The Council of Ministers is the main executive organ of the government and its stability is essential for the efficient running of the administration. There is a parliamentary form of government in India both at the level of the Union government as well at the level of States. The same pattern has also been followed in the state of Jammu and Kashmir.

The Cabinet or responsible form of government came to be based on certain well established and unchangeable principles as a result of the conventions. These principles are briefly stated below.

#### **Principle of responsibility**

The parliamentary system of government is also known as the Cabinet system or the responsible form of the government. The first requisite of this government is that the head of the state should be a nominal head. The real executive is called the Council of Ministers or the Cabinet. The entire administration is run in the name of the nominal head of the state. All powers vested in him are in actual practice exercised by the Council of Ministers which is answerable for all its acts of commissions and omissions to the representative chamber or lower house.

#### **Principle of Majority Rule**

The Council of Ministers is formed by the members belonging to the party which has majority in the popular house of a bicameral legislature. However, members from upper house are also appointed as the members of the Council of Ministers.

A member not being as a member of the either house of the legislature may be appointed a member of the Council, but in that case, he has to get himself elected to either of the house of the legislature at an early date.

### **Principle of the leadership of Chief Minister**

The Council of Ministers is headed by the Prime Ministers in a parliamentary form of government. He enjoys a position of prominence over his colleagues and holds real authority as the chief head of the administration. He is the chief spokesman of the government and final authority over the administration and Advisor to the nominal executive. In state government this position is occupied by the Chief Minister.

### **Principle of collective responsibility**

Collective responsibility constitutes essential features of a parliamentary form of government. This principle of collective responsibility means that all Ministers are responsible to the popular chamber. They can remain in office only as long as they have majority support in legislature. If a vote of no confidence is passed against the Ministers or an individual Minister and as a result of which government is defeated in the house, then all the Ministers have to resign. This is called principle of collective responsibility.

### **Principle of Secrecy**

Secrecy of the meeting of the Cabinet constitutes another feature of the parliamentary system. The meetings of the Cabinet are presided over by the Chief Minister. The decisions taken place in the Cabinet meetings are to be kept a secret by a Minister both during and after the tenure of his office.

### **Principle of intimacy between Executive and Legislature**

An intimate and close relation between the executive and legislature forms another feature of the parliamentary form of government. The members of the Council of Ministers are the members of the legislature at the same time. They are individually and collectively responsible to the popular house. They remain in office so long as they enjoy the confidence of the majority of that house. Similarly, the life of the legislature depends on the will of the Council of Ministers.

## **Principle of Party System**

In order to ascertain that the government in parliamentary type of the political system is run in accordance with democratic norms, the existence of an effective, sound and healthy opposition is not only the need but also a must. Thus if one party or a combination of the parties get absolute majority and form the government, the other party or parties form the opposition.

### **3.2.7 COMPOSITION OF THE COUNCIL OF MINISTERS IN JAMMU AND KASHMIR**

The Council of Ministers consists of three categories of the Ministers. In the first category are placed what is called Cabinet rank Ministers. The Cabinet rank Ministers are usually prominent, experienced, foresighted, and senior most politicians. They receive high salaries than other ministers. A Cabinet Minister is entitled to see harmony between different departments within his ministry and co-ordinate and guide them.

The second category is that of the Ministers of the State. They are not the member of the Cabinet and as such do not take part in its discussion and proceedings. If any matter regarding their department is under consideration or discussion in the Cabinet, they may be invited to attend the meeting and take part in the deliberation. But such a minister is not entitled to vote. The third category of ministers is known as the Deputy Ministers.

The Chief Minister prepares the list of those members of the Legislative Assembly whom he wants to include in the list of the Council of Ministers. All the Ministers are required to take an oath of office and secrecy before entering upon their office. The oath is administered to a Minister by the Governor or in his absence by any person authorized by him in this regard.

The Ministers and Deputy Ministers are entitled to such a salary and allowances as the legislature may from time to time by law determine and until so determined, shall be such as are payable respectively to the Ministers and the Deputy Ministers under the Jammu and Kashmir Ministers Travelling Allowances Rules for the time being in force and the Jammu and Kashmir Deputy Ministers Salaries and Allowances Act.

### **3.2.8 FUNCTIONS OF COUNCIL OF MINISTERS**

The Council of Ministers headed by the Chief Minister enjoys a wide range of powers and functions in different fields of the governmental setup in a parliamentary democracy. The Council of Ministers have various functions to perform in the executive, legislative, financial and judicial fields.

#### **3.2.8.1 EXECUTIVE FUNCTIONS**

All executive functions of the state are controlled and directed by the Council of Ministers. Theoretically as well as legally all executive powers of the state of Jammu and Kashmir are vested in the Governor who is required to exercise these powers either directly or through officers subordinates to him. Also, the executive actions of the state government are taken in the name of the Governor or of the government of Jammu and Kashmir state. But all these functions are in actual practice performed by the Council of Ministers. The executive functions performed by the Council of Ministers relate to the formulation of governmental policies and to get these policies approved by the legislature. The Council of Ministers also responsible for the proper implementation of their policies and decisions. All important appointments of higher officers of the government are made by the Governor on the advice of the Council of Ministers. The Council of Ministers is, therefore, a working executive in the state.

#### **3.2.8.2 LEGISLATIVE FUNCTIONS**

The Council of Ministers has many powers in the field of law making also. Two institutions of the legislature and executive are closely knitted together. In fact the Council of Ministers has its birth place in the legislative assembly and it remains in office so long as it enjoys its confidence. In principle the power of dissolution of the legislative assembly vested in the Governor but in practice the Governor exercised the power of dissolution according to the wishes of the Chief Minister.

The legislative policy of the government is determined by the Cabinet. In this regard all government bills are introduced and piloted by the Cabinet Ministers and the State Ministers in the legislature since the ministry belongs to the majority party, it becomes very easy for them to get their bills passed in legislature.

The principle of collective responsibility has been given legal recognition in that Section 37 of the State Constitution provides that all Ministers shall be collectively responsible to the Legislative Assembly.

#### **3.2.8.3 FINANCIAL FUNCTION**

The purse of the people remains in the hands of the Cabinet (Council of Ministers). The most important function of the Cabinet is to prepare the annual budget, showing the items of income and expenditure to be incurred by the state during each financial year.

#### **3.2.8.4 JUDICIAL FUNCTIONS**

One of the established principles of a parliamentary system of government is that the constitutional head of the state is left with some important prerogatives. One such prerogative recognizes the head of the state as the foundation of justice. This prerogative is provided in the Constitution of Jammu and Kashmir state under Section 34 which provides that the Governor has the power to pardon, reprieve, respite or remission of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against law. But in practice this power is exercised by the Governor on the advice of the Council of Ministers.

Thus, the Council of Ministers headed by the Chief Minister enjoys a wide range of powers and functions in different fields. The Chief Minister selects his own team of ministers. The Cabinet or responsible form of government follow some well-established principles and perform different type of functions, i.e., legislative, executive, financial, judicial etc. The Chief Minister, as the Chief political executive, acts as a link between the Governor and the Council of Ministers.

#### **3.2.9 LET US SUM UP**

The office of Chief Minister is a very important office in the State Government. Like other parts of the country, in Jammu and Kashmir as well, the parliamentary form of government is followed. Hence, all executive powers are vested in the Council of Ministers which is

headed by the Chief Minister. The Council of Ministers takes collective decisions and is collectively responsible to the Legislative Assembly of the State. Normally, the Council of Ministers is formed by the members of the party which secures the majority in the Legislative Assembly. But as in 2002, when no party is in a position to secure majority in the legislature, then there is the possibility of Council of Ministers coming from different parties. Such a situation arises when there is a coalition government.

### **3.2.10 CHECK YOUR PROGRESS EXERCISE**

1. How the Chief Minister will be appointed?
2. What are the powers of the Chief Minister?
3. The Chief Minister is the pivot of the whole system of the State Government. Explain.
4. Write a note on composition of the Council of Ministers.
5. What are the functions of the Council of Ministers?

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3.3 LEGISLATURE: COMPOSITION, POWERS AND FUNCTIONS OF LEGISLATIVE ASSEMBLY AND LEGISLATIVE COUNCIL

- Nirlap Kour

STRUCTURE

3.3.0 Objectives

3.3.1 Introduction

3.3.2 Nature of the State Legislature

3.3.3 Legislative Assembly

3.3.4 The legislative Council

3.3.5 Summoning of Sessions and Prorogation of the Houses

3.3.6 Legislative Procedure

3.3.7 Procedure in Financial Matters

3.3.8 Let us sum up

3.3.0 OBJECTIVES

After reading this unit you should be able to:

- understand the nature of composition of the Legislative Assembly in Jammu and Kashmir;

- know the powers of the Lower House and Upper House of the State legislature;
- understand the procedure of making the law in the state of Jammu and Kashmir.

3.3.1 INTRODUCTION

Unlike many other State legislatures, the Legislature of the State of Jammu and Kashmir is comprised of the two houses – the Legislative Assembly and the Legislative Council. The Legislative Assembly of the State is comprised of members who are directly elected by the people of the State while the Legislative Council constituted through the process of indirect election as well as the process of nomination. A peculiar feature of the composition of the Legislative Assembly of the state is that here twenty-four seats are reserved for that part of the State which has been occupied by Pakistan (PoK) since 1947. As that area continues to be occupied by Pakistan, election for these seats has never taken place.

3.3.2 NATURE OF THE STATE LEGISLATURE

The nature, composition and the powers of the State Legislature of Jammu and Kashmir is governed by the Constitution of Jammu and Kashmir. Under this Constitution, the state legislature is the highest law-making body with the powers to legislate on all matters, except those with respect to which Parliament has powers to make laws for the state under the provisions of Constitution of India. Part VI of the Constitution of Jammu and Kashmir deals with the state legislature.

The legislature of Jammu and Kashmir state is bicameral. By virtue of her own State Constitution, the state of Jammu and Kashmir has two houses. Hence, it consists of the Governor and two Houses – the Legislative Assembly and the Legislative Council. The upper house is called the Legislative Council and the lower house is known as Legislative Assembly. The Legislative Assembly forms an essential part of the government machine in a country governed on democratic principles and represents the people. Legislative Council does not get elected directly and represents the mature political opinion of the distinguished political leaders and eminent citizens of the State. This two chamber system is an integral part of Constitution of the State.

3.3.3 LEGISLATIVE ASSEMBLY

The members of the legislative assembly are directly elected by people from the territorial constituencies in the state. Now, the total strength of the legislative assembly is of 111 members. The Constitution of the State provides that twenty-four seats in the legislative assembly shall remain vacant for those residing in the Pakistan held area (POK) of Jammu and Kashmir. However, there is a provision for nomination under certain conditions. If in the opinion of the Governor women are not adequately represented in the assembly, he may nominate two women to be members thereof. In actual effect, at present the total strength of the legislative assembly is 87 and not 111 because the seats reserved for the people of PoK are not filled.

In addition to the reservation of 24 seats for the people residing in the area of the state of Jammu and Kashmir now under the occupation of Pakistan, the Constitution provides for the reservation of seats for the Scheduled Castes. This reservation has been made in ratio near to the proportion of the Scheduled Castes in the State. The Scheduled Castes are deemed to mean the castes, races, tribes or groups which under Article 341 of the Indian Constitution are constructed to be so. Thus, Article 341 of the Constitution of India is applicable to Jammu And Kashmir State. The reservation of seats for Scheduled Castes was provided for 23 years from the date the Jammu and Kashmir Constitution became operational, but this period was further extended by another 23 years through amendments.

The Constitution makes it clear that for the purposes of election to the legislative assembly, the state is divided into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it are, as far as practicable, the same throughout the state.

If the legislative assembly is dissolved prior to the expiry of its duration and the Governor is satisfied that holding of general election without delay is necessary, he may after consulting the Election Commission, by notification direct that the general election shall be held on the basis of the last preceding delimitation of territorial constituencies. The legislative assembly, unless sooner dissolved, shall continue for six years from the date appointed for its first meeting.

A person shall not be qualified for the membership to the Legislative Assembly unless he is a permanent resident of the state, is of twenty five years of age and makes and subscribes an oath and affirmation before some persons authorized in that behalf by the Election Commission of India according to the form set out for the purpose in the Fifth Schedule.

No person can become a member of both the houses at the same time. In case a person happens to be a member of both houses, he has to vacate his seat in one or the other houses according to law made by the legislature. Besides, a person ceases to be the member of the legislative assembly:

- (i) if he resigns his seat by writing under his hand addressed to the Speaker;
- (ii) If remains absent, without permission of the House, for 60 consecutive days from all the meetings of the House, his seat falls automatically vacant.

3.3.4 THE LEGISLATIVE COUNCIL

In accordance to the provisions dealing with the State Legislature, the Legislative Council of the State is to consist of 36 indirectly elected members, giving representations to functional groups, local bodies and other unorganized social interests. Of these, eleven members are elected by the members of the Legislative Assembly from amongst the residents of the Kashmir Province who are not members of the Legislative Assembly and at least one each being elected to represent the districts of Ladakh and Kargil tehsil. Eleven members are to be elected by legislative assembly from amongst the residents of Jammu province who are not members of the legislative assembly, at least one each being elected to represent the districts of Doda and Poonch. One member is elected by each of the following constituencies:

- (a) The members of Municipal Council, Town Area Committees and Notified Area Committees in the province of Kashmir.
- (b) The members of Municipal Council, Town Area Committees and Notified Area Committees in the province of Jammu.
- (c) Teachers of Kashmir province, and
- (d) Teachers of Jammu province.

Two members shall be elected by each of the following constituencies:

- (a) Panchayats and specified local bodies in Kashmir, and
- (b) Panchayats and specified local bodies in Jammu.

Eight members are nominated by the Governor, not more than three from amongst persons belonging to the socially or economically backward classes in the state and the rest from amongst those who have distinguished themselves in the fields of literature, science, art, cooperative movement and social services.

The election to the legislative council is held in accordance with the system of proportional representation by means of the single transferable vote under sub-sections (2) and (3) of section 50 which deals with the election of 22 members to be elected by the members of the legislative assembly. None of the sitting members of the legislative assembly is eligible to be elected to the Legislative Council.

The Council unlike the Assembly is not subject to dissolution but one-third of its members retire every two years. Both the Houses are to elect their presiding officers known as Speaker and Deputy Speaker and Chairman and Deputy Chairman respectively.

To be qualified for election to the Legislative Council, a person

- (1) must be a permanent resident of the state;
- (2) must be not less than thirty years of age;
- (3) must make and subscribe the oath or affirmation for election to the Legislative Council;
- (4) must possess such other qualifications as may be prescribed in that behalf by or under any law made by the legislature;
- (5) must not holds any office of profit under the governments of India or the state government or any other state government within the Union of India;
- (6) who is not entitled to become the member of the Legislative Council if he is declared of an unsound mind by a court of law.

3.3.5 SUMMONING OF SESSIONS AND PREROGATION OF THE HOUSES

The Constitution provides that the Governor shall from time to time summon each House of the state legislature to meet at such time and place as he thinks fit. Thus, it is the Governor, who has power to summon the sessions of the houses of the state legislature from time to time. However, the exercise of power of the Governor is conditioned by the requirement that six months must not intervene between the last sitting in one session of the house and the date appointed for its first sitting in the next session. There shall not, therefore, be an interval of more than six months between two sessions of a house. The Governor may prorogue from time to time either house of the state legislature which means termination of the session.

3.3.6 LEGISLATIVE PROCEDURE

The law making power is the most important power of the State legislature. This power is exercised in accordance with a set procedure. Such procedure differs according to the nature of the law to be formulated. Thus, there is difference in the procedure for passing the ordinary Bill as compared to the money Bill.

Ordinary Bill is neither a money Bill nor a financial Bill nor a Bill involving expenditure from the consolidated fund of the state, is known as Ordinary Bill. It is a Bill relating to matters of ordinary legislation. An ordinary Bill may originate in either House of state legislature. Wherever it originates, it has to go to the other House and must be passed by both the houses.

To become a law, the Bill has to pass through different stages. Though it has to go to both the Houses and get the approval of each of these Houses, the power of both the Houses in this respect is not equal. The power of the Legislative Council with regard to those Bills which are passed by the Legislative Assembly is restricted. If an ordinary Bill passed by the assembly is transmitted to the Council for consideration, the latter may either reject the Bill or can retain the Bill without taking it into consideration, for not more than three months or may pass the Bill with amendments and send the same back to the legislative assembly. The Legislative Assembly may, in the same session or in any subsequent session, pass the bill in its original form or with such amendments as have been

made or suggested by the Legislative Council. After the bill has been passed for the second time by the legislative assembly, it is retransmitted to the Legislative Council. The Legislative Council may reject the bill. If more than one month elapse and the Council has not passed it or if the Council passes the Bill with amendments not agreeable to the assembly, the Bill shall automatically be deemed to have been passed by both the houses of the state legislature in the form in which it was passed by the legislative assembly for the second time with or without such amendments as had been made by the Council and were agreed to by the legislative assembly.

All this means restrictive power of the Legislative Council. It can rarely do more than suggest amendments to bills passed by the lower house.

Once the Bill is passed by both the houses of assembly, it is presented to the Governor for his assent. Only then it becomes law.

The difference between the two Houses is also in relation to the pending bills before each of the two Houses. A Bill pending in the legislature does not lapse by reason of the prorogation of the house or houses thereof. A Bill pending in the Legislative Council, which has not been passed by the legislative assembly does not lapse on the dissolution of the assembly, but a Bill which is pending in the legislative assembly or which, having been passed by the legislative assembly, is pending in the Legislative Council, lapses on a dissolution of the assembly.

All this implies that the Legislative Council cannot veto Bills passed by the legislative assembly. The Council can only delay the passage of hasty and ill-considered legislation by the assembly and in some circumstances invokes the judgment of the electorate. The Constitution makes provision for a deadlock between the two chambers by Section 75.

It follows that in respect to a non-money bill, having been passed by the legislative assembly, the legislative council does not have any power except to delay the passing of the bill. The J&K Constitution does not specifically provide for the situation when a Bill, other than a money Bill, which originated in the Legislative Council and having been passed by it, if rejected in the legislative assembly, but it would seem that the assembly's disapproval means the lapse of the Bill.

Money Bill: A Bill which relates to finance or money is called a Money Bill. It is that bill which contains only provisions dealing with all or any of the following matters, namely –

- (1) The imposition, abolition, remission, alteration or regulation of any Tax;
- (2) The regulation of the borrowing of money or giving of any guarantee by the state or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the state.
- (3) The custody of the consolidated fund or the contingency fund of the state, the payment of money into or the withdrawal of moneys from any such fund.
- (4) The declaring of any expenditure to be expenditure charged on the consolidated fund of the state or the increasing of the amount of any such expenditure.
- (5) The receipts of money on account of the consolidated fund of the state or the public accounts of the state or the custody of issue of such money; or
- (6) Any matter incidental to any of the matters mentioned in Section 77(1). A money Bill is introduced in the assembly only.

According to the procedure followed in the State, a Bill shall not be deemed to be a money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties or for the demand or payment of fees for licenses or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration, or regulation of any tax by any local authority or body for local purposes.

If any question arises whether a Bill is a money Bill or not, the decision of the Speaker of the Legislative Assembly shall be final. A money Bill can be introduced or moved only on the recommendation of the Governor.

Sections 76 and 77 lay down provisions with regard to Money Bill. A money Bill must always originate in the legislative assembly. It cannot be introduced in the legislative council. A Money Bill having been passed by the legislative assembly is transmitted to the legislative council. The Council cannot reject or amend a Money Bill. All that Council can do is to suggest amendments, which the legislative assembly may or may not accept.

The Legislative Council shall return the money bill to the legislative assembly within 14 days from the date of its receipt in the council with its recommendations.

If the assembly accepts any of the recommendations of the Council the Money Bill shall be deemed to have been passed by both houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly.

If the legislative assembly does not accept any of the recommendation of the Legislative Council, the money bill shall be deemed to have been passed by both houses in the form in which it was passed by the legislative assembly without any of the amendment recommended by the Legislative Council.

If the Money Bill is not returned by the Legislative Council to the Legislative Assembly within the said period of 14 days, it shall be deemed to have been passed by both houses at the expiration of the said period in the form in which it was passed by the Legislative Assembly.

It thus follows that with respect to a Money Bill, the Legislative Council does not have any power but only to delay the passing of the bill by 14 days.

3.3.7 PROCEDURE IN FINANCIAL MATTERS

The Governor causes to be laid before the state legislature the “Annual financial statement” showing the estimates of receipts and expenditure of the government, generally known as Budget for every financial year. It is in two parts. The first Part, which is open in discussion in the legislature but which is not subject to vote, deals with matters charged on the consolidated fund of the state and covers –

- (a) the emoluments and allowances of the Governor and other expenditure relating to his office;
- (b) the salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly and of the Chairman and Deputy Chairman of the Legislative Council;
- (c) debt charges for which the state is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debts;
- (d) expenditure in respect of the salaries and allowances of the judges of the High Court;

- (e) any sums required to satisfy and judgment decree or award of any court or arbitral tribunal; and
- (f) any other expenditure declared by this Constitution or by legislature to be so charged.

The second Part of the statement contains demand for grants to meet anticipated expenditure. These may be assented to, refused or reduced by the legislature but may not be increased. A demand for grant can be made only on the recommendation of the Governor. The annual appropriation Bill is necessary to authorize payment of money out of the consolidated fund. Substantially the same principles apply to acts passed to provide supplementary grants during the year, votes on account, votes of credit and other legislative authority for the appropriation of money out of the consolidated fund. They must be introduced in the Legislative Council and on the recommendations of the Governor.

3.3.8 LET US SUM UP

To conclude, the Legislature of the State is a powerful body having important role of representing the people. The directly elected lower House of the State Legislature therefore represents the people. The State legislature also has the important role of making the law. The law making power of the Lower House is wider than that of the Upper House. The Upper House cannot do anything to a Bill duly passed by the Lower House. It can at the most delay the process of converting a Bill into a law. The Upper House is based on the principle of equal representation to the regions and also to take care of those subregions which may not be otherwise represented in a suitable manner.

3.3.9 CHECK YOUR PROGRESS EXERCISE

1. Write a note on importance of Legislature in a democratic system.
2. What are the powers and functions of the Legislative Assembly?
3. Explain the composition the Legislative Council in Jammu and Kashmir
4. Describe the powers and functions of Legislative Council.
5. Write a note on Legislative Procedure.
6. How the financial matters will be handled in legislature?

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## **3.4 JUDICIAL SYSTEM: POWERS AND FUNCTIONS OF HIGH COURT**

**- Nirlap Kour**

### **STRUCTURE**

#### **3.4.0 Objectives**

#### **3.4.1 Introduction**

#### **3.4.2 Judiciary in J&K – Historical Development**

#### **3.4.3 Judiciary in post-Independent Period**

#### **3.4.4 Composition of the High Court**

#### **3.4.5 High Court – Court of Record**

#### **3.4.6 Jurisdiction of High Court**

#### **3.4.7 Let us sum up**

#### **3.4.8 Check Your Progress Exercise**

#### **3.4.0 OBJECTIVES**

This unit provides a detailed knowledge of the history, composition and jurisdiction of the High Court. After reading this unit, you will be able to:

- to know about the history of development of judiciary in Jammu and Kashmir during the pre-independence period and after the making of the constitution of Jammu and Kashmir;

- to know about the composition and jurisdiction of the High Court of Jammu and Kashmir;
- to understand peculiarity of the state's constitution vis-à-vis the Judiciary and understand the nature of difference/similarity in comparison to other states.

### **3.4.1 INTRODUCTION**

The judiciary in Jammu and Kashmir acts as the interpreter and guardian of the Constitution. It is a key organ of the government of the State. Like the judiciary elsewhere in the country, the judiciary in this state has to act as an independent and impartial agency that has the important role of acting as a watchdog. Originally, the Judiciary in the state derived its power from the Constitution Act of 1939. The structure followed by the Judiciary after 1939 was continued even after 1947. In the State of Jammu and Kashmir, after the making of the Constitution of the State in the middle of fifties, the structure and powers of the Judiciary were drawn by this constitution. Despite its composition and powers being drawn from the state constitution, the structure of judiciary does not differ much from that of other states of India.

### **3.4.2. JUDICIARY IN JAMMU AND KASHMIR - HISTORICAL DEVELOPMENT**

The Judiciary in the modern context had taken shape in the state of Jammu and Kashmir during the time of the Dogra rule itself. The first High Court was established in March 1928. At that time, it comprised of a Chief Justice and two Prime judges and was called 'The High Court of judicature Jammu and Kashmir State'. This was the highest judicial body in the state within the limited framework of monarchy. Despite its modern nature, it was not fully autonomous. The control of the monarch continued as appeal from it lay to him.

With the framing of the Constitution Act of 1939, that was enacted by the Dogra ruler as a result of the pressure of the popular movement in the State, the High Court was institutionalised as an essential part of the government. Part IV of the Constitution Act, 1939, dealt with the judicature. Section 48 of the Act contained provisions with regard to the High Court.

### **3.4.3 JUDICIARY IN THE POST-INDEPENDENCE PERIOD**

The Judiciary in the State of Jammu and Kashmir, like judiciary in other states of India evolved as an impartial and independent institution in the post-independence period. However, there remained a basic difference in the structure of the Judiciary in this State as compared to the judiciary in other States. Governed by Article 370 of the Constitution of India, this State was to have its own internal governmental arrangement, while other states of India were to be governed by the common provisions relating to the governance of the States under the Constitution of India.

The state of Jammu and Kashmir therefore was not governed by the Entry 78 of List I of Seventh Schedule of the Constitution of India that deals with the exclusive power of the Union Parliament to legislate on the Constitution and organization of the High Courts in the states. Under the Presidential Order of 1950 that defined the nature of application of the Constitution of India to this state, this provision of the Constitution of India was not exercisable with regard to Jammu and Kashmir. The composition and organization of the High Court was within the exclusive jurisdiction of the State. The High Court of the State therefore continued working under the Constitution Act of 1939.

Despite its being governed by the local Act, the High Court of the State of Jammu and Kashmir was integrated to a very limited extent within the federal nature of the judiciary in India. Articles 131 and 132 of the Constitution of India, dealing with the original jurisdiction of the Supreme Court of India was applicable to this state. Similarly, the appellate jurisdiction of the Supreme Court on constitutional questions was also applied to this state. Other than this, the Supreme Court had no other jurisdiction in the state.

In 1957, the constitution of the State came into force. With this constitution in place, the Judiciary came to be governed by this Constitution.

### **3.4.4 COMPOSITION OF THE HIGH COURT, APPOINTMENT AND REMOVAL OF JUDGES**

The High Court of Jammu and Kashmir, to begin with consisted of a Chief Justice and two or more other judges. The Constitution did not fix any maximum number of judges, but provided that the minimum number of judges of the High Court, excluding the Chief Justice at any time, will be two. The present strength of the High Court is eight permanent (including Chief Justice) and six additional judges.

According to the procedure followed now, the appointment of the judges of the High Court is made by the President of India. He, however, consults the following persons in the matter:

- (a) Chief Justice of India;
- (b) The Governor of the State (originally the Sadar-I-Riyasat)
- (c) Chief Justice of the High Court of the State of Jammu and Kashmir.

In case of the appointment of the Chief Justice of Jammu and Kashmir, only (a) and (b) are to be consulted. The judges hold office until they attain the age of sixty two years. A candidate for appointment must have at least ten years of judicial experience in the State or in any other part of India, or have been an advocate of High Court of Kashmir or of any other High Court in India or of two or more such Courts in succession. A judge of the High Court may resign his office by writing under his hand addressed to the President of India. A judge of the High Court could be removed by an order of the President of India.

To begin with, the power of removal of Judges of the High Court lay in the legislature of the State. This was a power equivalent to the power of the Parliament to impeach the Judges. A judge of the High Court of this state could be impeached by the state legislature in accordance to the provision laid down in the Constitution. The Constitution of the State provided that a Judge could be removed by an order of the President of India after an address for his removal supported by a two-thirds majority has been passed by each House of the State legislature on the grounds of “proved misbehaviour or incapacity”. But this provision has been repealed by the Constitution of Jammu and Kashmir (First Amendment) Act, 1959. By C.O. 60, the removal of the judges of the State High Court can only be made after an address for their removal has been passed by Parliament of India and presented to the President in accordance with article 124(4) of the Constitution of India.

The Constitution of Jammu and Kashmir did not contain any provision with regard to the transfer of judges from or to the Kashmir High Court nor did the Constitution (Application to Jammu and Kashmir) Order, 1954 contain any such provision. But because the judiciary of the state was being integrated with the rest of India, it was felt that such a

provision was necessary. Accordingly, Constitution (Application to Jammu and Kashmir) Amendment Order, 1960, made Article 222 of the Constitution of India, which deals with the transfer of judges from a High Court to the other Courts in India, applicable to Jammu and Kashmir with effect from 26.1.1960, but with following condition. Every such transfer from the High Court of Jammu and Kashmir or to that High Court shall be made after consultations with the Governor.

So now there is a provision that the President of India may, in consultations with Governor, order the transfer of judges from or to the High Court of Jammu and Kashmir.

Section 106 of the Constitution of Jammu and Kashmir barred judges of the High Court, who had held office after the commencement of the Constitution from practicing before any Court or authority in the State.

Judges of the High Court enjoy the same immunity as the judges of the Supreme Court of India. No action lies against a judge for any acts done or words spoken in his capacity as a judge. “It is essential on all courts that the judges who are appointed to administer the law should be permitted to administer it under the protection of the law independently and freely, without favour and without fear. This provision of the law is not for the benefit of a malicious or a corrupt judge, but for the benefit of the public, whose interest it is that judges shall be at liberty to exercise their functions with independence and without fear of consequences.”

#### **3.4.5 HIGH COURT – COURT OF RECORD**

Section 94 of the Constitution of Jammu and Kashmir declares:

The High Court shall be a Court of record and shall have all the powers of such Court including the power to punish for contempt of itself, or of the Courts subordinate to it. Under this Section it has been provided that State High Court is empowered to “punish for contempt of itself or of Court subordinate to it”. Thus, contempt proceedings come under the original jurisdiction of the High Court.

Contempt of Court is of two types:

- (a) Civil, e.g., failure to comply with an order or undertaking;
- (b) Criminal.

There is further division of contempt for acts committed in court or out of court:

- (i) in Court: this includes unruly behaviour; interference with proceedings; refusal to obey presiding officer; speaking disrespectfully of judge or jury;
- (ii) out of Court: this includes the interference with the course of justice, e.g., intimidating a party; corrupting a witness, its officers and commenting on pending proceeding so as to prejudice trial.

### **3.4.6 JURISDICTION OF THE HIGH COURT**

#### **3.4.6.1 ORIGINAL, APPELLATE AND REVISIONAL JURISDICTION OF THE HIGH COURT:**

Section 102 of the Constitution of Jammu and Kashmir enacts that subject to the provisions of the Constitution of Jammu and Kashmir and to the provisions of any law in force for the time being, laws administered in the High Court shall be the same as immediately before the commencement of the Constitution. This applies to statutes, precedents, customs, usage and personal laws. The jurisdiction of the High Court therefore, was originally governed by the Constitution Act of 1939.

Section 56 of the Constitution Act, 1939 dealt with the jurisdiction of the High Court. It contained provisions with regard to the original, appellate and revisional jurisdictions of the High Court.

This Section 56(2) reads:

The High Court shall have jurisdiction to hear and determine any suit worth rupees twenty thousand and every such suit or proceeding shall be instituted in the High Court. After the enforcement of the 1957 Constitution, this jurisdiction of the High Court of Jammu and Kashmir was further extended to any suit or proceeding of value of twenty thousand rupees or over.

The high Court has jurisdiction to entertain and dispose of such appeals, revisions and cases, civil, criminal and revenue, as it may be empowered to do under any enactment in force in the state. Appeals from the lower courts lie to the High Court and the procedure for filing these appeals is probably contained in the letters dated of September 10, 1943.

The High Courts also enjoy the power to issue certain writs:

Section 103 of the Constitution of Jammu and Kashmir deals with powers of the state High Court to issue writs, orders, directions, etc. for any purpose other than those mentioned in article 32(2A) of the Constitution of India. The combined effect of Section 103 of the Constitution of Kashmir and Article 32(2A) of the Constitution of India is that the High Court of Kashmir has the power to issue writs etc. (a) for the purposes of the enforcement of the fundamental rights and (b) for any other purpose.

#### **3.4.6.2 SUPERVISORY JURISDICTION**

The High Court of Jammu and Kashmir is vested with administrative and judicial supervisory jurisdiction over all the Courts subordinate to it. In this capacity, the High Court is vested with the power of superintendence and control “over all courts for the time being subject to its appellate or revisional jurisdiction and all such courts shall be subordinate to the High Court”. The court may

- (i) call for returns from such Courts;
- (ii) make and issue general rules for regulating the practice any proceedings from such Courts;
- (a) prescribe forms in which books, entries and accounts are kept by the officers of any such Court; and
- (b) settle table of fees of the staff, clerks, officers, attorneys and advocates of such Courts.

#### **3.4.6.3 APPOINTMENT OF OFFICERS AND SERVANTS OF THE HIGH COURT**

The appointment of the officers and servants of the High Court is made by the Chief Justice or by such other judges or Jatever difference there existed earlier, now does not exist and for all practical purposes the constitutional position of Judiciary is at par with that of any other state.

### **3.4.8 CHECK YOUR PROGRESS EXERCISE**

1. How Judiciary in Jammu and Kashmir historically evolved?
2. Write a note on composition of the High Court and appointment of Judges.
3. How do you understand Court of Record?
4. Explain the original, appellate and revisional jurisdiction of High Court.
5. What is the Supervisory Jurisdiction of High Court?

Explain the powers of High Court with regard to appointments and promotions.

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4.1 CHANGING NATURE OF PARTY SYSTEM IN JAMMU AND KASHMIR AND COALITION POLITICS

- Shrutika Manhas

STRUCTURE

1.1.0 Objectives

1.1.1 Introduction

1.1.2 Meaning of Political Party

1.1.3 Nature of Party System in Jammu and Kashmir

1.1.4 Inter-Regional Demands

1.1.5 Coalition Politics in J&K

4.1.5.1 Assembly Elections 2002: Formation of Coalition Government

4.1.5.2 The NC-Congress Coalition Government

4.1.5.3 The PDP-BJP Coalition

1.1.6 Let Us Sum Up

1.1.7 Check Your Progress Exercise

4.1.0 OBJECTIVES:

After going through this lesson you will be able to understand:

- the meaning of a Political Party;
- types of Political Parties in Jammu and Kashmir;
- inter-regional grievances in Jammu and Kashmir;
- the nature and functioning of coalition governments in J&K.

4.1.1 INTRODUCTION

In the modern system of representative government, Political Parties plays a decisive role. In every modern polity, parties are indispensable link between the society and the various institutions of the government. Party system is a product of historical roots, civic traditions, cultural orientations and economy.

India is the largest democracy in the world under which both National and Regional political parties exist. Due to its diversity in terms of region, ethnicity, language and religion, many parties are functioning in India, representing voices of these diverse populations.

4.1.2 MEANING OF POLITICAL PARTY

A Political Party can be defined as an organized group which seeks to control the personnel and policies of the Government Political parties mobilize and compete for popular support on the basis of programme, policies and actions.

4.1.3 NATURE OF PARTY SYSTEM IN JAMMU AND KASHMIR

Due to the special circumstances prevailed in the state of Jammu and Kashmir, the political parties functioning somewhat differently from the parties in rest of India. Following are the features of Party System in Jammu and Kashmir.

4.1.3.1 ONE PARTY DOMINANCE

In Jammu and Kashmir one party, the National Conference, played a key role in the political system of the state. All J&K National Conference has its origins in the politics of a particular religion and a community in aspiration. Political consciousness in the

predominantly Muslim Jammu and Kashmir state started growing in the mid 1930's when it was ruled by a Hindu maharaja in whose regime it was said that there was discrimination against majority community, that they were inadequately represented in the services, denied religious freedom and that there was lack of freedom of the press and political organization.

In 1931, All J&K Muslim Conference was formed but at a later date, the gates of the party were thrown open to the likeminded Hindus and Sikhs who felt the need for bringing about a change in the Maharaja's Rule. In June 1938, the Muslim Conference met in Srinagar and after a prolong discussion decided to transform itself into All J&K National Conference. During this time Sheikh Abdullah emerged as the most important leader of the party which resisted Tribal-Pakistani invasion of Kashmir in 1946-47 and at the same time was responsible for the state's accession to India in 1948 – the year when a popular Government was installed in Kashmir. Its major deed was to transfer the land to the tenants under the big landed Estates Abolition Act. National Conference was also instrumental in compelling the centre to include Article 370 in the Constitution of India which gives the State a distinct Constitutional Personality. Up to 1970 there was one party dominance in Jammu and Kashmir.

In 1965, the National Conference and the Congress merged into Indian National Congress but the former was revived in 1975 by Sheikh Abdullah after his release from imprisonment. In 1977 Assembly elections the NC was an absolute majority. After assuming power in 1977 Sheikh Abdullah wanted to end factionalism and rebuild the party. Before his death in 1982, the Sheikh got his son Farooq elected as the President of NC who later succeeded him in power. This off course was resented by Farooq's maternal uncle G.M. Shah who has his political ambitions and who succeeded in becoming the Chief Minister in 1984. But in 1987 Assembly Elections, the NC (Farooq faction) returned to power in alliance with the Indian National Congress. Even now NC is the most influenced party in the State. The electoral result of the State shows how the party dominated the political scene of the State since its formation.

- In 1956 elections it won 68 seats out of 75.
- In 1962 elections the NC won 70 seats of 75 seats.
- In 1967 it merged with Congress.
- In 1977 it won 47 seats.

- In 1983 it won 47 seats.
- In 1987 it won 40 seats.
- In 1996 it again won with majority of 57 seats out of total of 87 seats.
- In 2002 general elections it won 28 seats.

This shows that national Conference has pragmatic character, secular nature, efficient and strong organization, charismatic political leadership. Dominance of one Party is the characteristic feature of Party System in Jammu and Kashmir.

4.1.3.2 NO STRONG OPPOSITION

Lack of well-knit strong opposition is another feature of Party System in the Jammu and Kashmir. Earlier there was only one party in the opposition in J&K and that was Praja Parishad under the president ship of Pt. Prem Nath Dogra. It was restricted to Jammu only. In 1957 elections, it could win only 5 seats and in 1962 elections Praja Parishad secured only 3 seats. Thus, it failed to gain general public support. Later on it merged with Bharatiya Jana Sangh and after its merger it came to be known as communal party. It never won more than two seats from Jammu. It was the position of the opposition parties up to 1965. However at present there are many opposition parties in the State against the ruling National Conference. These are INC, C.P.I (M), People Democratic Party, Panther's Party, BSP and BJP. But no one constitutes a strong and efficient opposition party in the State and it is proved by the continuing dominance of NC in the political system of J&K State. At present NC is in rule with the support of INC.

4.1.3.3 OTHER FEATURES OF PARTY SYSTEM IN JAMMU AND KASHMIR

1. **Multiparty System:** Multiparty System is another characteristic of party system in J & K. There are so many parties in the state such as NC, INC, C.P.I (M), PDP, Panthers Party, BSP and BJP.
2. **Autocratic Leadership:** An autocratic leadership is another important feature of the political parties in J & K State. There is hardly any party that is not under an autocratic leader. The constitution of most of the parties is presidential and committee are nominated by the President.

3. **Adhocism:** Another important feature of political parties in J & K is Adhocism. No party has evolved reliable mechanism and work procedure for managing internal conflicts.
4. **Regional Parties:** Regionalisation of parties is another feature of the Party System in J & K. The Regional Parties in the State are National Conference, Panthers Party, JKNPP and PDP.
5. **Coalition Politics:** It is also another feature of Party Politics in J&K. Influential Political Parties include Indian National Congress, NC, PDP, BJP and other smaller regional parties are joining with each other to form coalition governments since no single party is gaining absolute majority for the past 10 years. After dominating Kashmir politics few years, the NC lost its popularity in the state and even lost power to PDP-Congress alliance in 2002. In 2008 elections, which were held from 17th November to 24th December) the NC Party and the Congress Party together won enough seats in the State assembly to form a ruling alliance. Omar Abdullah became the C.M of this coalition Government on 5th January 2009.
6. The common feature of coalition Government in J & K is that Congress party has always played a partner to other party to establish a coalition government in the state.

4.1.4 INTER-REGIONAL DEMANDS

The State of J & K comprises of three heterogeneous regions, i.e. Jammu, Kashmir and Ladakh. The State is heterogeneous not only region wise but also on the basis of language, religion, ethnicity and culture. The diverse features of the three different regions of J & K State represent the example of communal harmony. But these diverse features many times results into tensions and conflict also. The conflict arises out of the interregional disparities and discontent long persisted in the State.

4.1.4.1 POLITICS OF REGIONAL TENSIONS

Jammu's political class has been raising the issue of regional imbalances and mobilizing the people around the disparities and discriminations of all kinds. This is the reason that Jammu

has been witnesses to a number of agitations. In response to the allegation of step motherly treatment by Jammu and Ladakh, The State Government appointed Gajendra Gadkar Commission in 1967 to enquire into regional imbalances in the development programmes. In addition to this, the Commission also got mandate to scrutinize the recruitment policies for admission to institutions of higher learning, professional degree courses and cause of irritation and tension.

In 1978, Jammu's sense of discrimination took a violent turn when riots broke out in Jammu and Poonch cities when certain Government recruitments were seen to be unevenly in favour of Kashmir region. The then Chief Minister Sheikh Abdullah felt the political heat and announced setting up of yet another commission called Sikri Commission to enquire into the allegation of neglect of Jammu and Ladakh regions. Interestingly enough the Sikri Commission too attributed regional discontent to the feeling of political neglect.

One of the distinct features of politics of Jammu region is they mostly reacted to the policies pursued by the Kashmiri dominated political leaders. Unless all the sub regions are treated equally and receive equitable share of developmental funds, sub-regional tensions will be there. Regional studies are being increasingly regarded as indispensable aids to the understanding of the politics of the State. Recurrent political explosions of varying intensities raised by different Jammu based political parties like demand for regional autonomy, establishment of Autonomous Regional Council or trifurcation with wider ramification further justify study of regional politics. Thus, it is important for all political parties to evolve some mechanism by virtue of which the genuine interest of all section of society are fully represented.

4.1.5 COALITION POLITICS IN J&K

The term coalition means a combination of groups or individuals formed to pursue specific objectives through the joint action. The term "coalition" has gained currency out of the exigencies of a multi-party system in a democratic set up. It is a phenomenon of a multi-party government where a number of minority parties join hands for the purpose of running the government, which is otherwise not possible in a democracy based on majority party system. The coalitions have become necessary in the evolution of democracy because they reflect plurality of the societies and provide space for contending political views.

When several political parties collaborate to form a government and exercise the political power on the basis of a common agreed programme/agenda, we can describe such a system as coalition politics or coalition government. So coalition implies co-operation between political parties and this co-operation may take place at one of these three levels: electoral, parliamentary and governmental.

Though coalition governments have become a regular phenomenon in Jammu and Kashmir from 2002 Assembly elections, however, their origin can be traced to mid-1980s. After a much ruptured political relations between Congress and NC in 1985 when Farooq Abdullah government was overthrown, the NC was forced to join with Congress to contest 1987 Assembly elections together. Though, they won in the elections, this unholy coalition between NC and Congress led to weakening of democratic politics in the state. The alliance with Congress considerably undermined the popularity of NC among the masses. Because of this crisis of legitimacy, the period from 1988 onward witnessed the start of insurgency in the state. The violent separatist movement which erupted after 1988-89 resulted in the collapse of political system and political institutions in the state, severely affecting the administrative set up. Due to these developments, the National Conference government led by Dr. Farooq Abdullah resigned in 1990.

4.1.5.1 ASSEMBLY ELECTIONS 2002: FORMATION OF COALITION GOVERNMENT

The 2002 elections to State Legislature marked a considerable change in the politics of Jammu and Kashmir as they institutionalized coalitions at the state level. Of the several other factors, the erosion of popular base of National Conference was one of the important factors for the emergence coalition governments in the State of Jammu and Kashmir. The second important factor, which follows from the first, is the emergence of People's Democratic Party (PDP) in the political landscape of Kashmir. The emergence of PDP introduced the factor of competition in mainstream politics of the Valley so far hegemonized by the National Conference. The PDP was formed by a splinter group of the Congress party, primarily in Kashmir region, led by Mufti Mohammed Sayeed and his daughter Mehbooba Mufti.

In 2002 Assembly Elections, though the NC emerged as the largest party with 28 seats, however, it could not form the government as it is substantially short of majority. As against NC's 28 seats out of 46 seats of the Valley, the PDP won 16 seats and formed

coalition with Congress which won 20 seats in the elections. This is the first coalition government in the state which has considered as legitimate in the eyes of the people since both the parties are ideologically belong to same politics. Moreover, both the parties together representing the regional interests in the state since PDP representing the interests of the Kashmir, and the Congress the interests of the Jammu region. The biggest gain of the 2002 elections was a genuinely interactive politics with a large and effective opposition party in place.

However, in 2005, when the power was to be transferred from the People's Democratic Party (PDP) to the Congress as per the initial agreement, some differences emerged as PDP wanted to continue for a full term. When the three years were over, the PDP argued that since its base is primarily located in the Kashmir Valley, an area where most of its population is believed to be alienated, the party should be allowed to continue in power so as to enable a conducive climate of peace in the state. Many argued that this idea ran counter to the basic premise of keeping a diverse state such as Jammu and Kashmir in terms of ethnicity, geography and religion, together.

In this situation, the Congress Party demanded for power shift as per the original agreement, and the independent MLAs also supported it. As a result, for the first time a person from Jammu Province, Ghulam Nabi Azad, has become the Chief Ministers of the Jammu and Kashmir. In the new power structure, the PDP would see itself as the defender of the Valley's interests just as the Congress, during Mufti's regime, held itself as the defender of Jammu's interests. The change in guard was thus significant and it also satisfied the political urges and aspirations of Jammu.

During the course of coalition government, there were numerous issues of friction between the Congress and the PDP. The relations between the Congress and PDP strained more when the PDP leadership asked its ministers to boycott the last two state cabinet meetings to protest against the refusal of the Centre and the chief minister to give in to its demand for immediate and drastic troop withdrawal from the Valley. Finally, the Congress-led coalition government lost power when its junior partner, People's Democratic Party (PDP), pulling out over the issue of transfer of land to the Shri Amarnath Shrine Board.

4.1.5.2 THE NC AND CONGRESS COALITION GOVERNMENT

The Assembly elections held towards the end of 2008 were significant for many reasons. During these elections, the Valley witnessed one of the highest voting percentage with more than 60% of the Valley voters decided to take part in the electoral process. The elections were also significant as they established Omar Abdullah as an important political leader in the state.

The 2008 state assembly elections again produced a fractured mandate. The People's Democratic Party (PDP) won 21 seats in the J&K legislative assembly. Due to its active involvement in the Shri Amarnath Shrine Board land agitation, the BJP made impressive gains in the Jammu region of the state, increasing the number of MLAs belonging to the party from 1 to 11. In these elections, the Congress lost some of its popularity and won only 17 seats instead of 20 in previous assembly. However, the NC managed to retain its seats of 28.

The NC being the largest party forged an alliance with the Congress to form a government in Jammu and Kashmir. Omar Abdullah took oath as Chief Minister of J&K on 5 January 2009. Before the coalition government was formed, the power-sharing agreement reached between the Congress and the NC in which Congress agreed to allow Omar Abdullah to continue as Chief Minister for full term of six years. Chief Minister, Omar Abdullah said that the coalition government of National Conference and Congress did not need a common minimum programme as the two coalition parties had full faith in each other. Though many times tension erupted between the two coalition partners on many issues such as revocation of Armed Forces Special Powers Act (AFSPA), empowerment of Panchayat institutions, rehabilitation policy, etc., the coalition government successfully completed its full term of six years.

4.1.5.3 THE BJP-PDP COALITION

The elections held for State Assembly in December 2014 again given fractured verdict as no single party gained majority seats to form the government. The PDP got highest seats of 28, followed by BJP 25 and Congress 12 in the 87-member Assembly. Due to this hung assembly and there is no consensus between the political parties, Governor's rule was imposed after the elections. The PDP and BJP hold talks for an alliance. Consultations

take two months for finalising common minimum programme - the Agenda of Alliance. After the successful conclusion of negotiations between PDP and BJP, on March 1st, 2015, Mufti Mohammad Sayeed was sworn in as the chief minister of Jammu and Kashmir for the second time. The coalition got into a trouble when Mufti Mohammad Sayeed dies of illness on January 7, 2016. Governor's rule imposed again as PDP-BJP fail to come to an arrangement for continuing the alliance. Due to intense efforts by leaders from both parties, on March 22, 2016 Mehbooba Mufti meets Prime Minister Narendra Modi in New Delhi and announced that she is satisfied with the assurances from the Centre. As a result, on April 4, 2016, Mehbooba Mufti takes oath as the first woman chief minister of the state.

Forged as "an alliance of extremes", the PDP-BJP alliance was meant to bridge the chasm between Muslim-majority Kashmir and predominantly-Hindu Jammu region. But, the power-sharing pact was rocked by spasms of flashpoints and conflicts, pushing the allies to brink.

The two parties have had several differences during their alliance period. The Centre did not accept the PDP demand to extend the unilateral ceasefire it had called in the state during Ramzan. The parties have disagreed in the past on holding talks with separatists and removal of the Armed Forces (Special Powers) Act. However, the developments in Katua rape case ultimately led to the end of coalition government. In January 2018, the rape and murder of an eight-year-old nomadic girl in Kathua in Jammu region took a political turn when the Hindu Ekta Manch demanded the release of accused. The episode widened the cracks in coalition and ultimately the BJP withdrew its support to coalition government and walked out of alliance on June 19, 2018. The Governor's rule was imposed in the state.

4.1.6 LET US SUM UP

Like all the States of India, J & K has a multi-party democratic system of Governance with a bicameral legislature. It is hoped that the ruling coalition would do to rectify the disparities and regional imbalances among the three regions. The feeling and perception of regional discrimination have served to sharpen both religious and regional divide. Though, the political parties in the state are somewhat successful in

negotiating with regional grievances, however, many times these tensions led to crisis in the state. As the state moved from single party dominance to multi-party coalition, these regional grievances are creeping-up between the alliance partners, leading to the tensions and sometimes to the collapse of the government, as it was happened in 2008 and again in 2018.

4.1.7 CHECK YOUR PROGRESS EXERCISE

1. What are the reasons behind NC dominance in State politics?
2. Write down few features of Party System in J & K?
3. Write few lines on interregional tensions.
4. Critically analyse coalition politics in J&K.

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## **4.2 INTER-REGIONAL AND INTRA-REGIONAL DEMANDS AND POLITICS**

- Mukesh Sharma

### **STRUCTURE**

#### **1.2.0 Objectives**

#### **1.2.1 Introduction**

#### **1.2.2 Regionalism**

#### **1.2.3 Regional Diversity in Jammu and Kashmir**

#### **1.2.4 Major Inter-regional and Intra-regional issues**

#### **1.2.5 Factors Responsible for Inter-regional and Intra-regional Demands**

#### **1.2.6 State Response to Regional Demands**

##### **4.2.6.1 Regional Autonomy Committee**

#### **1.2.7 Intra-regional Demands and Issues**

#### **1.2.8 Let Us Sum Up**

#### **1.2.9 Check Your Progress Exercise**

#### **1.2.10 Suggested Readings**

## 4.2.0 OBJECTIVES

After going through this lesson you will be able:

- to understand the canvass of politics of regionalism in the state of Jammu and Kashmir since the independence of India and subsequent accession of the state of Jammu and Kashmir with India;
- to understand the diversity of regional aspirations existing among the people of Jammu, Kashmir and Ladakh;
- to highlight the major regional issues of Jammu, Kashmir and Ladakh, the three main parts and socio-cultural entities of Jammu and Kashmir;
- to introduce the students about the responses of the people in these three parts on some of the major issues such as accession of the state, Article 370 and special status accorded to Jammu and Kashmir and the political future of the state of Jammu and Kashmir;
- to highlight the major intra-regional demands and political issues within these three major parts of the state of Jammu and Kashmir; and
- to understand the discourse of state autonomy and regional autonomy that is going on in the state especially since 1990s.

### 4.1.1 INTRODUCTION

India is a land of great diversity. There are differences across diverse regions of the country on the bases of language, culture, religion and socio-economic conditions. This has led to the rise of politics of regionalism in India where different regions have a feeling of discontent and discord among themselves. These regions have been contesting against each other or politically struggling against the Centre/Union Government to fulfil their demands and aspirations. This was a very common phenomenon in the large sized states like state of Bombay, Punjab, North-east and some of the southern states like State of Madras. Almost all these states have been reorganised into two or more than two states on the basis of language to provide them with a unified identity. Despite of such efforts, the problem of regionalism and regional politics is still widely prevalent in various parts of India, including

the state of Jammu and Kashmir. Geographically, the state of Jammu and Kashmir is one of the largest states of India consisting of three main parts: Jammu, Kashmir and Ladakh and a range of differences exist among these three regions owing to the differences in language, religion, culture and political affiliations. There are inter-regional as well as intra-regional issues that mark the politics of Jammu and Kashmir. In fact, it is one of the most important concerns in the study of politics and economy of this state.

#### **4.2.2 REGIONALISM**

Regionalism or rise of regional divisions is a common phenomenon especially in the case of large sized national territories having plural societies. In the absence of fair representation and accommodation of differences in politics, such regions may develop feelings of regional discord and mutual contestation. This may be the result of problems arising out of the factors such as; geographical isolation, independent historical traditions, racial, ethnic or religious peculiarities or local, economic and class interests. Such a discord and contestation are more likely to develop among the regions existing under a unified political system encompassing representing differential regional aspirations of their constituent units. In fact, different regional identities, if not treated fairly may develop regional consciousness leading to the rise of politics of regionalism. Thus, in short, regionalism is the politics of the manifestation of regional differences as well as contestation within various regional identities out of feelings of general neglect or socio-economic deprivation.

#### **4.2.3 REGIONAL DIVERSITY IN THE STATE OF JAMMU AND KASHMIR**

Like India, the state of Jammu and Kashmir also depicts a great extent of diversity on various bases. It is so vast and divergent that it is divided into three main parts/regions; the areas of Jammu, Kashmir Valley and Ladakh. Topographically, these three regions are quite different from each other. The climate and socio-cultural milieu of these regions also differs to a great extent. This diversity provides a distinct cultural identity to each of the region. On the basis of religious affiliations too, Jammu, Kashmir and Ladakh are distinct from each other. While the Jammu region has Hindus in majority Kashmir has predominantly Muslim population. In contrast to the Jammu and Kashmir regions, the Ladakh region has Buddhist population and Shia Muslims. Thus, owing to their geographical variations, different

socio-cultural life and practices, religious affiliations and linguistic concerns, Jammu, Kashmir and Ladakh behave like three different irreconcilable political regions.

Secondly, there are sharp differences among the people of these regions pertaining to the political future of this state as a coherent administrative unit on the one hand and the relationship with Indian Union. Thus, there exist strong regional feelings in these regions leading to the rise of a distinct set of political demands. These issues and demands are so pervasive that there is a discourse of regional autonomy going on in the state with the sharpening of inter-regional tensions especially since 1990s. However, there is no consensus among the leaders of these regions to have an agreement to resolve inter-regional issues in near future.

#### **4.2.4 MAJOR INTER-REGIONAL AND INTRA-REGIONAL ISSUES IN JAMMU AND KASHMIR**

As already mentioned, Jammu and Kashmir is composed of three main regions—Jammu, Kashmir and Ladakh. The internal politics of the state are also marked by these inter-regional tensions that greatly influence the attitude of the people on number of key issues. The feelings of deprivation, under-representation, economic neglect, in equal treatment and political domination constitute major issues among these three regions. Further, there is lack of unanimity among these three regions of the state with regard to the politico-administrative identity of the state. In fact, there can be seen a totally different political discourse in each of these three regions of Jammu and Kashmir. They have different attitudes on the issue of accession, national and sub-national identity and political future vis-a-vis Article 370 of the Constitution of India. These issues are discussed as under:

##### **4.2.4.1 DIFFERENT FEELINGS OF NATIONALISM AND SUB-NATIONALISM**

Owing to the sharp ethno-cultural and religious affiliations as well as diversities among the three regions of Jammu and Kashmir, a sort of local nationalism has developed in all the three regions of the state. In the case of the people of Kashmir region, their alienation from the national identity has been a constant problem especially since the onset of militant discourse in the aftermath of Assembly elections of 1987 in the state. They tend to give more importance to ethno-religious and regional identities than to considerations of unified state within Indian nation. In contrast to this, in the regions of

Jammu and Ladakh, a more pro-national sentiment seeking greater integration of the state with India can be seen. In these two regions, regionalism developed in response to politics of dominance by the successive governments in the state led by Kashmiri leadership. Thus, while autonomy and preservation of special status accorded to the state via Article 370 is the main issue in Kashmir region, in Jammu there is a discourse for full integration of state with India and abrogation of Article 370. Similarly, in Ladakh, the Buddhists are clearly against the Kashmiri dominance and spearheaded a movement seeking Union Territory status for Ladakh.

#### **4.2.4.2 ARTICLE 370**

Article 370 and the special status accorded to the state of Jammu and Kashmir is another regional issue especially between Jammu and the Kashmir region. In Jammu, there is a perception that the special status of Jammu and Kashmir conferred by Article 370 does not allow full integration of the state with India. Thus, they advocate that Article 370 should be revoked and Jammu and Kashmir should be integrated with Indian Union like any other state in India. This is the dominant perception among the Hindus of Jammu region. On the other hand, the Kashmiri Muslims and their leadership are in favour that the autonomy conferred to state via Article 370 should be maintained as promised at the time of incorporation of this Article in the Constitution of India. The state autonomy discourse since 1990s revolves around the question of restoration of pre-1953 constitutional position in the state.

#### **4.2.4.3 EK VIDHAN, EK PRADHAN, EK NISHAN**

There have been several regional agitations in Jammu region dating back to the early 1950s to voice the demand for regional autonomy. In 1952, a major agitation was launched by the Praja Parishad, an RSS-supported regional party in the Jammu region. The main demand of this agitation (with the slogan 'ek vidhan, ek pradhan, ek nishan' or 'one constitution, one president and one symbol') was the complete constitutional integration of the State of Jammu and Kashmir with India. Thus, these rightist wing forces led by RSS and Jan Sangh created a dimension of regional politics around the demand for abrogating the special status of the state. Over the years, varied political organisations like the Bharatiya Jan Sangh, Bharatiya Janata Party, ABVP, Shiv Sena and so on, have nurtured this kind of politics.

#### **4.2.4.4 TRIFURCATION**

Amidst growing regional discords and failure of the state government to respond adequately to inter-regional and intra-regional demands, a demand for trifurcation of the state of Jammu and Kashmir is organised since 1990s. This is the demand for reorganisation of state into three parts– with Jammu acquiring the status of a state and Kashmir and Ladakh acquiring the status of Union Territory. This is the outcome of a long standing demand for separation of Jammu and Ladakh from Kashmir. This demand became more assertive voice of Jammu region especially after the recommendations of the Regional Autonomy Committee. Jammu Mukti Morcha (JMM), a local-based political party was formed in Jammu city with its sole aim and objective of separation of Jammu from Kashmir as an independent state.

#### **4.2.5 FACTORS RESPONSIBLE FOR INTER-REGIONAL AND INTRA-REGIONAL DEMANDS AND POLITICS IN JAMMU AND KASHMIR**

The various factors and issues responsible for this regional polarisation and subsequent politics of regionalism in the state of Jammu and Kashmir are discussed as follow:

##### **4.2.5.1 MULTIPLE IDENTITIES**

The multiple identities existing within the state have been sharpened since 1947 by identity politics. Most of such identity politics, operating in terms of ‘we’ and ‘they’ has been constructed around polarity between different regions and sub- regions. Thus, it is not only the politics of ‘Jammu versus Kashmir’ or ‘Kashmir versus Ladakh’ that has been sharpened in the last few decades, but also the politics of ‘Leh versus Kargil’, ‘Jammu versus Doda’ and Jammu versus Poonch-Rajouri etc. The internal polarization that has taken place, consequently, has dangerous potential as it can give substance to divisive agendas.

##### **4.2.5.2 TOPOGRAPHY OR GEOGRAPHIC BARRIERS**

Apart from politics, the crux of tension also lies in the physical barriers, long distances, inaccessibility, climatic variations, linguistic variations, sharp socio-cultural and religious differences which hinder the process of inter-regional interaction and integration. Regional disparity has been reported, highlighted and spoken since accession.

#### **4.2.5.3 KASHMIRI DOMINATION**

There is no denying of the fact that in both Jammu and Ladakh regions, there is a strong sense of deprivation owing to the dominance of Kashmiri leadership in the politics of Jammu and Kashmir. Thus, like the people of Jammu, the Buddhists in Ladakh are also having this sense of deprivation. Both the regions allege that people of Jammu and Ladakh do not receive fair and equitable treatment at the hands of Kashmiri leadership. This sense of deprivation is very deep-rooted. In fact, both the regions keep on insisting on the successive governments to ensure a sense of equality among the people of three regions to maintain and keeping intact the existing regional identities.

#### **4.2.5.4 POLITICAL DIVERGENCE AMONG THE THREE REGIONS**

The entire fabric of politics in the state has been mainly based on two issues; the relationship between the Kashmir Valley and the Centre on the one hand and the relationship between the Kashmir Valley, Jammu and Ladakh regions on the other. There is considerable political divergence existing among these three regions especially with regard to the key issue of state's accession with Indian Union, article 370 and special status accorded to the state, autonomy discourse in Valley, demand of UT status by Ladakh region, separate statehood for Jammu and the separatist discourse since last three decades.

In fact, the political divergence discussed above has often become the basis of politicization by the political groups and organisations situated in the three regions of the state. Right from the time of state's accession in 1947, politics grew around the issue of Jammu's regional interest vis-a-vis Kashmir. The political discourse of regional discrimination and political deprivation and the claims associated have popularized the movements either for trifurcation of the state or the demand for regional autonomy between these three regions.

#### **4.2.5.5 DIFFERENTIAL PARTY-SYSTEM**

Assertion of multiple identities operating both at the regional and sub-regional level makes the politics of Jammu and Kashmir quite complex and conflicting in nature. The three regions of the state (Kashmir valley, Jammu and Ladakh) actually have their own different party systems and competition in these regions takes place on axes entirely

different from each other. Since 1930s, the National Conference, popularly known as NC had been dominating the political spectrum in the heart of the Kashmir region. The main agenda of NC had been the grant of state autonomy. Though it remained in power for most of the time, ever since the end of the Dogra rule and establishment of democracy in the state, it had never been so popular in the other two regions of Jammu and the Ladakh.

In Jammu, Indian National Congress and a group of small pro-Indian rightist political parties such as Jan Sangh and Praja Parishad had been active players. Both Jan Sangh and Praja Parishad had been pleading for full integration of Jammu and Kashmir with India under the slogan 'ek vidhan, ek pradhan, ek nishan' or 'one constitution, one president and one symbol' for whole of India including the state of Jammu and Kashmir.

#### **4.2.5.6 DEMAND FOR UT AND LAHDC**

Amidst these regional polarisations within Jammu and Kashmir, the regional grievances of Ladakh region have taken a totally different turn more likely on the basis of administration of Union Territories and Autonomous Development Councils as existing in North Eastern states of Indian Union. In Ladakh, Ladakh Buddhist Association (LBA) and Ladakh Union territory Front (LUTF) had been shaping the political choices of their people centred on the issue of attaining the status of Union Territory under the direct control of Centre. In October 1993, the union government and the government of Jammu and Kashmir agreed to get Ladakh the status of Autonomous Council. Subsequently, the Ladakh Autonomous Hill Development Council (LAHDC) Act was passed and two hill development councils were created in Leh as well as in Kargil district. However, these Hill development Councils have not succeeded to address the regional grievances of Ladakhi people and there is still a feeling of strong resentment existing there.

#### **4.2.6 STATE RESPONSE**

The long standing demand for fair treatment and development of Jammu region has led to the rise of a number of movements and agitations from time to time. In 1967, four students were killed in police firing in Jammu city while agitating against shifting of Agriculture and Ayurveda colleges from Jammu to Srinagar. Another such regional agitation began in 1978 in response to regional injustice and discontentment. Thus, the state

government had to respond to the feelings of regional discontent by appointing a range of commissions and inquiry committees to make recommendations regarding fulfilment of such regional aspirations. The state Governments in the past set up five such commissions namely: a) The Glancy Commission (1931); b) The Gajendragadkar Commission (1967); c) The Qadri Commission (1972); d) The Sikri Commission (1976); e) The Wazir Commission (1981).

While the commissions appointed in 1972 and 1981 examined demand for carving more districts out of Jammu region, the other two commissions recommended the measures which could rectify the regional imbalances and harmonise inter-regional relations. The Gajendragadkar Commission in its report recognised the widely held feeling of regional discrimination in the two regions. The commission held that the main cause for regional issues and tension is the feeling of political neglect and discrimination, from which certain regions of the state suffer. It recommended formation of statutory regional development boards for Jammu, Kashmir and Ladakh. Similarly, in 2010, the Central Government appointed Interlocutors to empower Jammu and Ladakh.

#### **4.2.6.1 REGIONAL AUTONOMY COMMITTEE AND ITS REPORT**

A Regional Autonomy Committee (RAC) was appointed on November 13, 1996 to propose a detailed programme for the empowerment of each and every region of the state. It submitted its report in April, 1999. The committee in view of historical, social, ethnic and development factors recommended classifying the existing two Provinces/ Divisions of Jammu and Kashmir into eight new regions/provinces to achieve the twin objective of self-governance and rapid social development. These regions included:

1. Kamraz (Baramulla and Kupwara Districts)
2. Nundabad (Budgam and Srinagar Districts)
3. Maraz (Anantnag and Pulwama Districts)
4. Chenab Valley (Doda District and Tehsil Mahore)
5. Jammu (Jammu, Kathua & Udhampur [excluding Tehsil Mahore] and Rajouri Districts)

6. Pir Panchal (Poonch and Rajouri Districts)
7. Ladakh (Leh District)
8. Kargil (Kargil District)

The Committee also recommended for the formation of Regional/Provincial Councils in the State along with a Finance Commission for the Jammu and Kashmir State to recommend the methods and mechanisms of raising the funds, devolving the funds to different organs and to provide the norms for transfers from the consolidated fund of the State to Regional/Provincial or District Councils.

#### **4.2.7 INTRA-REGIONAL DEMANDS AND ISSUES**

From the above classification of various regions, it also becomes clear that intra-regional differences also exist within Jammu, Kashmir and Ladakh. Jammu is heterogeneous—culturally, linguistically, ethnically and geographically. Thus, there are number of sub-regions within this region that can be considered as an independent entity with its distinct history, language and cultural identity. There are three such main autonomous regions, viz. a) Jammu (Jammu, Kathua and Udhampur districts excluding Mahore tehsil); b) Pir Panchal (Poonch and Rajouri districts) and c) Chinab Valley (Doda district and tehsil Mahore).

These hilly regions of the Jammu province, which were ethnically and even agro-climatically different from each other, faced different problems. These specific regions could not be uniformly developed. Thus, economic backwardness is the most important issue in these sub-regions. The Gajendragadkar Commission noted that within both Jammu and Kashmir regions there are certain pockets which remained backward because of continuous economic neglect. Thus, an acute sense of discontent exists in these areas especially Doda, Poonch and Rajouri leading to a process of politicisation and assertion of competitive identities. Much of this discontent is a result of resentment against the Kashmir elite for monopolising power and neglecting development of the backward areas.

The issues relating to primary education, health facilities, development of roads and the like, are of primary interest to these peripheral areas. Taking into consideration

the complex realities of the state, it is pertinent to acknowledge the multi-layered political aspirations within the state and to deal adequately with the widespread perception of neglect and injustice existing among groups in the diverse regions of the state.

Similarly, Ladakh region also exhibits considerable amount of such sub-regional diversity. The two main districts of Ladakh- Leh and Kargil are not only separated geographically but also on the basis of religious composition. Leh is predominantly having Buddhist population whereas Kargil has mainly Muslim population. Kargil had been closer to Kashmir leadership than the dominant causes aired by Buddhists in Leh. Even the demand for Union Territory status for Ladakh could not get support from Kargil. Thus, there was no enthusiasm among the people of Kargil for LAHDC when it was announced in 1995 as an alternative arrangement to much demanded UT status. The LAHDC Act provided for two councils each for Leh and Kargil. The first election to the Leh council was held in 1995 but Kargil deferred the council until July 2003.

#### **4.2.8 LET US SUM UP**

There is no denying the fact that Jammu and Kashmir is a state of vast diversity on the bases of geography, language, religion and culture. The three main parts or regions- Jammu, Kashmir and Ladakh have their political and economic grievances given their heterogeneity and different socio-political milieu in which they have been placed. Thus, there are number of regional issues based on a plethora of demands and politics from different regions. These demands are being manifested in the form of various agitations and movements from time to time that had already been discussed above.

There is a feeling of disenchantment towards Kashmir from both Jammu and Ladakh regions. The valley centric leadership is often accused of indifference towards the political aspirations of the people of Jammu and Ladakh. A sense of economic and political discrimination prevalent among the inhabitants of Jammu and Ladakh in relation to Kashmir Valley is responsible for the demand for regional autonomy. Balraj Puri rightly remarks that ‘until Jammu, Kashmir and Ladakh draw closer, settle their

differences and agree to operate as equal partners, there will never be a stable basis upon which relations with rest of India can be satisfactorily settled. In fact, there are number of such instances and issues that highlight the regional divide among the three regions of state of Jammu and Kashmir. Thus, the political reality of the state of Jammu and Kashmir is marked by heterogeneity and divergent political aspirations. It calls for a politics that not merely recognises the plurality of the state but also devises suitable political mechanisms for handing such plurality. Both the issues of regional and sub-regional deprivation are sought to be addressed through solutions based on communal considerations – division of the state in the first case, and that of the region in the second.

#### **4.2.9 CHECK YOUR PROGRESS EXERCISE**

1. Define Regionalism.
2. Write a short note on ‘regional diversity’ in the state of Jammu and Kashmir.
3. What are the major inter-regional demands in Jammu and Kashmir?
4. What are the main intra-regional demands in Jammu region?
5. Describe the state’s response to various regional demands and aspirations.
6. Discuss the intra-regional demands existing within Jammu, Kashmir and Ladakh.

#### **4.2.10 SUGGESTED READINGS**

- *Article 370: A Constitutional History of Jammu and Kashmir* by A. G. Noorani
- *Hindu Rulers, Muslim Subjects: Islam, Rights, and the History of Kashmir* by Mridu Rai.
- *Jammu and Kashmir: Politics of Identity and Separatism* by Rekha Chowdhary
- *Jammu and Kashmir: Political and Constitutional Development* by Jaswant Singh

- *Kashmir: A Disputed Legacy (1846-1990)* by Alastair Lamb
- *Kashmir: Roots of Conflict, Paths to Peace* by Sumantra Bose
- *The constitution of Jammu and Kashmir* by Justice A.S. Anand
- *The Story of the Integration of the Indian States* by V. P. Menon

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4.3 LADAKH REGION: DEMANDS AND POLITICS WITH SPECIAL REFERENCE TO HILL COUNCIL

1.3.0 Objectives

1.3.1 Introduction

1.3.2 Ladakh as a Separate Region

1.3.3 Major Grievances of Ladakh

1.3.4 LBA and Demand for Union Territory Status

1.3.5 Response of the Kargil to the Demand of UT Status to Ladakh

1.3.6 Ladakh Autonomous Hill Development Council

4.3.6.1 Powers and Functions of Council

1.3.7 Evaluation of LAHDCs

1.3.8 Let Us Sum Up

1.3.9 Check Your Progress Exercise

1.3.10 Suggested Readings

4.3.0 OBJECTIVES:

The main objective of this less will be:

- to understand the peculiarity of Ladakh as a separate region within the state of Jammu and Kashmir;
- to highlight the major issues in the politics of Ladakh region;
- to trace the origin and development of movement for attaining UT status for Ladakh;
- to know about establishment of Ladakh Autonomous Hill Development Councils, their structure and functioning;
- to evaluate the role and efficacy of LAHDCs to address the popular grievances in Ladakh.

4.3.1 INTRODUCTION

The state of Jammu and Kashmir has an unique identity owing to its composite culture and a distinct political and constitutional history. Geographically, it is divided into three main divisions/regions- Jammu, Kashmir and Ladakh with marked religious, cultural and linguistic differences. From the history of past seventy years of Jammu and Kashmir politics, it witnessed that all these three parts behave differently with regard to their political demands and popular aspirations. There is no unanimity among the three regions with regard to internal politics and nationalist claims. Unlike Jammu and Kashmir regions, Ladakh has its own set of demands and thus, a different political discourse quite different from that of Jammu and Kashmir. Though it is the part of this state but seems different on number of parameters. Ladakh, despite having almost seventy per cent of the area of Jammu and Kashmir has negligible presence in the corridors of power and decision making centres in Srinagar and Jammu.

4.3.2 LADAKH AS A SEPARATE REGION WITHIN JAMMU AND KASHMIR

Ladakh is a Buddhist majority region. It is culturally, ethnically as well as linguistically quite different from the other two main parts of the state of Jammu and Kashmir. Ladakh seems distanced from political discourse of the other two parts of Jammu and Kashmir State.

As a result there exists a deep sense of deprivation and discrimination especially against Kashmir. The people of Ladakh allege to be systematically being neglected and discriminated by the successive governments in the state of Jammu and Kashmir. Thus, the Ladakh region identifies itself more with Indian Union than with the state of Jammu and Kashmir.

4.3.3 MAJOR GRIEVANCES OF LADAKH

Since the beginning of the journey of independent Jammu and Kashmir, Ladakh had been favouring its greater integration with India to override Kashmir's domination in its politics and economic development. This demand started as early as 1946 and continued ever since. The essence of this demand lies in Ladakhi struggle against the Kashmiri domination especially since nineteen-sixties by the politically marginalised Ladakhis. In 1964, there was a well organised attempt from the Ladakhi Buddhists under the leadership of Kushok Bakula in this regard. In 1974, Ladakhis once again launched a mass movement demanding 'Central administration for Ladakh'. Since then, there had been many such instances when Ladakhis stood against Kashmiri domination and demand for direct central administration in Ladakh. Thus, a deep sense of deprivation and resentment against state government occupied space in the Ladakh region. This sense of resentment grew manifold when Sheikh Abdullah government divided Ladakh into two distinct districts- the Buddhist dominated Leh and the Muslim dominated Kargil in 1979. This was perceived as an attempt to polarise the Ladakhi society on religious and communal lines and to pit Muslims against Buddhists to weaken the on-going movement for greater integration with Indian Union and political and economic independence.

4.3.3.1 DEMAND FOR REPRESENTATION OF BUDDHISTS IN THE STATE GOVERNMENT

The issue of under-representation of Buddhists in the politics and administration of the state is very old. In the pre-independence period, a neo-Buddhist organisation in Kashmir under the name of Kashmir Raj Bodhi Mahasabha (KRBM) was founded in the early 1930s. It was organised to mobilise the people of Ladakh (mainly Buddhists) to demand representation for Buddhists in the state administration during the rule of Dogras. Succeeding KRBM, the first Ladakhi association under the name of the Young Buddhist Association (YBA) was created to provide political leadership to the people of Ladakh.

The present day LBA, Ladakh Buddhists Association is the successor of this YBA. The LBA has become a vanguard of the movement for attaining UT status for Ladakh. Thus, this demand cannot be attributed to perceived Kashmiri Muslim domination over Buddhist-majority Ladakh. In fact, it is not logical to perceive Ladakh being a Buddhist dominant region since both the communities have almost equal presence in Ladakh as a whole.

4.3.3.2 DEMAND FOR UT STATUS FOR LADAKH

The demand for Union Territory status has been the central axis around which the politics of Ladakh (mainly Leh) revolved ever since independence. This demand became the dominating agenda in Ladakh politics. In fact, the BJP won the Ladakh Parliamentary constituency on the promise of granting much awaited UT status for Ladakh. Later, the visits of Union Ministers, Nitin Gadkari and Rajnath Singh rebuild hopes for UT to Ladakh. A number of organisations and political outfits including the Ladakh Buddhist Association (LBA), raise this issue of UT status for Ladakh. However, the opposition from organisations and parties based in Kargil once again manifested the exclusive nature of the demand as the demand is being identified with the Buddhists of Leh.

4.3.4 LBA AND DEMAND FOR UNION TERRITORY STATUS

As discussed earlier, the main discourse in Ladakh politics revolves around the question of its final status as an integral part of Indian Union by attaining the status of UT. Since long, there are concerted efforts to attain such UT status for Ladakh. In 1982 there was another attempt by P Namgyal, then Member of Parliament to seek regional autonomy for Ladakh within the state of Jammu and Kashmir in the form of Union Territory status for Ladakh. In 1989, the movement to achieve the status of Union Territory for Ladakh was re-launched under the banner of the Ladakh Buddhist Association (LBA). However, since this movement coincided with the rise of popular discontent and insurgency in Kashmir valley, the LBA had to suspend its activities from time to time.

In response to this popular movement, the Government of India agreed to set up Ladakh Autonomous Hill Development Council (LAHDC) on the lines of the Darjeeling Gorkha Hill Council in response to the Buddhist movement for succession from Jammu and Kashmir and attaining the status of UT for Ladakh. In October 1989, a tripartite

agreement was signed between the State Government, the Central Government and the LBA whereby the PV Narasimha Rao government passed a promulgation to create the Ladakh Autonomous Hill Development Councils for both Leh and Kargil which took the form of a Bill in 1997.

4.3.5 RESPONSE OF KARGIL TO THE DEMAND OF UT STATUS TO LADAKH

Though Ladakh exists as a distinct part of Jammu and Kashmir State given its topography, religious and linguistic composition of its population and socio-economic needs, there are also differences between the two divisions/districts of Ladakh viz., Leh and Kargil. Both Leh and Kargil are not only divided from each other by high mountains and passes but also by their religious composition. Leh is predominantly has Buddhist population whereas Kargil is mainly inhabited by the Muslims. In 1979, Leh and Kargil were divided into two separate districts. Since then, there is little support for demand of UT led by Ladakh Buddhist Association as well as Ladakh Union territory Front (LUTF). Thus, like Jammu, there are also intra-regional politics in Ladakh region. Due to this intra-regional divide, there was not much of enthusiasm for Hill Development Council in Kargil. They deferred the elections to LAHDC Kargil till 2003. Amidst these internal fault lines in the region on religious basis and the fear of Kashmir of independence from India, the demand for the Union Territory status has gained momentum but limited mainly to Leh district.

In the recent years, many local political parties are contesting elections on the issue of granting of Union Territory status to Ladakh. Ladakh Union Territory Front (LUTF) has emerged as a powerful political party at local level elections in Ladakh. This is often viewed as the issue of trifurcation of the state of Jammu and Kashmir i.e., separate statehood for both Jammu and Kashmir and UT status for Ladakh region. In short, during the last three decades, Ladakh has also seen the rise of communal tension and politics between its Buddhist and Muslim inhabitants. The politics of representation deployed by the struggle for autonomy in the 1980s led to a social boycott of Muslims from 1989 to 1992 by the Ladakh Buddhist Association and riots in 1989. This became a turning point in the history of the region sowing an on-going bitterness between the two communities.

4.3.6 LADAKH AUTONOMOUS HILL DEVELOPMENT COUNCILS (LAHDCS)

On 9th May, 1995, out of a long drawn struggle for UT status, Ladakh got Autonomous Hill Development Council under Ladakh Autonomous Hill Development Council Act (LAHDC). It was provided as a compromise to the long held demand for the Union Territory (UT) on the one hand and to provide a mechanism to decentralise the power and autonomy in regional affairs, to the otherwise less developed, alienated and isolated community of the Ladakh region. In 1995, a compromise of sorts was reached between the government of India, government of Jammu and Kashmir and Ladakhi representatives to create Autonomous Hill Development Councils in a bid to improve direct self-governance in Ladakh region. The LAHDC Act provided for two councils each for Leh and Kargil. The first election to the Leh council was held in 1995 with the Congress party bagging almost all council seats. Kargil deferred the council until July 2003 since the people of the Kargil district of the region did not support the idea of UT.

The Act provided an Autonomous Hill Council for both Leh and Kargil and Inter-district Advisory Councils with tenure of five years. Each Council would have twenty six territorial constituencies. The sitting MLA's and MP's would be ex-officio members, four nominated by the state government. The nominees include one Muslim, one woman and two eminent persons. The Council constitutes a cabinet of five members with one Muslim.

The Executive Council of the council consists of the Chairman who shall be the Chief Executive Councillors and four members to be nominated by the Chief Executive Councillor from amongst the members of the Council. The executive powers of the Council are vested in this Executive Council. Besides, the Deputy Commissioner of the district is the Chief Executive Officer of the Council. Besides the Executive Council, the LAHDC Act also provides for a Inter-district Council to advise the District Council on matters of common interest to both districts, resolving their differences and preservation of communal harmony in Ladakh.

4.3.6.1 POWERS AND FUNCTIONS OF THE COUNCIL

The Act provides that the Council shall meet at least once in every six months to conduct its business. The quorum necessary for the transaction of business at a meeting is ten

members and the decisions of the Council are made by a simple majority of votes of the members. The ex-officio members of the Council have no right to vote. It has executive powers in the district in relation to:

- Allotment, use and occupation of land vested in the Council by the Government
- Formulation of development programme for the district and their periodical review
- Formulation and finalization of the Budget (Plan and Non-Plan)
- Implementation of centrally sponsored and state sponsored schemes at grassroots level
- Special measures for employment generation and the alleviation of poverty, promotion of cooperative institutions and supervision and constitution of notified area committees
- Promotion of education; languages and culture; public health; tourism and vocational training
- Construction and maintenance of local roads
- Apart from it, it looks after livestock, fisheries, small scale and cottage industries, non-conventional energy etc.
- The council is further empowered to levy taxes and collect state taxes on behalf of the government.

4.3.7 EVALUATION OF LAHDCS

There are certain doubts related to the efficacy of Hill Development Councils to resolve the local issues of socio-economic and political empowerment of Ladakh region. The key question is whether the council has achieved the goals as mentioned in the Council Act of 1995. However, the councils have not been able to do much for the people of the area due to a number of factors related to the institutional and the structural matters as mentioned below:

1. The deficiency of funds is one of the most serious problems to carryout developmental works and implementation of other socio-economic schemes and policies.

2. Secondly, the overlapping powers and functions of the Councils vis-a-vis other levels of administration such as the Panchayati Raj Institutions, Desert Development Agency and Command area Development Programme etc. is a source of confusion and conflicts over the dispersal of administrative powers by the Council.
3. The common people in Ladakh, especially in Kargil, are disillusioned with the workings of the council. They consider them as centre for grabbing power and for playing gully-politics by the local politicians.
4. Although, the council has been provided with enormous powers, these powers appear to be confined to paper only. The need of approval from the state government over budget, planning and other major decisions greatly hampers the effective functioning of the Council.
5. The major political handicap is when there are other political parties holding power in the state than that in the Council. To function smoothly, the ruling party in the Council need to be the ruling party in the state. For conflicting parties at both levels of power may pose a grave challenge of coordination.

Thus, there are many who question the success of the Ladakh Autonomous Hill Development Council (LAHDC) model of political devolution. There is a feeling that it will fail to serve its purpose because of being too much top-down and a number of other levels of administration and governance like the Panchayat system. However, there are certain positive outcomes from this model of Hill Development Councils. The devolution of powers have helped Ladakh to frame an educational curriculum which the region sees best for itself. It helped the region to have local news which protects its local economy and environment. It helped it in keeping its economic and other outside interests under check which may have the potential of changing the region's demography, religious value system, culture and environment. It re-gearred the non-governmental sector and local organizations to play a leading role in protection and preservation of local culture and environment. Thus, there are mixed reactions to this question. Though the Hill Development Council faces some challenges of immense nature, it has also succeeded to make some difference at the grass root level in areas of social and economic planning and development.

4.3.8 LET US SUM UP

Ladakh region is geographically isolated with a sparse population, a vast area and inhospitable terrain which remains landlocked for nearly six months in a year. Consequently, the people of the area have had a distinct regional identity and special problems distinct from those of the other areas of the State of Jammu and Kashmir. There is a strong feeling of regionalism in Ladakh. The people of Ladakh are demanding a special status of Union Territory much different from the regional demands of other two regions of Jammu and Kashmir State. They for a long time, have been demanding effective local institutional arrangements which can help to promote and accelerate the pace of development and equitable all-round growth and development having regard to its peculiar geo-climatic and location conditions, and stimulate fullest participation of the local community in the decision making process. In fact, there are number of factors responsible for the regional discontent of Ladakh such as overall backwardness of Ladakh, homogenised power politics of Kashmiri elite and continuous neglect of the political aspirations of Ladakhis.

It is felt that decentralisation of powers by the formation of Hill Council for the Ladakh region would give a boost to the developmental activities in Ladakh and meet the aspirations of the people of the said Region. The Council has succeeded in achieving the goal of empowering the local populace through political awakening. The people are now more conscious about their democratic rights as well as their distinct identity and culture. The newly acquired political consciousness has given birth to a nascent civil society, as exemplified by many NGOs that focus on governance related issues. However, the council has not succeeded that much to achieve its goals of equitable and inclusive development and social justice.

4.3.9 CHECK YOUR PROGRESS EXERCISE

1. Write a short note Ladakh's identity as a eparate region within the state of Jammu and Kashmir.
2. Highlight the major demands and popular grievances of Ladakh.
3. Discuss the politics of LBA and movement for UT status for Ladakh.

4. Discuss the structure and powers of Ladakh Autonomous Hill Development Councils.
5. Evaluate the role of Ladakh Autonomous Hill Development Councils.

4.3.10 SUGGESTED READING

- *Beyond Lines of Control: Performance and Politics on the Disputed Borders of Ladakh, India* by Ravina Aggarwal
- *Jammu Kashmir Ladakh: Ringside Views*, edited by Shyam Kaul and Onkar Kachru
- *Ladakh, Crossroads of High Asia* by Janet Rizvi
- *Ladakhi Histories: Local and Regional Perspectives* by John Bray
- *Political Development in Jammu, Kashmir and Ladakh* by Usha Sharma
- *The Fragile Web of Order: Conflict Avoidance and Dispute Resolution in Ladakh* by F. Pirie

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## **2.4 DISPLACEMENT AND RESETTLEMENT**

- Nagendra Rao

### **STRUCTURE**

#### **1.4.0 Objectives**

#### **1.4.1 Introduction**

#### **1.4.2 Partition and Displacement**

#### **1.4.3 Resettlement of Displaced People**

##### 1.4.3.1 Demands of Displaced People

#### **1.4.4 Internal Displacement**

##### 1.4.4.1 Displacement of Kashmiri Pandits

##### 1.4.4.2 Chhamb Displaced Persons

##### 1.4.4.3 Kargil War and Displacement

#### **1.4.5 Development and Displacement**

#### **1.4.6 Let Us Sum Up**

#### **1.4.7 Check Your Progress Exercise**

#### **4.4.0 OBJECTIVES:**

After going through this lesson you will be able to understand:

- the meaning of displacement, and the reasons for displacement in Jammu & Kashmir;
- the partition induced displacement and their status;
- the internal displacement due to conflict and terrorism;
- the displacement of Kashmir Pandits, and people living in border areas;
- the rehabilitation and resettlement policies of the central and state governments;
- the outcome of these rehabilitation measures on displaced persons.

#### **4.4.1 INTRODUCTION**

Displacement is defined as the uprooting of a person or a group of persons from the place of their habitual residence. It can take place because of the natural or the man-made reasons. While sometimes conflict, violence or persecution is responsible for displacement, sometimes it is the natural disaster or the quest for development which forces people to move out.

In Jammu and Kashmir, though some of the people moved out of their traditional places, however, the major reason for 'Displacement' is the internal strife which has arisen initially due to partition but later on because of militancy and terrorism. Large-scale displacement from different parts of state is a significant feature of Jammu and Kashmir. An estimated one million people have been displaced in the state due to militancy. In this lesson, you will understand some of the issues associated with displacement, and its effects on the life of people in the state of Jammu and Kashmir. Internal and external displacement is explained in this lesson to make you familiar with varieties of displacements and the political social and economic and psychological effects of the displacement on various segments of population.

#### 4.4.2 PARTITION AND DISPLACEMENT

As we all know, the partition of India in 1947 has resulted in one of the severe displacement in entire world. The communal polarization witnessed by subcontinent during that period led to large-scale human displacement in human history. An estimated six to seven million Muslims moved from India to Pakistan and nearly eight million Hindus and Sikhs moved from Pakistan to India. In Jammu and Kashmir, many people moved out of the borders and new settlements have taken place as many moved out of Pakistan controlled areas in Mirpur, Poonch, Muzaffrabad and frontier districts of Ladakh and Gilgit, who are called now as Pakistan occupied Kashmir (PoK) refugees. It was estimated that around 12 lakh people migrated to Jammu and Kashmir during partition. Almost 40 per cent of this 12 lakh PoK migrants are leading a miserable life for the past three generations in Jammu, Kathua, Rajouri, Poonch and Udhampur districts of Jammu and Kashmir.

The partition destroyed not only the life and property of lakhs of people but also the very fabric of human society and relationships. Their forced displacement resulted in property and job losses, breakdown of social networks, economic impoverishment. It affected people socially and politically and led to loss of cultural identity. The people were forced to migrate from their birth and history with bitter memories of pain, betrayal and sufferings in PoK and had to start lives in new surroundings. The people migrating from PoK had to seek relief in new surroundings which has not only brought changes in their places of residence but in their overall attitudes, habits and outlook of the people.

Hindu and Sikh migrations of 1947 occurred most substantially from Muzaffarabad and Mirpur districts to Jammu city and its surrounding environments, with a sizable amount of individuals choosing to settle in the Udhampur, Kathua, Samba, Reasi, Poonch and Rajouri districts. With the increase in the number of displaced families, refugee camps were opened in adjoining states of Punjab, Himachal and Uttar Pradesh as well. Most of these camps were located in Jalandhar, Pathankot, Hoshiarpur, Yol in Himachal, Chinar, Hastinapur in Uttar Pradesh etc. The displaced families staying in these camps were registered and were provided with tents for shelter, free food and/or cash doles.

### **1.4.3 RESETTLEMENT OF DISPLACED PEOPLE**

The main issue in displacement is rehabilitation and at stake is their right to life with dignity as enshrined in Article 21 of the Constitution of India. Resettlement is onetime physical relocation with or without other support like jobs or income generation schemes. So it concerns only the displaced persons. Rehabilitation is a long process involving replacement of the cultural and social system and economic base of the displaced persons, psychological preparation to deal with the new society and economy.

The Government of India has established a Central Refugee Committee to rehabilitate the displaced persons. Many refugee relief camps were opened to accommodate them in Government and private buildings at Pallanwalan, Jourian, Poonch, Nagrota, Chatha, Company Bagh, Ustad Mohalla, Kachi Chawni, Shahidi Chowk etc. to provide them temporary relief and shelter. Thereafter, the Relief and Rehabilitation Department was established on April 14, 1948, under the Ministry of Health and Rehabilitation.

The Rehabilitation Department took various measures to provide relief and settlement to those who displaced during partition. The Government of India set their Relief Organisation in Jammu on June 1, 1948. It established refugee relief camps at Nagrota, Chathe and Company Bagh. At one time the strength of the Nagrota camp rose to 35,000 constituting 8,870 families. During their stay at Nagrota camp, displaced persons were provided with tents for shelter.

Immediately on the dispersal of the displaced persons from the relief camps, a unit of land measuring 2 acres irrigated or 3 acres non-irrigated or 6 acres non-irrigated land has been allotted depending upon the strength of displaced family by the Joint Rehabilitation Board. Besides land, cash loans were granted by the government to the displaced persons for the construction of houses and purchase of other necessary equipments.

#### **1.4.3.1 DEMANDS OF THE DISPLACED PERSONS**

The displaced persons from PoK are not satisfied with the resettlement measures of Central and State governments and started demanding for more welfare measures. They demanded that the PoK displaced persons be granted evacuee property available in various parts of Jammu division at par with rules applicable to refugees from West Pakistan and East Bengal settled in other parts of India.

To address the grievances of displaced persons, in 1953 government constituted Wazir Committee to recommend various rehabilitation measures. The displaced persons submitted a memorandum to the Wazir Committee with some of the following demands:

- displaced persons should be given assurance by the Joint Rehabilitation Board against dispersal from their existing land until other alternatives of land were found;
- close relatives should be allotted land near to each other;
- the government should provide advance loan to the business class of displaced persons in kind and repayment of same at low rate instalment;
- displaced persons should be allotted all evacuee houses in the villages and a plan should be prepared for the establishment of colonies for displaced persons;
- adequate arrangement should be made for proper sanitation, drinking water, roads, education, medical facilities and post offices in the displaced persons locality;
- some of the vulnerable sections who cannot till the land themselves, such as widows, orphans and physically handicapped persons, be allowed to get their land cultivated by close relatives or agricultural labourers.

The Wazir Committee submitted its report to Government of India in 1953 and it has considered sympathetically the demands of the displaced persons. Some of the recommendations given by the Committee are as follows:

1. The displaced persons should not be dispersed until alternative lands are granted to them.
2. At the time of their resettlement, the Government should provide financial assistance.
3. The Government must give priority to displaced persons while allotting evacuee property.
4. There must be uniformity in the allocation of land based on the strength of the displaced family.

5. Loans should be provided to displaced business persons to continue with their profession and work.
6. To the creditors and depositors of Jammu and Kashmir Bank, the government should initiate an inquiry to promptly settle their claims within a stipulated period of time.
7. The essential facilities required for living, such as drinking water, medical, sanitation, etc., must be provided in resettlement camps of the displaced persons.
8. The Government must provide proper educational facilities to the children of displaced persons and these children should not only be exempted from education fee but also provide scholarships to continue their studies.

#### **1.4.4 INTERNAL DISPLACEMENT**

Apart from the POK migrants, there are many people who are displaced due to conflict and internal strife in the State of Jammu and Kashmir. There is also a displacement due to development process, mostly due to establishment of power projects.

##### **1.4.4.1 DISPLACEMENT OF KASHMIRI PANDITS**

Continuing with the partition agenda, Pakistan initiated proxy war with India since it considers Kashmir being a Muslim majority area legitimately belongs to it. It stated that the state of Jammu and Kashmir is an “unfinished agenda” of partition. Due to this, both India and Pakistan had gone to war three times which brought immense misery to both sides of the people. As it failed to wrest Kashmir through these wars, it started using Kashmiri militants to disturb peace in the State of Jammu and Kashmir. Since 1989, the Pakistan supported insurgency in Jammu and Kashmir has claimed at least 67,000 lives.

Due to this insurgency and terrorism, more than 90 per cent of the Hindu population in the Kashmir Valley, the Kashmiri Pandits, displaced from their places of living. These displaced Kashmiri Pandits are one of the largest internally displaced persons, not only in Jammu and Kashmir but in entire India. Around 3 lakh Kashmir Pandits moved out of Kashmir Valley during 1990s when the region engulfed with violent armed militancy and some of the militant groups opted for selective killing of Kashmiri Pandits. Of these displaced Pandits, more than 2 lakh rehabilitated in Jammu, the remaining are in rest of India, mostly in New Delhi.

The government provision for ‘migrant relief’ consists of housing in one or two-room tenements, monthly food rations and cash assistance. They live in over-crowded and miserable conditions. They suffer a host of physical and mental health problems, economic hardship. Those who were government employees prior to migration were adjusted in their respective departments, in Jammu, Delhi and other parts of the country. The Prime Minister of India in 2004 announced construction of 5242 two-room tenements at an estimated cost of Rs.345 crore for Kashmiri Migrants staying presently in one room tenements in camp areas in Jammu provision.

#### **1.4.4.2 CHHAMB DISPLACED PERSONS**

The 1965 and 1971 war between India and Pakistan had led to large-scale displacement of the people from the border areas. During this war around one lakhs people were forced to migrate from Chhamb-Jourian area of Akhnoor Tehsil in Jammu province when Pakistan army attacked it. About 50,000 people migrated and settled in Hiranagar, Samba, Bishnah, R.S.Pura and Jammu. The migrants are still holed up in tents along the Jammu-Poonch National Highway though several times they tried to return to their villages but could not, due to the frequent outbreak of tensions. For, most of their homes had been destroyed in the shelling and their fields rendered infertile due to the increased toxicity in the soil.

#### **1.4.4.3 KARGIL WAR AND DISPLACEMENT**

The India-Pakistan war in 1999 resulted in the displacement of large number of people from all over the border including Kargil, Leh, Jammu and Kathua. The approximate numbers of persons displaced in Kargil, Leh and Jammu were 24,630; 3,245 and 1,00,000, respectively. Most of the displaced persons returned to their homes as soon as the tension eased out. About 60,000 persons of 11,044 families from more than 20 border villages from Akhnoor, especially Khour block, were not able to return. The reason being continued tension on the Akhnoor border, where international border meets LoC.

Another long-lasting situation of internal displacement exists along the Line of Control separating Indian and Pakistani controlled Kashmir. Since the end of the 1990s, clashes between Indian and Pakistani forces and attacks by separatist militant groups have led to several waves of displacement from villages along the Line of Control. Although,

the ceasefire has substantially improved the security situation, more than 12,000 (some say 30,000) people, are still displaced on the Indian side because their villages have not been rehabilitated or their fields are mined. Administrative delays have also hindered their return.

#### **4.4.5 DEVELOPMENT AND THE DISPLACEMENT**

The development of large number of projects in the State of Jammu and Kashmir has also resulted in the displacement of people from their ancestral home. Though these projects have contributed significantly to the socio-economic development of the state and large sections of the populations, however, they also caused to the displacement of people who are living in the construction areas.

Jammu and Kashmir State is one of the potential regions for generation of power through hydroelectric rotor; important river basins of State having large potential of power generations. These hydroelectric projects play an important role for the development of State but on the other hand they have displaced large number of family which has severe consequences on the social, psychological, and economic well being of the people. The Baglihar Dam which is one of the largest, with a capacity of 900 MW, was started in 1992. The construction of Baglihar Dam has forced large number of families out of their natural habitations. It has affected more than 30 villages partially or fully in Jammu and Kashmir State.

The construction of number of multipurpose projects to provide irrigation and to generate hydro-electricity has had a direct affect on the people inhabiting these areas. The people and the villages or hamlets have been uprooted from their home and fields as well. This requires the evacuation and rehabilitation policy for the people living in these submerged areas or villages. Development projects that displace people have generally given rise to social, economic and ecological and environmental problems. With the absence of the Rehabilitation and Resettlement policy the displaced family faced large number of problems in particular women and infant children. They have lived under depressing conditions throughout their life.

#### **4.4.6 LET US SUM UP**

As you studied in this lesson, the Jammu and Kashmir State is affected with various kinds of displacement. Due to its geopolitical location, partition and Pakistan infused proxy war, many segments of population displaced from their places of living. Initially, the partition has forced many Hindus and Sikhs to move away from their places of living in Mirpur, Muzafarabad, and other areas of POK. They were rehabilitated in various parts of Jammu province. Though many of these POK migrants are legitimate State Subjects, some of them who migrated from Pakistan to Jammu and Kashmir were denied the same status. They continue to live in discriminatory conditions without having legal rights of citizens. There are many internally displaced persons in the State of Jammu and Kashmir. Among these, the Kashmiri Pandits are the largest group of displaced persons. The eruptions of the militancy and terrorism forced more than 90% of the minority population move away from their places in Kashmir province. The many wars between India and Pakistan and cross border firing by forces of India and Pakistan also displaced many from their traditional habitations. Though both Centre and State governments are making efforts to provide rehabilitation to all these displaced people and attempting to resettle them, still most of them are continue to suffer as these efforts are not adequate to address the problems they are facing in their daily lives.

#### **4.4.7 CHECK YOUR PROGRESS EXERCISE**

1. How do you understand displacement?
2. Why the State of Jammu and Kashmir experienced such a large scale displacement?
3. Write a note on POK migrants and government policies for their rehabilitation.
4. Who are the internally displaced persons?
5. Explain the reason for displacement of Kashmiri Pandits from the Valley?
6. Write a note on the displacement of people from border areas.
7. How development caused the displacement in Jammu and Kashmir?

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