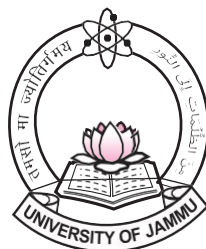


# Centre for Distance & Online Education UNIVERSITY OF



## SELF LEARNING MATERIAL OF M. A. POLITICAL SCIENCE

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SEMESTER –IV

COURSE NO. POL-401

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### DYNAMICS OF JAMMU AND KASHMIR POLITICS

**DR. V. V. NAGENDRA RAO**  
*COURSE CO-ORDINATOR*

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# **DYNAMICS OF JAMMU KASHMIR POLITICS**

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**COURSE NO. : POL-401**

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**M. A. Political Science Under Non-CBCS Semester-IV**  
**Session May 2024, 2025 & 2026 Course Code : POL - 401**

**Title : Dynamics of Jammu & Kashmir Politics**

**Credits : 6 (Six)**

**Max. Marks : 100**

**Internal Assessment : 20 Time : 3 Hours**

**Semester Exam : 80**

**Objectives of Course :** This course is designed to provide knowledge about the immediate surroundings of learners. It familiarizes the students about the politics of Jammu and Kashmir evolved over the period of time. It introduces the students with the historical and constitutional perspectives of the politics of Jammu and Kashmir. The constitutional provisions related to its special status and the subsequent modifications in that have been discussed here. The economic and electoral dynamics of politics have also been explored to grasp the politics in its entirety. The perennial conflict situation and urge for regional autonomy have also been examined. It also acquaints the students with the recent change brought about in its status and position in the Indian Union.

**Learning Outcomes :** Understanding about the historical and constitutional perspectives enables the learners to grasp the dynamics of politics in Jammu and Kashmir. It empowers them to develop broad knowledge base by focusing on the politics of granting special status and subsequently diluting it through various accords and agreements. Political economy and regional autonomy perspectives help the learners to develop deeper insights in the dynamics of politics in Jammu and Kashmir. To elucidate the impact of recent change in the status of Jammu and Kashmir will be another learning outcome of this course.

**Course Contents**

**Unit-I : Historical and Constitutional Bases**

- 1.1 Evolution of J&K State : Historical Perspective
- 1.2 Accession to Indian Union : A Critical Appraisal
- 1.3 Special Status : Rationale and Implications
- 1.4 State Subjects to Permanent Residents and Domicility

**Unit-II Political Structures**

- 2.1 Constituent Assembly : Composition and Debate
- 2.2 Accords and Agreements : 1952, 1974 and 1986
- 2.3 Governance Structures : Legislature, Executive and Judiciary
- 2.4 Institutions of Local Self Governance : A Critical Assessment

**Unit-III Political Processes**

- 3.1 Political Economy of Land Reforms : Dynamics and Dimensions
- 3.2 Electoral Politics : Issues and Dynamics

- 3.3 Delimitation of Constituencies
- 3.4 Politics of Marginalized Groups : Women, Dalits and Tribes

#### **Unit -IV Issues in J&K Politics**

- 4.1 Autonomy and Regional Autonomy : Aspirations and Politics
- 4.2 Separatism and Terrorism
- 4.3 Conflict and Displacement : Issues and Impact
- 4.4. Reorganization of Jammu and Kashmir and Ladakh, 2019

#### **Note for Paper Setter**

- The Question Paper shall be divided into two sections. The first section will carry eight short questions of which students will be required to attempt five questions. The upper words limit for the answer of each question will be 200 words. Each question carrying 4 marks.
- The second section will comprise eight questions of which students will have to attempt four questions on the basis of '**WITHIN UNIT**' choice. The upper words limit for the answer of each question will be 850 to 1000 words. Each question will carry 15 marks.

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## 1.1 EVOLUTION OF J&K STATE: HISTORICAL PERSPECTIVE.

- Tirtharaj Bhoi

### STRUCTURE

- 1.1.0 Objectives
- 1.1.1 Introduction
- 1.1.2 Historical Background
- 1.1.3 The Formation of J&K Princely State
- 1.1.4 Significance of Gulab Singh
  - 1.1.4.1 Treaty of Amritsar
- 1.1.5 The State under Succeeding Maharajas
- 1.1.6 Princely State at the Lapse of British Paramount
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### 1.1.0 OBJECTIVES

In this lesson you will study major landmarks in the formation of Jammu and Kashmir princely State. After going through this lesson, you will be able to know :

- The historical and mythological significance of Kashmir;
- The contribution of Gulab Singh to the formation of the princely State of Jammu and Kashmir;
- the other major landmarks in the post-Gulab Singh phase, till the State merged in the Indian Union.

### 1.1.1 INTRODUCTION

The state of Jammu and Kashmir lie between 32°27' and 33°30' North latitudes and 74°19' and 75°20' East longitudes. It is almost entirely a mountainous region. Geographically, the state falls into four natural regions. In the south lies Jammu, the winter capital of the state; in the centre is the valley of Kashmir which contains the summer capital, Srinagar; to the north is Gilgit; and between the Kashmir valley and Tibet is the province of Ladakh. The state has a population of over 59,87,389 and it covers an area of 84,471 sq. miles. It has 58 towns 6758 villages. Situated at the apex of the Indio-Pakistan sub-continent, Kashmir is of great strategic importance owing to the fact, that to its east lie Tibet; to the north- east, Sinkiang, a province of China; to the north-west, Afghanistan and a few miles from Afghanistan lies Russian Turkestan. This actual and potential importance of Kashmir

has caused the rulers of adjoining countries to cast covetous eyes on it. In 1846, the state of Jammu and Kashmir as it exists today was created by the British Government. To understand politics of contemporary Jammu and Kashmir, it is necessary to study the history of Kashmir, the mode of its creation, the history of its rulers and their efforts to get established in and maintain their hold on the people and the territory.

### **1.1.2 HISTORICAL BACKGROUND**

There is an uninterrupted series of an ancient Sanskrit written record of its history, reaching back beyond the period of the Muhammadan conquests and deserving the name of real chronicle. Kashmir has, therefore a Sanskrit chronicle of the Muslim world or Hindu and reminiscent of the chronicle of the Muslims world or medieval Europe. The earliest extent and most important of these chronicles is the Rajatarangini (i.e. stream of kings) compiled by Kalhana in about A.D. 1150. Kalhana had given an account of the region up to A.D. 1006, whereas Jonaraja up to A.D. 1420, Pandit Srivara upto A.D. 1489 and Pragma Bhatt upto A.D. 1586 when Kashmir was annexed by the Great Mughal Akbar. Since then the history and chronicles of Kashmir have been written by many Sanskrit and Persian scholars as well as by many Western travellers. From the period of the first settlement in Kashmir to the region of Gonanda, the first Prince, the region was governed by a succession of fifty two kings of the Kaurava dynasty which ruled over it for a period of about 1266 years.

In ancient India, Kashmir had an honoured place. The chronicles speak of a glorious king of Kashmir named Gonanda who was worshipped by the region which Kailasha lights up and which the tossing Ganga clothes with soft garments. Kashmir was a part of the empire of Ashoka who laid the foundation of city of Srinagar. He is said to have introduced Buddhism in Kashmir and sent about five thousand Buddhist disciples for its propagation. Many Buddhist monasteries, therefore, came up in Kashmir during his time. He also introduced the cultivation of Saffron in the Valley and took many steps to improve agriculture. The Buddhist faith had, however, received an impetus at the hands of the Indio-Scythian rules, particularly Kanishka, Husk and Juska. The Third Buddhist Council was held in Kashmir under Kanishka's patronage and from that time Kashmir became the centre of Mahayana from here missionaries carried the doctrine to distant China, Central Asia and Tibet. But all the subsequent rulers were not supporters of Buddhism. As a result of the rise of Shiva cut and philosophy, Buddhism though lingered on for some years, but was finally replaced by the traditional Brahminism. Toleration, however, was the key note of religious policy even in those remote years and the people of different religious faith lived together amicably. After the commencement of the Christian era, the Valley was invaded by Tartaras.

In the sixth century A.D. came the white Huns. The two other notable kings in Kashmir were Pravarsena II and Lalitaditya. Whereas, Pravarsen all reigned about 700 A.D., and built his capital on the site of the present Srinagar. Lalitaditya, being the most famous of the later Hindu Kings ruled over Kashmir in the middle of the eighth century and distinguished himself by his successful campaigns in Central and Western India and Central Asia. He is said to have subdued many kings in India in a tour of conquest for 12 years and then turned his attention to Central Asia and returned victorious via Tibet. It is recorded that he was a patron of art and culture and carried out many public works and built many

temples including Martanda temple. Mahmud of Ghazni is said to have attempted to invade Kashmir, but failed to effect entry. The subsequent political history of Kashmir for some hundreds of years was a succession of violent changes in which dynasty succeeded dynasty and some adventurer or other by his military talent acquired power. Towards the middle of 14th century the Muslim rule was established over the valley. This religion had found a fertile soil to grow and expand because the people had been groaning under the misrule of the later Hindu rulers, when trade had languished and agriculture was at standstill. The most notable of Muslim rulers was Sultan-Zain-ul-Abidin (1420-70 A.D.) who had worked zealously for the greater benefit of greater number and said to have introduced the vocations like carpet-weaving, paper-making, paper-mache, silk breeding, horticulture, stone-cutting, stone polishing, bottle-making, gold-heating, shawl-weaving etc. in Kashmir. He was generous and brave and earned the goodwill of Hindus who had been persecuted earlier. He encouraged learning, fine arts and polytechnics. He had also invited to Kashmir skilled craftsmen viz. the weavers, embroiders, wood- carvers and makers of brassware, carpets and paper-mache from Turkey, Mecca and Egypt, who were the progenitors of skilled craftsmen of today's Kashmir.

The death of this enlightened Sultan left Kashmir Valley a prey to the old anarchical influence and it was not until the conquest to the territory by Emperor Akbar towards the end of 16th century (in 1586), that a reign of order was established. Akbar had visited Kashmir thrice and during his last visit he got constructed the fort on the Hari Parbat Hill to attract the people who had fled from the valley because of the atrocities committed by Chaks. He also laid down a sound revenue system through his revenue Minister Todar Mal. Jahangir and Shah Jahan were very fond of Kashmir. They built stately mansions, planted chinars and laid out various pleasure gardens around the Dal Lake and elsewhere. The Mughal rule lasted until the middle of the 18th century, when in consequence of the decay of the imperial power, the governor of the state became independent of Delhi.

### **1.1.3 THE FORMATION OF J&K PRINCELY STATE: MAJOR LANDMARKS**

After Mughals, Kashmir fell under Afghan despotism and the people were oppressed by a succession of governors from Kabul, each more cruel, than his predecessor. Their rapacity was inflicted on the people irrespective of religion or caste and Hindus and Muslims were alike the victims of their cruel rule. It was said of them that they thought no more of cutting off heads than of plucking flowers. When their yoke became insupportable, the Kashmiris turned for aid to Ranjit Singh whose rising star was then attracting the attention of India. As a consequence of this appeal the Sikhs sent an army to Kashmir in 1814, the advance being made over the Pir Panjal. The expedition was a failure and nothing further was done until 1819 when Ranjit Singh's best general, Misr Diwan Chand, accompanied by Gulab Singh of Jammu, invaded Kashmir and after draining out the Afghan representative, Jbbar Khan, established the Sikh rule. A terrible famine ravaged the valley in the early years of the Sikh regime. The Sikh rule had been similar to that of the Mughal.

The governors for Kashmir were appointed from Lahore and as many as ten governors were sent there during the Sikh rule. They used to govern according to their own whims and caprices. Mian Singh was the most popular Sikh Governor, and the grateful memories of his exertions to repair the damage, still linger among the people. He was unfortunately assassinated by mutinous troops.

#### 1.1.4 SIGNIFICANCE OF GULAB SINGH

While Kashmir was passing through the later vicissitudes in its history a new power was growing in influence on the environs of the Valley. This was the authority of the Dogra Prince, Gulab Singh, one of the Ranjit Singh's favourite Lieutenants. He was appointed as Raja of Jammu with the allowance of three lakh rupees in 1820 for services rendered to the Sikh Darwar, Gulab Singh by force of character speedily organized his territory on firm lines. Gulab Singh strengthened his rule however, by adding Reasi, Rajouri, Chanani and Kishtwar to his growing empire. Kishtwar (a place which Gulab Singh never visited in his entire lifetime, not even as king) was incorporated in 1821 when Raja Mohammad Teg Singh surrendered to him at Doda without resistance. In June 1823, after some ineffectual rule, governorship of the province then passed to Gulab Singh's most trusted official, Zorawar Singh, who held it for eighteen years until his death in battle.

At first the process of swallowing cities and territories under the Kingdom of Jammu enjoyed Sikh support and was patronised by Ranjit Singh, under who Jammu operated as a subordinate state. This alliance continued until Ranjit Singh's death in 1838, by which time, Gulab Singh had served eighteen years under him and further consolidated and secured his frontiers. Two years after his mentor's (Ranjit Singh) death, Gulab Singh conquered Ladakh and Dardistan in 1840. Ladakh, a Buddhist area in Tibet, was populated by Chinese residents, not Indians. Zorawar Singh, a leading general in Gulab Singh's service, also annexed Baltistan, Skardu and Western Tibet by 1841. Eventually he established a complete domination over nearly all the regions between Kashmir and Punjab. With the result that Gulab Singh became practically the master of all the territory surrounding Kashmir.

##### 1.1.4.1 Treaty of Amritsar

When war broke out between the British and the Sikhs Darwar, Gulab Singh took his stand very cleverly and refrained from taking sides and in 1846 after the battle of Sobraon, he acted as a mediator between the British and the Sikhs. Lord Hardinge's private papers showed him as a spy of the British and call him a 'geographical allay'. Accompanied by several other chiefs, Gulab Singh met with the Governor General at Kasur. The governor General then communicate Gulab Singh and the Sikh chief the terms of the peace which were subsequently embodied in the Treaty of Lahore of March 9, 1846. The Treaty also ensured the Sikhs recognise Gulab Singh as the rightful monarch of Kashmir, which was to be awarded him by the British in a separate agreement with him personally.

The 'Amritsar Treaty', which followed a week later (16th March 1846), formally released Gulab Singh from Sikh authority (although he had relinquished loyalties to them years earlier) and gave him the highest official standing and rank he had ever possessed. According to the Treaty, the Darwar was required to pay one and a half crore of rupees as indemnity for the expenses of the war. As the Darwar was not in a position to pay such a huge amount demanded by the British, the Maharaja transferred to the company as equivalent for one crore rupee, as his hill territories

Out of this ceded territory the British transferred to Gulab Singh, for sum of seven and a half million rupees, all the hilly and mountainous country situated to the east of the Indus and the west of Ravi by signing the treaty of Amritsar on 16th March, 1846. British formally invested Gulab Singh with the title of Maharaja. According to the treaty whole of the Kashmir including Ladakh and Gilgit with Balistan and the Indus valley to Chailias were transferred to Gulab Singh. He tried to consolidate peace in the otherwise deplorable conditions then prevailing in Jammu region.

### **1.1.5 THE STATE UNDER SUCCEEDING MAHARAJAS**

In February 1856, Gulab Singh gave up his throne in favour of his son Ranbir Singh. Gulab Singh died in 1857 and in 1860, his son and successor, Ranbir Singh sent a well-equipped expedition against the mutinous chief of Gilgit and the adjoining territories, and succeeded in finally establishing the Dogra hold on this outpost. He made many reforms for the general welfare of the masses. In 1870 Maharaja Ranbir Singh sent his troops to Hanza and Nagar and obtained their vassalage. Later, when the Afghan war was in the offing and the British were anxious to isolate Afghanistan and eliminate any possible threat from Chitral, Maharaja Ranbir Singh was encouraged to send an expedition to chitral and obtain its vassalage. Negotiations were opened between the army officers to the Maharaja and the Mehtar of chitral which eventually resulted in a treaty between Aman-ul-Malik, the Mehtar and the Maharaja. According to the treaty the Mehtar accepted the suzerainty of the Maharaja and in token thereof agreed to pay annually a small tribute. It was thus towards the end of the 19th century that the Jammu and Kashmir state came into shape, the Maharaja's authority extending from Chitral in the North to Kathua in the South and Aksai Chin in the East and Kohala in the West. The state thus became the most important region of India. Ranbir Singh was an excellent ruler, and a man of learning, culture and of sharp intelligence. The close of his reign was darkened by the calamitous feminine of 1877-79, which decimated the Valley. On the death of Ranbir Singh, in 1885 his eldest son, Pratap Singh, ascended the throne. Maharaja Paratap Singh had a tough time with the British Indian Government.

In order to secure direct control over the state, British government appointed a resident who wielded unlimited powers over the administration. It was only towards the end of his long reign of forty years that some semblance of power was resorted to him. During his regime education was modernized. Several schools and two colleges – one in Srinagar and one in Jammu – were set up. Hospitals and dispensaries were opened. The Valley was linked with the rest of the country by two cart roads – one between Srinagar and Rawalpindi and another between Srinagar and Jammu. Thus, with the spread of education and faster communications between the state and the rest of India, there began a ferment among the people and they became conscious of their economic and political stagnation. In the early twenties of the century, this discontent surfaced with political demands voiced by a few leaders in the state. They were in no doubt influenced by the freedom movement launched by the Indian national Congress under the leadership of Mahatma Gandhi. But the abortion agitation was ruthlessly suppressed by the Maharaja who, however, passed away in 1925.

During the reign of Maharaja Hari Singh, who succeeded his uncle Maharaja Partap Singh

in 1925, the political consciousness had dawned on the entire length and breadth of the Subcontinent. The condition of the depressed classes was most pathetic. In order to ameliorate their conditions they started raising their voice against the ruler. As a result a continuous struggle for freedom and democratization of the administration in the state also started. It had its origin in the widespread discontentment among the Muslim masses that constituted 78% of the total population of the state and 94% of the population in the Kashmir Valley, but had very inadequate representation in the state services as well as in the economic and industrial life of the state. The bulk of the Muslim populations were tillers, labourers and artisans classes which were an excellent target of exploitation by the richer sections of the society.

Agrarian discontent and paucity of employment opportunities were thus the motivation forces for the Muslim masses to agitate against the Dogra regime in the state. The process of presentation of demands and their half hearted consideration by the government continued for some years, but without any tangible results coming out of it. It was in 1930 that a new organization called the Reading Room Party was formed by a few Muslim graduates for discussing the problems of Muslim masses. Meanwhile Sheikh Mohammed Abdullah, with post graduate degree in Chemistry from Muslim University Aligarh, and who was appointed as a teacher, left his job after a few months and in collaboration with his friends founded the All Jammu and Kashmir Muslim Conference of which he himself became President. The party leadership demanded the establishment of a full responsible government in the state. The Maharaja, however could not make any headway towards grants of responsible government to the people of the state. The political and economic situation was deteriorating fast and it was not, therefore, difficult for Sheikh Mohammed Abdullah and his small band of devoted workers to launch a mass movement against the Maharaja's autocratic rule. This was met with forces – wholesale arrests, firing by the police and military and levy of punitive fines. But ultimately he had to yield and set up a legislative assembly with very limited legislative and executive powers. This did not satisfy the leaders. Because of Sheikh Abdullah's nationalist outlook, his desire to fight for the entire state's freedom and people's fundamental right and to get the cooperation of all the progressive forces in the state, the Muslim Conference was converted into National Conference in 1939. The National Conference adopted a programme of building up New Kashmir in 1944. Sheikh declared that the future and independence of India inextricably linked with the future and independence of Jammu and Kashmir State.

The struggle against Maharaja entered into a crucial stage when the famous Quit Kashmir movement for the transfer of power to the people was launched by the All Jammu and Kashmir National Conference in May 1946. The state bureaucracy was bewildered at this new slogan and full of vengeance decided to crush the movement.

In spite of reign of terror, arrest, prosecution and deaths, the movement was on the verge of success when the British rulers decided to partition British India by dividing Indian subcontinent into the new dominions of India and Pakistan in August 1947, and making all Princely states independent and advising the princess to accede to one or the new dominions, keeping in view the considerations of geographical contiguity. For most of the British Indian States, the choice before Jammu and Kashmir State was a difficult one because partition of India made Kashmir state geographically

contiguous to both Bharat and Pakistan, besides Tibet, Sinkiang, USSAR and Afghanistan. Moreover, the state was a Muslim majority state with a Hindu ruler inclined towards India. A majority of the inhabitants of the state was Muslim by religion. Pakistan ruler thought that state must acceded to Pakistan.

The Maharaja therefore, could not decide the question of accession to either of the dominions rather entered into standstill agreement with Pakistan to get more time. Indian government however, refused to enter the agreement unless it was approved by the people of the state first. Mr. Jinnah was in a dilemma and believed that National Conference leadership was openly against his doctrine of two nations theory and looking more to towards India, the people of the state would not acceded to Pakistan. Pakistan authorities then used all sorts of tactics including communal incitement and infiltration of armed personnel to force the State accession to Pakistan but failed. Jinnah then became impatient and lost his balance as a result a massive attack in form of tribles invasion on defenceless Kashmir was launched on 25th October 1947 to force its annexation.

Meanwhile the working committee of the National Conference decided that the future of the state lay with India, approached the government of India for help and whole-heartedly supported the accession of the state by the Maharaja was thus forced to accede to India on 26th October 1947. On the October 27th 1947 the Maharaja had appointed the popular leader of the state Sheikh Mohammed Abdullah of the National Conference, Chief Emergence Officer. On 5th October, 1948 a regular government headed by Shiekh Mohammed Abdullah was formed. Article 370 out of Indian constitution, however, conferred a special status on the state of Jammu and Kashmir and it was thus the only state of the Indian Union which got the right to frame its own constitution.

#### **1.1.6 PRINCELY STATE AT THE LAPSE OF BRITISH PARAMOUNT**

The Indian Independence Act, 1947 enacted by the British Parliament envisaged the creation of two Dominions, i.e., Dominion of India and Dominion of Pakistan. It had of necessity to recognize that with the surrender of imperial power, the Paramount of the British Crown over Indian States would lapse and with that lapse the Rulers of Indian States could become sovereign unto themselves. This gave the Rulers of the Indian States the option to decide the fate of their States. A State could accede to Indian or to Pakistan but failing to do either, it could claim the right to remain independent. Like other Indian States, these alternatives were also open to the State of Jammu and Kashmir. The Indian States thus, on the “appointed day”, i.e, 15TH August 1947 became legally independent and regained the position of absolute sovereignty which they had enjoyed prior to the assumption of suzerainty by the British Crown. This was in accordance with the Cabinet Mission's Memorandum of 12th May 1946 and section 7(1) (b) of the Indian Independence Act, 1947. The status and the legal consequences which the transfer of power would entail were well-defined in the Cabinet Mission's Memorandum of 12th May, 1946.

His Majesty's Government will cease to exercise powers of paramountcy. This means that the rights of the states which flow from their relationship with the Crown, will no longer exist and that all the rights surrendered by the States to the paramount power will return to the States. Political arrangement between the States on one side, and the British Crown and British India, on the other will

thus be brought to an end. The void will have to be filled either by the States entering into federal relationship with the successor Government in British India or falling this, entering into particular political arrangements with it for them. The Rulers of Indian princely States thus became unquestionably competent to acceded to either the Dominion of India or Pakistan in exercise of their sovereignty. Their joining had to be voluntary and at the time of joining they were under no obligation to accept any future Constitution to be adopted by either of the Dominion excepted by voluntary acceptance or supplementary agreement. Most of the Indian princely States acceded to Indian before 15th August, 1947 the deadline fixed for the accession of the States except, Jammu and Kashmir, Hyderabad and Junagadh.

The developments unfolded from this stage had serious repercussions for the future state of Jammu and Kashmir. The state not only partitioned but also it has become one of the controversial issues in international politics and relations between India and Pakistan. The Instruments of Accession the Maharaja signed, when Pakistani rangers attacked the State, made it part of the Union of India but with a loss of significant part of its territory. How these developments took place and the nature of Instruments of Accession, the provisions incorporated in it will be discussed in the next lesson.

### **1.1.7 LET US SUM UP**

In this lesson, you have studied the evolution of Jammu And Kashmir State over the period of time. The three parts that constitute the State – Jammu, Kashmir and Ladakh – have come together into single entity very recently, only in 19th century under Maharaja Gulab Singh, the Dogra ruler of Jammu. In this lesson, you have studied how Gulab Singh rose from ordinary soldier to Maharaja and how significant are his skills in gaining the province of the Kashmir from the British after the defeat of the Sikh empire. Though the British had monitored the administration of the State under Dogra kingdom, however, various Maharaja's who succeeded Gulab Singh, more or less retain the authority over the state till the Quit Kashmir Movement emerged in the Kashmir Valley. The success of this democratic movement and the Pakistan's attack on the State in 1948 ultimately led to the end of monarchy and paved way for the emergence of democratic politics in the State of Jammu Kashmir which has become part of larger Indian Union after signing the Instruments of Accession in 1948.

### **1.1.8 EXERCISES**

1. Write a detailed note on major landmarks in the evolution of the princely State of Jammu and Kashmir ?
2. Write a short note on General Zorwar Singh's contribution expanding the princely State of Jammu ?
3. How significant is the 'Treaty of Peace' signed in Amritsar in the constitution of princely State of Jammu and Kashmir ?

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## 1.2 ACCESSION TO INDIAN UNION : A CRITICAL APPRAISAL

-Tirtharaj Bhoi

### STRUCTURE

- 1.2.0 Objectives
- 1.2.1 Introduction
- 1.2.2 The Pre-Independence Developments
- 1.2.3 Developments in Post-Independence Period
  - 1.2.3.1 Standstill Agreement
- 1.2.4 Instrument of Accession
  - 1.2.4.1 Salient Features of Instrument of Accession
- 1.2.5 Role of Popular Leadership in the Accession
- 1.2.6 Let Us Sum UP
- 1.2.7 Exercises

### 1.2.0 OBJECTIVES

In this lesson you will study the developments that led to the accession of Jammu and Kashmir State in Indian Union. After going through this lesson, you will be able to know:

- the importance of Cabinet Mission in determining the status of princely states in Indian Subcontinent with the end of British Paramountacy;
- the invasion of Pakistani raiders on Kashmir and accession of Jammu and Kashmir State to Indian Union;
- the developments that led to the end of monarchy and arrival of democratic politics in the state.

### 1.2.1 INTRODUCTION

The Instrument of Accession is a legal document executed by Maharaja Hari Singh, ruler of the princely state of Jammu and Kashmir, on 26 October 1947. By executing this document under the provisions of the Indian Independence Act 1947, Maharaja Hari Singh agreed to accede to the Dominion of India. In a letter sent to Maharaja Hari Singh on 27 October 1947, the then Governor-General of India, Lord Mountbatten accepted the accession. However, the Accession was not as smooth as you have studied here. There is a lot much happened from the day India became Independent and the State of Jammu and Kashmir accessed to India. There are five major parties that shaped the course of action or developments which ultimately led to the accession. The Domain of India, the Domain of Pakistan, the British, the Maharaja of Jammu and the Democratic Movement under the leadership of Sheikh Abdullah all are active players in the events unfolded. How these

developments took place and how it led to the Accession of the Jammu and Kashmir to India will be the major focus of the present lesson.

### **1.2.2 THE PRE-INDEPENDENCE DEVELOPMENTS**

The Cabinet Mission was an important milestone in the developments of the Indian Subcontinent in 1940s. Although the Cabinet Mission plan was rejected, the recommendations for the future of the 565 princely states, covering over two-fifths of the subcontinent, with a population of 99 million, became the basis for their future settlement. In a 'Memorandum on States' Treaties and Paramountcy' it was stated that the paramountcy which the princely states had enjoyed with the British Crown would lapse at independence because the existing treaty relations could not be transferred to any successor. The 'void' which would be created would have to be filled, either by a federal relationship or by 'particular political arrangements' with the successor government or governments, whereby the states would accede to one or other dominion.

The state of Jammu and Kashmir had unique features not shared by other princely states. Ruled by a Hindu, with its large Muslim majority, it was geographically contiguous to both India and the future Pakistan. Lord Mountbatten visited Kashmir in June, 1947 and spent three days there. He had with him a long note prepared by Nehru, which, on the basis of Sheikh Abdullah's popularity in the Kashmir valley, made out a strong case for the state's accession to India: "Of all the people's movements in the various States in India, the Kashmir National Conference was far the most widespread and popular . . . It is true that Sheikh Abdullah's long absence in prison has produced a certain confusion in people's minds as to what they should do. The National Conference has stood for and still stands for Kashmir joining the Constituent Assembly of India". Mountbatten also advised Maharaja "not to make a declaration of independence, but to join one dominion or the other by the 14th August, after finding out the will of the people". He also brought the message from the Congress leaders that, if the Maharaja were to decide in favour of Pakistan because of his Muslim majority population, they would not take it 'amiss'. But the Maharaja tactfully avoided to meet him under an excuse of ill health on the last day of his visit when the final reply was to be given to him.

### **1.2.3 DEVELOPMENTS IN POST-INDEPENDENCE PERIOD**

On August 15, thus, India and Pakistan emerged as two independent dominions. Maharaja of Kashmir was caught on the horns of dilemma whether to accede to Indian Dominion or to Pakistan or to declare Kashmir as an independent State. Like some of the other Princes, he too, being carried away by sentimentalism rather than realism and supported by his advisors and even some of the leaders of the politically conscious groups in the state, fondled with the idea of independence.

#### **1.2.3.1 Standstill Agreement**

In order to get more time for the final decision of the state's accession, Maharaja offered a Stand-still Agreement to both the dominions. Pakistan agreed to it hurriedly whereas the Government of India wanted concurrence of the people of the state. Despite signing of the standstill agreement with Pakistan, political manoeuvring was taking place on all sides. Both India and Pakistan were actively trying to determine events so that Kashmir would accede to their respective Dominions.

India retained the upper hand and despite the Maharaja's dislike for Nehru, he communicated more regularly and amicably with the Indian leaders than with those in Pakistan. Although he had rejected Mountbatten's suggestion of retaining military links with either India or Pakistan, on 13 September 1947 he requested the Government of India for the loan of an Indian army officer to replace Major-General Scott as his commander-in-chief. Clear steps were being taken to improve communications with India, by telegraph, telephone, wireless and roads. The Pakistani government alleged that India had violated the standstill agreement, because they had included Kashmir within the Indian postal system.

The Indian leaders were equally anxious about Pakistan moves. The armed raids from Pakistani territory into the state and disturbances in Poonch led the Indian leadership to believe that there would be a full-scale Pakistani incursion. Nehru wrote to Patel on 27 September that the maharaja should 'make friends' with the National Conference, 'so that there might be this popular support against Pakistan'. Nehru had hoped that the maharaja could be persuaded to accede to India before any invasion took place and he realized that accession would only be more easily accepted if Abdullah, as a popular leader, were brought into the picture. Two days after this letter, on 29 September, Abdullah, who had been in prison since his Quit Kashmir Movement in 1946, was released from jail. Abdullah wrote a letter pledging allegiance to the maharaja. At the beginning of October Dwarakanath Kachru, the secretary of the All-India States Peoples' Conference, visited Srinagar with the objective of convincing Abdullah of the merits of joining India. He reported back to Nehru that Sheikh Abdullah and his close associates have decided for the Indian Union. The objective of the Kashmir National Conference, as stated by Abdullah, is the attainment of people's sovereignty with the Maharaja enjoying a constitutional position.

Sensing the possibility of losing the State of Jammu and Kashmir, Pakistan sent raiders from the tribal territory of Pakistan's North-West Frontier province to Kashmir Valley. The invaders indulged in indiscriminate plunder, massacres, burning of houses, raping and abducting women. While explaining the invasion on Kashmir, Sheikh Abdullah said, 'What happened in Kashmir adds altogether a new pattern of perfidy. Those tribal pathans equipped with mechanized weapons of war, swooped down on us, not merely as armed bandits but as a centrally directed force with the avowed object of subjugating our land to the vassalage of Pakistan at the point of the gun'.

The invasion of tribals from Pakistan compelled the Maharaja of Kashmir to approach the Indian Government for immediate military assistance. The Indian leadership on the other hand insisted that unless the popular government in Kashmir be established and Instrument of Accession of the state of the Indian Dominion be signed, military assistance could not be sent.

In these compelling circumstances the Maharaja by a letter dated October 26, 1947 to the Governor-General of India informed him that he had decided to accede to India and enclosed an Instrument of Accession with it. The Government of India accepted the request of the Maharaja and the Instrument of Accession was signed on October 27, 1947 and military help was dispatched to save Kashmir and its people from the barbaric invasion of tribesmen. Sheikh Abdullah pointed out that both the Maharaja and the people of Kashmir requested the Government of India to accept accession.

Pakistan, therefore, had no right to say “that we must do this and that we must do that”.

After accepting the Instrument of Accession, Lord Mountbatten wrote following personal letter to Maharaja:

“... my Govt. have decided to accept the accession of Kashmir State to the Dominion of India. In consistence with their policy that in the case of any state where the issue of accession has been the subject of dispute, the question of accession should be decided in accordance with the wishes of the people of the state; it is my government's wish that as soon as law and orders have been restored in Kashmir and its soil cleared by the invader, the question of State's accession should be settled by a reference to the people”.

However, A.S.Anand, former Chief Justice, Supreme Court of India is of the view that: “This statement does not and cannot affect the legality of accession which was sealed by India's official acceptance. This statement is not a part of the Instrument of Accession”. Mehar Chand Mahajan, another Chief justice of Supreme Court India observed that “The Indian Independence Act did not envisage conditional accession. It could not envisage such a situation, as it would be outside the parliament's policy. It wanted to keep no Indian state in a state of suspense. It conferred on the rulers of the Indian state absolute power in their discretion to accede to either of the two Dominions. The Dominion Governor-General had the power to accept the accession or reject the offer. But he had no power to keep the question open or attach conditions to it”.

The only documents relevant to the accession were the Instrument of Accession and the Indian Independence Act and as the constitutional documents did not contemplate any conditions, there can be no question of the accession have been conditional. Mahajan further pointed out that “Finality which is statutory cannot be made contingent on conditions imposed outside the powers of the statute. Any rider which militates against the Finality is clearly ultra virus and has to be rejected”. Once Instrument of Accession was signed, accepting the legitimate demand of his people to establish a responsible Government in the State, Maharaja appointed Sheikh Abdullah as the Head of Emergency Administration the very next day. Some of the political parties of Jammu, particularly those representing Hindus, were in favour of full and final accession of the state to the Indian Union. They were of the view that issue of accession should not be linked with the promise of plebiscite at a future date. This stand of the parties continued in the subsequent years. But the Muslim Conference and other Islamic parties/groups of the Valley, on the other hand, contested State's accession to India. These parties took the stand that issue of accession was still alive and it could only be decided by the people of J&K through the exercise of right of self-determination in the plebiscite. They believed that accession of the State to India is temporary and as such, subject to the ratification by the people. They are also of the view that people of Kashmir still retain the right of self-determination. They believed that the only solution to the Kashmir issue was to hold a plebiscite. The people of the state should have the right to decide their future themselves.

Once appointed as Head of Emergency Administration, Sheikh Abdullah raised a force of local Kashmiri volunteers to patrol Srinagar and take control of administration. The Indian troops, which were air lifted in the early hours of 27 October, secured the Srinagar airport. The city of

Srinagar was being patrolled by the National Conference volunteers with Hindus and Sikhs moving about freely among Muslims, an “incredible sight” to visiting journalists. The National Conference also worked with the Indian Army to secure the city.

Pakistan refused to recognise the accession of Kashmir to India, claiming that it was obtained by “fraud and violence.” Governor General Mohammad Ali Jinnah ordered its Army Chief General Douglas Gracey to move Pakistani troops to Kashmir at once. However, the Indian and Pakistani forces were still under a joint command, and Field Marshal Auchinleck prevailed upon him to withdraw the order. With its accession to India, Kashmir became legally Indian territory, and the British officers could not play any role in an inter-Dominion war. The Pakistan army made available arms, ammunition and supplies to the rebel forces who were dubbed the ‘Azad Army’. Pakistani army officers ‘conveniently’ on leave and the former officers of the Indian National Army were recruited to command the forces. In May 1948, the Pakistani army officially entered the conflict, in theory to defend the Pakistan borders, but it made plans to push towards Jammu and cut the lines of communications of the Indian forces in the Mehndar Valley. In Gilgit, the force of Gilgit Scouts under the command of a British officer Major William Brown mutinied and overthrew the governor Ghansara Singh. Brown prevailed on the forces to declare accession to Pakistan. They are also believed to have received assistance from the Chitral Scouts of the state of Chitral, one of the princely states of Pakistan, which had acceded to Pakistan on 6 October 1947.

The ceasefire was finally imposed on 1 January 1949, signed by General Gracey on behalf of Pakistan and General Roy Bucher, who was shortly to hand over to General Cariappa, on behalf of India. It was the last document signed by two Englishmen on behalf of the respective Dominions. The line was to be monitored by a United Nations Military Observer Group (UNMOGIP).

#### **1.2.4 INSTRUMENT OF ACCESSION**

The Instrument of Accession, which formed the basis of Jammu and Kashmir's future relationship with India, accorded the State a special status which was not granted to other former princely states. Legally, India's jurisdiction only extended to external affairs, defence and communications.

##### **1.2.4.1 Salient Feature of Instrument of Accession**

The first thing to be noted is that the Instrument of Accession signed by Maharaja Hari Singh on the 26th October, 1947, was in the same form as was executed by the Rulers of the numerous other States which had acceded to India following the enactment of the Indian Independence Act, 1947. The legal consequences of the execution of the Instrument of Accession by the Ruler of Jammu & Kashmir cannot, accordingly, be in any way different from those arising from the same fact in the case of the other Indian States. It may be recalled that owing to the lapse of paramountcy under s. 7(1)(b) of the Indian Independence Act, 1947, the Indian States regained the position of absolute sovereignty which they had enjoyed prior to the assumption of suzerainty by the British Crown.

The Rulers of the Indian States thus became unquestionably competent to accede to either of the newly created Dominions of India and Pakistan, in exercise of their sovereignty. The legal basis as well as the form of Accession were the same in the case of those States which acceded to Pakistan and

those which acceded to India. There is, therefore, no doubt that by the act of Accession the State of Jammu & Kashmir became legally and irrevocably a part of the territory of India and that the Government of India was entitled to exercise jurisdiction over the State with respect to those matters to which the Instrument of Accession extended. If, in spite of this, the Government of India had given an assurance to the effect that the Accession or the constitutional relationship between India and the State would be subject to confirmation by the people of the State, under no circumstances can any third party take advantage of such extra-legal assurances and claim that the legal act had not been completed.

The act of Accession was unequivocally given legal effect by declaring Jammu & Kashmir a part of the territory of India [Art. 1]. But the application of the other provisions of the Constitution of India to Jammu & Kashmir was placed on a tentative basis, subject to the eventual approval of the Constituent Assembly of the State. The Constitution thus provided that the only Articles of the Constitution which would apply of their own force to Jammu & Kashmir were—Arts. 1 and 370. The application of the other Articles was to be determined by the President in consultation with the Government of the State [Art. 370]. The legislative authority of Parliament over the State, again, would be confined to those items of the Union and Concurrent lists as correspond to matters specified in the Instrument of Accession. The above interim arrangement would continue until the Constituent Assembly for Jammu & Kashmir made its decision. It would then communicate its recommendations to the President, who would either abrogate Art. 370 or make such modification as might be recommended by that Constituent Assembly.

In pursuance of the above provisions of the Constitution, the President made the Constitution (Application to Jammu & Kashmir) Order, 1950, in consultation with the Government of the State of Jammu & Kashmir, specifying the matters with respect to which the Union Parliament would be competent to make laws for Jammu & Kashmir, relating to the three subjects of Defence, Foreign Affairs and Communications with respect to which Jammu & Kashmir had acceded to India.

### **1.2.5 ROLE OF POPULAR LEADERSHIP IN THE ACCESSION**

The path-breaking event of transformation of the Jammu and Kashmir Muslim Conference into the National Conference gave a new dimension to Jammu and Kashmir politics in 1939. The decision was taken by Sheikh Mohammad Abdullah after realising the change in the rules of the game. Nehru had a very cordial relationship with Sheikh Mohammad Abdullah. They shared close ideological proximity with each other. Nehru's Kashmir mission required the identification of a regional figure, modern, secular and rooted in the local social milieu. He found in Sheikh Mohammad Abdullah a leader drawn from the plebian section of the Kashmir society who identified with the people and had an open mind on issues central to the Kashmir society and polity.

Nehru was a staunch supporter of the popular legitimacy of any political rule. It was this consideration which led him to rein in the political designs of the then ruler of the Jammu and Kashmir state, Maharaja Hari Singh. Nehru offered his full cooperation to the National Conference in the 'Quit Kashmir' movement in 1946. He tried to enter Kashmir but was arrested by the Maharaja and sent back. Nehru arranged a lawyer, Asaf Ali, to defend Sheikh Abdullah in one of the cases with regard to

the Maharaja's rule in the state.

He also helped the National Conference by putting in use the ideological resources which the latter needed for freedom from the rule of the Maharaja. The New Kashmir Document, which was framed by the National Conference in 1944, can be cited as an example. Almost all the political, economic and social values which Nehru adhered to came to be included in this document. Though the manifesto was essentially a product of local socio-economic realities, the Naya Kashmir Manifesto was basically a roadmap for the political and economic development of the J&K state. Its essence was redistributive justice which forms the bedrock of socialistic thinking. This document structured itself on the basic values of planning. All these values were very dear to Jawaharlal Nehru.

There were some important elements which formed the core of the common ideological project on Kashmir propounded by Nehru and the National Conference under the leadership of Shiekh Mohammad Abdullah. One was that a joint struggle of different communities, castes and religious groups, oppressed by autocratic rule, can lay down the basis for an emancipatory political movement in Jammu and Kashmir. Second, both political organisations, the National Conference and Indian National Congress under Nehru, worked towards consolidating Kashmiri nationalism as an affiliate of pan-Indian nationalism to checkmate the influence of the two-nation theory on the political culture of the Jammu and Kashmir state.

When the tribal invasion took place in October 1947, the Maharaja of Kashmir acceded to the Indian Union of course with due support of Sheikh Mohammad Abdullah. After the Instrument of Accession, Maharaja Hari Singh appointed Sheikh Abdullah as the head of the Emergency Administration on October 31, 1947. Maharaja Hari Singh invited Sheikh Abdullah to form the Interim Government and to carry on the administration of the State. The Interim Government later changed into a full-fledged Cabinet on March 5, 1948 with Sheikh Abdullah as its head. The appointment of Sheikh Abdullah as a new Prime Minister of the State was a clear manifestation of the establishment of a popular government in the State.

After Maharaja Hari Singh acceded to India on 26th Oct 1947, the Indian Government was under tremendous international pressure to implement the UN Security Council resolutions passed on 21st April 1948 and 13th August 1948, which directed both India and Pakistan to resolve Kashmir dispute through impartial plebiscite. Sheikh Abdullah opposed the UN resolution during his historical speech in UN Security Council on 5th February 1948, where he said, "if Pakistan comes forward and says, we question the legality of Accession, I am prepared to discuss... We shall prove before the Security Council that Kashmir and the people of Kashmir have lawfully and constitutionally acceded to the Dominion of India, and Pakistan has no right to question that Accession". Again in 1950 when UN nominated Sir Owen Dixon, an Australian jurist, as the United Nations representative recommended 'Regional Plebiscite in Jammu & Kashmir', National Conference was the first to reject it in its General Council meeting on 27th Oct 1950. Sheikh decided to convene a Constituent Assembly to ratify the Accession of Jammu & Kashmir State with India and on 5th November 1951. The Constituent Assembly framed a new Constitution for a democratic Jammu and Kashmir State with Indian Union, the details of which we study in the next lesson.

### 1.2.6 LET US SUM UP

Maharaja Hari Singh became the ruler of the princely state of Jammu and Kashmir in 1925, and he was the reigning monarch at the conclusion of the British rule in the subcontinent in 1947.

With the impending independence of India, the British announced that the British Paramountcy over the princely states would end, and the states were free to choose between the new Dominions of India and Pakistan or to remain independent. When Pakistan supported raiders invaded the Kashmir, the Maharaja initially fought back but appealed for assistance to the Governor-General Louis Mountbatten, who agreed on the condition that the ruler accede to India. Maharaja Hari Singh signed the Instrument of Accession on 26 October 1947 in return for military aid and assistance, which was accepted by the Governor General. While the Government of India accepted the accession, it insisted the Maharaja to accede power to popular government led by Sheikh Abdullah who was championing the democratic movement in Jammu and Kashmir. Accordingly Sheikh Abdullah was appointed as Head of the Emergency Administration which has successfully countered the Pakistani attack. The Maharaja subsequently appointed Abdullah as head of the interim government of the State of Jammu and Kashmir which was entrusted to frame a new Constitution as per the changing status as part of Indian Union. According a new Constituent Assembly was established to undertake the task.

### 1.2.7 EXERCISES

1. Analyse the factors that forced the Maharaja to sign the Instrument of Accession ?
2. Write a short note on Standstill agreement ?
3. Outline the developments that led Maharaja to accede the State of Jammu and Kashmir to Indian Union ?
4. Explain the salient features of Instrument of Accession ?
5. Critically analyse the role of popular leadership in the Accession ?

## 1.3 SPECIAL STATUS : RATIONALE AND IMPLICATIONS

- V. V. Nagendra Rao & Tirtharaj Bhoi

### STRUCTURE

- 1.3.0 Objectives
- 1.3.1 Introduction
- 1.3.2 Historical Background
- 1.3.3 Rationale of Article 370
- 1.3.4 Article 370: Main Features
  - 1.3.4.1 Purpose of the Article 370
- 1.3.5 The Constitutional Order of 1950 & 1954
- 1.3.6 Article 370: Special Provisions
- 1.3.7 Article 370: Critical Assessment
- 1.3.8 August 2019 Modification to Article 370
- 1.3.9 Let Us Sum UP
- 1.3.10 Exercises

### 1.3.0 OBJECTIVES

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

- the historical background to incorporation of Article 370 in India Constitution;
- the main provisions in Article 370;
- the significance or insignificance of Article 370 in contemporary times.

### 1.3.1 INTRODUCTION

Article 370 was included in the Constitution, not as an afterthought but after 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. Kashmir procrastinated between independence and accession to India and chose the latter. Accession to India was conditional on Kashmir retaining its distinct cultural and regional identity. Article 370 assured the state all benefits of independent Kashmir 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 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. 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.

### **1.3.2 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.

### **1.3.3 RATIONALE OF ARTICLE 370**

It would be appropriate to recall the rationale given by founding fathers to justify the inclusion of Article 370 in the Constitution of India. While introducing the draft clause 306A (Article 370) in the Constituent Assembly of India, N. Gopalaswami 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 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. Gopalaswami Ayyangar while explaining the scope of article 370 in the Constituent Assembly on 17th 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. Gopalaswami 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

#### **1.3.4 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 7th 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*".

#### **1.3.4.1 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”.

### 1.3.5 THE CONSTITUTIONAL ORDER 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 14th 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. 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 Constituent Assembly of the State.

### 1.3.6 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”.

### 1.3.7 ARTICLE 370: CRITICALASSESSMENT

By this time you must have understood that Article 370 was a temporary provision incorporated in the Constitution of India since the status of the State of Jammu and Kashmir in Indian Union was not settled when India's Constitution operationalised. Article 370 is the only connecting point between Indian Union and State of Jammu and Kashmir once the latter signed the Instrument of Accession. The final status of relationship between Indian Union and State of Jammu and Kashmir left to the decisions taken by Constituent Assembly of Jammu and Kashmir.

However, Nehru's intentions on Jammu and Kashmir are very clear from the beginning. Nehru was for the abrogation of Article 370. He thought that once the people of Jammu and Kashmir develop faith in India's democracy, secularism and development, they themselves volunteer for this. Some sort of assurance is required to the people till the time they gain confidence in India's political plurality. Hence, it is not surprising that, in spite of being an architect of Article 370, Nehru told the Lok Sabha on November 27, 1963, that “it [Article 370] has been eroded, if I may use the word, and many things have been done in the last few years which have made the relationship of Kashmir with the Union of India very close. There is no doubt that Kashmir is fully integrated... We feel this process of gradual erosion of Article 370 is going on. Some fresh steps are being taken and in the next month or two they will be completed. We should allow it to go on.”

Union Home Minister Gulzari Lal Nanda said in the Lok Sabha on December 4, 1964, that the “only way to take the Indian Constitution to Jammu and Kashmir is through the application of Article 370. It is a tunnel. It is through this tunnel that a good deal of traffic has already passed and more will.” Nanda further stated that: “What happens is that only the shell is there. Article 370, whether you keep it or not, has been completely emptied of its contents. Nothing has been left in it.”

How the Article 370 is already 'eroded' as Nehru stated or only 'shell' is left as Nanda emphasised can be seen if we take into cognisance the post-1953 developments. For instance, The Delhi Agreement of 1952 stated that “the residuary powers of legislation” (on matters not mentioned in the State List or the Concurrent List), which Article 248 and Entry 97 (Union List) confer on the Union, will not apply to Kashmir. However, the order of 1986 purported to apply to the State Article 249, which empowers Parliament to legislate even on a matter in the State List if a Rajya Sabha resolution so authorises it by a two-thirds vote. But it so amended Article 249 in its application to Kashmir as in effect to apply Article 248 instead – “any matter specified in the resolution, being a matter which is not enumerated in the Union List or in the Concurrent List”. The Union thus acquired the power to legislate not only on all matters in the State List, but others not mentioned in the Union List or the Concurrent List – the residuary power. In relation to other States, an amendment to the

Constitution would require a two-thirds vote by both Houses of Parliament plus ratification by the States (Article 368). For Kashmir, executive orders have sufficed since 1953

This is the reason for events took a tragic course since 1953 onwards. The person on whom Nehru reposed a faith as integrator of the State of Jammu and Kashmir with Indian Union, Sheikh Abdullah, started criticizing Nehru and Union government, which led to his dismissal from the office and imprisonment on August 9, 1953. On May 14, 1954 came a comprehensive Presidential Order under Article 370. It was made with the “concurrence” of the State government and drew validity from a resolution of the Constituent Assembly on February 15, 1954 which approved extension to the State of some provisions of the Constitution of India. The Order sought to implement the Delhi Agreement. Besides, the order in some respects went beyond the Delhi Agreement. It certainly paved the way for more such Orders – all with “the concurrence of the State Government”, each elected. Ninety four of the 97 Entries in the Union List and 26 of the 47 in the Concurrent List were extended to Kashmir as were 260 of the 395 Articles of the Constitution.

This resulted in the alternation of the basic structure of the Constitution of the State of Jammu and Kashmir. The head of State elected by the State legislature was replaced by a Governor nominated by the Centre. Article 356 (imposition of President's Rule) was applied despite provision in the State's Constitution for Governor's rule (Section 92). This was done on November 21, 1964. On November 24, 1966, the Governor replaced the Sadar-i-Riyasat after the State's Constitution had been amended on April 10, 1965 by the 6th Amendment. On July 23, 1975 an Order was made debarring the State legislature from amending the State Constitution on matters in respect of the Governor, the Election Commission and “the composition” of the Upper House, the Legislative Council. Hence, in short, Article 370 never stopped the intervention of Centre or Union Government in matters related to State of Jammu and Kashmir. This is the reason why no political party in the Centre made attempts to repeal it. Though the BJP periodically demanded for its abrogation, but it never made serious attempts when it was in power.

On the other hand, the Supreme Court of India and High Court of Jammu and Kashmir also rejected the petitions appealing for abrogation of Article 370 as it is only a 'temporary' one. The Supreme Court five-judge bench without referring to *Prem Nath Kaulv. State of J&K*, pronounced a decision in *Sampat Prakash vs. State of J&K* ruled that (i) the wording of Article 370 makes no mention of the completion of work of the Constituent Assembly or its dissolution and (ii) the Constituent Assembly recommended that Article 370 should continue.

Hence, Article 370 of the Constitution has become bedrock of the constitutional relationship between Jammu and Kashmir and the rest of India. The J&K High Court in October 2015 observed that the provision has acquired a state of permanence. However, the High Court's comment should be seen in the limited context in which it was made. Its remark that Article 370 is beyond amendment, repeal or abrogation flows from an analysis of the question whether the section had become inoperative after the State's Constituent Assembly framed its Constitution, and then the Assembly

itself ceased to exist. In fact, the question whether its temporary provisions had acquired permanence was not before the court; nor was the court hearing a challenge to the validity of the Article per se. It was dealing with the validity of reservation in promotions among government employees in J&K. Ultimately, it struck down the provision for quotas in promotions on the ground that clause 4A of Article 16, introduced by the Constitution (77th) Amendment to protect reservation in promotions, was not applicable to J&K. This is because there is no Presidential Order making the new clause applicable to the State. One of the features of Article 370 is that a Constitution amendment becomes applicable to J&K only after the President issues an order. Without the protection of the clause, there is no scope for reservation in promotions, as the Supreme Court had barred such quotas in *Indra Sawhney*.

In its implications for Article 370, the High Court verdict has not broken any new ground. If anything, it is a reiteration of earlier Supreme Court rulings that Article 370 continues to be operative. It impliedly rules that the President's power to issue orders, as has been done over the years making several laws and provisions of the Constitution applicable to J&K, remains untrammelled. By reiterating the core requirement that even provisions affording constitutional protection require the use of Article 370 and orders issued under its imprimatur, the court has reaffirmed that importance of the Article and showed how abrogating it will weaken the legal basis for J&K to be part of India, as the accession was linked to its getting special status. Some may find the observation that Article 370 is beyond repeal or abrogation debatable. Parliament's amending power under Article 368 remains available for such a measure, but it is far wiser for any dispensation to wait for a resolution of the dispute with Pakistan over the entirety of Kashmir's territory before revisiting the State's constitutional status. Any premature action on this front may be a needless misadventure.

### **1.3.8 MODIFICATION TO ARTICLE 370, AUGUST 2019**

On the August 05, 2019, the Government of India modified Article 370 to remove any discrepancy between Union Constitution and Jammu and Kashmir Constitution, which resulted in eliminating the special status the state enjoyed so far in the federal structure of India. With the modifications brought by Union government, the state of Jammu and Kashmir ceased to be State but a two union territories, that of Jammu and Kashmir with a provision to legislative body and Ladakh without a legislative body. The constitutional amendment not only brings Jammu and Kashmir on par with other union territories of India but also empowered the Union Government with many executive powers including Law and Order.

Contrary to the many news reports that have wrongly stated that the Union Government has scrapped Article 370, in reality, it has not been scrapped but modified. The Presidential order signed by the President of India has not scrapped Article 370. But invoking this very article special status of Jammu & Kashmir has been withdrawn. Thus Article 370 is very much on the statute book. In fact, the President had used his powers under Article 370 to fundamentally alter the provision, extending all Central laws, instruments and treaties to Kashmir. Moreover, since Presidential Order of August 5 has

extended all the provisions of the Constitution to Kashmir, Fundamental rights chapter has now been extended.

By superseding the 1954 Order, the Centre's notification issued in August 2019 takes away the special rights and privileges enjoyed by the state of Jammu and Kashmir. The 1954 Order had introduced a proviso to Article 3, namely 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”. That power of the State Legislature to give prior consent does not exist anymore. It has effectively allowed the entire provisions of the Indian Constitution, with all its amendments, exceptions and modifications, to apply to the area of Jammu and Kashmir. It declares that “all the provisions of the Constitution, as amended from time to time, shall apply in relation to the State of Jammu and Kashmir”.

The 1954 Order had also brought into existence Article 35A. This Article gave the State Legislature of Jammu and Kashmir exclusive power to define classes of persons who are/shall be permanent residents of the State; to confer permanent residents special rights and privileges and impose restrictions upon other persons from outside the State; make laws and conditions for State government employment, acquisition of immovable property, settlement rights, scholarships and other forms of aid from the State government. Hence, with superseding of 1954 Order, the Article 35 A also lost its validity.

With the removal of the 1954 Order, the power of the State Legislature ceases to exist and Parliamentary laws, including that of reservation, would apply to Jammu and Kashmir as it does in other parts of the country. The government called this the end of “positive discrimination” and the closing of the “chasm” between residents of J&K and citizens of other parts of the country. The removal of the 1954 Order further also negates a clause which was added to Article 352. The Order had mandated that no proclamation of Emergency on grounds “only of internal disturbance or imminent danger shall have effect” in the State unless with the concurrence of the State government.

The Jammu and Kashmir reorganization Act entrusts wide powers to the Lieutenant Governor of the Union Territory of Jammu and Kashmir and makes it the “duty” of the Chief Minister of the Union Territory to “communicate” all administrative decisions and proposals of legislation with the LG. Moreover, all Central laws and State laws of J&K would apply to the new Union Territories of J&K and Ladakh. Assets and liabilities of J&K and Ladakh would be apportioned on the recommendation of a Central Committee within a year. Employees of State public sector undertakings and autonomous bodies would continue in their posts for another year until their allocations are determined. The police and public order is to be with the Centre.

### **1.3.9 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.

### **1.3.10 EXERCISES**

1. Outline the historical background for the incorporation of the Article 370 in Indian Constitution ?
2. State the main provisions in the Article 370 ?
3. The core of Article 370 has eroded only the shell is left. Do you agree with this ?

## 1.4. STATE SUBJECTS TO PERMANENT RESIDENTS AND DOMICILITY

-Mamta Sharma

### STRUCTURE

- 1.4.0 Objectives
- 1.4.1 Introduction
- 1.4.2 Historical Background
- 1.4.3 Permanent Residents for Jammu and Kashmir State
- 1.4.4 Article 35A of The Constitution
  - 1.4.4.1 Historical Background of Article 35A
  - 1.4.4.2 Text of the Article 35A
  - 1.4.4.3 Analysis of Article 35A
- 1.4.5 Domicility
- 1.4.6 Let us Sum Up
- 1.4.7 Exercises

### 1.4.1 INTRODUCTION

Fundamental rights constitute one of the most important features of the Constitution of India and, as such, they have the same importance in the Constitution of Jammu and Kashmir state also. In Indian Constitution fundamental rights have been placed under a separate part, but the same have been added to the part dealing with permanent residents in the state Constitution. The Indian Constitution guarantees, basic rights and liberties to its citizens. In a democratic polity the government is always limited by institutional safeguards. The Constitution ensures free exercise of these guaranteed rights against any kind of encroachment on the part of government or the official tyranny. The fundamental rights guaranteed to the citizens of India are not however absolute. They are placed under certain restrictions and limitations in the interests of the security of state, maintenance of public order, friendly relations with foreign nations, stability of the social order etc.

### 1.4.2 HISTORICAL BACKGROUND

In the late twenties, the people of Jammu and Kashmir state had agitated for the protection of their rights against the superior competing interests of the non residents of the state. It was in response to this popular agitation that the Maharaja's government promulgated a Notification in 1927 and provided a strict definition of the term "State Subjects". This Notification read with the State Notification of 1932 provided to some extent the law of the citizenship of the state. In 1950, the Constitution of India came into force. Article 370 of the same covered the case of Jammu and

Kashmir state. By virtue of the powers conferred by this Article, the President of India, in concurrence of the government of Jammu and Kashmir, issued an order, The Constitution ( Application to Jammu and Kashmir) Order, 1950. This Order enumerated the provisions of the Constitution of India which were to apply to the state in addition to the provisions of Article 370 and Article 1.

### **1.4.3 PERMANENT RESIDENTS FOR JAMMU AND KASHMIR STATE**

The constitution of Jammu and Kashmir has provision of permanent residents. The citizenship laws of India did not apply to the state of Jammu and Kashmir. In 1956 the Constituent Assembly of J&K satisfied to the states accession to India and settled the Controversy regarding the future affiliations of the state with Indian Union. Negotiations were held between the representatives of India and J&K and it was agreed that the permanent residents of the state could have the common Indian citizenship. The President of India in Consultation with the state government issued the constitution ( Application to Jammu and Kashmir) Order 1954. This order lays down the essentials of the permanent residents of Jammu and Kashmir .

The constitution of Jammu and Kashmir does not include a separate chapter on the fundamental rights. But it does make application of Part III of the Indian Constitution of permanent residents of Jammu and Kashmir enjoy all the rights which are mentioned in Part III of the Indian Constitution. Section 10 of the constitution of J&K provides that permanent residents of the state will have all the rights guaranteed to them under the constitution of India as applicable in the state under the constitution Order, 1954, vide section 2 (4).

Part III of Jammu and Kashmir Constitution provides the detailed provision for rights of Permanent Residents of Jammu and Kashmir state. Section 6 to Section 10 of the J&K Constitution deals with the permanent residents of the state.

Under Section 6 of J&K Constitution- {1) 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, if on the fourteenth day of May, 1954-

- (a) He was a State Subject of Class I or of Class II; or Having lawfully acquired immovable property in the State, he has been ordinarily resident in the State for not less than ten years prior to that date.
- (b) Any person who, before the fourteenth day of May, 1954, was a State Subject of Class I or of Class II and who, having migrated after the first day of March, 1947, to the territory now included in Pakistan, returns to the State under a permit for resettlement in the State or for permanent return issued by or under the authority of any law made by the State Legislature shall on such return be a permanent resident of the State.
- © In this section, the expression “State Subject of Class I or of Class II” shall have the same meaning as in State Notification No. 1-L/84 dated the twentieth April, 1927, read with State Notification No. 13/L dated the twenty seventh June, 1932.

Section 7 provides provision for the Construction of references to State Subjects in existing

laws:- Unless the context otherwise requires, all references in any existing law to hereditary State Subjects or to State Subject of Class I or of Class II or of Class III shall be construed as references to permanent residents of the State.

Sections 8 and of the Constitution of Jammu and Kashmir provides for a very tough procedure to amend this provision. Sections 8 provides, Legislature to define permanent residents:- Nothing in the foregoing provisions of this part shall derogate from the power of the State Legislature to make any law defining the classes of persons who are, or shall be, permanent residents of the State. .

Under Section 9 - Special provision for Bills relating to permanent residents:-A Bill making provision for any of the following matters, namely-

- (a) Defining or altering the definition of the classes of persons who are, or shall be, permanent residents of the State;
- (b) Conferring on permanent residents any special rights or privileges;
- (c) Regulating or modifying any special rights or privileges enjoyed by permanent residents; shall be deemed to be passed by either House of the Legislature only if it is passed by a majority of not less than two-thirds of the total membership of that House.

Section 10 of the J&K Constitution declares that: “ The permanent residents of the state shall have all the rights guaranteed to them under the Constitution of India”. The fundamental rights guaranteed to Indian citizens are dealt with in the Part III of the Constitution of India. These rights were extended to the state of Jammu and Kashmir in 1954 by the Constitution Application to Jammu and Kashmir order, 1954 and came into force on the same day. The fundamental rights had been made, however, applicable to the state with some exceptions and modifications.

Section 6 of the Constitution identifies the classes of people of the state who are the permanent residents of the state. The constitution however does not intend to lay down a permanent or comprehensive law relating to permanent residentship. The powers to enact law defining the classes of persons who are, or shall be, permanent resident of the state is left to the state legislature by section 8 of the state constitution. But any such law which defines or alters the definition of the classes of persons who are or shall be, permanent residents of the state, confers on permanent residents any special rights or privileges or regulates or modifies any special rights or privileges enjoyed by permanent residents has to be passed by majority of not less than two thirds of the total membership of the legislature.

#### **1.4.4 ARTICLE 35A OF THE CONSTITUTION**

Article 35A is a unique provision of the Constitution of India. It is a part of the Constitution, but does not figure in the bare Act. One does not find Article 35A after Article 35 in the Constitution. Article 35 is followed by Article 36. Article 35 A was conceived exclusively for the benefit of the State of Jammu and Kashmir through a Presidential Order issued in 1954. It empowers the Jammu and Kashmir State Legislature to define the State's 'permanent residents' and their special rights and privileges. It was specially devised to save the State subject laws that had already been defined under

the Dogra ruler Maharaja Hari Singh's regime and notified in 1927 and 1932. However, this Article which came into force in 1954 without a place in the bare Act of the Constitution was unknown to the public. It came into limelight only when cases were filed in the apex court challenging its validity, thereby raising an intense debate.

#### **1.4.4.4 Historical Background of Article 35A**

Through the 1927 and 1932 notifications, Maharaja Hari Singh, the ruler of the princely state of Jammu and Kashmir, imposed a law defining the State subjects and their rights. The law also regulated migrants to the State. Following Independence, the State joined the Union of India through an instrument of accession to India signed by Hari Singh in October 1947. After Jammu and Kashmir's accession to India, Sheikh Abdullah who took over the reins from Hari Singh in 1949 negotiated the State's political relationship with New Delhi, which led to providing special status through the formulation of Article 370, the subject of intense debate for long time. However, under the 1952 Delhi Agreement between Sheikh Abdullah and Jawaharlal Nehru, several provisions of the Constitution were extended to Jammu and Kashmir through the 1954 Presidential Order. Article 35A, not a part of the original Constitution, was conceived under the 1952 Delhi Agreement entered into by Jammu and Kashmir with India. In other words, it is a byproduct of Article 370 of the Indian Constitution.

Article 370 guarantees special status to the State of Jammu and Kashmir as clause (1) (d) specifically states that 'such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions as the President may by order specify. Article 35A is one such exception issued through Presidential Order in 1954 known as Constitutional Order No.48. Jammu and Kashmir's Constitution was framed in 1956. It retained Maharaja Hari Singh's definition of permanent residents: All persons born or settled within the State before 1911 or after having lawfully acquired immovable property and resident in the State for not less than ten years prior to that date. All emigrants from Jammu and Kashmir, including those who migrated to Pakistan, are considered state subjects. The descendants of emigrants are considered state subjects for two generations. The permanent residents law prohibits non-permanent residents from permanent settlement in the State, acquiring immovable property, government jobs, scholarships and other aid. However, the Permanent settlement law was interpreted as discriminatory against the women of Jammu and Kashmir as it disqualified them from the state subject rights, if they married non-permanent residents. But, in a landmark judgment in October 2002, the Jammu and Kashmir High Court held that women married to non- permanent residents will not lose their rights. The children of such women don't have succession rights.

#### **1.4.4.2 Text of the Article 35A**

'35A. Saving of laws with respect to permanent residents and their rightsNotwithstanding anything contained in this Constitution, no existing law in force in the State of Jammu and Kashmir, and 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'.

### **EFFECTS OF ARTICLE 35A**

A most prominent feature of the Constitution of Jammu & Kashmir, as distinguished from the rest of India, is the provision for the special treatment of 'permanent residents' of Jammu & Kashmir. The permanent residents are such persons as are declared so by any existing law of the State or by any future law enacted by the Legislature of the State. As stated in the Article, any such law may either confer special rights or privileges or impose restrictions upon the permanent residents with respect to employments under the State Government, acquisition of immovable property in the State, settlement in the State and the right to scholarships and other forms of aid as the State Government may provide. Such legislation shall be valid notwithstanding that it is inconsistent with the Fundamental Rights conferred by the Constitution of India upon the other citizens of India [e.g. by Articles. 15(1), 16(1), 19(1) (e)-(f) of Part III of the Constitution dealing with the fundamental rights].

#### **1.4.4.3 Analysis of Article 35A**

Article 35A provides that state government can make laws to declare conditions for bestowing permanent resident-ship of the citizens of the state. Government can discriminate among permanent resident of J&K and residents of other states, with respect to service in state, property and settlement. Generally other states do this kind of discrimination only for some specific areas; in order to protect the interest of tribal people of hilly or forest areas. But here government of J&K is doing this discrimination to create separate interest for the people of J&K. This is actually an effort to stop intermingling of state residents with other people of the country. Unity and integrity is a two way process, where domiciles of state 'A' go to other states and domiciles of other states come to state 'A'. In Jammu and Kashmir due to article 35A, coming and settling down of the domiciles of other states have become totally impossible. This provision and laws made under this provision are totally against the ideals enshrined in the preamble of the constitution of India. Here, the great question is whether exceptions and modifications mentioned in article 370 can be of such nature which may go against the very constitution of India and ideals enshrined in its preamble?

Section 10, which provides fundamental rights in the state provides as thus; “ . Rights of the permanent residents:-The permanent, residents of the State shall have all the rights guaranteed to them under the Constitution of India.” This provision clearly shows that only permanent residents of

the state will have all fundamental rights in the state; citizens of other parts of India have no ensured fundamental rights in the state. Further, this section says that all the rights guaranteed in the constitution of India will be given, means no additional fundamental right.

#### **1.4.5 DOMICILITY**

The Ministry of Home Affairs (MHA) has issued the Jammu and Kashmir Reorganisation (Adaptation of State Laws) Order, 2020. On 6 August 2019, the Centre revoked J&K's special status under Article 370 and Article 35A of the Constitution and bifurcated it into the UTs of J&K and Ladakh. The category of Permanent Residents, as mentioned in the previous section, allowed only the residents of the State of J&K for employment in the State Government's jobs. In May 2020, the General Administration Department of the State notified the rules for the Grant of Domicile Certificate in J&K. The new Domicile rules have altered the older category of Permanent Residents to some extent, but not completely discarded its regulative function in recruitment. It amended 109 laws and repealed 29 laws of the erstwhile State and inserted the 'Domicile' clause in the Jammu and Kashmir Civil Services (Decentralisation and Recruitment) Act, 2010. The clause for 'permanent resident of the State' under the 2010 Act, has been substituted by 'Domicile' of the UT. The Act pertained to employment in the civil services comprising “District, Divisional and State” cadre posts. Only permanent residents of J&K were eligible to apply for the gazetted and non gazetted posts but now non-domiciles can also apply for these.

The domiciles will be eligible for the purposes of appointment to any post carrying a pay scale of not more than Level 4. The Level 4 post comprises positions such as gardeners, barbers, office peons and waterman and the highest rank in the category is that of a junior assistant. The reservation for domiciles would not apply to Group A and Group B posts, and like other UTs, recruitment would be done by the Union Public Service Commission (UPSC).

Section 3 of the Grant of Domicile Certificate lays down the eligibility criteria for the grant of the Domicile Certificate. Under Section 3(a), any person who has resided in the territory of J&K for 15 years or has studied for a period of 7 years in J&K and has appeared in Class 10<sup>th</sup> & 12<sup>th</sup> examinations in an educational institution located in J&K is eligible for the grant of Domicile Certificate. Children of Central government Officials, All India Services, PSUs, autonomous body of Centre, Public Sector Banks, officials of statutory bodies, Central Universities, recognised research institutes of Centre who have served in J&K for a total period of 10 years. Children of such residents of J&K who reside outside J&K in connection with their employment or business or other professional or vocational reasons but their parents fulfil any of the conditions provided. This section has potentially widened the scope of those who can apply for recruitment in State government jobs.

Under Section 3(d), the child whose parents meet the criteria under Sections 3(a) & 3(b) too is eligible for the grant of Domicile Certificate.

And, under Section 3(e) the child whose parents reside outside the State due to professional reasons but fulfill any on the conditions laid down in sections 3(a) and 3(b).

Immediate potential beneficiaries of this change include the Valmiki community who were brought in to State in mid-1950s when the *Safaikaramchar* is of the State had gone on a strike, and whose children had been educated in the State but were not eligible for employment and scholarships of the State Government.

Under Section 3(b) any person who is registered as a migrant by the Relief and Rehabilitation Commissioner (Migrants) in the territory of J&K is eligible for the grant of Domicile Certificate. This section has the effect of making the community known as West Pakistan Refugees eligible for the Domicile Certificate who had been residing in the state of J&K since 1947. This only makes *de jure* what was *de facto*.

#### **1.4.6 LET US SUM UP**

Fundamental rights in the state of Jammu and Kashmir are different from constitution of India. There are many exceptions and modifications in part III introduced by the constitutional order of 1954. Some of these exceptions and modifications have either directly reduced the fundamental rights or have postponed the time of implementation of fundamental rights in the state of Jammu and Kashmir. In some cases even judicial review has been kept out directly or indirectly. On the whole nature of these changes is regressive. Article 370 is impartial in its core nature; it talks about 'exceptions and modification' but does not explain that what would be the nature of the changes. The impugned article imposes no restrictions or limitations on the nature and extent of these changes. It is totally in the hands of the state legislature and president of India that they can make any progressive or regressive amendments in the constitution of India with regard to J&K. But unfortunately, whatever changes have been introduced in Part III when it applies to the state, through constitutional order of 1954, are very regressive in nature.

#### **1.4.7 EXERCISES**

- Q1. Describe the emergence of the term “State Subject” ?
- Q2. Write a note on the Permanent Residents provisions in the J&K Constitution ? Q3. Give a summary of the origins of Article 35A ?
- Q4. What are the criteria for granting of Domicile Certificate in J&K ?

## 2.1 CONSTITUENT ASSEMBLY : COMPOSITION AND DEBATE

-Tirtharaj Bhoi

### STRUCTURE

#### 2.1.0 Objectives

#### 2.1.1 Introduction

#### 2.1.2 Formation of Constituent Assembly

#### 2.1.3 The Constitution Order 1950

#### 2.1.4 Convening the Constituent Assembly

##### 2.1.4.1 Proceedings of Constituent Assembly

#### 2.1.5 Delhi Agreement of July 1952

#### 2.1.6 Constituent Assembly: Post-Agreement Developments

#### 2.1.7 Latest Development: Application of Indian Constitution

#### 2.1.8 Let Us Sum UP

#### 2.1.9 Exercises

#### 2.1.0 OBJECTIVES

In this lesson you will understand the special status accorded to the State of Jammu and Kashmir, formation of Constituent Assembly and framing of the separate Constitution for the State. After going through this lesson, you will be able to know:

- the bases for the special status given to the State of Jammu and Kashmir;
- the importance of Article 370 in Constitution of India;
- formation of Constituent Assembly and the adoption of new Constitution; and
- the importance of Delhi Agreement of 1952.

#### 2.1.1 INTRODUCTION

Constitution of Jammu & Kashmir is the legal document which establishes the framework of government at state level in Indian state of Jammu & Kashmir. The present constitution was adopted on 17 November 1956, and came into effect on January 26, 1957. Constitution of India grants special status to Jammu and Kashmir among Indian states, and it is the only state in India to have a separate constitution. Article 370 of the Constitution of India states that Parliament of India and the Union Government jurisdiction extends over limited matters with respect to State of Jammu & Kashmir, and in all other matters not specifically vested in Federal governments, actions have to be supported by state legislature. Also, unlike other states, residual powers are vested in state government. Because of

these constitutional provisions, the State of Jammu & Kashmir enjoys autonomy not enjoyed by other states. Among notable and visible differences with other states, till 1965, the head of state in Jammu & Kashmir was called as Sadr-e-Riyasat, whereas in other state, the title was Governor, and head of government was named as Prime Minister in place of Chief Minister in other states.

### **2.1.2 FORMATION OF CONSTITUENT ASSEMBLY**

On the commencement of the Indian constitution, the Constitution (Application to Jammu and Kashmir) Order, 1950 was promulgated by the President of India. This order defined the jurisdiction of Parliament and the provisions of the constitution of India which were made applicable to the state in furtherance of the subjects specified in the Instrument of Accession. The Centre-State relation were governed by this Order and for its internal governance, the State was governed by the Jammu and Kashmir Constitution Act of 1939, which remained operative till 26th January 1957 when the State Constitution was brought into force. During the interim period the State framed its own constitution by convening a Constituent Assembly of its own. The Constituent Assembly took certain important decisions and recommended that no compensation should be paid for the expropriation of big landed estates; the hereditary ruler ship should be abolished and that the future headship of the state should be made elective and that the state should have its own flag.

These decisions of the State Constituent Assembly had to be recognized by the Government of India and consequently required amendments in the Constitution of India, i.e., article 370 and the constitution (Application to Jammu and Kashmir) Order 1950. These developments led to the Delhi Agreement of July, 1952. The understanding and the conclusion contained in the Delhi Agreement were given a formal shape of a Constitution (Application to Jammu and Kashmir) Order, 1950 and it now regulates the constitutional relationship between the State of Jammu and Kashmir and Union of India.

### **2.1.3 THE CONSTITUTION (APPLICATION TO JAMMU AND KASHMIR) ORDER, 1950**

Under article 370(1)(b)(i), the constitution (Application to Jammu and Kashmir) Order, 1950 was promulgated by the President of India in consultation with the Government of the State of Jammu and Kashmir on 26th January, 1950. This order defined the jurisdiction of the Parliament and the provisions of the Constitution of India which were made applicable to the state in furtherance of the subjects already specified in the Instrument of Accession. Two Schedules were added to the order. In the First Schedule the matters corresponding to the Instrument of Accession of the state of Jammu and Kashmir to the Dominion of India with respect to which the Union of Parliament was competent to make laws were specified. The First Schedule enumerated the approximate entries from the Union List of Seventh Schedule which were made applicable to the State. These entries related to defences, foreign affairs, communication, trade and commerce with foreign countries, matters relating to Parliament, Union Executive and Supreme Court, audit of the accounts of the Union and ancillary matters. Some of these entries applied in the modified form, such as those relating to railways, trade

and commerce, and audit.

Besides articles 370 which apply to the State propriety vigour, the other provisions of the Constitution of India made applicable in relation to the state were those specified in the second schedule to this order. The provisions of the second schedule were applied subjects to the exception and modifications specified in the said schedule. Parts of the Constitution that were made applicable or not-applicable to the State are as follows:

- (i) The fundamental rights and directive principles did not apply to Jammu and Kashmir;
- (ii) The jurisdiction of Supreme Court was restricted to original and appellate jurisdiction under articles 131 and 132;
- (iii) The Comptroller and Auditor-General had no jurisdiction in relation to Jammu and Kashmir;
- (iv) Representatives of the state in the Council of States and House of the People were to be chosen by the president in consultation with the state government;
- (v) The legislative relations between Jammu and Kashmir and India were restricted to matters indicated in the First Schedule of this Order Residuary power legislation vested in the state as the articles 247 to 252 did not apply to the state;
- (vi) The financial provisions of the Constitution did not apply to the state;
- (vii) Provisions with regard to services did not apply to the state ;
- (viii) Provisions relating to elections were to apply only in relation to the elections to the parliament and to the offices of the president and Vice-President of India;
- (ix) Emergency provisions did not apply to the state;
- (x) Amendments made in the Constitution of India would apply to Jammu and Kashmir subject to an appropriate order issued by the President under article 370(1).

The constitution order of 1950, thus envisaged a unique pattern of constitutional relationship between the state of Jammu and Kashmir and Indian Union. It contained a purely federal pattern as the state had acceded only in specified subjects. The State List and the Concurrent List in the Seventh Schedule did not apply to the state. The residuary powers of legislation remained with state. The state had also the right to frame its constitution and provide for its institutions. In other words, the provisions governing the Executive, Legislation, and Judiciary of the state of Jammu and Kashmir were to be found in the constitution drawn by the constituent Assembly of the state and the corresponding provisions of the constituent Assembly for the state was to be set up as envisaged in the provisions of articles 370.

#### **2.1.4 CONVENING OF THE CONSTITUENT ASSEMBLY FOR THE STATE**

As seen above the jurisdiction of the Union Parliament to legislate with respect to the state was confined to the matters surrendered to the centre in terms of Instruments of Accession. The remaining matters were left for the state to decide in its own constitution. Article 370, had therefore, rightly

envisaged Constituent Assembly for the state. The demand for the National Assembly for the state of Jammu and Kashmir was made during the freedom movement in the state and the “New Kashmir” programme envisaged the same. The perception for the National Assembly was so well recognized that the Maharaja of Jammu and Kashmir in the Declaration of 5th March, 1948 proclaimed as under:-

“I have already appointed the popular leader of my people Sheikh Mohammed Abdullah as the Head of the Emergency Administration. It is now my desire to replace the emergency administration by a popular interim government and to provide for its powers, duties and functions, pending the formation of a fully democratic constitution.

My council of Ministers shall take appropriate steps as soon as restoration of normal conditions have been completed to convene a national Assembly based upon adult suffrage, having due regard to the principle that number of representatives from each voting areas should, as far as practicable, be proportionate to population of the area. The Constitution to be framed by the National Assembly shall provide adequate safeguards for the minorities and contain appropriate provisions guaranteeing freedom of conscience, freedom of speech and freedom of assembly.

Sheikh Mohammed Abdullah assisted by a Cabinet was entrusted the task of running the administration of the popular interim government. The Maharaja's authority was limited to that of a constitutional ruler, making it imperative upon him to consult the government on all issues relating to the governance of the state. The Maharaja could not reconcile himself to the democratic system of the government and there was disagreement between him and the government on matters of policy. He dissociated himself from the administration and before leaving the state he issued a proclamation on 20th June 1949 appointed his son Karan Singh as Regent in whom vested all the powers and functions legislative, executive, or judicial which were exercisable by the Maharaja in relation to the state and its government including the power and prerogative of making laws issuing proclamations orders and Ordinances, etc. Karan Singh thus became the head of the state.

Karan Singh as a constitutional Head of the state issued a proclamation on 1st May, 1951 for the convening of the Constituent Assembly for the state of Jammu and Kashmir to decide the future constitution of the state. The Proclamation directed that the Constituent Assembly consisting of representatives of people elected on the basis of adult franchise shall be constituted to frame the constitution for the state. The voting at the elections was direct and by secret ballot. Only a state Subject who was not less than 21 years of age on the first day of March, 1951 and who had been resident in the constituency for such period as was prescribed by the rules could be registered as a voter in the electoral rolls for that constituency.

The elections to the Constituent Assembly were held in terms of the proclamation in September, 1951 and it composed of 75 members. It held its first meeting on 31st October, 1951 at Srinagar. The Constituent Assembly was invested with the authority of a constituent body. It was a sovereign authority in the state of Jammu and Kashmir. The Constituent Assembly of Jammu and Kashmir was given authority not only to frame the Constitution for Jammu and Kashmir, but to give

concurrence in matters of application of Indian constitution and extension of the jurisdiction of the Indian Parliament to Jammu and Kashmir. The further progress in the development of constitutional relations between Jammu and Kashmir and India was subject to the recommendations of the Constituent Assembly.

#### **2.1.4.1 Proceedings of the Constituent Assembly**

As seen above, the Constituent Assembly for the state as contemplated under article 370 was elected on the basis of adult suffrage in September 1951. The Constituent Assembly held its first meeting on 31st October, 1951 at Srinagar. Sheikh Mohammad Abdullah, the then Prime Minister of the State in his opening address to the State Constituent Assembly on 5th November, 1951 set the following four tasks before it for deliberation :

- (a) To frame a constitution for the future governance of the state of Jammu and Kashmir;
- (b) To determine the future of Royal Dynasty of Jammu and Kashmir;
- (c) To determine whether any compensation should be paid for the expropriation of the big landed estates in pursuance of the Big Landed Estates Abolition Act, 1950: and
- (d) To declare its reasoned conclusion regarding accession.

Between 31st October, 1951 and 9th August 1953 (when Sheikh Mohammed Abdullah was removed from the Prime Minister ship of the state) the constituent assembly held only six sessions and could not contribute much towards the framing of the state's constitution. However during this period constituent assembly took the decisions on the following :-

- (i) That no compensation should be paid for the expropriation of big landed estates. This was done by adopting the report of the Land Compensation Committee (29-31st March, 1952).
- (ii) That hereditary ruler ship should be abolished and that the future headship of the state should be made elective,
- (iii) That the state should have its own flag (7th June, 1952).

These decisions of the state Constituent Assembly had to be recognized by the Government of India and consequently required necessary amendment in the Constitution of India i.e. article 370 and the Constitution (Application to Jammu and Kashmir) Order 1950. The leaders of Jammu and Kashmir including Sheikh Mohammed Abdulla visited Delhi in July, 1952. After a week long negotiations with Indian leaders concluded an agreement known as Delhi Agreement of July, 1952.

#### **2.1.5 DELHI AGREEMENT OF JULY 1952**

The terms of the agreement were explained to the Constituent Assembly of Jammu and Kashmir by Sheikh Abdulla, the Prime Minister of the state on August 11, 1952. The Delhi Agreement covered broadly ten points which are as under :

- 1) **Residuary powers:** It was agreed that while under the present Indian Constitution the residuary powers vested with the Centre in respected of all states, in case of Jammu and

Kashmir, they vested in the state itself and should continue as such.

- 2) **Citizenship:** It was agreed that in accordance with article 5 of the Indian Constitution persons who have domicile in the Jammu and Kashmir state shall be the citizens of India. It was further agreed that the state legislature shall have power to define and regulate the rights and privileges of the permanent residents of the state, more especially in regard to the acquisition of the immoveable property, appointments to services and like matters. Till then the existing state law would apply. It was also agreed that special provisions should be made in the laws governing citizenship to provide for the return of those permanent residents of Jammu and Kashmir state who went to Pakistan in connection with disturbances of 1947 or in fear of them as well as of those who have left for Pakistan earlier but could not return. They should be entitled to the rights, privileges and obligations of citizenship.
- 3) **Fundamental Rights:** It was agreed that the Fundamental Right which are contained in the Constitution of India could not be conferred on the residents of the state of Jammu and Kashmir in their entirety because of the different political situation in the state and because of the socio-economic policies of the state Government under the new Kashmir programme. It was agreed that there was a need for providing suitable modifications, amendments and exceptions, as the case may be in the chapter of fundamental rights in order to harmonize those provisions with the pattern of principles of new Kashmir program. However, the main point that remained to be determined was whether the chapter of fundamental rights should form the part of the constitution of J&K or that of Union constitution. Since fundamental rights were not applicable, an Advisory Committee on Fundamental Rights and Citizenship was constituted on 7 November 1951 to make recommendations as regards the qualifications necessary for the state citizenship and fundamental rights of the state. In making recommendations, the Committee shall keep in view the definition of the 'State subject' proclaimed on 20th April, 1927. The same date has been fixed to determine who is a citizen of the State of Jammu and Kashmir.
- 4) **Jurisdiction of Supreme Court:** The Constituent Assembly also decided the jurisdiction of the Supreme Court of India. It has given original jurisdiction in respect of disputes mentioned in Article 131 of the Constitution of India. The appellate jurisdiction of the Supreme Court in civil and criminal matters was not agreed to. It was further agreed that the Supreme Court should have jurisdiction in regard to fundamental rights which are agreed to by the state.
- 5) **National Flag:** For historical and other reasons connected with the freedom struggle in the, the need for the continuance of the state Flag was recognized. It was agreed that the Union Flag to which all owed allegiance as part of the Union will occupy the supremely distinctive place in the State.
- 6) **President of India:** It was agreed that powers to grant reprieve and commute death sentence, etc., should also belong to the President of Union.

- 7) **Headship of the State:** The following arrangement was mutually agreed upon in this regard:-
- i) the head of the state shall be the person recognized by the President of the Union on the recommendation of the Legislature of the State;
- ii) he shall hold office during the pleasure of president; iii) he may, writing under his hand-addressed to the President, resign his office; iv) subject to the foregoing provisions, the Head of the State shall hold office for the term of five years from the date he enters upon his office.
- 8) **Financial Integration:** It was recognized that it would be necessary to evolve some sort of financial arrangement between the state and the Union. In view of the far reaching consequences involved therein, it was agreed that a detailed and objective examination of this subject would be necessary.
- 9) **Emergency Powers:** It was decided that article 352 be accepted with the addition of following words at the end of first paragraph: - “But in regard to internal disturbance at the request or with the concurrence of the Government of the State”. The Government of India did not press for application of article 356 or even article 360. The State's representatives wanted sometimes to consider the implications and consequences as laid down in articles 353, 358, and 359 which was on the whole accepted. In regard to article 354, they wanted to examine it further before expressing their opinion.
- 10) **Conduct of Election to the Houses of Parliament:** Article 324 of the Indian Constitution was already applicable so far as it related to the election to the Houses of Parliament and to the offices of the President and Vice – President of India.

Commending these decisions to the Constituent Assembly, Sheikh Mohammed Abdullah made the following observation:

“A satisfactory position has emerged and we are now able to assess the basic issues of our constitutional relationship with India in clearer terms. These have been a good deal of accommodation of our respective points of view. Both, the representatives of the Government of India and the Kashmir Delegation have been impelled by the desire to strength the future existing relationship to remove all obscurity and vagueness. We are convinced, as ever before, that we have the full support of the Government and the people of the India in the fulfilment of our democratic ideals and the realization of our objectives.”

Sheikh Abdullah further stated:

“The goodwill and amity, I am sure, will result in the consolidated of freedom and democracy in our country. I may, however, emphasized that the freedom and democracy in our relationship with India is the identity of the democratic and secular aspiration, which have guided the people of India as well as those of Jammu and Kashmir in their struggle for emancipation and before which all constitutional safeguards will take a secondary

position....It is of course, for the Constituent Assembly which is seized of these matters to determine the extent and scope of the State's accession to India. The Assembly may agree to continue this relationship on the present basis or extend its scope as it might like and consider feasible and proper in the course of framing the constitution for the State.”

The Delhi Agreement was considered by the Constituent Assembly of Jammu and Kashmir between 11th August and 19th August, 1952, and a motion approving the agreement was unanimously adopted. The Indian Prime Minister also gave the details of the terms of the agreement in a statement made in the Lok Sabha on 24th July, 1952. This statement was discussed in the Lok Sabha on 7th August, 1952 and although some members criticized such aspects of the agreement as special rights for permanent residents of Jammu and Kashmir and elective Headship of the State, the House adopted a motion approving all the steps taken so far in the matter. The implementation of these mutual pledges was the bottom line and the high ideal before the State Autonomy Committee.

#### **2.1.6 CONSTITUENT ASSEMBLY: POST-AGREEMENT DEVELOPMENTS**

However, the political developments in Jammu and Kashmir have taken a surprising new turn from here onwards. Sheikh Abdullah, the Head of the State, has become doubtful about Indian Government's commitment for special status and autonomy as more and more nationalist leaders from India and Jammu started criticizing special status. A protest movement was launched by Shyam Prasad Mukherjee. These developments made Sheikh Abdullah more assertive and started taking decisions without consulting either Central government or his own colleagues in the state, which has led to growth of dissent within the ranks of the National Conference.

After the dismissal of the Sheikh Mohammed Abdullah the Prime Minister of the state on 8th August 1953 and his imprisonment simultaneously, a liberal group headed by Bahshi Ghulam Mohammad as its leader assumed the leadership of the Government as also of the a Constituent Assembly of the State. A new phase of constitutional relationship between the State and India thus commenced. The Constituent Assembly started its work afresh. The process of constitution making was expedited. Two committees were set up, namely, Fundamental Rights Committee and Drafting Committee to finalize the draft Constitution. The Constituent Assembly met on February 6, 1954, and adopted the reports of Basic Principles Committee and Advisory Committee on Fundamental Rights thereby fulfilling one of the major tasks, i.e. accession of the State to India with which it has been charged. The report of Basic Principles Committee laid emphasize on the following :

“The State's accession to the Union entails certain responsibilities on the centre for protecting the interests of the State and also for its social and economic development. In order to enable the Centre to discharge its responsibilities which devolve upon it under the Constitution, those provisions of the Constitution of India which may be necessary for this purpose should be made applicable to the State in an appropriate manner. While preserving the internal autonomy of the State, all the obligations which flow from the fact of accession and also its elaborations as contained in the Delhi Agreement should find an appropriate place in the

Constitution, The Committee is of the opinion that it is high time that finality in this respect should be reached and the relationship of the State with the Union should be expressed in clear and precise terms”.

The Basic Principles Committee also recommended that a directive be issued to the Drafting Committee of the constitution to further define the sphere of Union jurisdiction in the State suggesting additions, modifications and amendments in the Constitution (Application to Jammu and Kashmir) Order, 1950 to suit the requirements of the State. The Advisory Committee on Fundamental Rights and Citizenship recommended to the Drafting Committee that the Fundamental Rights of the Indian Constitution should be made applicable to Jammu and Kashmir with suitable modifications. The Constituent Assembly of Jammu and Kashmir unanimously adopted the Reports of the Basic Principles Committee and Advisory Committee on Fundamental Rights and Citizenship on 6th February, 1954. These Reports were presented jointly to the Constituent Assembly.

Syed Mir Qasim presented to the Constituent Assembly the report of the Drafting Committee on 11th February, 1954. The Annexure to the Report indicated “in detail provisions of the Constitution of India which generally correspond to Defence, Foreign Affairs and Communications and such other matters as are considered essential concomitants of the fact of accession”. The Report was unanimously adopted by the Constituents Assembly on 15th February, 1954 and proposals contained therein were submitted to Government of India through the state Government for further appropriate action. The Drafting Committee in its Report defined nature and extent of the jurisdiction of the Indian Union in the State of the Jammu and Kashmir.

The Government of India took cognizance of the proposals sent to it by the State Government which had been duly adopted by the Constituent Assembly of the State. These proposals were made a part of the Constitution by an order issued by the President in exercise of his powers under article 370(1) and is known as the Constitution (Application to Jammu and Kashmir ), Order, 1954, dated 14th May 1954. This Order superseded the earlier Order of 1950 and has been treated as the parent Order to which subsequently amendments were made by the orders of the President issued under article 370 of the Constitution of India. This Order implements the Delhi Agreement as ratified by the Constituent Assembly. This Order has been modified and amended from time-to-time. It regulates the constitutional position of the state of Jammu and Kashmir vis-à-vis Indian Union. This Order contains the provisions of the Indian Constitution pertaining to matters specified in the Instrument of Accession and also many other provisions relating to several other matters not specified in the Instrument which apply to the state. This Order settled the entire constitutional position of the state within the state 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.

### **2.1.7 LATEST DEVELOPMENT: APPLICATION OF INDIAN CONSTITUTION**

On August 05, 2019 the Government of India had scrapped the special status granted to the state of Jammu and Kashmir (J&K) by modifying Article 370 of the Constitution. Both houses of the

Indian Parliament, the Rajya Sabha and Lok Sabha passed the Jammu and Kashmir Reorganisation Bill, which proposes the bifurcation of the state into two union territories-Ladakh and Jammu-Kashmir.

With the approval of the Bills by Indian Parliament, in August 2019 Article 370 and the Jammu and Kashmir Constitution that largely govern the Centre-State relations as well as State administration modified drastically and the new constitutional mechanisms have been replaced them.

With the Presidential Order issued in August 2019, Jammu and Kashmir witnessed historic political and geographic changes. It is to be divided into two union territories – Ladakh and Jammu and Kashmir. Ladakh will not have a legislature, while Jammu and Kashmir will have a legislative assembly with 107 members. However, this assembly will not have the authority to pass laws relating to 'public order and the police'. The single largest party in the assembly will form the government, headed by a chief minister, and the assembly will have a five-year term, not six, as was the earlier case. A Lieutenant Governor will govern both Union territories. Of the six Lok Sabha seats currently with the state of Jammu and Kashmir, five will remain with the union territory of Jammu and Kashmir, while one will go to Ladakh.

The following are the main changes to the political status of Jammu and Kashmir with the modification brought to the Constitution:

- Jammu and Kashmir will no longer have separate constitution, flag or anthem. The citizens of Jammu and Kashmir will not have dual citizenship-they will be citizens of India alone.
- As the new union territory of Jammu and Kashmir will be subject to the Indian Constitution, its citizens will now have the Fundamental Rights enshrined in that document; until now, this was not the case. Article 360, which can be used to declare a Financial Emergency, will now also be applicable.
- All laws passed by Parliament will be applicable in Jammu and Kashmir, including the Right to Information Act and the Right to Education Act.
- The Indian Penal Code will replace the Ranbir Penal Code of Jammu and Kashmir.
- As the government has modified the Article 370, diluting special status to Jammu and Kashmir, Article 35 (A), which originates from the provisions of Article 370 stands null and void. Any Indian citizen from any part of the country can now buy property in Jammu and Kashmir, take a state government job and enjoy scholarships and other government benefits. Children of a woman marrying outside Jammu and Kashmir will not lose property rights.

### **2.1.7 LET US SUM UP**

Jammu and Kashmir's original accession, like all other princely states, was on three matters:

defence, foreign affairs and communications. All the princely states were invited to send representatives to India's Constituent Assembly, which was formulating a constitution for the whole of India. They were also encouraged to set up constituent assemblies for their own states. Most states were unable to set up assemblies in time, but a few states did, in particular Saurashtra Union, Travancore- Cochin and Mysore. In May 1949, the rulers and chief ministers of all the states agreed to accept the Constitution of India as their own constitution. The states that did elect constituent assemblies suggested a few amendments which were accepted. The position of all the states (or unions of states) thus became equivalent to that of regular Indian provinces. In particular, this meant that the subjects available for legislation by the Central and State governments was uniform across India.

In the case of Kashmir, the representatives to the Constituent Assembly requested that only those provisions of the Indian Constitution that corresponded to the original Instrument of Accession should be applied to the State. Accordingly, the Article 370 was incorporated into the Indian Constitution, which stipulated that the other articles of the Constitution that gave powers to the Central Government would be applied to Jammu and Kashmir only with the concurrence of the State's Constituent Assembly. This was a “temporary provision” in that its applicability was intended to last till the formulation and adoption of the State's constitution. The State's Constituent Assembly dissolved itself on 25 January 1957 without recommending either abrogation or amendment of the Article 370. However, the Presidential Order issued in August 2019 modified Article 370 and invalidated the earlier constitution. The state of Jammu and Kashmir divided into two Union Territories, that of Jammu and Kashmir Union Territory with a provision to legislative body, and Ladakh Union Territory without a Legislative Body. With these modifications, a new chapter began to the erstwhile state of Jammu and Kashmir.

### **2.1.8 EXERCISES**

1. What is the purpose of incorporating Article 370 to the Indian Constitution ?
2. Write a note on Constituent Assembly of Jammu and Kashmir ?
3. Detail those 10 points covered in the Delhi Agreement of 1952 ?
4. Briefly outline the developments in post-1952 Agreement ?

## **2.1 ACCORDS AND AGREEMENTS : 1952, 1974 AND 1985**

- Tirtharaj Bhoi & Mamta Sharma

### **STRUCTURE**

#### **2.2.0 Objectives**

#### **2.2.1 Introduction**

#### **2.2.2 Contextual Background**

#### **2.2.3 The Delhi Agreement, 1952**

2.2.3.1 Main Features of the Delhi Agreement

2.2.3.2 Significance of Delhi Agreement

#### **2.2.4 Developments of Post-1952 Agreement**

#### **2.2.5 Indira-Sheikh Accord 1974**

2.1.5.1 Main Features of the Accord

#### **2.2.6 Let Us Sum UP**

#### **2.2.7 Exercises**

### **2.2.0 OBJECTIVES**

This lesson explains two important agreement signed by Union of India and State of Jammu and Kashmir to determine the principle that govern the relations between them. After going through this lesson, you will be able to understand:

- the political context that led to the conclusion of 1952 Delhi Agreement;
- the main provisions in 1952 Agreements;
- the developments in post-1952 agreement; and
- the main features of 1974 Indira-Sheikh Accord.

### **2.2.1 INTRODUCTION**

The accession of Jammu and Kashmir to Union of India has happened gradually over the period ever since the Maharaja of erstwhile princely state Hari Singh signed the Instrument of Accession. Though Article 370 was incorporated in the Constitution of India to indicate special status accorded to the State of Jammu and Kashmir, however, the jurisdiction of Union and State were not clearly spelled out other than assigning three subjects – Defence, External Affairs and Communications – to the Union of India. The Delhi Agreement of 1952 and Indira-Sheikh Accord of 1974 are, in reality, filled this gap of specifying the jurisdiction of Union and the State. In the following sections, you will study the detailed provisions incorporated in both agreements and how

they altered the relations between Union of India and State of Jammu and Kashmir.

### 2.2.2 CONTEXTUAL BACKGROUND

According to the Instrument of Accession of 26th October, 1947, the State of Jammu and Kashmir had acceded to the Indian Union on three subjects – Foreign Affairs, Communications and Defence. Rest of the matters was left to the State's discretion. The result was that the applicability of fundamental rights, citizenship, Supreme Court, Election Commission, Comptroller and Auditor General, etc., were put within the State's residuary powers. The then State Government headed by Sheikh Abdullah had, thus, a free hand to conduct the internal administration of the State.

However, credit must be given to the new regime for introducing land reforms in the state at a time when nobody in Pakistan and very few in India had thought of making experiment. The reforms brought about by the popular government of the state, such as grant of fixity of tenure to the tenants in respect of tenancy holdings; fixation of the maximum rental payable by the tenant to the landlords; the rationalization of land tenures; providing for summary reinstatement of a tenant, who had been wrongfully ejected; the abolition of indebtedness and usury; restitution of mortgaged properties; relief to the distressed debtors; abolition of *Jagirs, Mufais and Mukararies*. The Big Landed Estate Abolition Act; the denial of compensation for the expropriated landlords, abolition of hereditary monarchy and making of the office of the executive head of the state elective etc. were progressive in content and measures of great significance. As a consequence of these measures some criticism and controversy rose in some parts of Jammu as well as outside the state. The critics in India even suspected the very motives of these reforms. But in order to put this economic programme of 'Naya Kashmir' into operation the state leaders demanded some of the concessions and partial application of Chapter III of the Indian Constitution. The reforms, though theoretically sound, were introduced in a huff. The breathless hurry in which a time old system was abolished left everyone wondering. The old system of money lending was abolished, but no effort was made to provide alternative means of credits to co-operative movement monopolized by a few individuals.

The land reform programme was not implemented satisfactorily. All the facts of omission and commission inevitably created large scale discontent in various parts of the State. Kashmir Valley's wails, Ladakh's lament and Jammu's jingoism, provided an opportunity to the reactionary elements both outside and inside the State to exploit the situation with a view to precipitating a crisis. This became one of the main causes of the Praja Parishad movement in Jammu. The land reform programme mainly affected that section of the Jammu Province which consisted of landlords and whose only source of income was land. Meanwhile, the Praja Parishad, the only opposition party in Jammu charged the All Jammu And Kashmir National Conference and its government with adopting dubious methods in the elections of the Kashmir Assembly. Mirza Mohd Beg, the then Chairman of the Basic Principles Committee, declared that the State of J&K would be “an autonomous Republic with the Indian Union, with a separate Citizenship. Beg's statement was deeply resented not only in Jammu, but in Ladakh and created serious apprehension about the credibility of the leaders of Kashmir. The already pent-up feelings of the people of Jammu were kindled and the result was protest and agitations against the government. They developed the psychological feeling that the new regime was “Anti-Dogra.” These feelings were there right from the day when the royal dynasty was

terminated. They started criticizing the Governmental Policies and demanded more integration and abrogation of Article 370. The result was internal instability.

Another reason which threatened internal stability was the undue intervention of Indian leadership in Kashmir affairs, the wrong interpretation and exaggeration by the press, and the speeches delivered by the National Conference Leadership during that period. Mr. Beg's Announcement in the State Constituent Assembly that "so far as the constitution of the state is concerned we aim at making its frame work such that the state will be an autonomous unit within the Indian union" was highly criticised by the Indian press. Indian leaders and the press took autonomy for independence. Even.

N.G. Ayyanger, the then Minister of state of India who visited Jammu in April, 1952 to study the situation and to cool passions, advised that the framers of the state constitution to be practical and not led by shibboleths and theocratic idea and rather to display a measure of political wisdom. At his instance the Praja Parishad leaders were released. But Sheikh Abdullah felt hurt by central interference. In another speech on April 6, 1952 at Hazaratbal, Sheikh Abdullah pointed out that in no way Kashmiris were prepared to renounce their cherished ideology in furtherance of which they had offered blood and sweat during the last two decades. He added that Kashmiris had acceded to India in three subjects – Defence, External Affairs and Communications and they enjoyed complete freedom in their internal affairs.

As a recitation in some emotional outburst Sheikh Abdullah made certain outspoken statements, for example, his speech on 29th March, 1952, in the Constituent Assembly, wherein he declared: "... we are a hundred per cent sovereign body, Furthermore his speech at Ranbir Singh Pura on 11<sup>th</sup> April, 1952, referred the demands of full application of the Union Constitution to the state as "Unrealistic, childish and insane" arguments. He further said: "No one can deny that the communal spirit still exists in India. Many Kashmiris are apprehensive as to what will happen to them and their position if, for instance, something happens to Pandit Nehru. As realist, we Kashmiris have to provide for all eventualities. If a special status for Kashmir was not granted in the Indian Constitution, how can we convince the Muslims in Kashmir that India does not interfere in the internal affairs of Kashmir? We have acceded to India in regard to defence, foreign affairs and communications in order to ensure a sort of internal autonomy. If our right to shape our own destiny is challenged and if there is a resurgence of communalism in India, how are we to convince the Muslims of Kashmir that India does not intend to swallow up Kashmir Such developments might lead to a break in the accession of Kashmir to India."

Sheikh Abdullah repeatedly assured his people that he had never surrendered to Muslim communalism of Pakistan and would never surrender to Hindu communalism of India. All this caused a lot of suspense and a chain of angry reaction against him. On the other hand the Assembly of Kashmir Unanimously adopted a separate flag for the state on 7th June 1952 and the interim report of the Basic principle Committee for the abolition of hereditary monarchy and the elective head of the state on 12th June 1952. However, the movement for autonomy of the state in the Valley and for its full integration with India in Jammu were in reality seemed complementary. Sheikh Abdullah said, "If

Jammu and Ladakh so desire they can decide to integrate with India and leave the Valley free to have a limited accession.”

Actually, what Sheikh Abdullah wanted and wished for was neither the accession of the state to Pakistan nor its independence, but his slogan was “Maximum autonomy for the State within the Indian union,” which had been misinterpreted since his Ranbir Singh Pura speech. Politicians in India expressed dissatisfaction with these statements of Sheikh Abdullah, and the result was uproar in the state and in India. Pandit Nehru, who otherwise had been giving support to the policy of his old friend, declared that he did not like these, especially the tone of his speeches. Indian leaders got alarmed on seeing the deteriorating internal situation of the State which could have provided a golden opportunity to interested foreign powers. A sort of tug of war was going on between the integrationists and autonomists. So, left with no alternative, the Indian Government intervened and invited Sheikh Abdullah for talks in Delhi. But he refused to court for several months. He sent his emissaries to prepare the ground for an agreement which would stipulate a privileged, autonomous position for Kashmir in the Indian Union.

### **2.2.3 THE DELHI AGREEMENT, 1952**

However, compelled by circumstances, Sheikh Abdullah agreed to visit Delhi for talks; and it was in the month of July, 1952, that an agreement was signed. Delhi agreement was a further guarantee of the special status of Kashmir. In an statement made on July, 24th, 1952, in the Lok Sabha, the Indian Prime Minister gave details of the terms of the agreement concluded after a week of negotiations. The subjects covered in these negotiations were :

1. Residuary Powers;
2. National Flag;
3. Powers of the Indian President;
4. Conduct of Elections to the Houses of Parliament;
5. Headship of the State;
6. Citizenship;
7. Emergency Provisions;
8. Fundamental rights;
9. Jurisdiction of the Supreme Court of India and
10. Financial Integration.

On most of those subjects, barring the last three, agreements were reached. The Residuary Powers remained with the State, the State flag was to continue for historical and sentimental reasons connected with their struggle for freedom, but the supreme position of the Indian Flag was recognized. The power of pardon etc. of the President and applicability of Article 324 to the election to the parliament would continue. On the question of the headship of the State the decision of the Jammu and Kashmir Constituent Assembly was accepted and it was suggested that the Sadar-i-Riyasat should be elected by the Assembly for a five years, and be recognized by the President.

Regarding citizenship, it was recognized that although under Article 5 of the Indian constitution the residents of Jammu and Kashmir would be citizens of India but the State Legislature could define their permanent residents and confer on them special rights and privileges, especially in regard to the acquisition of property and holding of employment under the state.

On the question of emergency it was agreed that Article 352 should apply to Jammu and Kashmir but the proclamation of emergency issued by the President on grounds of internal disturbances or imminent danger thereof must not be made in relation to Jammu and Kashmir except on the request or with the concurrence of the State Government. The Fundamental Rights of the Indian Constitution could not be applied to Jammu and Kashmir in full because of a different political situation in the state and because of the socio-economic policies of the State Government under the New Kashmir Programme. It was decided that the whole matter should be studied further to find which fundamental rights should be applied to Jammu and Kashmir, and with what modifications. The jurisdiction of the Supreme Court was another question over which final agreement was not forthcoming. The Supreme Court's Jurisdiction was recognized with regard to such fundamental rights as would be agreed to by the state, and also regarding disputes mentioned in Article 131 of the Indian Constitution. It would be final court of appeal, but detailed examination of this would be necessary, and it was agreed to consider it further some other time. Finally, the necessity of some financial arrangement was seen, but a detailed and objective examination was considered necessary. Pandit Nehru while justifying the Delhi Agreement in Parliament, said: "...there was general agreement that there should be fundamental rights and these rights should apply to the state. But again there were great apprehensions in the minds of our friends from Kashmir. First of all, the question was how far these Fundamental Rights might come in the way of their land legislation or any other development of it. The second thing was that, all the business of invasion of Kashmir, war, cease fire, all kinds of continuing tension's difficulties due to infiltrating etc., espionage cases, there is sabotage and unrest. So we were told that some part of the Fundamental Rights might very well hamper the activities of the State Government from taking (necessary) precautions. We agreed that this was essential in the interest of Kashmir, situated as the State is now".

During the course of the Lok Sabha debate on Delhi Agreement on 7th August, 1952, Pt. Nehru further said: "The strongest bonds that bind us will not be armies or even of Constitution to which so much references have been made but bonds which are stronger than the Constitution and armies – bonds that bind through love, affection and understanding." Indian leaders justified the Agreement on account of the abnormal conditions in the State caused by invasion etc." Nehru, however, arranged a meeting of all the opposition elements of the parliament with Sheikh Abdullah, who congratulated him on the Agreement.

### **2.2.3.1 Main Features of the Delhi Agreement, 1952**

The main features of this agreement are outlines below.

- (I) In view of the uniform and consistent stand taken up by the Jammu and Kashmir Constituent Assembly that sovereignty in all matters other than those specified in the Instrument of Accession continues to reside in the State, the Government of India agreed that, while the

residuary powers of legislature vested in the Centre in respect of all States other than Jammu and Kashmir, in the case of the latter they vested in the State itself;

- (ii) It was agreed between the two Governments that in accordance with article 5 of the Indian Constitution, persons who have their domicile in Jammu and Kashmir shall be regarded as citizens of India, but the State legislature was given power to make laws for conferring special rights and privileges on the 'state subjects' in view of the 'State Subject Notifications of 1927 and 1932 the State Legislature was also empowered to make laws for the 'State Subjects' who had gone to Pakistan on account of the communal disturbances of 1947, in the event of their return to Kashmir;
- (iii) As the President of India commands the same respect in the State as he does in the other Units of India, articles 52 to 62 of the Constitution relating to him should be applicable to the State. It was further agreed that the power to grant reprieves, pardons and remission of sentences etc., would also vest in the President of India;
- (iv) The Union Government agreed that the State should have its own flag in addition to the Union flag, but it was agreed by the State Government that the State flag would not be a rival of the Union flag, it was also recognised that the Union flag should have the same status and position in Jammu and Kashmir as in the rest of India, but for historical reasons connected with the freedom struggle in the State, the need for continuance of the State flag was recognised;
- (v) There was complete agreement with regard to the position of the Sadar-i- Riyasat; though the Sadar-i-Riyasat was to be elected by the State Legislature, he had to be recognised by the President of India before his election.

### **2.2.3.2 Significance of 1952 Agreement**

Delhi agreement was crafted in 1952 by mutual agreement between Prime Minister of India and State of Jammu and Kashmir regarding the contours of State's association with India. Delhi agreement as per Sheikh Abdullah, included 'certain broad principles and tentative decisions'. Delhi agreement was not an agreement for the sake of agreement but a bunch of 'tentative decisions' for future exploration with regard to integration of State of Jammu and Kashmir with union of India.

Under this agreement, the J&K State was given a special status under the Indian Constitutional frame work (Article 2 of the Constitution itself). Consequently, the Constituent Assembly elected Karan Singh as the first Sadar -i- Riyasat on November 15, 1952, thus bringing to an end the 106 years old hereditary Dogra rule in the J&K State.

The Nehru-Abdullah Agreement in July 1952 (“the Delhi Agreement”) confirmed that “the residuary powers of legislation” (on matters not mentioned in the State List or the Concurrent List), which Article 248 and Entry 97 (Union List) confer on the Union, will not apply to Kashmir.

The most important provision of the agreement was the emergency powers of the President of India. As per Art.352 of the Indian Constitution, President has the power to declare emergency in case of invasion, external danger or internal disturbance. But as per the agreement in case of internal disturbance, emergency can only be declared at the request or the concurrence of the Govt. of the

state. Pt Nehru while making a statement on Delhi Agreement on July 1952 had described “the article an unusual provision and by no means final”.

#### **2.2.4 DEVELOPMENTS OF POST-1952 AGREEMENT**

A serious opposition to S. M. Abdullah had developed in Jammu under the Praja Parishad, which launched a political movement with Prem Nath Dogra as its leader. Syama Prasad Mukherjee was the President of Jan Sangh Party at the national level who commented that there was, or would soon be, “two Constitutions, two flags and two Prime Ministers in one country and cannot be tolerated”. The State Praja Parishad, Jan Sangh and R.S.S. joined their hands together and advocated the abolition of Article 370 of Indian Constitution.

In Nov. 1952, the Praja Parishad leader, Prem Nath Dogra and his close associate Shri Sham Lal were detained. So, the situation in Jammu grew tense within the spring of 1953 and Dr. Mukherjee supported agitation outside the State and in May 1953, he left for Jammu but was arrested by I.G.P. Kashmir at State border (Lakhanpur/Kathua) on May 11, 1953 and taken to Srinagar in custody. Unfortunately Mukherjee died in the Government. Hospital, Srinagar on June 23, 1953. The popular slogans of the Praja Parishad agitators were – “*ek desh mein do vidhan; ek desh mein do nishan; ek desh mein do pradhan nahi chalen gay*” (in one country , two Constitutions; in one country two flags , in one country two Prime Ministers will not be tolerated).

The unresolved issues indicated in the Delhi Agreement could not be taken care of due to dismissal of Sheikh Govt. on Aug.9, 1953 and installation of Bakshi Ghulam Mohd as the new Prime Minister of J&K State. With the passage of time, The Constitution (Application to Jammu and Kashmir) Order, 1954 was promulgated by the President of India in consultation with the Government of J&K, regulating the constitutional status of the State; and apart from it several Central laws got extended to the J&K State and even the nomenclature of Sadar-i-Riyasat and Prime Minister were changed to Governor and Chief Minister on March 30, 1965.

Despite of continuous efforts by various political parties, Art 370 of the Indian Constitution could neither be made permanent nor abolished, so it continues to be as such in the Indian Constitution with J&K having its own Constitution and State flag and resulting into non-application and non-extension of Central laws without approval of the State Legislature.

From 1953 to 1975, Chief Ministers of that State had been nominees of Delhi. Their appointment to that post was legitimised by the holding of farcical and totally rigged elections in which the Congress party led by Delhi's nominee was elected by huge majorities.

#### **2.2.5 INDIRA- SHEIKH ACCORD 1974**

Central Government was keen to arrive at a sound solution of Kashmir Tangle because Kashmir issue was still being treated as an international issue (as is indicated by Tashkent talks and Shimla Agreement). In spite of the arrest of Sheikh Abdullah in 1953 and coming up of a number of new leaders of the All Jammu And Kashmir National conference and Congress parliamentary party such as G. M. Bakshi, Kh. Shamsuddin, G.M. Sadiq and Qasim, the problem of communalism and secessionism continued not only to exist but had taken a serious dimension in the State. People of the

Valley seemed to have not been pacified with different regimes since August, 1953. Sheikh Abdullah was still regarded as undisputed leader of the Valley and his influences in the political circles still regarded as paramount. Some of the Kashmiri leaders even challenged the state accession with the Indian Union and pleaded for the holding of plebiscite to decide it finally. Moreover, Pakistani influence on the people of the Valley was also on increase.

In the light of the circumstances mentioned above Indian leadership particularly Mrs. Gandhi, the then Prime Minister, seemed to have been conceived that it was not possible to get the popular support from the Valley by ignoring Sheikh Abdullah as well as no final solution of Kashmir issue would be possible without taking Sheikh Abdullah into confidence. On the other hand, the failure of Pakistani army to capture Kashmir by force in the past, the then political turmoil in Pakistan, because of refusal of West Pakistani leaders to accept Mujub-ur-Rehman from East Pakistan whose party secured majority in the then Assembly Elections, as the Prime Minister of Pakistan, subsequent civil war in East Pakistan, Pakistan armies massacring, raping and commissioning of other atrocities on the co-Muslim brethren of East Pakistan, and secession of the Pakistan and emergence of Bangladesh as a new State, had deep impact on the thinking of Kashmiri leadership. Most of them were of the opinion that the people of the state might have been treated by the Pakistani leadership in the same way as they did in East Pakistan if the state acceded to Pakistan. Moreover they were also clear in their mind that the possibility of Kashmir to be independent was very bleak because of the fact that it was surrounded by a number of countries. They finally seemed to have been convinced that if there could be any solution of their problem, it would be within the framework of Indian Constitution.

This change in the life of the sub-continent, the changing attitude of the central leadership and the policy of liberalisation adopted by the then state government and the offer of Syed Mir Qasim to opposition leaders in Kashmir including Sheikh Abdullah to join the mainstream of State's political life invoked a favourable response from Sheikh Abdullah. He, therefore, thought that it was better for their benefits to reconcile their position and try to solve the problems peacefully and in a spirit of mutual understanding. He realised that the method they had adopted in their struggle for freedom had practically denied the people to have a government of their own choice. The leaders of the plebiscite front, therefore, tried to rethink on their future in Kashmir. They wanted to have a government of their own choice for the benefit of common people in Kashmir. So they started to rethink on their terms with India and wanted to reach an understanding with the Union Government. Sheikh Abdullah, therefore, in a public speech, affirmed his faith in accession, secularism and democratic socialism. He, for the first time declared that his quarrel with India was not on the question of accession but on the quantum of autonomy of the state in its relationship with India.

Such kind of attitude of the Plebiscite Front leaders encouraged Indian Government to seek a compromise with Sheikh Abdullah. The central government was very such keen to arrive at a sound solution about Kashmir problem. For the first time awareness and keen desire to have a dialogue between Sheikh Abdullah and New Delhi was voiced in Lok Sabha by Shamim Ahmed Shamim. Shamim was asserting the need for a dialogue with the ousted Kashmir leader. The Prime Minister Indira Gandhi thought, to de-internationalise the Kashmir issue, it was better to have an agreement with Sheikh Abdullah.

Consequently, Prime Minister of India, Gandhi in 1972 said that she wanted a new chapter to open with regard to Kashmir leadership. She had realised that the Kashmir problem could not be solved unless the leaders of the plebiscite Front were taken into confidence.

Accordingly, Sheikh Abdullah, the patron of the Plebiscite Front, reciprocated the call and made it clear that he would not say “no” to Mrs. Indira Gandhi's expressed desire to turn over a new leaf in relation between India and Kashmir. Sheikh Abdullah expressed his desire to make a limited beginning with the hope that the condition will take a turn for better and that the people of Kashmir will come closer to India. All these factors pressed together paved the way for table negotiations and the Centre and State leadership continued to find ways for a better solution of Kashmir within the constitutional framework of India. These deliberations were later pursued by Parthasarthy, the emissary of Prime Minister Indira Gandhi.

The discussions started between Beg and G. Parthasarthy on constitutional relationship between centre and state in which Swaran Singh, Sayed Mir Qasim and D. P. Dhar also made their contributions. Most of the people described the negotiations for the beginning of a new chapter in the affairs of the state. The Chief Minister, Syed Mir Qasim, admitted that Sheikh Abdullah could played a great role in strengthening the democratic and socialist forces in the country. Negotiations between Sheikh and Mrs. Gandhi or more accurately between their emissaries Mirza Afzal Beg and Parthasarthy dragged on for full four years before a mutually satisfactory agreement was reached. The talks centred round the statement of Sheikh Abdullah upholding the finality of Kashmir's accession to India and demanding maximum autonomy as envisaged in the instrument of accession. The Plebiscite Front leadership wanted the centre to retrace the steps it had taken since the Delhi Agreement, which was signed twenty three years ago. This meant that the jurisdiction of the Supreme Court, the Union Public Service Commission, the Election Commission which had been extended to the State had be rolled back.

#### **2.2.5.1 Main Features of the Accord**

The text of the Accord, signed by G. Parthasarathi and Mirza Mohammad Afzal Beg, as representatives of the then Prime Minister Mrs Indira Gandhi and Sheikh Mohammad Abdullah, at New Delhi on November 13, 1974, which paved the way for resumption of power by the latter on February 25, 1975, stated:

1. The State of Jammu and Kashmir, which is a constituent unit of the Union of India, shall in its relations with the Union, continue to be governed by Article 370 of the Constitution of India.
2. The residuary powers of legislation shall remain with the State; however, Parliament will continue to have power to make laws relating to the prevention of activities directed towards disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or bringing about secession of a part of the territory of India from the Union or causing insult to the Indian National Flag, the Indian National Anthem and the Constitution.
3. Where any provision of the Constitution of India had been applied to the State of Jammu and Kashmir with adaptations and modifications, such adaptations and modifications can be altered or repealed by an Order of the President under Article 370, each individual proposal in

its behalf being considered on its merits, but provisions of the Constitution of India already applied to the State of Jammu and Kashmir without adaptation or modification are unalterable.

4. With a view to assuring freedom to the State of Jammu and Kashmir to have its own legislation on matters like welfare measures, cultural matters, social security, personal law, and procedural laws, in a manner suited to the special conditions in the State, it is agreed that the State Government can review the laws made by Parliament or extended to the State after 1953 on any matter relatable to the Concurrent List and may decide which of them, in its opinion, needs amendment or repeal. Thereafter, appropriate steps may be taken under Article 254 of the Constitution of India. The grant of the President's assent to such legislation would be sympathetically considered. The same approach would be adopted in regard to the laws to be made by Parliament in future under the proviso to Clause 2 of that Article; the State Government shall be consulted regarding the application of any such law to the State and the views of the State Government shall receive the fullest consideration.
5. As an arrangement reciprocal to what has been provided under Article 368, suitable modifications of that Article as applied to the State should be made by a Presidential Order to the effect that no law made by the Legislature of the State of Jammu and Kashmir, seeking to make any change in or in the effect of any provision of the Constitution of the State of Jammu and Kashmir relating to any of the under-mentioned matters shall take effect unless the Bill, having been reserved for the consideration of the President, receives his assent; the matters are:
  - (a) the appointment, powers, functions, duties, privileges and immunities of the Governor; and
  - (b) the following matters relating to Elections, namely, the superintendence, direction and control of Elections by the Election Commission of India, eligibility for inclusion in the electoral rolls without discrimination, adult suffrage, and composition of the Legislative Council, being matters specified in Sections 138, 139, 140 and 50 of the Constitution of the State of Jammu and Kashmir.
6. No agreement was possible on the question of nomenclature of the Governor and the Chief Minister and the matter is therefore remitted to the principles.

Once the agreement was reached, the next step was automatic. Sheikh Abdullah assumed power as the Chief Minister of the State on February 26, 1975. He received tumultuous receptions everywhere. The people in the Valley were particularly hysterical in welcoming their hero back in power.

In case of Jammu, the response to the Kashmir Accord was far less sharp. Apparently because the people and political elite of the region were not directly involved in Abdullah's relations with the Centre.

The new Cabinet he announced for the State, included his second-in-command Mirza Afzal Beg from Kashmir and D.D. Thakur, a retired judge of the High Court, from Jammu. Mrs Gandhi

offered to include me in her Cabinet to compensate me for non-inclusion in Abdullah's Cabinet. She advised me to tell Abdullah that I had done enough public work and wanted to retire.

As the above provisions of the agreement indicate, the Accord retained Article 370 but was also retained the changes made after 1953. The State could, however, review post 1953 legislation on the concurrent list which would be sympathetically considered by the President. The key provision enabling the centre to appoint Governor under article 356 was unaffected. The agreement further provided that Parliament will continue to have power to make laws relating to prevention of activities directed towards disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or bringing about cession of a part of Indian territory. There was no agreement on restoration of nomenclature of Wazir-i-Azam & Sadr-i-Riyasat which was left to the decision of Principal parties.

### **Rajiv - Farooq Accord 1986 :-**

In order to eradicate the hatred and bitterness which had been generated between the National Conference and the Congress because of Farooq Abdullah's support to the opposition parties of India hoisting of opposition conclave at Srinagar in 1983, the failure of two parties to come its comprise on the sharing of seats of 1983 Assembly election, the malicious propoganda and campaign by both the parties and their leadership to defame each other in the state, dismissal of Farooq Abdullah's ministry in 1984 with the help of Congress support and in future to cooperate with each other in fighting against the communalist and secessionist forces in the valley, the two parties entered into negotiations. There negotiations culminated in Rajiv Farooq Accord signed on November 7, 1986.

The agreed terms of the Accord were as under :-

1. As the ideology of both the Congress and National Conference (F) was based on the secularism, socialism, unity and integrity of India. They would support and corporate with each other and would not waste their energies for fighting each other.
2. Both would join hands against secessionist, communalist and extremist forces on political fronts in the state. This would ultimately lead to rapid economic development of the state and the betterment of its people at large.
3. Coalition government of both the parties would be formed before and after 1987 elections.
4. Certain seats in the valley would not only be left for the Congress candidates in the then coming Assembly elections but National Conference (F) would support there candidates during elections.

Summing up the cure of the Accord, the Prime Minister observed, “the purpose of the Accord was to consolidate further and unite democratic, secular and socialistic force in the state and usher in a new ear of policitical stability and economic property not only in this state but all over the country. Farooq Abdullah's stated, “the biggest political gain of the Accord will be to fight unitedly against forces of disruption in Jammu & Kashmir, to fight fundamentalists whether Hindu or Muslim and to be able to spend our energies in getting something better for the state, remove poverty, disease and unemployment”.

### **2.2.6 LET US SUM UP**

In this lesson you have studied three important milestones related to the State of Jammu and Kashmir that is the Delhi Agreement of 1952 and Indira-Sheikh Accord of 1975 & Rajiv-Farooq Accord. The common link for all the agreements is that they have established legal and constitutional relationships between the Union of India and the State of Jammu and Kashmir. The only contrast is that while the Delhi Agreement of 1952 is more tilted towards the autonomy of the State of Jammu and Kashmir by restricting the application of provisions of the Constitution of India to the State of Jammu and Kashmir, the 1975 Agreement more or less integrated the state to the Union of India. Most of the changes brought to the state between 1952 and 1974 were kept intact, though it retained the special status of the Jammu and Kashmir as well as Article 370.

### **2.2.7 EXERCISES**

1. Discuss the context for the conclusion of 1952 Agreement between Union of India and State of Jammu and Kashmir ?
2. What are the main features of 1952 Delhi Agreement ?
3. Briefly outline the developments between 1952 Delhi Agreement and Indira-Sheikh Accord of 1974 ?
4. Write a note on important provisions included in the Indira-Sheikh Accord ?

## **2.3 GOVERNANCE STRUCTURES: LEGISLATURE, EXECUTIVE AND JUDICIARY**

**- Tirtharaj Bhoi**

### **STRUCTURE**

- 2.3.0 Objectives**
- 2.3.1 Introduction**
- 2.3.2 The Executive**
- 2.3.3 The Governor**
  - 2.3.3.1 Powers of the Governor
- 2.3.4 The Council of the Ministers**
  - 2.3.4.1 The Chief Minister
- 2.3.5 The State Legislature**
  - 2.3.5.1 Legislative Assembly
  - 2.3.5.2 The Legislative Council
- 2.3.6 The Judiciary**
  - 2.3.6.1 Judiciary in Jammu and Kashmir
  - 2.3.6.2 Judiciary in Post-Independence Period
  - 2.3.6.3 The High Court
  - 2.3.6.2 The Jurisdiction of the High Court
- 2.3.7 The Jammu and Kashmir Reorganisation Act 2019**
- 2.3.8 Exercises**
- 2.3.0 OBJECTIVES**

In this lesson you will study the three important organs of the state structure, i.e., Executive, Legislature and Judiciary. After going through this lesson, you will be able to understand:

- The composition of the state legislature and its proceedings;
- the composition of the executive and its powers, especially the power of the Governor, the Council of Ministers and the Chief Minister;
- the judiciary in Jammu and Kashmir in both pre- and post- independence period and the jurisdiction of the High Court.

### **2.3.1 INTRODUCTION**

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. Following the classical doctrine of power, the governance in the state also clearly divided between three organs: the legislature, executive and judiciary.

### **2.3.2 THE EXECUTIVE**

The executive power may be defined as the authority within the state which administers the law, carries on the business of government and maintains order within and security from without the state. The executive in Jammu and Kashmir state, like in any other states comprises of three offices: a) the Governor; b) the Chief Minister; and c) the Council of Ministers.

### **2.3.3 THE GOVERNOR**

The executive power of J & K state vests in the head of the state, called the governor. By the constitution of J&K Act, 1965, 'sadar-i-riyasat' has been substituted by the governor. Prior to the amendment made in 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. The normal term of the Governor is five years but notwithstanding the expiration of his term he shall continue to hold office 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. No person, however, shall be eligible for appointment as a Governor unless he is a citizen of India and has completed the age of thirty years.

The Governor shall not be a member of either House of the legislature and if a member of either house is appointed the Governor, he shall be deemed to have vacated his seat in the House on the date on which he enters upon his office as a Governor. The Governor is debarred from holding any other office Governor shall before entering upon his office make and subscribes in the presence of the Chief justice of the High Court or in his absence, the senior most judge of that court available, an oath or affirmation in the prescribed form. The Governor is the Head of the State and not the Head of the Government to the Council of Ministers. He appoints the Chief Minister. (The term Chief Minister had been substituted by the Sixth Amendment Act, 1965 for 'Prime Minister'). The ministers, other than the Chief Minister, the Deputy Minister are also appointed by the Governor from amongst the legislators on the advice of the Chief minister and the other ministers, the appointment of the Deputy Ministers and the issuing of a proclamation in cases of breakdown of constitutional machinery in the State only on the advice of his Council of Ministers.

### **2.3.3.1 Powers of the Governor**

The Sadar-i-Riyasat (now the Governor) is the Head of the State and exercises the executive powers of the State, either personally or through officers subordinate to him. In this connection ministers have been held to be officers subordinate. The legislatures can, however vest the executive function in authorities other than the Governor also.

The main reason for weakening of the position of the Governor is the formal recognition of the Chief Minister as the de facto Head of the administration for However, the Governor is empowered by the constitution to issue a proclamation in case of breakdown of the discretion, subject only to the power is to be exceeded by him in his discretion of the president of India. In the other India States this power is vested, not in the Governors, but in the President of India, who no doubt, acts on the advice of his Council of Ministers, since he is no specifically empowered to discharge any functions in his discretion.

All executive orders are to be issued in the name of the Governor, and if they are authenticated in accordance with rules made by the Governor, the courts may not enquire into the question whether they were in fact made by the Governor or not. The Governor appoints the Chief Minister at this discretion and the remaining ministers at the advice of the Chief Minister. The Constitution does not specify the number of remaining ministers and it is left to the choice of the Chief Minister depending upon the necessity of the situation. The appointment of the Deputy Ministers is also made by the Governor but the must exercise his powers after seeking the advice of the Chief Minister.

### **2.3.4 THE COUNCIL OF MINISTERS**

The Council of Ministers is the main executive organ of the Government, and its stability is essential for the efficient running of the administration. In Kashmir the party system is in development and it is reasonable to suppose that the Council of Ministers will become more stable as it develops. Though it is within the discretionary power of the Governor to appoint the Chief Minister of the choice, yet owing to the fundamental principle of parliamentary government that the cabinet must have the confidence of the legislature, this choice by the Governor becomes almost automatic in the sense that he will be obliged to appoint as Chief Minister, the leader of the majority party in the House. This is generally regarded as a convention, but the practice is dictated by the necessity of ensuring continuous stable Government. It is assumed that this practice will be followed in Kashmir. The discretionary power of the Governor may not seen as important if there is a party in the legislature which has an overall majority and whose leader enjoys its confidence; but it becomes critical in a situation where there is no such party and a coalition government is essential. It will then be for the Governor to consider what coalitions are possible and chose that one which is most likely to endure. Once the decision has taken about who is commanding the confidence of legislature, then Chief Minister and other ministers are appointed by the Governor. The constitution does not lay down how the chief minister will choose his colleagues but owing to the rule of collective responsibility the chief minister will make his council of ministers as broadly representative as possible. He will probably

include at least one representative of every region viz Jammu, Kashmir and Ladakh. He may also appoint a representative of the minority communities viz pundits from Kashmir and include a representative from each of the backward communities, schedule castes and the other minority group viz the Sikhs.

Ministers on appointment need not be a member of the legislature. He can become a member later, either by nomination by the Governor. It is not necessary that the ministers should all be members of the Legislative Assembly but, as Sir Ivor Jennings suggest “the Cabinet has to be a team and not a leading actor with chorus and strength of a team sometimes depends on the weakest member”. It would seem to be in the best interest of the Government to have the majority of the Ministers in the Legislative Assembly, since the ministry is collective responsible to it. Ministers have a right to speak in both House. The allocation of the portfolios is done by the Governor on the advice of the Chief minister and it is he who also makes rules for the more convenient transaction of the business. The salaries and allowances of the minister and deputy ministers have not been laid down in the constitution. But it is provided that they will be governed by the Act of 1956 and the Act of S.2010 respectively. The Ministers hold office at the pleasure of the Governor. Thus, he may, if the necessity arises, dismiss the ministers and the deputy ministers, for the power to appoint presumably includes the power to dismiss and the power to will accordingly to the practice and conventions, be exercised by the Governor on the advice of the Chief Minister to remove an undesirable member of the council of ministers. The normal method of removal of a minister or the ministry is a vote of no-confidence in the minister in the Legislative Assembly, but it may sometimes happen that, though a minister is otherwise undesirable, he commands the support of the House. The power of dismissal by the Governor might be used in such a case. Though, no doubt, occasions for the exercise of such authority will be rare, yet as Keith observes, it will be impossible to say that changed circumstances might not render the exercise of such authority necessary.

#### **2.3.4.1 Council of Ministers & Dissolution of the House**

On the dissolution of the House, the Chief Minister or other members of the Council are not required either to resign nor can they be dismissed by the Government implying that they continue in office on that account only. No fresh order is, therefore, required to be made by, the Governor authorising the Council of ministers to continue in the office.

#### **2.3.4.2 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.

### **2.3.5 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.

#### **2.3.5.1 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.

#### **2.3.5.2 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.

#### **2.3.5.3 Summoning of Sessions and Prorogation 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.

#### **2.3.5.4 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.

#### **2.3.5.5 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.

#### **2.3.6 JUDICIARY**

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.

#### **2.3.6.1 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.

#### **2.3.6.2 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.

### **2.3.6.3 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
- (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.”

#### **2.3.6.4 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.

#### **2.3.6.5 Jurisdiction of The High Court**

##### ***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.

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

#### **2.3.7. THE JAMMU AND KASHMIR REORGANISATION ACT 2019: FROM STATE TO UNION TERRITORY**

On 5 August 2019, the President of India issued a Presidential Order, The Constitution (Application to Jammu and Kashmir) Order, 2019 under Article 370 making all the provisions of Constitution of India applicable to the State of Jammu and Kashmir and this has rendered the Constitution of Jammu and Kashmir infructuous from that date. Now the Constitution of India is applicable to Jammu and Kashmir, like all other Indian states. Accordingly, many changes have been brought to the Legislative, Executive and Judicial branches of the Union Territory of Jammu and

Kashmir.

### **2.3.7.1 Constitutional Structure**

On and from the appointed day, the provisions contained in article 239A, which are applicable to “Union territory of Puducherry”, shall also apply to the “Union territory of Jammu and Kashmir”. Hence, the Union Territory with legislative body of Jammu and Kashmir resembles the same features and provisions of the Pondicherry.

The Administrator appointed under article 239 of the Constitution of India for the Union territory of Jammu and Kashmir called as Lieutenant Governor.

The Lieutenant Governor carries all the functions that were earlier carried out by the Governor of the erstwhile state of Jammu and Kashmir. In fact, the Lieutenant Governor carries more executive authority than the earlier Governor because certain subjects, particularly the Law and Order, are no more in the jurisdiction of the State government.

The total number of seats in the Legislative Assembly for the Union territory of Jammu and Kashmir are 107; these are filled by persons chosen by direct election, out of which 24 are located in the Pakistan Occupied Kashmir. A delimitation commission will be constituted to determine the Assembly constitutions as per the census records. Some of the seats in the Legislative assembly will be reserved for Scheduled Castes and Scheduled Tribes as per their proportion in the population. The Legislative Assembly, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Legislative Assembly.

If any provision of a law made by the Legislative Assembly with respect to matters enumerated in the State List, in the Seventh Schedule to the Constitution is repugnant to any provision of a law made by Parliament with respect to that matter, whether passed before or after the law made by the Legislative Assembly, or, if any provision of a law made by the Legislative Assembly with respect to any matter enumerated in the Concurrent List in the Seventh Schedule to the Constitution is repugnant to any provision of any earlier law, other than a law made by the Legislative Assembly, with respect to that matter, then, in either case, the law made by Parliament, or, as the case may be, such earlier law shall prevail and the law made by the Legislative Assembly of the Union territory shall, to the extent of the repugnancy, be void. However, nothing in this section shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislative Assembly.

The new Act states that the Council of Ministers should not be more than ten percent of the total number of members in the Legislative Assembly, with the Chief Minister at the head to aid and advise the Lieutenant Governor in the exercise of his functions in relation to matters with respect to which the Legislative Assembly has power to make laws.

With regard to the Judiciary, not much has changed in the new Act. The High Court of Jammu

and Kashmir shall be the common High Court for the Union territory of Jammu and Kashmir and Union territory of Ladakh. The Judges of the High Court of Jammu and Kashmir for the existing State of Jammu and Kashmir holding office immediately before the appointed day shall become on that day the Judges of the common High Court.) The expenditure in respect of salaries and allowances of the Judges of the common High Court shall be allocated amongst the Union territory of Jammu and Kashmir and Union territory of Ladakh on the basis of population ratio.

### **2.3.8 EXERCISES**

- 1 Briefly explain the composition of the legislature in Jammu and Kashmir ?
- 2 Write a note on the powers and functions of the executive in the State ?
- 3 Analyse the composition and jurisdiction of the High Court in Jammu and Kashmir ?

## **2.4 INSTITUTIONS OF LOCAL SELF GOVERNANCE : A CRITICAL ASSESSMENT**

**- Tirtharaj Bhoi**

### **STRUCTURE**

- 2.4.0 Objectives**
- 2.4.1 Introduction**
- 2.4.2 PRIs in Jammu and Kashmir**
- 2.4.3 Panchayat Raj Act of 1989: Main Features**
  - 2.4.3.1 Halqa Panchayats
  - 2.4.3.2 Block Development Council
  - 2.4.3.3 District Planning and Development Board
- 2.4.4 Limitations of the Panchayat Raj Act 1989**
  - 2.4.4.1 Structural Problems
  - 2.4.4.2 Operational Problems
- 2.4.5 Corrective Measures**
- 2.4.6 The Jammu and Kashmir Reorganisation Act and Panchayats**
- 2.4.7 Let Us Sum UP**
- 2.4.8 Exercises**

### **2.4.0 OBJECTIVES**

This lesson focuses on Panchayat Raj Institutions of Jammu and Kashmir, their status and functioning. The lesson also explains recent developments in the state to bring PRIs on par with the 73 Amendment. After going through this lesson, you will be able to understand:

- the historical background of Panchayat system in Jammu and Kashmir;
- Main features of the Panchayat Act of 1989 and its limitations both structural and operational;
- The recent corrective measures initiated by State Government to bring PRIs of Jammu and Kashmir on par with 73 Constitutional Amendment of Government of India.

### **2.4.1 INTRODUCTION**

The institutions of Panchayat have become key institutions for democratisation of politics in

India. They have been empowered by the 73rd Amendment Act of the Constitution of India to act as the most important instruments of power of the people at the grass roots level. It is through this Act that there is said to have taken a silent revolution as the principle of reservation for the marginal sections of society including the Scheduled Castes and Tribes as well as women has institutionalised the participation of these people in the democratic decision making process. The State of Jammu and Kashmir has still to bring itself at par with the rest of India in adopting the 73rd Amendment Act but it has its own Panchayat Raj Act that was formulated in 1989. The gap between this Act and the 73rd Amendment Act is gradually being sought to be filled up.

#### **2.4.2 PRIS IN JAMMU AND KASHMIR**

The State of Jammu and Kashmir witnessed a radicalized political environment in the third and fourth decade of the 20th 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 sidelined, 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 elite 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.

### **2.4.3 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”.

#### **2.4.3.1 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 carryout 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.

#### **2.4.3.2 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.

#### **2.4.3.3 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.

To provide a clear understanding on the structural aspects of Jammu and Kashmir Panchayat Raj institutions, the main features have been summarized in Table 1 and 2.

**Table 1: Structure and Administration of Panchayats**

|                                       | <b>PANCHAYATS</b>                                               | <b>DEVELOPMENT COUNCIL</b>                                                                            | <b>DISTRICT PLANNING AND DEVELOPMENT BOARDS</b>                                                                                               |
|---------------------------------------|-----------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Population</b>                     | <b>Maximum of 5000 in hilly areas and 4500 in Plain areas</b>   | <b>Population of the Whole Block Determined by the Government</b>                                     | <b>Population of the whole district</b>                                                                                                       |
|                                       | <b>(not less than seven and not more than eleven)</b>           | <b>Panchayats Chairperson, Marketing Society of Block</b>                                             | <b>Development Councils<br/>MPs and MLAs of the District<br/>Chairman of the Town Area Committees<br/>President of the Municipal Councils</b> |
| <b>Age Limit for Members</b>          | <b>25</b>                                                       | <b>25</b>                                                                                             | <b>25</b>                                                                                                                                     |
|                                       |                                                                 |                                                                                                       |                                                                                                                                               |
| <b>Election of the</b>                |                                                                 | <b>electoral College comprising of Panches and Sarpanches of Halqa panchayats in the Block elects</b> | <b>Government from amongst the members of the District Planning and Development Board</b>                                                     |
| <b>Election Authority</b>             | <b>Chief Electoral officer</b>                                  | <b>Chief Electoral Officer</b>                                                                        | <b>N.a.</b>                                                                                                                                   |
| <b>Term of office</b>                 |                                                                 |                                                                                                       |                                                                                                                                               |
| <b>Removal of Head of institution</b> | <b>No Confidence resolution passed 2/3<sup>rd</sup> members</b> | <b>No Confidence resolution passed 2/3<sup>rd</sup> members</b>                                       | <b>N.a.</b>                                                                                                                                   |
| <b>Remuneration to the Members</b>    | <b>Honorarium specified by government</b>                       | <b>Government prescribes honorarium for Chairperson and sitting Fee for members</b>                   | <b>Not specified in the Act</b>                                                                                                               |

**Table 2: Powers and Functions of the Panchayats**

| HALQA PANCHAYATS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | DEVELOPMENT COUNCILS                                                                                                                                                                                                                                                                                                                                                                                                                | DISTRICT PLANNING AND DEVELOPMENT BOARDS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>To prepare plans for the development of the Halqa.</p> <p>2. To undertake measures for the implementation of the development plans.</p> <p>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.</p> <p>4. Regulation of buildings, shops and entertainment houses and checking of offensive or dangerous trades.</p> <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>Constructions, maintenance and supervision of inter-Halqa Panchayat Communication system.</p> <p>2. Administrative and technical guidance to Halqa Panchayats and review of their work.</p> <p>3. Supervise relating to agriculture, rural development, animal husbandry, social forestry, education and public health.</p> <p>4. Supervise and monitor poverty alleviation programmes and various developmental programmes.</p> | <p>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.</p> <p>2. To periodically progress and achievements of developmental plans and schemes and make recommendations it considers appropriate.</p> <p>3. To function as a working group for formulation of periodic and annual plans for the District.</p> <p>4. To formulate and finalize the plan and non-plan budget for the District.</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> |

#### **2.4.0 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 73rd 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 73rd 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 73rd 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.

Some of the major problems the Panchayat Raj Institutions of the Jammu and Kashmir facing are analysed in an orderly manner.

##### **2.4.1.1 Structural Problems**

Structurally, the Panchayati Raj Act 1989, despite the recent amendments, remains flawed and does not serve the purpose of making the Panchayats as units of self-governance. The main flaws

of the Act from a gender perspective are as under:

1. The Panchayats, as per the State Act, are not democratically structured at all the three levels. The principle of direct election of the Panchayat, for instance, is applied only at the village level, neither the Block level Panchayat nor the District level Panchayat is comprised of the directly elected representatives of the people and hence women as margins are at the receiving end.
2. It is only the Chairman of the Block Development Council who can be elected but the process of election is not direct but indirect—the Electoral College comprises of the Panches and Sarpanches within that block. The election for the same is yet to take place in the State. Similarly there is no provision for direct election in the District Planning and Development Board. It is only the Vice-Chairperson of the Board who is elected, the Electoral College being comprised of the members of the Board itself.
3. Presence of the government officials at all three levels hampers the democratic structuring of the Panchayat. The Secretary, Panchayat at all the three levels is a government official: the Gram Sevak at the level of the Halqa Panchayat, the Block Development Officer at the Block Development Council level and the Deputy Commissioner at the level of District Planning and Development Board. Besides the Secretary, the Chairperson of the District Planning and Development Board is also a nominee of the government. As per the practice, the government generally nominates a senior Minister to be the chairperson of the Board. The meeting of the Board is attended by many senior Ministers, including the Chief Minister and senior bureaucrats. The presence of such high powered government officials and Ministers cannot in any case allow the Panchayat at this level to be a democratic body autonomous of governmental control and influence. True, most Gram Sevaks are women but they are government servants and not elected representatives.
4. The structure of the District Planning and Development Board is more in line with the Single Line Administration system (where the district is the unit of administration) that was introduced in the State in the mid-seventies of the last century rather than in line with the Panchayati Raj Institutions. Under the scheme of the Panchayati Raj Institutions, the idea of decentralised planning remains incomplete without its democratic structuring and content.
5. The Halqa Majlis, which is the foundation of local self-governance, has not been recognised as an institution in the Jammu and Kashmir Panchayat Act. A good thing about the Act is that it makes it mandatory for the Halqa Panchayats to 'lay for sanction' its plans and budget to a 'meeting of voters'. However, this 'meeting of voters' and its mode of functioning have not been clearly defined. Also the Act does not state whether the recommendations given by the Halqa Majlis are binding legally and cannot be tampered with.
6. Women's reservation in the Act was limited to the level of Panches and was not extended to the level of Sarpanches. It was further specified only at the level of Village Panchayat and not

at the other two levels.

7. The Gram Sabha (Village Assembly), which should have been the most powerful body demanding accountability from the Panches and Sarpanches, remains subordinate to the Panchayat. Gram Sabah is conducted once in a blue moon and that too by some Panchayats only. The meetings of the Village Assembly could have helped in cultivating the debating skills of women and creating role models.

#### **2.4.1.2 Operational Problems**

1. At the operational level, the biggest issue remains the powerlessness of the Panchayat. There are pronouncements regarding devolution of powers and empowerment of the Panchayat, and yet, the Panchayats remain without power. However, this is an all-India problem as pointed out by the Second Administrative Reforms Commission. The Commission has noted the reluctance of State governments and the bureaucracy to let the PRIs become independent self-governing entities in accordance with the principle of subsidiary, which states that any activity that can be done at a lower level should not be delegated to a higher level. The ARC report blames the skewed concentration of political power at the higher levels for the prevailing sorry state of affairs.
2. The absence of funding should not have been a problem in view of the provisions in 73rd Constitutional Amendment Act of 1992. The J&K Government can be asked to take a cue from the above stipulation. But there is a more intricate problem which needs to be hammered out. The fact is that State governments are starved of funds due to the imbalances in the Indian fiscal federal system tilted towards the Union Government. So State governments are reluctant to give away their meagre resources to the Panchayats. In Jammu and Kashmir, as in the case of other States, the only funding that is available to the Panchayats is tied with some Centrally sponsored schemes. Other than that, neither are the Panchayats provided basic funding by the State nor are these directly empowered to raise their resources through taxation even though the power of taxation is detailed in the Act.
3. The mere devolution of funds by itself will not result in improvements in the functioning of the Halqa Panchayats. Equally important is the need to build the capacities of elected representatives to handle these funds, plan and implement programmes in Halqa Panchayats. In most States the Union Ministry of Panchayati Raj (MOPR) has taken up the initiative to train the elected representatives and instituted reward schemes to promote devolution. The MOPR reports do indicate the significance of capacity-building of elected Panches. The first statement of panchayat report (2006-2007) thus notes: a big bang approach was recommended for overcoming the sluggishness in the devolution of functions, functionaries and funds (3Fs) to the PRIs. The logic was that if substantial functions, functionaries and funds were devolved at one go with accompanying investment in capacity building and training of staff and elected representatives to handle the greatly increased responsibilities,

then this big-bang would blow away much of the inertia and inexperience that were proving to be the major hurdle. The success of PRIs in Kerala where this approach was first followed was held up as an example.

4. Overlapping of functions and powers between the administrative and field agencies under the control of the State Government and the Panchayats is also an issue to be sorted out. The PRIs in the State are not structured on the basis of federal principles. The principle of devolution of powers between the State and Panchayat is not reflected in the Act in any manner. The Act provides the powers of the three tiers of the Panchayat, but it does not in any case guarantee that there is no overlapping of functions and powers between the administrative and field agencies under the control of the State Government and the Panchayats. The PRIs should be planning and implementing their own work at their level, but this comes into conflict with the centralised top-down administrative and planning process.
5. The issue of honorarium to Panches and Sarpanches is still not resolved. The government announcement made any number of times—that the Sarpanch will get an honorarium of Rs 2000 and Panch Rs 1000 per month respectively—has not been implemented till date. In the above mentioned Panchayat Conference, held at Kashmir University, we heard many women Panches voice their demand for it not as an employment package but as a cushion to face odds in an otherwise extraordinary political situation in Kashmir. This is also thought to be necessary to curb lower level corruption in development schemes executed at the Panchayat level where a nexus has emerged between Panches, contractors and lower functionaries of the Rural Development Departments.

#### **2.4.6 CORRECTIVE MEASURES**

One of the most positive developments in recent period with regard to PRIs is that the State Government could conduct the elections to most of the PRIs in the state in 2011 despite the threat from militancy. These elections assumed huge local and national importance and women's participation added a critical dimension to it. Panchayat elections were held in a State which saw violence and the decline of both social and political institutions and consequent elimination of social capital. The women are still at the receiving end as many reports documented the impact of violence on women and their placement in the society. Second, the elections were held at a time when the political discourse was dominated by issues of devolution, autonomy and self-rule in the State as means of conflict resolution and conceding it at the lower level only disappointed many important stakeholders. Further, the elections were held in an atmosphere of fear as violence saw many political workers being killed in elections to the State Legislature in 1996, 2002 and 2008. Though the elections to the Panchayat were held on non-party basis, yet political parties cleverly fielded proxy candidates to control the Panchayati Raj Institutions. The fact that many Panchayat members were killed may partly be the reason that their political affiliations became noticeable.

Secondly, the gender dimension was brought into the local governance system and women were elected to the grassroots level democracy in J&K in 2011. Women's participation in the Panchayat elections started shaking up the political culture of the State. Women-related issues were agitated at the bottom level. The number of women Panches and Sarpanches gives an idea about the evolving women-friendly and emancipating Panchayat politics in the State and its defined future. It is as yet premature to assess the extent to which power has been bestowed upon women through the PRIs, as not much power has been devolved to the Panchayats and only 0.70 per cent women Sarpanches getting elected is an indicator of the nature of politics at the grossroot level. The reservations of seats for women at all levels of PRIs improve the situation.

Thirdly, less than a month after successful completion of panchayat elections in Jammu and Kashmir, the government-appointed committee on devolution of powers to the three-tier Panchayati Raj system has submitted its report to the state government. The report contains recommendations on devolution of functions and quantum of funds to the Panchayati Raj institutions, issues related with personnel and human resources, changes in the composition of District Development Board, powers and functions of Chairmen and Vice Chairmen of District Planning and Development Boards, strengthening the Rural Development department and amendments required in the J&K Panchayati Raj Act of 1989.

Fourthly, and most importantly, the Jammu and Kashmir cabinet headed by Chief Minister Omar Abdullah decided to accept the recommendations of the above committee and incorporate important provisions of the 73rd constitutional amendment in the state's Panchayati Raj Act to empower elected village representatives in September 2011. The state will now have a separate finance and election commission besides ensuring reservations for women and weaker sections of the society in panchayats across the state. The amendment also makes holding of the panchayat elections mandatory every five years. After the amendment is incorporated by the state legislature, chairmen of block development councils and district development and planning boards would have to be elected by the panches and sarpanches. The cabinet also approved to delegate functions 14 departments to Panchayats, Agriculture, Education, Health, Consumer Affairs and Public Distribution System, Animal and Sheep Husbandry, Horticulture, Revenue, Social Welfare, Fisheries, Forest and Industries and Commerce.

Finally, to amend the Panchayat Raj Act 1989 to incorporate above mentioned changes, six bills are passed by JK Legislature in March 2014.

#### **2.4.7 THE JAMMU AND KASHMIR REORGANISATION ACT 2019: IMPLICATIONS FOR PANCHAYATS**

Ever since the modifications to Article 370 and the reorganisations of the Jammu and Kashmir into Union Territory, the governments at Centre as well as State are giving enough indication to introduce structural reforms to Panchayat Raj Institutions to make them on par with rest of India and enable them to function as institutions of local governance. The Jammu and Kashmir Lieutenant

Governor Girish Chandra Murmu in 04 December 2019 said that the government was committed to empower grass- roots institutions in the Union Territory. The government is working to effectively implement 73<sup>rd</sup> and 74<sup>th</sup> Amendments of the Panchayati Raj Act to empower Panchayati Raj Institutions (PRIs), which will further strengthen the democratic set up at the grass-roots level. Murumu stated that the PRIs will be devolved with sufficient financial resources so that enable them come up to the expectations of the people.

The government conducted the maiden Block Development Council (BDC) election in Jammu and Kashmir in October 2019. It has declared that the election has witnessed a record 98.3 per cent turnout. However, some of the major political parties in the Union Territory, Congress, National Conference (NC) and Peoples Democratic Party (PDP) boycotting the first electoral exercise after the abrogation of the state's special status. The polls are conducted to elect chairpersons of BDCs in 310 blocks in the state and 1,092 candidates were in the fray, of whom 27 were elected unopposed. When results are declared, 217 independent candidates were elected to the post of chairperson in the Block Development Council (BDC) elections in Jammu and Kashmir, with the BJP winning in 81 of the 310 blocks. The National Panthers Party elected in another 8 constituencies.

The panches and sarpanches who elected to the village panchayats during the last quarter of the 2018 are elected the representative for this middle tire of the panchayats, that is Blocs, in the elections held in October 2018.

However, the elections held in 2018 to the village panchayats and 2019 to the Block Panchayats do not solve the problems faced by the PRIs in Jammu and Kashmir. Two structural aspects have to witness a drastic change to their meaningful functions. First and foremost, all aspects of violence have to be reduced the representatives of the panchayats to carry their functions without fear and stress. Second, all the provisions in the 73<sup>rd</sup> and 74<sup>th</sup> amendments must be applied to PRIs and sufficient functions and funds have to be transferred to these bodies. Without these steps it is very difficult for the PRIs to function as institutions of local governance.

#### **2.4.8 LET US SUM UP**

In this lesson, we have studied the functioning of Panchayati Raj System in Jammu and Kashmir. Like all other institutions of governance, the PRIs in Jammu and Kashmir also suffering due to prevailing political situation in the state. For long time, due to militancy the PRIs have become defunct. The PRIs of the Jammu and Kashmir missed the bus of devolution which has gained great momentum in rest of the country with the passage of 73<sup>rd</sup> Amendment and with the reservations of the seats for weaker sections particularly, women, dalits and tribals. Though elections were seriously conducted in 2011, still due to lack of reservations for these weaker sections the democratic revolution which we can see elsewhere is missing in the state. Similarly, lack of devolution of funds and functions is also hurting the Panchats very seriously. The state government off late has initiated corrective measures by appointing a high level committee to amend the Panchayat Raj Act. The committee has recommended for more devolution and state government duly agreed and passed five

bills in state legislature in 2014. As a result, now conducting elections to the Panchayat for every five years has become mandatory along with reserving seats for women and other marginal sections. This is a great leap forward, which can actually lead to empower panchayats in the days to come.

#### **2.4.8 EXERCISES**

1. Write a note on PRIs in Jammu and Kashmir ?
2. Explain the main features of the 1989 Panchayat Raj Act ?
3. Critically assess the limitations of the 1989 Panchayat Raj Act ?
4. Write a note on corrective measures recently initiated by State Government to bring PRIs in Jammu and Kashmir on par with 73<sup>rd</sup> Constitutional Amendment of Government of India ?

#### **2.4.9 SOURCE**

Gull Wani and Effat Yasmin, “Democratic Decentralisation in J&K: Gender and Political Change”, *Mainstream*, VOL LIV, No 1, December 26, 2015.

## **3.1 POLITICAL ECONOMY OF LAND REFORMS : DYNAMICS AND DIMENSIONS.**

**- V. V. Nagendra Rao**

### **STRUCTURE**

- 3.1.0 Objectives**
- 3.1.1 Introduction**
- 3.1.2 Land Reforms: The Historical Context**
- 3.1.3 Land Reforms, 1950**
- 3.1.4 The Jammu and Kashmir Agrarian Reforms Act, 1972**
- 3.1.5 Land Reforms in Jammu and Kashmir: A Critical Review**
- 3.1.6 Let Us Sum UP**
- 3.1.7 Sources**
- 3.1.8 Exercises**

### **3.1.0 OBJECTIVES**

This lesson explains one of the progress steps initiated by the government of Jammu and Kashmir related to Land Reforms. After going through this lesson, you will be able to:

- trace the history of land reforms in Jammu and Kashmir;
- know the agrarian reforms after 1948 initiated by the new democratic government;
- acquainted with the Jammu and Kashmir agrarian reforms act; and
- understand politics surrounded around land reform issues.

### **3.1.1 INTRODUCTION**

Land reform refers to the redistribution of land from the rich to the poor. More broadly, it includes the regulation of ownership, operation, leasing, sales, and inheritance of land. In an agrarian economy such as India, with great scarcity and unequal distribution of land, coupled with a large mass of the rural population below the poverty line, there are compelling economic and political arguments for land reform. Not surprisingly, it received top priority on the policy agenda at the time of the Indian Independence in 1947 considering the benefits it can offer to the farmers as well as to the economic growth of the country.

Most importantly, land reform is not simply a question of social justice. On it depends the

solution to manifold problems of economic development. Success or failure of land reform measures should be judged by such criteria as whether surplus land has been taken away, and whether it has been distributed, whether the tenants are really protected.

When India became independent and Jammu and Kashmir's accession to India was complete, the political leadership of India as well as in Jammu and Kashmir sincerely wished to initiate land reforms to transfer the land to those who were actually tilling. However, it was in Jammu and Kashmir that the most radical land reforms were conceived and implemented. No other state in India was as successful as Jammu and Kashmir in terms of implementing the land reforms. The restructuring of the land had huge impact on the social, economic and political landscape of Jammu and Kashmir by empowering and liberating ordinary masses. It is not an exaggeration to state that there is no family in Jammu and Kashmir without a piece of land after the land reforms. Hence, in this lesson we will try to understand the issues related to land reforms in Jammu and Kashmir, the ideology behind these reforms, the leadership role, the way it has been implemented and its impact on ordinary masses.

### **3.1.2 LAND REFORMS: THE HISTORICAL CONTEXT**

Jammu and Kashmir was primarily an agrarian State, with 90 % of its population, before 1947, lived in villages with agriculture as their main livelihood. The agrarian system in the state was basically feudal in character and cultivators suffered greatly due to heavy taxation and levy in kind. Only those who pleased the kings were bestowed with land in the form of Jagirs. Under Maharaja, like any other monarchy at that time in India, land belonged to the State with the Maharaja as the sole claimant with powers to distribute it to whomever he wished. This led to the concentration of large tracts of land in few hands resulting in large scale farming and the creation of an intermediate class. The peasants who cultivated the lands had no proprietorship rights at all and, hence, could not sell or transfer the land they were cultivating. They were working like agricultural labourer under a management system dominated by Jaghirdars and Zamindars. The proprietorship of jagirs could be only conferred by the Darbar by *sanad* (official document) and the grantees were invariably the relatives, courtiers and top officialdom of the Darbar. Concentration of land in the hands of absentee landlords coupled with unprotected tenancy rights, arbitrary and sometimes even forcible ejectment of tenants by landlords, underutilization of cultivable land and increasing exploitation of peasantry under the garb of high taxation policy were the main features of this agrarian system.

#### **3.1.2.1 Initial Reforms**

The initial reforms, including land reforms, in Jammu and Kashmir were initiated when British Resident was appointed to the State in 1855. The permanent British constituted and headed the Council of Regency through which the British exercised their assertive control over the monarchical administration to bring out social, political and economic reforms. Two residents Andrew Wingate and Walter Roper Lawrence initiated some far-reaching changes with regard to land tenure and tenancy relationships towards the end of 19<sup>th</sup> century. Wingate advised the Maharaja to delegate the

possession rights to the farmers over the land they were tilling, in order to gain their support and legitimacy, that is the hereditary occupancy rights in the land against the ownership of the State/Ruler. Lawrence moved a step farther and recommended for occupancy rights with sale, mortgage, lease, etc. Due to the efforts of these British officers, Maharaja Pratap Singh in 1895-1896 legally recognised the hereditary occupancy rights of the peasants over the land.

These initial land reforms also legalised another class with legitimate rights over the land. The cultivator who was recognised by the Darbar as lawful occupant, after these reforms, was called the *assami* which was decided on the basis of his hereditary cultivation rights of the land. In this way the British brought a new *Zamindari* structure into Jammu and Kashmir, the way they had done in other parts of India. In Kashmir, before the said land settlements of 1887-1891 & 1889-1894, the landlords had no proprietary rights on the land as ownership vested with the Maharaja only. Nor were they recognised as *assimidars*. But Wingate and Lawrence made those powerful and influential intermediary proprietors or landlords *asassimidars* of the land which was legally accepted by the Darbar in 1900. These reforms, in reality, worked against the peasants as they were declared mere permanent tenants-at-will who held tenancy subjecting to the will of the landlords. This led to a huge resentment among the peasants who were actually tilling the land. Hence, to prevent the easy removal of the tenants-at-will, the Maharaja had to pass the Tenancy Act, 1923, under which the landlord could eject the tenant only after filing a petition before the court on specific grounds. The Act stated that their ejectment from the land could be filed before the court on certain specified grounds only, such as the land was unfit for cultivation or the tenant has failed to cultivate the land or pay the rent (*lagan*) to the landlord or the landlord required it for personal use.

The reforms in agrarian relations were further initiated as a result of the 1931 mass movement by Kashmiris against monarchy. This movement led to the constitution of Glancy Commission. Glancy Commission made several recommendations, some of which are related to land reforms. The Glancy Commission without eliminating the Jaghirdars and Zamindars, however, recommended for the transfer of property rights of the land to the peasants wherever these rights were vested in the state. Accordingly, the Maharaja empowered the farmers who had occupancy rights with full property rights on the lands they are tilling. The Maharaja also initiated further measures, as per the Glancy Commission recommendation, to prevent large farmers, business and propertied classes buying out the land of poor farmers by passing the Land Alienation Act, 1933 and the Right of Prior Purchase Act, 1937 as per which a peasant was not allowed to sell more than one fourth of his land, and a peasant had to sell his land only to another farmer.

Despite these reforms, still a large chunk of the land remained under the control of Jaghirdars and Zamindars. Most of the peasants who were actually tilling the land are not having either occupancy or property rights over the land that they were tilling. More than 50 % of cultivable land was still under the control of large feudal landlords with Maharaja having the property rights.

### **3.1.2.2 New Kashmir Manifesto**

Agrarian reforms in post-Independence Kashmir were carried out against the backdrop of the Quit Kashmir Movement (a non-violent movement under the leadership of Sheikh Abdullah launched against the Maharaja). The movement drew its main strength from the oppressed peasantry which was promised self-rule along with land-to-the-tiller. In its annual session in 1944, the All Jammu and Kashmir National Conference, while pursuing its goal of Responsible Government, publicly set forth its radical plan of transforming Jammu and Kashmir into a welfare state. The *New Kashmir Manifesto* or Naya Kashmir plan, as it came to be known, proposed a complete re-modelling of the social, economic and political structures of the State, more or less on the pattern of State-led socialism. In its economic dimension, the Plan envisaged a society free from landlordism, autocracy, monopolies, wide income gap, exploitation of the peasantry and labouring classes, indebtedness. The *Naya Kashmir Manifesto* promised land to the tiller and cooperative association of tillers to regulate production and sale of crops and agricultural goods. The radical restructuring of land and land relations where land was transferred to the actual tiller with a 'bundle of rights' of permanent nature, without any compensation being paid to the original owner of the land.

### **3.1.3 LAND REFORMS, 1950**

The National Conference Government came into power in March, 1948. The agrarian reforms were carried out in three stages: firstly, by abolishing all 'feudal' privileges like jagirs, muafis, and mukkarraries; secondly, by transferring the land, acquired through the abolition of these privileges, to the tillers; and thirdly, through the introduction of co-operative societies. The abolition of landlordism was essentially the first step towards the founding of a new social order.

#### **3.1.3.1 First Phase of Reforms, 1948: Abolition of Feudal Institutions**

Immediately after coming to power the government initiated its first set of reforms in 1948 by abolishing all feudal institutions such as Jagirs, muafidars and mukkarraree-khwars (recipients of cash grants). As a result of this enactment, 396 Jagirdars and 2347 Mukarraridars disappeared from the rural areana. It relieved peasant from the crushing burden of payment in kind and released 4250 acres in favour of the tillers. Moreover, in the jurisdictional jagirs of the state also 2.5 lakh people gained freedom from the subjection of the jaghirdars. These tillers got property rights over the land that they were tilling. Probably the most significant achievement is to be seen in the case of Poonch and Chenani, two jurisdictional jagirs, where the jagirdar enjoyed powers almost equivalent to that of the ruler of the State

#### **3.1.3.2 The Second Phase, 1948: Protecting the Interests of Tenants**

The next round of reforms began in October 1948 when the government amended the State Tenancy Act of 1924. Subsequent amendments were made in the Act in 1950 and 1952. As part of these reforms, tenants-at-will were granted fixed tenure over holdings not exceeding 2.5 acres (17 kanals) of wet land and 4.5 acres (33 kanals) of dry land in the Kashmir valley and almost double this size in respect of both the categories in the Jammu division due to predominant nature of dry land in the area. The Tenancy Act provided for extracting minimal rents in land. Maximum rent on holdings

exceeding 12.5 acres, was fixed at one-fourth of the produce in case of wet land and one third in case of dry land. However, in case of tenancies not exceeding 12.5 acres (100 kanals) the tenants could keep half of the produce while the other half would go to the landlord. Subsequently tenants were granted more security against ejection through amendments/changes in the relevant acts in 1955, 1960, 1965 and 1970. The tenancy reforms are estimated to have benefited three-fifths of the peasants cultivating 700,000 acres of land. The Act created a new class of tenants called 'protected tenants'.

### **3.1.3.3 Third Stage of Land Reforms, 1950: Abolition of Big Landed Estates**

The most significant land reform law, which was actually the core of the whole series of reforms, was the Big Landed Estates Abolition Act of 1950. The Act provided for the abolition of absentee landlordism completely, under which surplus land from big landlords was acquired and redistributed among the tillers. A ceiling of 22.5 acres was imposed on land-ownership and surplus land was transferred to the tillers, without any compensation given to the earlier landlords. The main features of this legislation were:

- a) Fixation of a ceiling on the holding of proprietors at 22.75 acres (182 kanals) of land, excluding orchards, fuel and fodder reserves and uncultivable waste land;
- b) Transfer of surplus land to tillers cultivating the land without any payment;
- c) Fixation of a ceiling (at 160 kanals) on land including that which was owned and which had been leased out; and
- d) Surplus lands which were not in the cultivating possession of any person, were acquired by the state.

As a result of this enactment, 9000 odd proprietors were removed from 4.5 lakh acres of land out of which about 2.3 lakh acres were transferred to the tillers in ownership rights and the remaining land vested in the state. By 1961 about 8 lakh acres of land were transferred to tillers. Due to this land transfer, about 70900 landless peasants in the valley and 25000 lower-caste Hindus in Jammu region became land- proprietors.

For the further protection of the occupants, especially for preventing the fragmentation of land holdings, the Act forbade the transfer of land or any interest therein by a self-cultivating proprietor or a tiller without the permission of the government. In case the new tiller-proprietor did not himself cultivate his land or sublet his land for two successive harvests, his right of ownership would extinguish and his land would be taken over by the government.

### ***Wazir Committee Recommendations***

In order to review the working of Land Reforms in the state, the state government appointed a Committee under the chairmanship of Justice Wazir in 1952. The Commission in its report recommended that: a) the maximum unit for a proprietor in Kashmir should be fixed at roughly 28 acres and in Jammu at 34 acres against the prevailing unit of 22.75 acres; and b) secondly lands

attached to Buddhist religious institutions in Ladakh called Gumpas, should be excluded from the operation of the Act. Subsequently a series of legislations was passed to remove the flaws present in the previous legislations in order to give more and more rights to the tenants, to impose restrictions and to make the resumption laws.

#### **3.1.4 THE JAMMU AND KASHMIR AGRARIAN REFORMS ACT, 1972**

The state Jammu and Kashmir Agrarian Reforms Act of 1972 inaugurated the fourth phase of the reforms. This was intended to further abolish “absentee landlordism” and to confirm the ownership of land among the tillers. The Act came into force in May 1975, with the following provisions:

1. Vesting of ownership rights of land (excluding orchards) held by owners and intermediaries who are not in its personal cultivation to those who held such land in personal cultivation on September 1, 1971.
2. Imposition of a ceiling of 100 standard Kanals (12.5 standard acres) and vesting of all land in excess of this ceiling with the state.
3. Payment in lieu of all land vested with 1 and 2 above at rates specified by the Government.
4. Provision for resumption of land by any intermediary or absentee landlord on certain specified conditions.
5. Full compensation for evacuee lands.
6. While there is no ceiling as such on orchards, an annual tax has been imposed on such portions of an orchard, which exceed 12.5 standard acres at the rate of Rs 800 per standard acre.
7. Standard acre has been defined with reference to various kinds of soil in irrigated and unirrigated areas.

In a nutshell, the 1972 reforms reduced the land ceiling from 22.5 acres to 12.5 acres and lots of land was further released and transferred to numerous tillers. Also, ceiling was fixed on family not on individuals as was the case in the Big Landed Estates Abolition Act 1950.

However, several objections were raised and some writs filed against this Act in the High Court of J&K. It was contended that under the Act, the ownership of the tiller would get confirmed only after twenty years during which period the tiller was bound to pay rent to the Government that would remit it to the original owner whose ownership rights were terminated under the Act. The Act was challenged also on the ground that its drafting was very loose as, for example, the word “personal cultivation” had given rise to ambiguity and confusion. Due to these contentions, this Act was later modified by the Agrarian Reforms Act, 1976 under which, subject to a ceiling of 12.5 Acres, the ownership rights in the land were given to the tillers who held it in personal cultivation and consequently, all rights of absentee landlords including intermediaries who were not cultivating the land personally in Kharif 1971 were extinguished. Excess land that was held by a tiller vested in the State that distributed the same among the landless according to the rules appended to the Act. The

orchards were excluded from the operation of the Act.

### **3.1.5 LAND REFORMS IN JAMMU AND KASHMIR: A CRITICAL REVIEW**

According to George Mathew, land reform was a watershed in the history of Jammu and Kashmir and a measure, the first of its kind in the subcontinent, lauded by different sections of society and people belonging to different walks of life in the country. The land reform greatly helped the marginal sections, especially the Scheduled Caste to become landowners. During 1950s and 1970s, out of total surplus land taken away from the landlords, 70.24% was allotted to Scheduled Castes tenants. Hence, a radical inter-generational shift in the occupational pattern of the Scheduled Castes in terms of landless agricultural labourers to landowning peasants from grandfather to 47.1% in the present generation has taken place.

Hence, on the face of it, the land reforms in Jammu and Kashmir, much publicized in the press at the time and subsequently in literature, would look like a complete dissolution of the landed interests, the foundation of an egalitarian Kashmiri society, a happily-ever-after affair. But a deeper insight into working of the reforms and the very principles on which they were based reveals some innate flaws. As observed by Thorner, “in many areas the layer of absentee landlords at the top has been peeled off; at the bottom, in most areas forced labour has diminished or even vanished entirely. But, in between, the basic problems of the ordinary peasants persist. It has done the least for the petty tenants and landless labourers, these two categories being the largest in the countryside”.

Similarly, what Bardhan points out in the context of land reforms in the rest of India were equally applicable to Kashmir: “Laws were frequently enacted with deliberate loopholes and tell-tale exemptions designed to induce fictitious transfers of land to close and distant relatives and to keep the permissible retentions high”. For instance, orchards, fuel and fodder reserves were not directly included in the agricultural ceilings set by the 1950 Act. Therefore, some landowners converted their estates into orchards, thereby avoiding the ceilings. Bardhan argues that the land reforms were executed by a local bureaucracy largely indifferent, occasionally corrupt and biased in favour of the rural oligarchy. Riaz Punjabi substantiates these claims in Jammu and Kashmir with various examples of rent seeking activities in the countryside. Sarin argues that the revenue officials (Patwaris) enjoyed the greatest gains from land reforms, as they extracted large amounts of money from different parties. Political interference greatly undermined the egalitarian aims of the reforms, as land was distributed and redistributed according to the political affiliations of the tenants. The cooperatives through which large sums of money were extended as 'unrecoverable loans' developed into a highly politicised sector of Kashmir economy. There was an alliance between the rich landlords and the bureaucracy, which worked against the interest of the poor peasants.

Similarly, Bhat points out that “the post reform period has given birth to a new class structure in rural Kashmir of commercially orientated landowners, land speculators, bureaucrats, houseboat owners, transporters and bootleggers wielding both money and political power”. Ironically, the welfare policies aimed at the poorest and most backward sections of society, have been misallocated

to further the interests of the very class whose rural monopoly they were intended to abolish. Gias-u-Din argues that this process has led to the creation of neo-landlordism in the rural sector.

However, the above realities do not completely undermine the progress the land reforms achieved in Jammu and Kashmir. The land reforms changed the structure of the rural economy. The pattern of landholdings has been radically reversed over the past four decades from large average holdings, to smaller ones. In 1953, 42 per cent of holdings were below one hectare, constituting only 14 per cent of the total land. By 1986, 73 per cent of total holdings constituted 0-1 hectares, and their share of total area doubled to 32 per cent. Conversely, over the same period, large holdings of 4+ hectares, constituting 6 per cent of total holdings and 22 per cent of the total land, fell to 2 per cent of total holdings and 16 per cent of the total area. Although the increase in the number of small holdings has created a greater sense of equality and social justice, it has also resulted in a situation of extreme land fragmentation with average farm size now being considerably below the optimum size of farms for all India. The average holding in is extremely small, only 0.99 hectares compared to 1.82 hectares at the all India level.

### 3.1.6 LET US SUM-UP

The history of land reforms of J&K is old. It started with the appointment of two principal Settlement Officers of the State in 1887 and concluded with the passing of the Agrarian Reforms Act in 1976. However, substantial land reforms that intended to restructure agrarian relations and alleviate the tillers from their poverty and misery were initiated only under Sheikh Abdullah's government after Kashmir's accession to India. That time political leadership used the process of land reforms as a part of its political agenda under the dominant influence of socialist Ideology on its minds. The radical attitude of the political leadership was the biggest factor that differentiated the agrarian reforms in Jammu and Kashmir with the rest of India. The *New Kashmir Manifesto* of 1944 was a part of this socialist agenda prepared by well known Communist leader BPL Bedi who was Sheikh Abdullah's mentor. Hence, among all the states in the Indian Union, Jammu and Kashmir has the unique distinction of having introduced land reforms of considerable magnitude, including the remission of land revenue on small holdings.

### 3.1.7 SOURCES

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### **3.1.9 EXERCISES**

1. Write a note on historical background to land reforms in Jammu and Kashmir.
2. Outline agrarian reforms after 1948 ?
3. What are the major recommendations of Wazir Committee ?
4. Write a note on the Jammu and Kashmir Agrarian Reforms Act ?
5. Critically analyse politics of land reforms in Jammu and Kashmir ?

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## 3.2 ELECTORAL POLITICS : ISSUES AND DYNAMICS

- V. V. Nagendra Rao & Mamta Sharma

### STRUCTURE

#### 3.2.0 Objectives

#### 3.2.1 Introduction

#### 3.2.2 Electoral Process During Monarchy

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3.3.3.1 Electoral Politics During Pre-election Commission of India

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#### 3.2.6 Electoral Politics : Issues and Dynamics

#### 3.2.7 Let Us Sum UP

#### 3.2.8 Exercises

#### 3.2.0 OBJECTIVES

This lesson explains you administration of elections in Jammu and Kashmir and broader trends prevailed before and after Election Commission of India's jurisdiction extended to the State. After going through this lesson, you will be able to know:

- history of election in Jammu and Kashmir, especially under Dogra Kingdom;
- administration of elections in Jammu and Kashmir and why the process has been criticised by many; and
- main features of electoral process in the State.

#### 3.2.1 INTRODUCTION

Electoral politics and process are vital aspects of a democratic structure. A free and fair

election are a minimum requirement for any democratic society. A political systems legitimacy depends on how transparently the elections are conducted and how much representative the democratic system is. Noting the importance of transparency and fairness, most of the democratic countries have established an independent election commission to conducted periodic elections in their respective countries. In case of India, the largest democracy in the world, the need for free and independent election commission was recognized in the process of constitution making itself. Being a country that empowered its citizens with universal adult franchise, for the first time in the history of humanity, India's nationalist leadership realized the vitality the election commission is going to provide to India's democratic structure.

Hence, the Election Commission of India was established in 1950 itself to conduct a free and fair elections in India and various provinces in India. Initially the Commission was appointed only with one Commissioner. The Election Commissioner Amendment Act, 1989 was adopted on 1 January 1990 which turned the Commission into a multi-member body: a 3-member Commission has been in operation since then and the decisions by the Commission are made by a majority vote. The Chief Election Commissioner and the two Election Commissioners who are usually retired IAS officers draw salaries and allowances at par with those of the Judges of the Supreme Court of India

However, due to peculiar circumstances prevailed in the state of Jammu and Kashmir, special status accorded to it, and most importantly, due to prevailing political complexities in the State, the jurisdiction of Election Commission of India has not been extended to the erstwhile state for a considerable. This has implicated the politics and political process and distorted the functioning of the democratic process considerably. Due this factor, you will study in this how the electioneering has been carried out in Jammu and Kashmir since 1950s and its political implications over the period to the democratic politics.

### **3.2.2 ELECTORAL PROCESS DURING MONARCHY**

The Electoral history in the erstwhile state of Jammu and Kashmir can be traced to the monarchical period, to the days of Maharaja Hari Singh, when Praja Sabha established in 1934. The Praja Sabha, the first Legislature established in the state of Jammu and Kashmir, was comprised of 75 members, out of which 33 were to be elected. However, these 33 elected members were not elected from territorial constituencies, as it is the practice today, but elected by the religious communities in the state. The Praja Sabha was established in the backdrop of the Muslim subjects in the state, especially from the Kashmir region, raised against Maharaja opposing the communal discrimination. To address the issues raised by various communities in the state, a Constitutional Reforms Conference, headed by B. J. Glancy, was appointed to recommend measures so as to associate the masses with the administration of the state. The conference submitted its report in April, 1932. It made recommendation for the establishment of a legislative assembly in the state, giving representation to all the communities in the state as per their proportion, 21 Muslims, 10 Hindus and 2 Sikhs.

The elections conducted during this period were much more different what we experience today. They were held on the basis of Monto-Merely recommendations which restricted the electorate to certain sections of the society. The voting rights are restricted to educated, property holders, business and professional people, etc. Among the qualifications required for the right to vote included those related to education, holding of property, professional occupation, and the like. Women, illiterate and people having yearly income of less than Rs.400, were excluded from the right to vote. Commenting on the limited nature of electoral process at that time, A S Anand notes: “The franchise was very limited. It did not cover more than 3 percent of the population. Women were altogether excluded from voting. Illiterates were not entitled to vote. The literate votes consisted mostly of the lawyers, medical practitioners pensioned officers, title holders, village and district headmen, priests and managers of religious parties. No person who did not have an yearly income of Rs.400/- or more could vote”. More importantly, the electoral process was limited due to the fact that the official members outnumbered the elected members and very few people were enfranchised. However, in 1939, the number of elected members in the Praja Sabha was increased to 40, making nominated members minority. it was an important Proclamation in the constitutional history of State which could be considered as one more step towards the goal of responsible government.

The Constitutional Act of 1939 further attempted to reform the governance and representation structures to expand the critical democratic space within the monarchy. It provided for a unicameral legislature consisting of His Highness and the Praja Sabha. It also provided, as mentioned above, for an elected majority in the Praja Sabha. The members of the Praja Sabha were given freedom of speech and no member shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Praha Sabha. In short, the 1939 Act actively associated the subjects with the administration of the State while not surrendering the sovereign rights in favour of the Praja Sabha.

The Muslim Conference that renounced itself to rename as National Conference, started agitation for more representational democracy under the leadership of Sheikh Abdullah. In 1941, the National Conference became a formal member of the All India State People's Conference which spearheaded the liberation struggle in the Indian States. However, some of the party members who opposed the name change remained the leaders of the Muslim Conference had taken ambivalent position towards constitutional reforms.

In order to pacify the agitating masses, the Maharaja appointed a Commission under the chairmanship of Chief Justice of State High Court in July 1943 to review the working of the Constitution of the state. The National Conference prepared a detailed programme of reform and reconstruction for the State and submitted it to the Commission for its consideration. The Commission considered these reforms beyond the its scope and refused to accept. Any cooperation and formal association between the Maharaja and National Conference considerably ended thenceforth. However, in 1944 the National Conference adopted the proposal submitted to Commission as the party's Manifesto. Popularly known as agenda for “Naya Kashmir”, it contains

the Constitutional reforms, a bill of rights and details about representative political institutions along with other proposals for cultural and educational development of the masses of Jammu and Kashmir.

When India was about to attain its independence from British and there was a considerable confusion about the future status of princely states, the National Conference started agitation of “Quit Kashmir” against the rule of Maharaja. In this backdrop, the Maharaja of Jammu and Kashmir State decided to hold the second election to the Praja Sabha in January 1947. The National Conference, as expected, boycotted these elections. The Muslim Conference won 16 of the 21 Muslim seats.

### **3.2.3 ELECTORAL PROCESS IN POST-ACCESSION JAMMU AND KASHMIR**

The electoral process in the post-1947 period has to be understood in the context of the Special constitutional status enjoyed by the state. Following the Accession, the interim government, headed by Sheikh Mohammed Abdullah, negotiated a special constitutional status of the state which allowed to have a different relationship with the Union government as compared to the rest of the states in India. Known as Asymmetrical federalism, this special status was formalised by adding Article 370 to the Constitution of India. This special status has accorded extensive powers to Jammu and Kashmir, limiting the role of the Centre in very few areas of strategic importance. The Parliament also had a limited power of making laws for the state. The State was allowed to draft a constitution of its own through an elected Constituent Assembly. The Constituent Assembly that was also to serve as the first Legislative Assembly was convened in 1951.

#### **3.2.3.1 Electoral Politics During Pre-election Commission of India**

Due to the Special Status accorded to the State of Jammu and Kashmir, the electoral process of the state was de-linked from the election process in rest of India. The power of the Union Parliament to make laws concerning elections in J&K was not extended to the state. Therefore, the laws relating to election to either House of Parliament or to either House of the legislature were not constitutionally determined but left it to the then State Government led by Sheikh Abdullah. The entry 72 of the Union List dealing with elections was also not made applicable to the state. As a result, Sheikh Abdullah led government has decided everything related to the electoral process including delimitation of territorial constituencies, preparation of voters list, conduct of elections, declaration of results, etc. In determining the matters related to the electoral process, the provisions of the Constitution of Jammu and Kashmir, framed during the monarchical period, were followed. Hence, the responsibility for the 'superintendence, direction and control' of election to the State Legislature was given to the state Election and Franchise Commissioner to be appointed by the Sadr-i- Riyasat, that is the person appointed by the Sheikh Abdullah led government. In short, the electoral rules were locally framed without following norms incorporated in the Indian Constitution.

#### **Elections to the Constituent Assembly 1951**

On 30 April 1951, the Prince Regent Karan Singh issued a proclamation announcing the

elections for the Constituent Assembly. The new rules, Jammu and Kashmir Constituent Assembly Elections Rules, were framed to conduct the elections. The Constituent Assembly was to have a nominal membership of 100 members, of which 25 seats were allocated to Kashmir under Pakistani control (which were never filled). Of the remaining 75 seats, Kashmir was allocated 43 seats, Ladakh 2 seats and Jammu 30 seats.

The foremost modification carried out by these new rules was expanding the electoral space. The limited voting rights given in the earlier constitutional system was abandoned and the system of universal adult franchise was institutionalised. The Jammu and Kashmir Constituent Assembly Elections Rules further provided that every person whose name had been duly entered in the electoral roll of any constituency was entitled to vote.

The Proclamation issued specifying the rules to be followed in the conduct of elections to the Constituent Assembly reads as follows:

**Yuvraj Karan Singh, do hereby direct as follows:**

- A Constituent Assembly consisting of representatives of the people, elected on the basis of adult franchise, shall be constituted forthwith for the purpose of framing a constitution for the State of Jammu and Kashmir;
- For the purposes of the said elections the State shall be divided into a number of territorial constituencies, each containing a population of 40,000 or as near thereto as possible, and each electing one member. A delimitation committee shall be set up by the Government to make recommendations as to the number of constituencies and the limits of each constituency;
- Elections to the Constituent Assembly shall be on the basis of adult franchise, that is to say, every person who is a State subject of any class, as defined in the notification No....., is not less than twenty- one years of age on the first day of March, has been a resident in the constituency for such period as many be prescribed by the rules, shall be entitled to register in the electoral rolls of that constituency, provided that any person who is of unsound mind or has been so declared by a competent court, shall be disqualified for registration;
- The vote at the election shall be by direct and secret ballot; Any person who had fulfilled the following conditions and qualifications was eligible to contest the elections:
  1. A State subject as defined in the Notification L/1984 dated 18th April 1927.
  2. A registered elector of his constituency
  3. A literate

4. A person of 25 years of age on or before the first day of August, 1951.

The rules also provided for certain disqualifications. Following categories of people were not eligible to contest elections:

1. Holder of any office of profit in Jammu and Kashmir Government or Government of India or any other State of Government of India or any whole-time employee in any Municipal or Local Body in the State. (Exemption however was made for a Minister in the State or a pensioner of Jammu and Kashmir Government, or any other Government in India or whole-time employee of any cooperative society.)
2. Convicted and sentenced for an offence punishable with imprisonment for not less than two years or for such a lesser period as might be allowed in any particular case of election commissioner.
3. Dismissed for corruption either by the Government of Jammu and Kashmir State or by Government of India unless a period of 3 years or such less period as the Election Commissioner might allow in any particular case.
4. Of unsound mind as declared by a competent court; and
5. An undischarged insolvent and a person so declared by a competent court. But an insolvent, on a certificate that his insolvency was caused by misfortune without any misconduct on his part, was exempted from this disqualification.

### **3.2.3.2 Flawed Electoral Process: Uncontested Returns and Massive Majorities**

The electoral process in Jammu and Kashmir has had a chequered history of elections reflecting the troubled politics of the state since its accession to India in 1947. The first elections were held to the state's constituent-cum-legislative assembly in 1951. It was a time when the influence of Sheikh Abdullah was at its height and nobody from the opposition stood so ruling party candidates were returned unchallenged. A prominent lawyer, Ghulam Nabi Hagroo, says that the elected MLAs came to be known as “made by Khaliq”.

There were two broader trends that dominated the electoral politics in the initial electoral politics of the State or before the India's Election Commission's jurisdiction was extended to the State of Jammu Kashmir. These are 1) the phenomenon of uncontested returns and 2) the tendency for massive majority in favour of the ruling party. It was during the 1951 Constituent cum Legislative Assembly election that the unique trend of uncontested returns was initiated in this state. As many as 73 out of the 75 Assembly seats were returned uncontested during this election.

The former Chairman of United Nations Commission for India and Pakistan (UNCIP), Dr. Josef Korbel, in his book *Danger in Kashmir* that: “Forty-three candidates were elected unopposed one week before the election date, and two independent candidates withdrew under pressure later.

There was actually no balloting. In Jammu the authorities rejected the nomination papers of the Praja Parishad, the opposition party, in 13 constituencies on the pretext that they were not properly presented. Thus, before the election date, Sheikh Abdullah was assured of 58 friendly members in the constituent Assembly. Three days before the elections in Jammu, on October 12, Praja Parishad announced boycott of the elections accusing the government of illegal practices and official interference, wholesale rejections of Parishad nomination papers. This gave National 15 seats. The last two contestants dropped out at the last moment. Before the polling began, therefore, Sheikh Abdullah's followers were sure of all 75 seats". Scholar Sumantra Bose states that the manner of elections indicated that the National Conference elites wanted to govern Jammu and Kashmir as a party state. Their slogan was "One Leader, One Party, One Programme".

The two phenomena mentioned above, that is uncontested results and massive mandate for ruling party, continued till 1967. During the all the elections conducted from 1951 to 1962 the government machinery was completely and unhesitatingly used in support of the ruling party; opponents were disqualified on flimsy and frivolous grounds; Peace Brigade men were employed to intimidate voters; and when even strong arm methods failed, the ballot boxes were tampered with enabling polling officers to declare the victory of the National Conference party men.

#### **Uncontested Results**

| <b>Year of Assembly Election</b> | <b>The Ruling Party at that time</b> | <b>The percentage of the victories in favour of the Ruling Party</b> |
|----------------------------------|--------------------------------------|----------------------------------------------------------------------|
| 1951                             | National Conference                  | 100.00%                                                              |
| 1957                             | National Conference                  | 90.66%                                                               |
| 1962                             | National Conference                  | 93.33%                                                               |
| 1967                             | Indian National Congress             | 81.33%                                                               |

#### **3.2.4 EXTENSION OF INDIA'S ELECTION COMMISSION TO JAMMU AND KASHMIR**

The efforts to reform the fraudulent electoral process in Jammu and Kashmir was initiated in late 1950s with the amendment to the "The Jammu and Kashmir Representation Act", though its effects were somewhat visible only since late 1970s. The Jammu and Kashmir Representation of the People Act, 1957 paved the way to the extension Election Commission of India jurisdiction to the State of Jammu and Kashmir. By an amendment to Section 138 of the Constitution of Jammu and Kashmir in 1959, the 'Superintendence, direction and control' of election to the Legislature of Jammu and Kashmir was delegated to the Election Commission of India. However, the functioning of the Election Commission of India in the State was not governed by the Union laws but operates under the laws of the State. However, the State was at par with the rest of States with regard to the procedure for

the Election of the President and Vice-President.

Since then, though in many respect the laws and rules of the state of J&K were modelled on the pattern and rules enshrined in the Indian Constitution, yet there were some basic differences between the two set of rules. The first such difference was in the context of delimitations of the constituencies. In rest of India a commission was needed to be constituted for readjusting the representation of the territorial constituencies of the state legislatures. However no such provision was required with regard to the state of Jammu and Kashmir. Here the powers of delimitation rested with the Governor of the state.

The other difference was related to the election of the Members of the Parliament from the state. While Article 81(1) of the Indian Constitution provides for the direct election from territorial constituencies for election to the Parliament, however, in case of Jammu and Kashmir, the representatives were to be indirectly elected by the legislature of the state and appointed to Parliament by the President of India. This practice continued for almost two decades.

There was also a difference regarding the delimitation of the constituencies. Art 81 (2) (b) of Indian constitution provides that each state shall be 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 is, as far as practicable, the same throughout the state. But in case of Jammu and Kashmir, provision was made for dividing the state into single-member territorial constituencies in accordance with such procedure as the Delimitation Commission may deem fit. The delimitation commission's composition was also left at the disposal of the state legislature, which again was in variation from the Indian constitution. The rules and regulations for the preparation and publication of electoral rolls and for the entertainment of objections and claims were also delegated to the state authorities as per state laws. The People's Representation Act 1957 of the state constitution provided that Election Registrar could amend any entry according to his satisfaction.

The People's Representation Act, 1957 of State though was based on similar legislation applicable in the rest of India but the powers of the Election Commissioner were more limited than in the rest of India.

In order to safeguard the interests of certain classes the Indian constitution provides for reservation of seats for certain classes and schedule Tribes. However Art 325 to Article 334 providing such safeguards for adequate representation were not made applicable to the state of J&K. The reservation was later made for the Scheduled Castes. But as there were no officially recognized Scheduled Tribes in the State earlier, provision was not made for reservation of seats for them in the State Legislature. Article 342 of Constitution of India, which provides for reservation of seats for Scheduled Tribes is still not applicable to the state.

The constitution of Jammu & Kashmir also bars the interference by courts in electoral matters and hence such matters are left wholly on the discretion of returning officer with immunity from the

court of law. As per the provisions of the People's Representation Act, 1957, the civil courts were barred from entertaining or adjudicating upon any question "whether any person is or is not entitled to be registered in an electoral roll for a constituency". The courts are also barred from "questioning the legality of any action taken by or under the authority of an electoral registrar or of any decision given by any authority appointed under this Act for the revision of any electoral rolls or any action taken or decision given by the returning officer or by any other person appointed under this Act in connection with an election." The present position of the jurisdiction of courts with regard to electoral matters is stated by Justice A S Anand as follows: "An election ends with the declaration of the results; if subsequently an election tribunal is set up, the High Courts are not barred from interference with its decision. However, since, 1967, it is the High Court alone which has the power to try an election petition". Section 142 of Constitution of Jammu and Kashmir deals with this matter.

### **3.2.5 FEATURES OF ELECTORAL PROCESS IN JAMMU AND KASHMIR**

The controversial nature of the electoral politics of Jammu and Kashmir makes it very difficult to draw an objective picture about it. However, one can make an effort to depict various processes of the electoral politics of the state. While some of the features can be located in the electoral process itself, many others have been directly related and influenced by the very political environment in the state. It is important therefore to pinpoint some of the peculiarities of the state politics, specifically those that had definite implications for the electoral process.

#### **3.2.5.1 Legitimacy Crisis of Power Politics**

First of all, it is important to point out the legitimacy crisis of the power politics, which evolved as early as 1953 when Sheikh Abdullah, the charismatic leader of the National Conference (the party responsible for the mass mobilization in Kashmir) was dismissed from power and arrested for a long time. Though in detention, Sheikh continued to be seen as the tallest leader of Kashmir. The political leadership that was meanwhile involved in the power politics could neither match the political stature of Sheikh nor could develop an independent politics for itself. Surviving with the support of the Central government, this leadership faced a legitimacy crisis that was extended to all modes of mainstream politics. Electoral politics also could not escape the brunt of this legitimacy crisis. From the beginning, it came to be seen as an instrument of central intervention and manipulation.

#### **3.2.5.2 Fragility of the Party System**

Secondly, the electoral politics suffered a setback due to the fragility of the party system. Of the various limitations from which the party politics of the state suffered, one important limitation related to a restricted nature of competition and an absence of politics of dissent and opposition. The state from the very beginning evolved a unique nature of politics in which the ruling party hegemonized the political space to such an extent that there was no possibility of effective opposition. Though this was generally the scene for whole Jammu and Kashmir, but it was much more so for the Valley. The ruling party came into power with massive majority monopolizing most of the electoral

space.

However, the colossal strength of the ruling party after each successive election, was not based upon the popularity of this party as much as it was a result of a systematic and deliberate effort of the national leadership to restrict the dissenting and oppositional voices in Jammu and Kashmir to the minimum. There was a feeling on the part of the national leadership that the political situation in Kashmir was too fragile to allow a normal process of internal competition. The claim made on Kashmir by Pakistan on the one hand and the internal pressure of the separatist politics of the Plebiscite Front (led by Sheikh Mohammed Abdullah) on the other, made the national leadership wary of any internal challenge to the ruling party from within in initial days of post-accession. However, the same political trend continued to even today.

### **3.2.5.3 Weak Oppositional Politics**

Till the middle of sixties, the National Conference remained the only effective political party of the state in general and Valley of Kashmir in particular. The only opposition party that operated in the state was Praja Parishad, which was located in Jammu. Praja Parishad continued to operate till 1962 Assembly elections. Later it was merged into the Bharatiya Jana Sangh. Jana Sangh, did not extend itself to the state till the time the Praja Parishad was in existence. It operated through the Praja Parishad. For all practical purposes, the Praja Parishad was an extension of Jana Sangh in rest of India. Apart from Praja Parishad, there was no effective opposition party in the state. It is interesting to note that neither the Indian National Congress nor the Communist Party of India operated in Jammu and Kashmir for quite some time. Both chose to operate through the National Conference.

There arose a number of opportunities for the opposition to evolve within the Legislative Assembly, however, all these attempts were stifled. In 1957, thirteen dissenting NC MLAs led by G M Sadiq formed a party of their own viz. the Democratic National Conference. However, the party leaders, on the intervention of the Central leadership returned to the fold of National Conference.

### **3.2.5.4 Central intervention and Dependence on the Ruling Party in the Centre**

In the absence of a genuine space for the oppositional politics within the mainstream politics, the democratic politics could not institutionalize itself. Ruling party rather than looking for support from the people started relying more on the support of the Central government. Gradually it became the norm that the power politics was determined more by the will of Centre rather than through the local support and mandate.

The popular perception that the power politics of the state was regulated by the Central government became more deep-rooted with the increasing intervention of the Central ruling party in the politics of the state. The local power structure rather than being defined by the logic of local politics came to be determined by the political convenience of the Central government. Bakshi Ghulam Mohammed who had replaced Sheikh as the Prime Minister of the State in 1953, was conveniently sidelined in 1962 under the garb of 'Kamraj Plan'. The process of nominating or

replacing the political leadership of the state as per the expediency of the Centre continued in the later period. In 1975, Mir Qasim, the Chief Minister of the Congress-led government was asked to step down to make space for Sheikh Abdullah who was brought back to power under an Accord that the Central leadership made with him. However, very soon the Congress party withdrew the support that it had offered to him in 1977. In 1984, the Congress party succeeded in overthrowing the NC government led by Farooq Abdullah even when it had received a massive mandate in a keenly contested Assembly election in 1983. A Congress supported government of the NC-defectors led by G M Shah replaced this government. G M Shah's government was similarly overthrown as the Congress party in the Centre decided to go in for an alliance with the National Conference.

The Central intervention went much beyond this and resulted in changing the basic principles of Centre-State relations. The logic of Autonomy guaranteed under the Article 370 of Indian Constitution was compromised as many provisions of Constitution of India were extended to the state. Such extension was beyond the scope of the 1952 Delhi Agreement between Sheikh Abdullah and Jawaharlal Nehru. By mid-sixties, substantial changes were made even in the Constitution of Jammu and Kashmir. The sixth Amendment to the Constitution of Jammu and Kashmir changed the nomenclature of Prime Minister and Sadar-e-Riyasat. Prime Minister was now to be named as the Chief Minister. In place of Sadar-e-Riyasat, who was till now elected by the state legislature, there was to be the office of Governor. He was to be a nominee of the Centre and was to be appointed by the President of India. Meanwhile, the Congress party, which had hitherto no formal political existence in the state, became the ruling party in the state as the ruling National Conference dissolved itself and merged with the Congress. All these developments took place at a time when the legitimacy of the local elite was seriously contested.

### **3.2.6 ELECTORAL POLITICS : ISSUES AND DYNAMICS**

The electoral experience of the people of Jammu and Kashmir goes back to 1934. The elections were the outcome of the prolonged political movement in early thirties, articulation a demand of representative institutions. Leading role in the movement was played by the Muslim young men who had returned to the valley after completing their education in different parts of the country. Since the political consciousness was banned but the educated youth formed what is known as the "Reading Room" (1929) in the grab of which they wanted a platform to bring the entire educated youth together for devising ways and means to fight against the injustice done to the educated youth. The leaders of the organization organize secret meeting in which they discuss the problems which are faced by the educated youth. Initially its main focus was mainly to discuss the problems related to employment and other issues but later it started to mobilize the people against the Dogra Rajput ruler and wanted to setup responsible government. Encouraged by the mass support the Muslim leadership got emboldened to launch an organized struggle by forming a political organization for the purpose. To give a practical shape to the idea a committee was setup. It drafted a constitution of the proposed organization and decided to name it as All Jammu and Kashmir Muslim

Conference in 1932.

The inaugural session was held at the historic Pather Masjid under the presidentship of Sheikh Abdullah. The Maharaja initially resorted to repressive measures, but finding himself incapable of curbing it, and in this perspective found it necessary to associate leaders of public opinion in the governance of the state. A system of restricted franchise was introduced. A reform commission under the B.J. Glancy recommended a partially elected Praja Sabha. The Praja Sabha consisted of 75 members of whom only 33 were to be elected by constituencies organized under the scheme of separate electorate. Another 14 members were to be nominated by the Maharaja. The Muslim Conference captured all the seats reserved for Muslims. The party worked with a common cause and tried to unite all the sections of the society under the same platform, and it was the reason which ultimately led to the conversion of Muslim Conference into National Conference. This conversion took place in 1939. The conversion was not an abrupt development but the culmination of a gradual process that began as early as the formation of Muslim Conference. It was alleged that it was a party which represented only Muslims. Thus in order to give a secular character to the party its name was changed. After its formation the National Conference remained central in the politics of Jammu and Kashmir. The party became popular in the state because of the adoption of New Kashmir Manifesto (1944), Quiet Kashmir Movement (1946) and the land reform. Sheikh Abdullah's demand for Article 370 and its implementation made him the great figure in the politics of Jammu and Kashmir. The election to the legislative Assembly which was held in 1951 National Conference had won all the seats. Thus the National Conference with absolute majority and the slogan of 'one leader' (Sheikh Abdullah) 'one party' (National Conference) and 'one programme' (Naya Kashmir Manifesto) formed the Constituent Assembly. The National Conference had strong influence in Kashmir but could not sweep Jammu. The party failed in its effort to extend its activities in Jammu and Ladakh region particularly in the Hindu dominated belt. Its genesis, growth and ideological mooring made it a suspect in the eyes of the Dogra nationalists of Jammu. Their resentment was further aggravated by his demand of Article 370. They believed that they would enjoy greater security within the Indian union and therefore demanded full integration of the state with India. In the backdrop of this situation it was decided to launch a movement to resist Sheikh Abdullah's design and the programme of National Conference. The movement took the shape of a political party called the Praja Parishad. The party opposed the setting up of a separate Constituent Assembly for the state. It demanded the abrogation of Article 370 and complete merger of Jammu and Kashmir state with India. The party's autonomy views were expressed in a popular slogan: *Ek Desh main do vidhaan, ek desh main do nishan, ek desh mai do pradhan: nahin challenge, nahi challenge* (Two Constitutions in one country, two flags, two Heads of State, these will not be accepted). In spite of this stand it decided to contest the election to the Constituent Assembly of the state. Because of the large scale rejection of the nomination papers of its candidates it decided to boycott the election in protest and blamed the government for having used unfair means. Sheikh Abdullah remained the prime minister of Jammu and Kashmir until August 1953, when he was dismissed by the central government and detained on grounds of conspiracy.

against the government of India. The new government was installed in the state under Bakshi Ghulam Mohammad, who won a unanimous vote of confidence from the Constituent Assembly. Elections to the legislative Assembly were held in 1957. At that time the NC won 68 seats out of 75. The second election which was held in 1962, NC got 70 seats. There was lack of opposition in the elections. The only party in opposition was Praja Parishad. Both the elections were heavily rigged. Central intervention remains the main feature in the politics of the state because of this the National Conference was merged in 1964 with Congress. After this merger the nomenclature of *Sadar-e-Riyasat* and *Wazir-e-Azam* was changed to Governor and Chief Minister in the state constitution. In 1972 Assembly election the Congress won 58 seats. This was the election when the J and K Jamaat-e-Islami contested for the first time and won 5 seats. Sheikh Abdullah finally revived the National Conference after signing Indira-Sheikh Accord in 1974. The Congress abdicated power in the state as per the accord and he took over the Chief Minister of the state. But the arrangement did not last long and the Congress withdrew its support on March 1977 and the Governor rule was imposed in the state. Sheikh Abdullah returned to power in 1977 Assembly election by capturing 44 seats, followed by Jnata Party (13) and Congress (11).

### **Issues and Dynamics**

One party dominance remains the main feature of the Jammu and Kashmir politics. National Conference after its revival in 1977 again formed the government in the state. Yet the Congress sought applying pressure on Sheikh to enter into alliance. While Sheikh Abdullah could withstand such pressure but after his death in 1982 it was not that easy for his son and successor Farooq Abdullah who succeeded his father as the leader of the NC. Also with the entry of Muslim United Front in 1987 the power politics was changed in the state. The 1987 Assembly election paved the way for the insurgency in the state. The rigging in this election led to the emergence of militancy and separatism which resulted into the suspension and collapse of political process in the state in early 1990. The state was put under Governor rule. The only significant political development during this period was the formation of the All Party Hurriyat Conference in March 1993 to provide separatism a political space. To restore the political process 1996 Assembly election was conducted and National Conference again formed the government. After 2002 Assembly election the National Conference lost its dominant position and was replaced by the PDP. The PDP formed alliance with Congress and coalition era was started.

### **3.2.7 LET US SUM UP**

By this time, you must have understood that the democratic situation in Kashmir from the beginning was not an ideal one. The period 1947-53 was one of transition and the democratic political structures were yet to fully institutionalise. This resulted in manipulated electioneering. During the first general election for the Legislative cum Constituent Assembly, all the seats were captured by the National Conference. After the dismissal and imprisonment of Sheikh Abdullah, the electoral politics in the post- 1953 period lost whatever democratic content it earlier had. The manoeuvring of

the electoral process insulated the democratic politics from the mass response. Though elections were held at regular frequency of five years, yet there was nothing that enthused the voters. With most candidates getting elected uncontested, the whole process bypassed the people. However, the 1977 assembly elections and elections conducted from 2002 onwards somewhat erased the past negative record and brought back credibility to electoral politics in the State of Jammu and Kashmir. Now many people, in the state, national and internationally, lauding Election Commission of India for making serious efforts to conduct a fair and free elections so that a true representatives of the people can be elected.

### **3.2.8 EXERCISES**

1. The uncontested results and massive majorities undermined the legitimacy of government in Jammu and Kashmir for a long time. Comment ?
2. Write a note on main features of Electoral Process in Jammu and Kashmir ?

### **3.3 POLITICAL PROCESSES : DELIMITATION OF CONSTITUENCIES**

**- Mamta Sharma**

#### **STRUCTURE :**

#### **3.3.0 Structure**

#### **3.3.1 Introduction**

#### **3.3.2 The Philosophy behind Delimitation**

#### **3.3.3 The Evolution of the Process of Delimitation in India**

#### **3.3.4 Delimitation of Constituencies in Jammu and Kashmir**

#### **3.3.5 Let Us Sum UP**

#### **3.3.6 Exercise**

#### **3.3.0 OBJECTIVES**

In this lesson you will study the major landmarks in the delimitation of Constituencies in India in general, and Jammu and Kashmir State particularly. After going through this lesson, you will be able to know:

- the historical context of delimitation of constituencies in India.
- the major landmarks of delimitation of Constituencies in Jammu and Kashmir state.
- Major recommendations of delimitation Commission in Jammu and Kashmir UT.

#### **3.3.2 INTRODUCTION**

The notion of democracy can be regarded as an art, as well as a craft. It is an art when it captures the subjective and abstract notion of representation, citizenship, empowerment, and emancipation of the masses. Its craft dimension of techniques and mechanics is more implicit in the specifics of electoral processes, and the models and techniques employed often dictate the nature of democracy that is eventually formulated. The importance of representation in a democracy does not need to be elucidated through an invocation of constitutional provisions. Political representation figures in the core operative principles of a democratic nation. The very first step towards establishing a system of representative democracy has been to allocate the voting population into spatial units, called 'electoral constituencies' or 'districts'. The process through which these electoral constituencies or districts are drawn, and redrawn, keeping careful considerations of the population, composition of the population, geographical size and many other factors is called delimitation. The Constitution of India provides for the periodical exercise of delimitation under Articles 81 and 82 after every Census.

The purpose of the delimitation exercise is to ensure that with a change in the population, the constituencies are also reapportioned to accommodate roughly the same population in all the constituencies, thereby upholding the principle of “One Vote, One Value”. Delimitation of constituencies for elections to Lok Sabha and State Legislative Assemblies was put on freeze till the 2001 Census figures through the 42nd Amendment to the constitution in the year 1976, and again in the year 2002 through 84th Amendment extending the freeze till the first Census after the year 2026.

The Constitution of India provides for a Union parliament with a bicameral legislature similar to the Westminster model. The Union Parliament as mentioned in Chapter II of the constitution is composed of the President, the lower house i.e. the Lok Sabha and the upper house i.e. the Rajya Sabha. Similarly, as per Chapter III under Article 168, the State legislature is composed of the Governor, the legislative assembly as a lower house and the upper house known as the legislative council. The members of the House of the People of the Parliament and the State legislatures are directly elected by the people through direct elections whereas, for the Rajya Sabha and the Legislative councils, the members are elected indirectly. The Indian Constitution is one of the first to provide for universal adult suffrage, which means every adult citizen above the age of eighteen years can cast her vote in the general as well as assembly elections. The members in Lok Sabha, as well as the State Legislative Assemblies, are elected through 'first past the post' system also known as plurality system as provided in the Conduct of Election Rules, 1961. Under this system, any candidate securing the highest number of votes in her favor is considered the winner, unlike the Proportional Representation (PR) system. The exercise of overall superintendence, directions and control of elections in the country lies with the Election Commission of India which is a constitutional body. Indian electoral system is based on territorial representation where the entire country is divided into parliamentary and assembly constituencies on where the elections are contested. The task of 'Delimitation' i.e. demarcation of boundaries of territorial constituencies and their apportionment in the Lok Sabha and the State Legislative Assemblies is given to a separate boundary commission called the Delimitation Commission.

### **3.3.3 The Philosophy Behind Delimitation**

In simple terms, 'delimitation is the drawing or redrawing of the electoral boundaries of the constituencies with a view to dividing, so far as practicable, the population of a political division (State, Province or District) in such an equitable manner that there are as many electoral constituencies of equal size and population as the number of elected representatives allotted to that political division'. The basic premise around the process of delimitation is that the ratio of the number of seats allocated in the Lok Sabha for every state to the total population of the state should nearly remain constant across the country. The same is the case for assembly constituencies in the States. The reason behind it, as rightly stated by McMillan is that 'people voting in one place do not have a greater influence over the result than people voting in another'. In other words, the principle of 'one person, one value, one vote' must remain intact.

Delimitation is the act of fixing or redrawing the limits or boundaries of territorial constituencies (Assembly or Lok Sabha seat) in a country or a province having a legislative body, as per the Election Commission. The delimitation exercise is carried out by an independent high-powered panel known as the Delimitation Commission whose orders have the force of law and cannot be questioned by any court. The exercise has been carried out over the years to redefine the area of a constituency- based on its population size (based on the last Census). Aside from changing the limits of a constituency, the process may result in a change in the number of seats in a state. This exercise also involves reservation of Assembly seats for SC & ST in accordance with the Constitution. The key aim is to have equal representation to equal segments of the population in order to ensure a fair division of geographical areas so that all political parties or candidates contesting elections have a level playing field in terms of a number of voters.

Some general principles, recognized as being implicit in the guidelines framed by Delimitation Commission after every delimitation exercise for demarcation of electoral boundaries are:

1. Integrity Principle- All assembly constituencies fall wholly within a district, and no assembly constituency shall extend to more than one parliamentary constituency.
2. Contiguity principle- The electoral constituencies must be geographically compact and contiguous.
3. Geometric shape- The delimitation of the constituencies in a district shall be done starting from north to northwest, and then proceeding in a zigzag manner to end at the southern side.
4. Equi-population principle- The electoral constituencies must be equal in population. However, given the 'impossibility' and 'impracticability' of having equal population across constituencies, a deviation (also called 'tolerance') of  $\pm 10$  percent from the average population of a constituency may be allowed'.

### **3.3.4 The Evolution of the Process of Delimitation in India**

- 1 **Initial Phase (1951-1961)** The Constitution put the onus on the parliament to form an authority for the purpose of readjustment of territorial constituencies in the House of the People and in the legislative assembly of each State. Article 81 talks about the apportionment of seats in the House of the People from every state along with the manner in which such apportionment should be taken place. Similarly, Article 170 provides for the manner in which the apportionment of seats in the Legislative Assembly of the state should be done. As discussed above, the Constitution also provides for the reservation of seats in the legislature for Scheduled castes and Scheduled tribes under Article 330 and 332. To provide political representation to the Anglo-Indian community in the legislature, not more than two seats are reserved for them in the Lok Sabha and one seat in each State assembly. The task was entrusted

to the Election Commission of India by enacting sub-section 6 and 9 of Representation of the People Act, 1950. The presidential order in this regard was issued on an ad-hoc basis which was valid until the completion of the general election (1951-52) and the subsequent by-elections. After the completion of the initial delimitation exercise, the EC made recommendations to the government to set up an independent quasi-judicial commission with judicial members, as the former encountered certain procedural shortcomings while undergoing the exercise. Based on its recommendations, the government enacted the Delimitation Commission Act, 1952 with a 3- member Commission, two judicial members and the Chief Election Commissioner as a third ex-officio member. In addition to it, two to seven political representatives from each state depending on the population of the State concerned were included as Associate Members in the Commission with no voting rights. The Delimitation Commission was also entrusted with the task of reservation of seats for SCs and STs- one seat either for SCs or STs in two-member constituencies prevalent at that time. Later, the commission recommended doing away with the two-member constituencies which were later abolished in the second delimitation exercise of 1962. On 1st November 1956, 14 states and 6 union territories were created by the State Reorganization Act of 1956. With this reorganization, a need for a fresh delimitation commission had also arisen. However, government reappointed the same members for the new commission and the order was based on the Commission's report formed the basis for the second and third general elections to the Lok Sabha in the year 1957 and 1962, respectively.

- 2 **Second Phase (1961-1971)** The second Delimitation Commission was constituted after the 1961 Census by the Delimitation Commission Act of 1962. By July 1966, the Commission had completed the assigned task, however, with the reorganization of Punjab, Himachal Pradesh and Haryana and the creation of Chandigarh as a Union Territory, some additional readjustment in the territorial constituencies were further made. The Act of 1962 had certain differences from the previous Act. First, the two-member constituencies were abolished and reservation for SC-STs was to be provided in single-member constituencies. Second, it was provided that every assembly constituency should be fallen within one parliamentary constituency. The third was with respect to the reservation of constituencies where, the constituencies reserve for Scheduled Castes should be distributed in different parts of the state, as far as practicable, in areas of higher Scheduled Caste population. However, the ST constituencies should be reserved only in those areas where there is a high concentration of the ST population. Based on the orders of this Commission, the general elections of 1967 and 1971 were conducted.
- 3 **Delimitation after the 1971 Census and the Freeze:** With the completion of the 1971 Census, the third Delimitation Commission was constituted by the Delimitation Commission Act of 1972. This Act mandated the Commission to make recommendations to readjust and reapportion the parliamentary constituencies of all states except Jammu and Kashmir and the UTs of Delhi, Goa, Pondicherry, Daman and Diu and Mizoram and assembly constituencies of

all states excluding Jammu and Kashmir and including the UT of Delhi. The process of readjustment and delimitation of Nagaland was governed by Art 371A 2(h) and State of Nagaland Act, 1962, for the UT of Delhi, Delhi Administration Act, 1966 and for remaining UTs, the process was governed by Section 3 and 39 of the Government of Union Territories Act, 1963. Moreover, the act also increased the strength of Associate Members in the Commission from 9 to 10 members- 5 MPs nominated by the Speaker of the Lok Sabha and rest 5 MLAs nominated by the Speaker of the concerned Legislative Assembly. The Commission allocated the 545 Lok Sabha seats in such a manner that 36 seats were allocated to smaller states with a population of 60 lakhs whereas, the remaining 507 seats were allocated to the rest of the major states with the average population per seat ratio of 10.44 lakhs. However, the parliament took a very unprecedented move by amending the Art 82 and 170 of the Constitution by 42nd Constitutional Amendment Act of 1976. The Act, not only had frozen the population figures to that of the 1971 census but had also put a 30-year long moratorium on the further delimitation exercise, till the publication of 2001 Census figures. The reasoning provided by the government was, as the National Population Policy (NPP) was in force, some states especially the southern states were more successful in controlling the population growth than their northern counterparts. The freeze was to 'ensure that the states following the NPP and keeping the growth of population low are not put to any loss of representation in the national parliament'. Continuance of further delimitation exercise as according to the Constitution might result in loss of representation of Southern states in the House of the People on the cost of gaining representation of northern states who failed to put a check on their population growth.

- 4 **The Interregnum (1971-2001)** With no Delimitation Commission after 1975, the number of seats in Lok Sabha and state legislative assemblies were unaltered. However, the political map of the country was continuously changing with the creation or re-organisation of new states and union territories. Statehood was conferred to Arunachal Pradesh and Mizoram in 1986, Goa, Daman and Diu were reorganized in 1987, Uttaranchal was carved out of Uttar Pradesh in 2000, National Capital Territory got legislative assembly in 1991, etc. In addition to this, some additional castes and tribes were recognized and included which altered the population of SCs and STs in certain states. These changes were to be reflected in the size of the territorial constituencies of that time. So, despite the embargo, 'the responsibility of delimiting the parliamentary and assembly constituencies or locating the additional reserved constituencies for the scheduled castes and scheduled tribes was entrusted by Parliament to the Election Commission, instead of setting up any separate body for the purpose'. This means the exercise of delimitation was not completely stalled, it was the EC who was playing the role of a Delimitation Commission as and when the need has arisen. When the State of Uttaranchal, Chhattisgarh and Jharkhand were carved out, the EC was entrusted with the task of delimitation exercise under the Respective State Reorganization Acts. The only condition was, not to alter the number of seats in the Lok Sabha and state legislative assemblies in any

circumstances. However, several attempts were made for status-quo ante and to revive the process of delimitation.

**5 Fourth Delimitation Commission and Further Freeze** With the publication of the Census of 2001, and enactment of the Delimitation Act, 2002, the delimitation exercise had started. Before that, a Constitutional Amendment Bill was moved in 2000, in favour of conducting the delimitation exercise on the basis of already published Census data of 1991 as it could be irrational to use the decade-old Census figures when the process of the 2001 Census was already in force and the Census figures were about to come. Hence, the Bill was sent to a Parliamentary Standing Committee chaired by Shri Pranab Mukherjee for more deliberations and consensus. The committee discussed the bill at length. The Ministry of Law and Justice gave the explanation that using the 2001 data would have caused a massive delay in the process of delimitation as it was expected that the data, including that of SC/ST population, would have come out no sooner than 2005. This would also have caused a significant delay in holding fresh elections. With much debate and discussions on this issue, the standing committee decided to show a green signal to this bill in its original form and the bill after ratification from more than half the states became the Constitution (Eighty-fourth) Amendment Act. However, by this Act, the parliament decided to extend the freeze till the publication of the first figures after 2026 Census. The same rationale as was given in 1976 was again reiterated nevertheless, this time with greater expectations that the country would achieve a uniform population growth by 2026. Furthermore, another Constitutional Amendment Act was later enacted by the parliament which amended the Delimitation Act, 2002 to provide for 2001 Census figures as the basis. So, the current status of the law and the Constitution is that the number of seats in the Lok Sabha and legislative assemblies are unchanged as that of the 1971 Census, however, the redrawing and readjustment of the territorial constituencies and the reservation of seats shall be given based on the 2001 Census figures. The final recommendations of the fourth Delimitation Commission were:

1. The total number of existing seats as allocated to various states in the 'house of the people' on the basis of the 1971 Census shall remain unchanged till the first census to be taken after the year 2026;
2. The total number of existing seats in the legislative assemblies of all states as fixed on the basis of the 1971 Census shall also remain unaltered till the first census to be taken after the year 2026;
3. The number of seats to be reserved for the scheduled castes (SCs) and scheduled tribes (STs) in the Lok Sabha and state legislative assemblies shall be reworked on the basis of the 2001 Census.
4. Each state shall be re-delimited into territorial parliamentary and assembly constituencies

on the basis of the 2001 Census and the extent of such constituencies as delimited now shall be frozen till the first census to be taken after the year 2026,

5. The constituencies shall be redrawn that population (on the basis of the 2001 Census) of each parliamentary and assembly constituency in a state shall, so far as practicable, be the same throughout the state

### **3.3.5 Delimitation of Constituencies in Jammu and Kashmir**

Delimitation exercise conducted in Jammu and Kashmir in the past has been different from the ones conducted in the rest of the country because of the region's special status which was withdrawn by the Jammu and Kashmir Reorganisation Act, 2019. Until then delimitation of the Lok Sabha seats in Jammu and Kashmir was governed by the Constitution of India but the delimitation of State Legislative assembly seats was governed by the Jammu and Kashmir Constitution and the Jammu and Kashmir Representation of People Act, 1957. Assembly seats in Jammu and Kashmir were delimited in 1957, 1966, 1975 and 1995. The last exercise was conducted on the basis of 1981 Census. It formed the basis of the state elections in 1996. There was no Census in the state in 1991 and no Delimitation Commission was set up by the state government after 2001 as the State Assembly passed a law putting a freeze on fresh delimitation of Seats until the relevant figures for the first census taken after the years 2026 have been published.

The recent, Delimitation Commission was constituted by the Govt. of India through an official gazette notification published on 6 March 2020, in exercise of powers conferred by Section 3 of Delimitation Act, 2002 (33 of 2002), for the purpose of delimitation of Assembly and Parliamentary Constituencies in the Union Territory of Jammu & Kashmir. The Commission was headed by Justice Ranjana Prakash Desai, a retired Judge of the Supreme Court of India. Sushil Chandra, Chief Election Commissioner and K. K. Sharma, State Election Commissioner, Union Territory of Jammu and Kashmir, were the Ex-Officio members of the Commission. The Commission also associated in its work, 5 members of Lok Sabha( Farooq Abdullah, Hasnain Masoodi, Mohammad Akbar Lone, Jugal Kishore Sharma and Jitendra Singh elected from the UT of Jammu and Kashmir. These Associate Members were nominated by the Hon'ble Speaker of Lok Sabha. Notably, associate members do not have any voting rights under law and their objections are not binding on the commission. The commission was initially set up for a period of one year but was given a cumulative extension of 14 months under subsequent gazette notifications.

The Union Territory of Jammu and Kashmir was carved out from the erstwhile State of Jammu and Kashmir through the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019), passed by the Parliament. The delimitation of Assembly Constituencies in the erstwhile State of Jammu and Kashmir was governed by the Constitution of the State of Jammu and Kashmir and Jammu and Kashmir Representation of People Act 1957. The Assembly seats in the erstwhile state of Jammu and Kashmir were last delimited in 1995 based on 1981 Census. The 2011 Census population had

increased more than 100 percent over the 1981 Census population of Jammu and Kashmir. Since the last delimitation was based on 1981 Census, the nature of constituencies had to a large extent become malapportioned. Besides, since the last delimitation the number of districts in the Union Territory has increased from 12 to 20 and tehsils from 56 to 207. As a result the present assembly seats cut across the district boundaries and most of the tehsils are spilt in different assembly constituencies. The five Lok Sabha Seats cover nine districts in 1976. Due to these factors and the increase in 7 seats in Assembly and provision for reservation for Scheduled Tribes, the delimitation exercise has drastically changed the boundaries of most of the Assembly and Lok Sabha constituencies.

The erstwhile Jammu and Kashmir Assembly at that time had 111 seats including 4 seats in Ladakh. 24 seats of this were kept reserved for Pak occupied Jammu and Kashmir. The Commission sought assistance of the Registrar General of India and Census Commissioner from time to time, in data related matters. The Delimitation Commission was entrusted with the work of delimiting the Assembly and the Parliamentary Constituencies in the UT of Jammu and Kashmir on the basis of 2011 Census and in accordance with the provisions of Part-V of the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019) and the provisions of Delimitation Act, 2002(33 of 2002). Section 9(1) of the Delimitation Act, 2002 provides that all Parliamentary and Assembly constituencies to be delimited shall be single member territorial constituencies and under clause (a) of that sub-section, all constituencies shall be, as far as practicable, geographically compact areas and in delimiting them regard shall be had to physical features, existing boundaries of the administrative units, facilities of communication and public convenience. The clause (b) of that sub section provides that every Assembly constituency shall be so delimited as to fall wholly within one Parliamentary constituency. In terms of sub-section (1) of Section 60, along with sub-section (4) of Section 14 of the Reorganisation Act, 2019, total seats in the Legislative Assembly of Union Territory of Jammu and Kashmir have been increased from 107 to 114, out of this 24 seats for the Pakistan occupied Jammu and Kashmir has been kept out of the preview of delimitation. Having regard to relevant provisions of the Constitution (Article 330 and Article 332) and sub-sections (6) and (7) of Section 14 of the Jammu and Kashmir Reorganisation Act 2019, the number of seats to be reserved for the Scheduled Castes (SCs) and the Scheduled Tribes (STs) in the Legislative Assembly of the Union Territory of Jammu and Kashmir was worked out on the basis of 2011 Census. It is worthwhile to mention that the Constitution of erstwhile Jammu and Kashmir State did not provide for reservation of seats for the Scheduled Tribes in the Legislative Assembly. The Jammu and Kashmir Reorganisation Act, 2019 and Delimitation Act, 2002 laid down the broad parameters within which the delimitation exercise was to be carried out. However, the Commission formulated Guidelines and Methodology for delimitation of Assembly and Parliamentary Constituencies in Jammu and Kashmir, for smooth functioning and effective results, and the same were followed during the delimitation process. Keeping in view the geographical features, means of communication, public convenience, contiguity of areas as various factors enumerated in Section 9(1) of the Delimitation Act, 2002 and the inputs gathered during the Commission's visit to the UT from 6th to 9th July 2021, the Commission

categorised all 20 districts into three broad categories i.e. A- Districts having predominantly hilly and difficult areas, B- Districts with Hill & Flat areas and C- Districts with predominantly Flat areas, giving margin of +/- 10% of the average population per Assembly Constituency, while proposing allocation of the constituencies to the districts. The Commission has also, for some districts, proposed carving out of an additional constituency for geographical areas having inadequate communication and lack of public conveniences due to their excessive remoteness or inhospitable conditions on the international border. The Commission decided that Constituencies shall be delimited having regard to the administrative units i.e. Districts, Tehsils, Patwar Circles, etc, as in existence on 15-06-2020 and the Commission communicated to the UT administration, not to disturb the administrative units as existed on 15-06- 2020 till the completion of the delimitation exercise in the UT of Jammu and Kashmir. It has been ensured by the Commission that every Assembly Constituency remained entirely within district boundary. The lowest administrative unit i.e. Patwar Circle (Ward in Jammu Municipal Corporation) is not broken and remained within an Assembly Constituency.

The Delimitation Commission submitted its final report on 5<sup>th</sup> of May 2022. The broad recommendation of the Delimitation Commission are:

Out of the 90 Assembly Constituencies in the region, 43 will be part of Jammu region and 47 for Kashmir region keeping in view the provisions of Section 9(1)(a) of the Delimitation Act, 2002 and Section 60(2)(b) of Jammu & Kashmir Reorganization Act, 2019.

After consultation with Associate Members, representatives of political parties, citizens, civil society groups, 9 Assembly Constituencies have been reserved for STs, out of which, 6 are in Jammu region and 3 Assembly Constituencies in the Valley.

There are five Parliamentary Constituencies in the region. The Delimitation Commission has seen the Jammu & Kashmir region as one single Union Territory. Therefore, one of the Parliamentary Constituency has been carved out combining Anantnag region in the Valley and Rajouri & Poonch of Jammu region. By this reorganisation each Parliamentary Constituency will have equal number of 18 Assembly Constituencies each.

Names of some Assembly Constituencies have also been changed keeping in view the demand of local representatives. The Commission had decided that Constituencies shall be delimited having regard to the administrative units i.e. Districts, Tehsils, Patwar Circles, etc, as in existence on 15-06-2020 and the Commission had communicated to the UT administration, not to disturb the administrative units as existing as on 15-06-2020 till the completion of the delimitation exercise in the UT of Jammu and Kashmir. It was ensured by the Commission that every Assembly Constituency shall be contained entirely in one district and the lowest administrative units i.e. Patwar Circles (and Wards in Jammu Municipal Corporation) were not broken and were kept in single Assembly Constituency.

The Commission took extreme care in identifying the seats reserved for the Scheduled Castes

and Scheduled Tribes in the Legislative Assembly and to locate seats to be reserved for these communities, as far as practicable, in areas where the proportion of their population to the total population is the largest, by working out the percentage of Schedule Castes and Scheduled Tribes population in each Assembly Constituency and identifying the requisite number of reserved constituencies by arranging them in descending order.

The public sittings were organised in the Capital cities of Jammu and Srinagar on 4<sup>th</sup> and 5<sup>th</sup> April 2022 respectively, which provided an opportunity to the people, public representatives, political leaders and other stakeholders to express their views. All those who filed objections and suggestions in response to the public notice were specifically heard. All the suggestions of the public, given in writing or orally during the public sittings and representations from various stakeholders were tabulated by the Secretariat of the Commission.

The Commission conducted a final round of internal meetings to examine all the suggestions and took decision on the changes to be made in the draft proposals. Most of the representations regarding the change of names of the proposed constituencies were accepted by the Commission in view of the public sentiment involved in the same. These name changes included naming Tangmarg-AC as Gulmarg-AC, Zoonimar-AC as Zaidibal-AC, Sonwar-AC as Lal Chowk-AC, Padder-AC as Padder-Nagseni-AC, Kathua North-AC as Jasrota-AC, Kathua South-AC as Kathua-AC, Khour-AC as Chhamb-AC, Mahore-AC as Gulabgharh-AC, Darhal-AC as Budhal-AC, etc. In addition to these, there were many representations pertaining to shifting of Tehsils from one AC to another and some of them which Commission found logical were accepted, viz; shifting of Tehsil Shrigufwara from Pahalagam-AC to Bijbehara-AC, shifting of Kwarhama and Kunzar Tehsils to Gulmarg-AC and b redrawing Wagoora-Kreeri-AC having Kareeri and Khoie tehsils and part of Wagoora and Tangmarg tehsils, shifting of Darhal Tehsil from Budhal-AC to Thannamandi-AC.

The Delimitation of Assembly and Parliamentary constituencies in the Union Territory of Jammu and Kashmir had been a challenging task. The Commission visited UT of Jammu and Kashmir twice. During the first visit, the Commission interacted with approximately 242 delegations at four locations, i.e. Srinagar, Pahalgam, Kishtwar and Jammu. Approximately 1600 people attended and expressed their views at the Public sittings held at Jammu and Srinagar on 4<sup>th</sup> and 5<sup>th</sup> April 2022 respectively, during the second visit of the Commission to the UT of Jammu and Kashmir.

During the public hearing, the Commission received number of representations from the Kashmiri migrants and the displaced persons from Pakistan occupied Jammu and Kashmir. The delegations of Kashmiri migrants represented before the Commission that they were persecuted and forced to live in exile as refugees in their own country for the last three decades. It was urged that in order to preserve their political rights, seats may be reserved for them in the Jammu and Kashmir Assembly and Parliament. The Displaced persons from PoJK also requested the Commission to reserve few seats for them in J&K Legislative Assembly. Accordingly, the Delimitation Commission also made following recommendations to the Central Government.

1. Provision of at least two members (one of them must be a female) from the community of Kashmiri Migrants in the Legislative Assembly and such members may be given power at par with the power of nominated members, of the Legislative Assembly of Union Territory of Puducherry.
2. The Central Government may consider giving the Displaced Persons from Pakistan occupied Jammu and Kashmir some representation in the Jammu and Kashmir Legislative Assembly, by way of nomination of representatives of the Displaced Persons from Pakistan Occupied Jammu and Kashmir.

### **3.3.6 Let Us Sum UP**

The peculiar geo-cultural landscape of the Union Territory presented unique issues arising due to factors like competing political aspirations of the geographically and culturally distinctive Jammu and the Kashmir regions; vast differences in population density between districts ranging from 3436/ sq. km in districts in the plains on one side, to 29/sq. km in the predominantly hilly and difficult districts on the other; existence of sub-regions within certain districts having extremely difficult intra-district connectivity due to extraordinary geographical barriers with some remaining totally cut off on account of the snow blocking the mountain passes for months during winter; uncertainty of life and inadequate availability of connectivity and public conveniences in villages along the International Border prone to unprovoked intermittent firing/shelling in the Border Districts. These competing claims to equitable exercise of democratic rights by populations living in inequitable conditions, besides other aspects, were well articulated on behalf of all the diverse areas of the UT by representatives of political parties, social organisations and individuals, as well as the media. They provided profound insights before the Commission. Their eagerness, sincerity and commitment demonstrate their unequivocal support in upholding the democratic values, cherished by the people of this largest democracy in the World. This helped in providing of a fair and robust framework by carving out appropriate constituencies for exercise of their right to franchise by the members of the electorate living in mutually diverse circumstances, in an equitably convenient manner.

### **3.3.7 EXERCISES**

- Q1. Define Delimitation of Constituencies ?
- Q2. Discuss the philosophy of origin of delimitation in India ?
- Q3. Explain the various phases of delimitation in India ?
- Q4. Discuss the process of delimitation in Jammu and Kashmir UT ?
- Q5. What are the major recommendations of Delimitation Commission of 2020 in the context of Jammu and Kashmir ?

## **3.4 POLITICS OF MARGINALIZED GROUPS : WOMEN, DALITS AND TRIBES**

**- V. V. Nagendra Rao**

### **STRUCTURE**

#### **3.4.0 Objectives**

#### **3.4.1 Introduction**

#### **3.4.2 The Status of Women in Jammu and Kashmir**

- 3.4.2.1 Reservation for Women in Political Sphere
- 3.4.2.2 Women's Political Participation and Representation
- 3.4.2.3 Women Participation in Recent Assembly Elections
- 3.4.2.4 Women in Casting Votes
- 3.4.2.5 Status of Women in Panchayats
- 3.4.2.5 Summing Up

#### **3.4.3 Dalits: Composition and Identity**

- 3.4.3.1 Demographic Composition
- 3.4.3.2 Dalit Subjectivity
- 3.4.3.3 Summing Up

#### **3.4.4 Tribes: Social and Political Dynamics**

- 3.4.4.1 Demographic Composition
- 3.4.4.2 Social and Political Assertion
- 3.4.4.3 Summing Up

#### **3.4.5 Let Us Sum UP**

#### **3.4.6 Exercises**

#### **3.4.0 OBJECTIVES**

In this lesson, you will study the issues related to vulnerable groups in the state of Jammu and Kashmir, particularly Women, Dalits and Tribes. After going through this lesson, you will be able to understand:

- the status of women, their political participation and representation in political institutions including political parties;

- the issues of dalit empowerment and reasons for their relative social empowerment compare with their counterparts in other states of India; and
- the status of tribes in Jammu and Kashmir and their demographic and political presence.

### **3.4.1 INTRODUCTION**

In the state of Jammu and Kashmir, the Women, Dalits and Tribes are the most backward groups and their political involvement in the state is minimal. They constitute a large number in terms of the population of the State but their representation in the political sphere is almost close to insignificant. The larger political identity in the state of Jammu and Kashmir is based on religion, caste and regional divide. The marginal groups in the State of Jammu and Kashmir do not hold ample representation, whether it is the national, state or local level politics, compare to their ratio of population. They are not actively engaged in the political sphere of the state. This present lacuna of their representation in state can be attributed to multiple factors, most of which are patriarchal and caste based stereotypes. There are certain internal inhibitions also that keep them away from the politics. The lime light politics in the state of Jammu and Kashmir is enjoyed and practiced by males, especially from the caste group of Brahmin and Rajputs in case of Hindu majority areas of Jammu region and Sayeed from Valley in Muslim majority areas. These particular caste, class or regional groups are holding well of social, political and economic background which helps them to establish their political carrier in the state. There are certain situations which have pushed these marginal groups in politics and gradually they are learning and making their mark. Not to mention, many of the constitutional safeguards have improved their status to some extent.

Politics is an important instrument for the emancipation and empowerment. The present chapter discusses the factors responsible for the politics of the marginal group in the state from different periods till present and analyses whether there is a change or not.

### **3.4.2 THE STATUS OF WOMEN IN JAMMU AND KASHMIR**

Politics in the State of Jammu and Kashmir, like any other Indian states is dominated by men. Women not only remain at the fringes of society but are also marginalised in politics. Patriarchal context of women's lives inhibits their role both in society as well as in politics. The gender division of roles, which places politics in the public domain and therefore outside the legitimate domestic sphere where women are expected to operate, makes it difficult for women to use the political sphere for their own emancipation or for the betterment of other's lives. Of all the occupations that lie in the public sphere, politics is the least desired sphere for women.

The overall politics of women in the State of Jammu and Kashmir in different walks of life is not pleasing. This is despite their active participation in the freedom struggle of Kashmir, the legal and constitutional recognition of women's rights. Throughout the State, the women continue to be under-privileged and backward which is unambiguously revealed from the available data on various

indices including literacy, demographic situation, employment, political participation, etc. As per the data provided by the Census Report of 2011, the women in the state of Jammu and Kashmir constitute 57 per cent of total population, the percentage of female literates is 56.43 per cent compare to 76.75 of male literacy rate; even it is less than all India average which is 65.46 per cent. This lower level of literacy of women reflects their state of marginalization. Lower literacy affects at other indices of development. Thus, the number of women who go for higher education, professional education, employment and other related areas, is relatively lower as compared to the national figures.

Most of the women movements all over the country that started in the eighties have not touched women of Jammu and Kashmir. There is also no organised women's response. The women are not able to reap the benefits of various legal and structural changes that have been taking place elsewhere in the country. For example, the jurisdiction of the Women's Commission of India does not extend to the State of Jammu and Kashmir. Though the State has its own Women's Commission, it has not been able to match the achievements of its counterpart in the rest of India. While in the rest of India, women have joined Panchayats in large numbers; in Jammu and Kashmir women have not had a chance to be politically active at the grass-root level. Only recently, an amendment has incorporated to provide reservation for women in the elections. The vulnerability of women the State can be further seen in relation to their status as a 'State Subject' or the Permanent Resident. It is in such contexts that the role of women in the political sphere of the state becomes more important.

In the post-accession period of Jammu and Kashmir, the democratic politics in the State remained problematic as the legitimacy of electoral politics was contested from the very beginning. While in the rest of India various marginal groups were getting increasingly politicized through each electoral exercise, in the case of Jammu and Kashmir, electoral process did not touch the people at all. Ironically, this was the time when crucial political developments did take place in the State.

Likewise, the separatist politics which have dominated the political space, especially in the Kashmir region, has remained dominated by the men. The All Party Hurriyat Conference (APHC) which is the largest conglomeration of various separatist groups has only one women organisation namely, Khawateen Markaz, and which has played only a nominal role in the separatist political agenda. Even some of the groups of APHC consider themselves as the protector of women by shadowing them from the deteriorating nature of current politics. The various militant groups like Hizb-ul-Mujahideen (HUM), Al-Jehad, etc., with no women as their members justify that women cannot fight as they have their roles confined within the four walls of the home.

The society in the state of Jammu and Kashmir is also persisting with the ideology of the feudal and patriarchal notion. Women in the state are still living beneath the veil of patriarchy. The patriarchal mindset of society has confined women to a limited space. The society in the state do not allow women to continue the political activities or as activist of any party as it is against in the patriarchal structure of the society. Even though every political party give tickets to women but their working for the women section is in dual position. Today the society is moving forward with the

technological and information sector revolution but the condition of women still remain where it was centuries ago. Very little has changed in their mobility and education set up. The women, even in the 21<sup>st</sup> century are not considered fit as the leader of the people. In the political sphere the reservation of seats is made for women but they are acting as puppets in the hands of the patriarchy and the women are not making proper use of their powers.

#### **3.4.2.1 Reservation for Women in Political Sphere**

The Bill regarding grant of 33 percent reservation to fair sex is hanging in balance in the Parliament for last many years with political parties reaching no consensus on the issue, the mainstream political parties in J&K have also not given more than four to five per cent reservation to women folk in Assembly elections. This shows the insensitiveness of the political system in the country towards half of the citizens of the country. Though women constituted about half of total population, grant of only 33 percent reservation in representative bodies like Parliament and State Assemblies is itself biased in giving justice to the fair sex. The political parties in J&K like other parts of the country have also failed to give due representation to women folk in the Assembly elections in the State.

#### **3.4.2.2 Women's Political Participation and Representation**

The Jammu and Kashmir State has gone through a phase of very radical resistance movement. During this movement, the rights of the underprivileged sections of the society, including peasantry, workers, and women formed the most crucial part of the political discourse. Anti- monarchical and anti-feudal movement led by the National Conference had adopted the 'New Kashmir Manifesto' in 1944. This manifesto contained an exclusive Women's charter. This Women's charter was very ambitious and advocated the principles of equality and justice for women in social, economic and political sphere. But, the failure of political parties in giving due representation to them while fielding candidates revealed that women have to still struggle for decades together to seek their rights. The national parties at the Centre which claim to be the champion of women cause have also failed to give justice to them in the Assembly elections in the State. Not to talk of giving mandate to 33 percent women in the Assembly elections in the State, the national parties have failed to field more than five percent female candidates in the Assembly poll. The data reveals that out of 76 seats contested by the Party in the State it has given mandate to three female candidates.

#### **3.4.2.3 Women Participation in Recent Assembly Election**

People's Democratic Party (PDP) which is headed by a female, Mehbooba Mufti, is also not sensitive towards fair sex as it has fielded only one candidate in Assembly poll. Congress, which is also headed by a woman as its national president is sailing in the same boat. The Party has fielded three women candidates from the State though it contested all the 87 seats. Bahujan Samaj Party (BSP) too is headed by a woman (Mayawati) but it fielded only one candidate in the Assembly elections. National Conference (NC) however, has been relatively holding a better record by fielding six candidates in the State which is double the number of Congress and BJP. The Jammu and Kashmir

National Panther Party (JKNPP) has fielded two candidates. It is unfortunate to see that political parties in J&K have failed to give due representation to women in the selection of candidates.

The women and men are two wheels of the society and no society can progress when one wheel becomes dominating over the other. Women have been deprived of their due share. The women have proved to be good Prime Ministers, Chief Ministers, Governors as well as bureaucrats but still they are deprived of their due right by the male dominated society. Instead of giving 50 per cent representation to women in all fields, the political parties have even failed to give them 33 per cent representation in Parliament and State Assemblies and it is a cause of concern.

#### **3.4.2.4 Women in Casting Votes**

The participation of women in the electoral process in general and casting of votes in particular have not made significant progress. Especially in the Kashmir Province and some parts of the Jammu Province, women did not find many opportunities to visit the polling booths. Till the fourth general elections, there were many constituencies which had not gone for an electoral contest even for once. From this period onwards, a remarkable trend of more and more women coming out of their homes to take part in election rallies have been noticed. However, the swing ends there because when it comes to representation, women candidates account for a dismal 3 per cent. In the elections to the 87-member state Assembly, there are just 12 female candidates, with six of them from the ruling National Conference (NC). More than 300 candidates have been fielded by all the four parties - NC, PDP, Congress and the BJP - in the polls.

#### **3.4.2.5 Status of Women in Panchayats**

Out of 4128 Sarpanches posts in the 22 districts of the State, only 29 women managed to win the elections with a dismal success rate of less than one per cent (0.70 per cent). According to the data compiled by the Chief Electoral Officer of the State, there is no woman Sarpanch in 10 of the 22 districts as male candidates have won the elections for all the posts in these districts. Out of the 10 districts in the Valley, eight districts do not have a single woman Sarpanch. Baramulla in north Kashmir and Anantnag and Shopian in south Kashmir have been the saving-grace but the three districts have elected just four women as Sarpanches out of 453 posts. Surprisingly, Leh district, of the State, where women are considered to be far more assertive than their counterparts in other districts, has also failed to elect woman Sarpanches. The only district in the Jammu division not to elect any woman as Sarpanch is Kishtwar. The remaining nine districts of the Jammu region have representation of women as Sarpanches but again the percentage of winners is negligible.

#### **3.4.2.6 Summing Up**

The political sphere in the Jammu and Kashmir has been in a state of flux. And as a part of society the women have been affected by the changing situations as men were. The women in post-1947 electoral period also have not been able to reap the benefits of gender-friendly vision underlying in the 'New Kashmir Manifesto'. In addition, the society's role in encouraging women to take part in

politics is not fitting and the women themselves have been a mute spectator in the politics of Jammu and Kashmir. Even in the 21st century, this gap between the male and female is still persisting at the ground level. Moreover, without empowering the women at the basic level, it is not possible to change the present society and the mind-set which is ruled by patriarchal notion.

### **3.4.3 DALITS: COMPOSITION AND IDENTITY**

The State of Jammu and Kashmir has three main administrative parts—Jammu, Kashmir, and Ladakh—each of which is culturally, politically, and linguistically distinct. The SC population of the state is mostly concentrated in Jammu region. Jammu has a majority Hindu population (approximately 65%) with adequate religious and political diversities, dalits do not form a cohesive community; they are spread out in various other parts of Jammu and are culturally differentiated. They constitute a sizeable 17.44% of Jammu's population, but are divided into 13 sub-castes, of which Megh, Chamar, and Doom are numerically predominant forming 39%, 24%, and 21%, respectively, of the total dalits population.

#### **3.4.3.1 Demographic Composition**

The SCs are overwhelmingly rural, as many as 82.6 per cent of them reside in rural areas. District wise distribution of the SC population shows that they have maximum concentration in Samba and Jammu districts with a share of 28.82 and 24.76 per cent respectively, followed by Udhampur (24.95 per cent) and Kathua district (22.94 per cent). The Kashmir region has a meagre SC population. Four districts of Kashmir region have recorded SC population below 500. Of these, in each of Shoypian and Kulgam districts the population of SCs is less than 100. This clearly indicates the SC population is overwhelmingly concentrated in the Jammu region, especially in the districts that are bordering Punjab.

#### **3.4.3.2 Dalit Subjectivity**

The unique historical context of Jammu and Kashmir has left its own specificities in the formation or construction of identities, particularly for Dalits. In a predominantly Muslim dominated State of Jammu and Kashmir, religion often played a crucial role in the formation of other identities as well. Since Hindus are minority in a religious polarized State, the dominant sections of the Hindu society, especially the upper castes, did not strictly practice the rigid social stratification for which Hindu society is known for. Fearful of conversions, they had shown tremendous flexibility and liberalism towards caste based practices. For instance, Maharaja Hari Singh was the first one who granted to Dalits the access to temples and other public places and admission in government schools way back in 1931-32. This removal of legal restrictions on the Harijan entry in public places was probably the first in princely states of India. Similarly, 'untouchability' was abolished in the state legally long before Mahatma Gandhi took up the same. Similarly, many Hindu reformist organizations that were established in the State in early twentieth century attempted to infuse cohesion among the Hindus by undermining some of the social practices of segregation. This

historical context has significant influence on the formation of Dalit consciousness.

The dalits like other marginal groups are not detached from the dominant politics of the State but rather participate despite the exclusion of the issues related to their group. While the community to a large extent identifies and collaborates with upper-castes and other entrenched Hindu sections at the political level, they form relatively more visible strategies of resistance vis-a'-vis these sections in the everyday social realm where oppression is more direct and explicit. Moreover, rather than a complete disconnect between these two realms, the political and social responses of dalits blend and influence one another. The social context and everyday performance of these multiple identities help us appreciate dalits political perceptions and subsequent collaborations with the largely upper-caste political discourse that assumes anti-Kashmir positions. Yet, there are significant differences in the ways resistance operates at the social and political levels.

The Megh, Chamar, and Doom, the three sub-castes among the dalits in the Jammu region, are relatively better organized politically and more educated than the rest of the sub-castes. The remaining sub-castes are Batwal, Barwala, Basith, Saryala, Chura, Dhayar, Gardi, Jolaha, Ratal, and Watal are socially marginalized and economically backward communities.

The dalits in Jammu are not politically organized to assert their caste and class interests. Despite their caste interests—such as their attempts to escape physical and social marginalization as well as stigmatization by upper- and middle-caste Hindus— dalits also emphasize their class concerns, confronting various forms of economic exclusion and impoverishment. The issues concerning the dalits are often closely linked with the concerns of the dalits in the whole country, such as the concentration of their large number of population in low paying or menial jobs, indicating a fortification of their low caste and class status to a large extent.

However, the dalits are not politically organized enough to powerfully voice these concerns. They largely identify themselves with the mainstream conflict-based politics of Jammu and Kashmir State. Kashmiri struggle against the monarchy led to its abolition and the establishment of participatory democracy in the State. The National Conference, under the leadership of Sheikh Abdullah, introduced sweeping economic changes and radical land reforms which weakened upper-caste dominance in the state and diluted caste oppression in society to some extent. Due to these alterations, dalits have been able to improve their socio-economic position in the post-independence period. An improvement in the status of dalits is also reflected in their level of literacy, which has increased from 12% in 1971 to 59% in 2001. This is also a result of the affirmative action policy that reserved government jobs for dalits. Though very few members of community could reach the higher ranks of bureaucracy, there were many who were able to benefit from low cadre government jobs. This has helped create a lower middle class layer of dalits and, over the generations, a small urban middle class also.

However, this does not indicate that the situation of all members of the community has improved. Over a period of more than sixty years a vast section of SCs continues to remain at the

economic margins. In fact, a bulk of the dalits population still serves as marginal workers in low-paying occupations. The dilution of traditional structures of caste oppression, while reducing caste-based extremities such as physical violence, has not wiped away many other related ills, which include exclusion and oppression in everyday life.

#### **3.4.3.3 Summing Up**

Though, the policy of reservation is present in the society but its fruits is being enjoyed by a very few among them. The political set up of the group is also existent at a minute level with very few representatives at the helm of the affairs. Dalits practice Hindu religion custom in their daily lives. However, majority of them are engaged themselves in the menial activities like broom making, basket making and leaflet plates in the villages of Jammu regions. The caste baste discrimination still persists; no inter- caste and inter-dinning functions are organized with this caste group. The political representation of the Dalits in the state is from only those constituencies which are reserved for this section of the population. Ironically, Dalits in the state of Jammu and Kashmir are living on the edge and are still facing discriminations made by the upper caste class people.

#### **3.4.4 TRIBES: SOCIALAND POLITICAL DYNAMICS**

According to 2011 census, the Tribal population in Jammu and Kashmir is 14,93,299 comprising 11.9% of total population. The tribes in the state reside in the hilly areas. They majority of the tribals are Gujjars, Bakwarwal and Gaddhis, majority of them are Muslims; only Gaddhi group of tribes practices Hindu religious traditions and cultural customs. The socio economic condition of the tribe group in the state is in the edge of the political discourse. The educational status of the tribes in the state is also at the margin; majority of the dropouts are from this group. Even the reservation available to them is not working in their advantage as most of them are not in position to take benefit out of them. Majority of the tribal population engages in the nomadic and cattle rearing activities they rear goat, sheep, and buffalos in the state. The main source of the income is through this medium. The representation of the tribes in the state is negligible in the election sphere of national, state and local level.

##### **3.4.4.1 Demographic Composition**

As per to 1931 census, Gujjars were the third largest linguistic group and second largest ethnic group in the region. If language is criteria, then after Kashmiri and Dogri, there is maximum population of Gujjars in the state. Ethnically, they have second largest population after Kashmiri whereas Rajputs both Hindu and Muslim form third largest ethnic entity of the state. This fact is also relevant even in today's politics of Jammu and Kashmir. As far as the history is concerned, Jammu and its surrounding districts were covered by Gujjars and had emerged as a significant political, social and cultural force even before 1947. There were many habitations of Gujjars in main towns and cities besides the surrounding areas of Jammu region. But the partition of the state resulted in large scale migration of which eventually changed the demographic character of the State. In the post-independence period, various races and groups appeared on the socio-political scene of the state but

Gujjars who were pushed to remote and far flung areas lacked in all walks of life. All linguistic and ethnic groups progressed in one or the other way but this was not the case with Gujjars.

Gujjars are mainly divided between those who continue to pursue a nomadic life and those who are settled on land. Those who are nomadic practice transhumance or seasonal migration with their livestock and are further classified into two categories – the Baniharas and the Bakerwals. While the Bakerwals are entirely nomadic, the Dodhi Gujjars are semi-nomadic. The two categories follow different paths of grazing.

Many of the Gujjars of Kashmir, rather than the permanent residents of the Valley, are the seasonal migrants to the valley and come from Jammu province through the Pir Panjal range. They move back to Jammu province during the winter period. Besides the Dodhi Gujjars and Bakerwals who are basically nomadic, there are other sedentary and settled groups also. These groups have settled in the routes of various migration passes. They can be traced in large numbers in Jammu, Rajouri, Poonch, Udhampur and Kandi areas of Jammu region and Kupwara, Ganganagar, Pahalgam etc. in Kashmir division.

The Gujjars form a distinct identity in the state of Jammu and Kashmir. Despite their stay in Jammu and Kashmir for centuries, they have maintained their distinction in terms of their language, customs and culture. Notwithstanding the fact that Gujjars follow the religion of Islam, yet they assert their distinct identity vis-à-vis the other Kashmiris and Jammu Muslims.

#### **3.4.4.2 Social and Political Assertion**

Despite their backwardness, the Gujjars have been asserting their cultural, tribal and political identity. The cultural, linguistic and tribal identity markers are privileged to assert the distinctiveness of their group identity. The *Gujjar* identity is invoked to carve a special and distinctive space for the group which not only claims to have a distinguished historical antecedent but also a racial, cultural, linguistic and tribal cohesiveness. Though the Gujjars, all of them being Muslims, are very religious, yet religion does not become the primary marker of their identity. Asserting their distinctive identity, they differentiate themselves from other Muslims of the State.

The politics of Gujjar identity has been revolving around certain demands. These demands have been ranging from the socio-economic empowerment and the modernisation of the community to the political representation. The demand for socio-economic empowerment arises from the very basic context of backwardness, arising mainly due to the nomadic nature of their lifestyle as well as their existence on the edges of the society. Of all the communities in Jammu and Kashmir, the Gujjars are among the most backward ones. They have been asserting their identity as a separate tribal identity and have been demanding reservation for them in the educational institutions, in the state employment and in the Legislative Assembly.

Keeping in view the backwardness of Gujjars, especially those who continue to be nomadic, the community leadership has been demanding special attention. To cater to such a demand, a board

for development of Gujjars, namely Jammu and Kashmir Gujjars and Bakerwals Development Advisory Board, was constituted.

Before this, the Gujjars politics has been mostly unorganised. It was only when “All Jammu and Kashmir Gujjar Islahi Sudhar Sabha” was formed under the Presidentship of Haji Mohammed Israil that their problems were highlighted. Besides this, a number of other organisations emerged like “All India Gujjar Sudhar Sabha”. A Branch of this organization was established in Jammu and Kashmir under the Presidentship of Choudhary Gulzar Ahmed. This organization worked from 1960-71. In the beginning, this organization had no affiliation with any political party but later on it got affiliated to the Congress. Another organization of the Gujjars was the Gujjar Youth Federation, which mostly consisted of newly educated youth of the state. All these Organizations from time to time raised some basic issues relating to their community.

The Gujjars of Jammu and Kashmir state were first politicized in 1970s when the Prime Minister Indira Gandhi cultivated them and proposed them up as the possible counter weight to the valley Muslims. The recognition of Gojri language and allocation of time on Jammu and Kashmir radio for its program was the first step in this direction. Though it was genuine demand of the community but came as the political concession from the government of India.

The demand of Gujjars and Bakerwals for scheduled tribe status under the Indian constitution took a long time to fructify and it was during the Chandra Shekhar government in 1991 that the Scheduled tribe status was finally provided. But, the same status for the Gujjars of the neighbouring State of Himachal Pradesh was provided in 1950.

Even after the two decades of having scheduled tribe status the socioeconomic status of Gujjars and Bakerwals is miserable. Their literacy rate is among the lowest in the State, while the infant mortality rate is highest. Majority of the community is living the nomadic life without any permanent settlement and those who are settled make their livelihood out of casual labour and domestic service etc.

Although, the representation of the Gujjars in the State of Jammu and Kashmir is not proportional to their population, it is subsequently representation in the State Legislative Assembly. There are six districts across Jammu and Kashmir, where the Gujjars constitute substantial portion of populace. There are 23 Assembly Constituencies (8 in Jammu region and 15 in Kashmir) and two Parliamentary Constituencies (One is Kashmir- Baramullah another is Jammu Poonch) where the Gujjars play a decisive role in elections. In a number of these assembly constituencies, the Gujjars and Bakarwals form a majority.

In the process of identity formation certain voluntary organization and institution of Gujjars and Bakerwals are trying to promote their identity. The Gujjars of state have taken some steps to found certain premier political and social organisations like "Jammu and Kashmir united front," and "Gurjar Desh Charitable Trust,". These organisations and institution were established to improve the socio-cultural life of Gujjars and Bakerwals also and to preserve their culture, tradition, custom etc,

and to put pressure on the authorities to consider their rational demands and redress their genuine grievances.

At the political level there is a feeling of exploitation among the Gujjars and Bakerwals of Jammu and Kashmir state by the politically articulated leaders of other communities. The recognition of Gujjars and Bakerwal as scheduled tribe was a major achievement in the process of identity politics. This status has enabled them to get the advantage of reservation in government jobs as well as in education institutions, including the technical and professional institutions. However, the discontentment and grievances are still there for the political discrimination. This is due to the reason that the provisions of the article 342 of Indian constitution as incorporated in section 50, sub-section 6 of the Jammu and Kashmir constitution have not been fully applied to this state. These provisions contain for reservation of seats for scheduled tribe in the Lok Sabha, the state legislative assembly and the State legislative council. There is provision for political reservation of seats in the parliament and state legislature for scheduled tribe and scheduled caste as per the article 330 and 332. All the states of Indian union except the state of Jammu and Kashmir, have the provision for political reservation according to the population of scheduled tribe and scheduled caste. This demand for political reservation is the major demand of this community as they want the implementation of article 330 and 332 of Indian constitution which means reservation of seats in house of people and state legislature respectively.

#### **3.4.4.3 Summing Up**

The politics of tribal identity has been revolving around certain demands. These demands have been ranging from the socio-economic empowerment and political modernisation of the community. Such demands were arising mainly due to the nomadic nature of their lifestyle as well as their existence on the edges of the society. However, the fulfilment of the demand for the grant of ST status has opened way for other demands as well.

#### **3.4.5 LET US SUM UP**

This lesson analyses the status of marginal groups in the State of Jammu and Kashmir: Women, Dalits and Tribes. As you have understood, the status of women is suffered due to patriarchy and strong influence of traditional values. Participation of women in politics is still considered as not respectful which is leading their low participation. Probably Jammu and Kashmir is one of the states where political participation of the women is very less. Non-implementation of the 73<sup>rd</sup> Amendment also had its own effect as the participation of women in Panchayats is the lowest in the country. However, the recent decision of the state government to extend reservation to women might change the scenario in the future. With regard to Dalits, the oppression and untouchability practices in other parts of the country is not prevalent in the State.

Due to Muslim majority nature of the state, fears of further conversions, operated to accommodate dalits in larger social milieu. Hence, the social and class divisions that are visible elsewhere are missing in the State, which resulted in low political consciousness. The tribes of Jammu

and Kashmir are one of the most vulnerable groups in the society. Poverty and illiteracy was still high among them. Their education status is very poor with high dropout rate. However, recent periods have witnessed social and political assertion of tribes in the state demanding more representation and participation in political and administrative institutions.

#### **3.4.6 EXERCISES**

1. Why the political participation of women in Jammu and Kashmir is very less compare to their counterparts in other status of India ?
2. Critically analyse the reasons for low representations Dalits in the governing bodies of the state despite their social empowerment ?
3. Write a note on tribes of Jammu and Kashmir ?

## **4.1 AUTONOMY AND REGIONAL AUTONOMY: ASPIRATIONS AND POLITICS**

**- V. V. Nagendra Rao**

### **STRUCTURE**

#### **4.1.0 Objectives**

#### **4.1.1 Introduction**

#### **4.1.2 Demand for Autonomy: Historical Context**

#### **4.1.3 Constitution of State Autonomy Committee (SAC)**

##### 4.1.3.1 SAC Recommendations

##### 4.1.3.2 Basic Presumptions

##### 4.1.3.3 Centre's Rejection

##### 4.1.3.4 Indifference in Jammu and Ladakh

#### **4.1.4 Regional Autonomy**

##### 4.1.4.1 Constitution of Regional Autonomy Committee (RAC)

##### 4.1.4.2 The Major Recommendations of the RAC

##### 4.1.4.3 Peoples Democratic Party's Self Rule

#### **4.1.5 Autonomy, Regional Autonomy: Critical Assessment**

#### **4.1.6 Let Us Sum UP**

#### **4.1.7 Exercises**

#### **4.1.0 OBJECTIVES**

This lesson debates issues around State Autonomy and Regional Autonomy.

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

- understand the historical context for the demand of autonomy;
- know the major recommendations of the State Autonomy Committee and reasons for Centres rejection;
- familiar with demands for regional autonomy, recommendations of the Regional Autonomy Committee and reasons for why these not attracted favourable response; and
- critically debate on issues state autonomy and regional autonomy in Jammu and Kashmir.

### **4.1.1 INTRODUCTION**

For more than three decades, the demand for Jammu and Kashmir's autonomy has been raised by several political parties. In the 1980s, the Sarkaria Commission on Centre-state relations was setup to go into the question. There have been many proposals for devolving more powers to the states. The successive Central governments have failed to fulfil the demand for a more federal structure; even the Sarkaria Commission report has been ignored.

The State of Jammu and Kashmir had a special status within the Indian Constitution, from its accession in 1947 to till August 05, 2019. As you have already studied in previous lessons, the State of Jammu and Kashmir possessed more state autonomy as compared to other States of Indian Union. Since the beginning of its relationship with the Indian Union, there has been a persistent demand for more autonomy by the State of Jammu and Kashmir. It is noteworthy that the State of Jammu and Kashmir has a unique identity owing to its composite culture and a distinct political and constitutional history. The preservation of its uniqueness has made the State of Jammu and Kashmir quite sensitive on the issue of autonomy. This is evident from the fact that it “is the only State in the Union of India which negotiated the terms of its membership with the Union.” Unlike other Princely States, the State of Jammu and Kashmir did not waive the option of forming its own Constituent Assembly to draft its Constitution. Unlike other Princely States, Jammu and Kashmir refused to surrender all its residual autonomy to the Indian Union and expressed its inability to accept all the terms of the Constitution of India. This led to the inclusion of Article 370 in the Constitution of India to safeguard its internal autonomy.

### **4.1.2 DEMAND FOR AUTONOMY: HISTORICAL CONTEXT**

The demand for autonomy in Jammu and Kashmir followed by heated discourse on the subject has been appearing and fading intermittently. The demand as well as discourse has an historical context. Despite the constitutional safeguard, there is a prevalent view that the autonomy of Jammu and Kashmir has been eroded since 1953. The dismissal and arrest of Sheikh Abdullah, the most potent advocate of the State's autonomy, is considered to be the beginning of the erosion of the State autonomy of Jammu and Kashmir. The different constitutional provisions, applicable to Jammu and Kashmir after 1953 are viewed as the erosion of the state autonomy. In addition to it, the governments which were installed in the State, from time to time, with the active connivance of the Government of India also undermined autonomy of Jammu and Kashmir. This has given rise to a sense of betrayal and alienation among the residents of Jammu and Kashmir, more so among Kashmiris. In other words, there has been strong resistance to the different constitutional provisions extended post- 1953 by the Union of India to the State of Jammu and Kashmir. The first voice of protest was raised by Mohammed Sheikh Abdullah in 1970s.

The basis for contemporary Autonomy demand has its basis when the same has been incorporated in Indira-Sheikh Accord which brought him to power in 1975. In practical terms, it is related to restructuring the constitutional relations between the State of Jammu and Kashmir and the

Union of India. Sheikh Abdullah stated that he never challenged the accession of the state with the Union, but his 'quarrel with the Union of India related to the quantum of the autonomy of J&K state and not accession', recorded in his autobiography. Sheikh Abdullah had also further asserted that many laws which were extended to the state during his absence should be abrogated. This assertion gradually resulted in the demand of 'restoration of autonomy' on the part of his party, the National Conference (NC). After assuming the office of Chief Ministership in 1975, he appointed a committee to review the parliamentary laws extended to the State in the post-1953 period. The review concluded that all central laws and provisions of the Constitution of India extended to the State were properly applied. The following year another review gave opinion contrary to the former one. Neither of them was laid on the floor of the House. Sheikh Abdullah's demand for autonomy was based on pre-1953 status for the State of Jammu and Kashmir. Responding to this demand, Indira Gandhi asserted that the 'needless of [the] clock do not swing backwards', thereby indicating that the laws extended by the Union to the state could not be abrogated. Be that as it may, despite such demand on the part of the J&K leadership and this response from the leadership at the centre, there has been periodic emergence of the autonomy issue which has been primarily articulated by the National Conference in the state.

#### **4.1.3 CONSTITUTION OF STATE AUTONOMY COMMITTEE (SAC)**

The demand for autonomy became loud again in mid-1990s when Sheikh Abdullah's son Farooq Abdullah fought elections of 1996 on the main plank of autonomy. After its forced withdrawal from the political scene in the wake of militancy and mass upsurge in early 1990s, the National Conference used 'autonomy' as its main ideological plank to reclaim its political constituency in Kashmir. In its first central working committee meeting held in 1994, after a gap of five years, the party held the union of India responsible for destroying the original constitutional arrangement of the state and for alienating the people of Kashmir. It passed a resolution, which asserted that, 'the time has come when this state of affairs should be reviewed in order to restore autonomy to its pristine and original form'. Autonomy in its 'pristine form' was defined with reference to the constitutional status of the state in the pre-1953 period.

The party contested the 1996 assembly elections with the slogan of 'autonomy' and proclaimed its massive victory in this election as a mandate for restoration of the pre-1953 constitutional position of the state. Soon after forming the government, it constituted the State Autonomy Committee (SAC), headed by Karan Singh to “examine and recommend measures for the restoration of autonomy to the state of Jammu and Kashmir consistent with the Instrument of Accession, the Constitution Application Order, 1950, and the Delhi Agreement of 1952”. Karan Singh resigned from the SAC in July 1997, and thereafter the SAC was headed by G. M. Shah, a State cabinet minister and a loyal confidant of Abdullah. The Report of the SAC made public in April 1999 was discussed in a special session of the state legislative assembly on June 26, 2000. The session concluded with the 'Autonomy Resolution' demanding that the union and the state government take positive and effective steps for implementing the report. The resolution triggered a controversy with many apprehensions expressed

against its pre-1953 stance.

#### **4.1.3.1 SAC Recommendations**

The SAC report made the following major recommendations:

- i) The word 'Temporary' be deleted from the title of Part XXI of the Constitution of India and the word 'Temporary' occurring in the heading of Article 370 be substituted by the word 'Special'.
- ii) Matters in the Union list not connected with the three subjects of Defence, External Affairs and Communications or Ancillary thereto but made applicable should be excluded from their application to the State.
- iii) All modifications made in Article 246 in its application to the State subsequent to the 1950 order should be rescinded.
- iv) Articles 248, 249, 250, 251, 262 and 263 should be omitted from their application to the State.
- v) Article 254 should be restored to the position it had in its application to the State in 1954.
- vi) Regarding emergency provisions, the report stated that Articles 355, 356, 357, 358, 359 and 360 should be made non-applicable to the State as was the position in 1954.
- vii) The report recommended a separate Chapter on Fundamental Rights to be included in the State Constitution.
- viii) Articles 72 (1)(c), 72(3), 133, 134, 135, 136, 138, 145(1)(c) and 151(2) should be made non-applicable to the State as was the position in 1950 Order. Articles 149, 150 and 151 should apply to the State in the form in which they were in 1954.
- ix) Articles 218, 220, 222 and 226 should also be omitted in their application to Jammu and Kashmir State.
- x) With regard to financial matters, the report recommended that the matter be discussed between the State representatives and the Union Government as agreed to during the talks in 1952.  
In Article 312 the brackets and words “including the State of Jammu and Kashmir” inserted by the Constitution (Application to Jammu & Kashmir) Order, 1958 be omitted.
- xii) The report also recommended omission of Articles 338, 339, 340, 341 and 342 and corresponding provisions should be made in the State Constitution. It also recommended clause (4) of Article 368 to be deleted.
- xiii) Regarding the Schedules, the report recommended that in the Seventh Schedule entries in the Union List not applied to the State by the Constitution (Application to Jammu & Kashmir) Order, 1950 should be omitted. Concurrent List which was not applicable to the state in 1950 but was applied by subsequent orders should cease to apply to the state.

#### **4.1.3.2 Basic Presumptions**

Two basic presumptions underlie the State Autonomy Committee Report prepared in the late

1990s. These are :

- (a) Autonomy representing the aspiration of the people of Kashmir is a specific demand located in the history of the freedom movement of Kashmir. The federal context of India is basic to the issue of autonomy. The asymmetrical nature of the federal structure of India guaranteed a differential status to Jammu and Kashmir. The Constitution of India treats the state differently from other constituent units in the distribution of sovereign power.
- (b) The equation between Indian Union and Jammu and Kashmir is a negotiated settlement unlike other states in India where it is settled one. The State joined the Union on voluntary basis and negotiated the terms of its relationship. Whereas other princely states signed the Instrument of Accession to India and subsequently the instruments of merger, the accession of J and K was limited only to the areas of Defence, External Affairs and Communications. While other states gave up their right to their separate Constitution and “agreed to what the Constituent Assembly of India would give to them via the Constituent Assembly of the Union”, the government of this state did not accept the Constitution of India as an instrument for the governance of the state.

It is with reference to these presumptions that the Report privileged the pre- 1953 constitutional relationship between the centre and the state. This period is defined both by the limited applicability of the Constitution of India as well as a continuous process of negotiation between the centre and the state. Three landmarks of the period that are highlighted in the report are Article 370 of the Indian Constitution, Constitution (Application to Jammu and Kashmir) Order of 1950, and the Delhi Agreement of 1952.

The State Autonomy Report also recommended for withdrawal of the extension of the Fundamental Rights to the state; its substitution by a separate chapter on Fundamental Rights in the state constitution is suggested. A fresh discussion on the financial relationship between the centre and the state, including the jurisdiction of the Comptroller and Auditor General is also called for. The Report also finds certain changes made in the constitution of the state – especially change of nomenclature of the head of the state and state Executive, mode of appointment of the head of the state<sup>1</sup> and administration of state judiciary – as contradictory to the original logic of autonomy and recommends their reversal.

#### **4.1.3.3 Centre's Rejection**

The union cabinet, in response to these apprehensions, summarily rejected the Report. While “Committed to the promotion of federal harmony by ensuring a partnership of the Centre and the States as laid down in the National Agenda for Governance of the National Democratic Alliance”, the Centre, however, rejected the Autonomy demand stating that “the Cabinet finds the resolution passed by the State Assembly of Jammu and Kashmir endorsing the report of the State Autonomy Committee unacceptable. The Cabinet feels that the acceptance of this resolution would set the clock back and reverse the natural process of harmonising the aspiration of the people of Jammu and Kashmir with the integrity of the nation”.

According to the Union Cabinet, most of the recommendations contained in the report of the State Autonomy Committee seek to reverse the application of constitutional provisions to the State of Jammu and Kashmir which may not only adversely affect the interests of the people of the State but would also tantamount to removal of some of the essential safeguards enshrined in our Constitution. Besides, the issue of restoring the constitutional situation in Jammu and Kashmir to its pre- 1953 position had been discussed in detail by Sheikh Mohammad Abdullah with Prime Minister Indira Gandhi in 1974-75. It is noteworthy that the agreement signed after these negotiations had affirmed that “provisions of the Constitution of India already applied to the State of Jammu and Kashmir without adaptation or modification are unalterable”. The cabinet, therefore, decides not to accept the resolution passed by the Jammu and Kashmir Assembly on the report of the State Autonomy Committee by stating that the “Government is of the firm conviction that national integration and devolution of powers to States must go together”.

#### **4.1.3.4 Indifference in Jammu and Ladakh**

The State Autonomy Committee report approved and passed by the State Legislature has not appealed or resonated with the people of Jammu and Ladakh regions. Both the regions expressed strong opposition to the the pre-1953 stance of the Report of the SAC. The strong wave of resentment against the Report has been a result of the Kashmir-centric approach of the Report that not only ignores the plural realities of the state but also undermines the regional aspirations. The Report not only locates the discourse of autonomy in the specific history of Kashmir but also projects the demand for the 'state autonomy' as an exclusive demand of the Valley.

The most important reason for resistance to the Report of the SAC, within the regions of Jammu and Ladakh, relates to its failure to incorporate the logic of internal devolution of power. This is a serious flaw of the report because these regions suffer from an acute feeling of regional deprivation. Among the most common complaints voiced here are those related to disproportionate share of political power, developmental grants, bureaucratic positions and employment opportunities among the three regions of the state. Kashmir, it is felt, generally gets a bigger piece of cake, leaving the other two regions perpetually deprived. Since no mechanism of internal devolution of power is suggested in the Report, it is felt that the autonomy for the state may actually come to mean autonomy for Kashmir only. It may not flow to the regional and subregional levels. The state, in any case, is known for its centralised structure of power and despite persistent regional discontent, the successive state governments have resisted all demands for devolution of power.

During the 1996 assembly elections, almost all political parties operating in the regions of Jammu and Ladakh had been compelled to take cognisance of the demand for regional autonomy. The National Conference had also reaffirmed its commitment to grant autonomy to regions. After assuming power, it had appointed the Regional Autonomy Committee (RAC) to deliberate upon the question of internal devolution of power.

#### 4.1.4 REGIONALAUTONOMY

There have been several regional agitations in Jammu and Kashmir 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. Jammu Autonomy Forum since mid-1960s has campaigned for regional autonomy under the leadership of Balraj Puri.

The J&K State People's Convention, convened by Sheikh Abdullah in 1968, representing the entire political spectrum of the valley, adopted an internal constitution of the state which provided for regional autonomy and further devolution of power to districts, blocks and panchayats. He convened a convention of leaders of Jammu and Ladakh in 1974 where the commitment to regional autonomy was reiterated.

To address the demand for regional autonomy, the State Government in the past set-up five Commissions. These are :

1. The Glancy Commission (1931)
2. The Gajendragadkar Commission (1967)
3. The Qadri Commission (1972)
4. The Sikri Commission (1976)
5. The Wazir Commission (1981)

While the Commissions appointed in 1972 and 1981 examined demand for carving more districts in Jammu, the other two commissions recommended 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 of the State by stating: “In fact, we consider that the main cause of irritation and tension is the feeling of political neglect and discrimination, real or imaginary, from which certain regions of the State suffer”.

Such sub-regional discontent grew as a result of the backwardness of the peripheral areas of the state. The Gajendragadkar Commission had noted that 'within both Jammu and Kashmir regions there are certain pockets which have remained much more backward than the rest of the region... these areas deserve special attention and the governments should address themselves urgently to the task of developing them speedily.' Despite this warning, little was done by successive governments to tackle the problems of the peripheral areas.

##### 4.1.4.1 Constitution of Regional Autonomy Committee (RAC)

The demand for regional autonomy in the State of Jammu and Kashmir is the demand for internal devolution of power in the State and for equal political participation of different regions in the integrated development of the State. During the 1996 Assembly elections, the demand acquired such

strong public support that all political parties across ideological lines were forced to incorporate it in their electoral manifestos. Finally when the National Conference came into power, it appointed Regional Autonomy Committee (RAC) on November 13, 1996 which submitted its report in April, 1999.

#### **4.1.4.2 The Major Recommendations of the RAC**

The Regional Autonomy Committee made twenty-four pages report which was endorsed by the State Cabinet in January, 2000. Following are the major recommendations of the report:

- i) In view of historical, social, ethnic and development factors, the Committee recommended that
- ii) the existing two Provinces/Divisions of Jammu and Kashmir should be classified into eight new regions/provinces as:
  1. Kamraz (Baramulla and Kupwara Districts)
  2. Nundabad (Budgam and Srinagar Districts)
  3. Maraz (Anantnag and Pulwana Districts)
  4. Chenab Valley (Doda District and Tehsil Mahore)
  5. Jammu (Jammu, Kathua and Udhampur)
  6. Pir Panchal (Poonch and Rajouri Districts)
  7. Ladakh (Leh District)
  8. Kargil (Kargil District)
- iii) The Committee recommended to establish Regional/Provincial Councils in the State to meet the requirement of devolution of power to different regions as per the Committee's classification. The Regional/Provincial Councils should be elected in the same manner in which the State legislature is elected. There should be reservation of 25% seats for women in the Council. The leader of the majority party so elected in the Region/Province shall head the Regional/ Provincial Council and be designated as Chief Executive Councilor. The financial powers of the Councils would be limited to the subjects allocated to the Council.
- iv) The committee recommended that the government may consider setting up District Councils as an alternative to the Regional/Provincial Councils. The District Councils may be established in the existing districts of the entire Jammu and Kashmir State.

The committee recommended that government may constitute an Expert Committee and seek its opinion on the proposed models before taking a final decision in this behalf.
- v) The committee recommended constiuting a Finance Commission for the Jammu and Kashmir State to recommend the methods and mechanisms of raising and dividing funds to different organs.

- vi) The Committee recommended necessary changes in the Constitution of Jammu and Kashmir in order to implement the recommendations made in the report.

The Report of the RAC, that was made public simultaneously with the Report of the SAC, has not succeeded in removing the grievances of people of Jammu and Ladakh regions. Rather than going into the question of autonomy at the regional levels, it has recommended an altogether new classification of regions. In accordance with this classification, Jammu gets divided into three regions and Ladakh into two regions as you can see above. The suggested division, more or less, is communal in nature. In Ladakh, for instance, the division takes place between the Buddhists of Leh and the Muslims of Kargil. In Jammu, similarly, the Hindu dominated districts are separated from the Muslim dominated area of Doda and Poonch-Rajouri. In fact, a part of the Muslim-dominated area (Mahore Tehsil) is carved out of the rest of the Hindu dominated districts to fit in the Muslim-dominated area of Doda.

An acute sense of discontent in the areas of Doda, Poonch and Rajouri led to a process of politicisation and assertion of competitive identities. Although much of the discontent arose from a resentment against the Kashmir elite for monopolising power and neglecting development of the backward areas, there was also resentment against the Jammu elite for not highlighting the backwardness of the region.

Viewed from this perspective of sub-regional discontent, the autonomy discourse acquires a different flavour. Neither the discourse of state autonomy nor that of regional autonomy are sufficiently comprehensive to deal with questions of sub-regional deprivations. What is required is a multi-layered structure of autonomy that must flow from the state to the region and from the region to the sub-regional and finally to the panchayat level. Conscious of the complexity of the underlying problems of discontent at regional and sub-regional levels, Balraj Puri, in his alternate report on regional autonomy, had recommended a five tier system that included devolution of power from state to region to district, block and panchayat level. The political, legislative, executive and financial powers and functions of each tier, he felt, should be carefully spelt out and constitutionally guaranteed.

Such sensitivity to the complex realities of the state, particularly at the regional and the sub-regional levels, was unfortunately missing in the official Regional Autonomy Committee report. Instead of acknowledging the multi-layered political aspirations within the state and underlining the need to extend the logic of political autonomy from the state to regional and sub-regional levels, it merely foregrounded sub-regional aspirations and totally ignored the question of Jammu's regional discontent.

Arguing that the recognition of 'culturally, linguistically, ethnically and geographically' heterogeneous Jammu as a region hampered the process of social and human development of ethnic groups and democratic participation at the grassroots level within the state, it suggested recognising Poonch-Rajouri and Doda as autonomous regions. Such a process of identifying new regions, in its

opinion, was the only way to deal with the 'perception of neglect and injustice, real and imaginary, existing among groups in the diverse regions of the state.'

The demand for regional autonomy and further devolution of power at district, block and panchayat levels, on the pattern of panchayati raj in the rest of the country, would not only address the aspirations of the people of Jammu and Ladakh, but would also safeguard the unique identity and civilisation of the Kashmir valley. The world over, in democracies, the centralised polity is being substituted by federal and decentralised structures, which go a long way in empowering people at the grassroot level. This is all the more necessary in the most diverse state of India. Regional autonomy alone can harmonise its diversities and satisfy the basic human urges of empowerment and identity.

#### **4.1.4.3 Peoples Democratic Party's Self Rule**

The Peoples Democratic Party has offered a working paper on Jammu and Kashmir known as self rule booklet to resolve the issue of autonomy in States. It defines self rule as “a trans-border concept that has a pan-Kashmir dimension but at that same time seeks to regionalize power across Jammu and Kashmir.” The Self-rule has three key elements - a new political superstructure known as the Regional Councils of Greater Jammu and Kashmir that has representatives from Pakistan Occupied Kashmir (POK) , the economic integration across the line of control that includes establishment of common economic space, instituting a dual currency system and adequate constitutional safeguards which include repealing of Article 356, Article 249, the sixth amendment of Constitution of the State, Article 312 and the proviso added to the Article 368. You must have already become familiar with the details on PDP's Home Rule as it has been dealt at length in the lesson on Political Parties.

#### **4.1.5 AUTONOMY, REGIONALAUTONOMY: CRITICALASSESSMENT**

The issue of autonomy in the state is complex in nature. It not only involves the question of evolving the fair principles of centre-state relations but also the questions of internal devolution of power and inter-regional relations. The two issues of the state autonomy and the regional autonomy are, in fact, logically interconnected. It is not possible to achieve the one without aiming at the other. The politics of autonomy, of the regional or of the state level, somehow has failed to carry this logic forward. Those who demand regional autonomy oppose the demand of autonomy for the state and those who demand state's autonomy hesitate to talk about the regional autonomy.

Given the peculiar historical context of the state, its plurality and diversity as well as its divergent political aspirations, the state needs a multi-layered package of autonomy that extends beyond the state to the regional and sub-regional levels. The sub-regional discontent in the state is as acute as the regional discontent. The backward and peripheral parts, both in the Jammu and Kashmir regions, often complain of political and economic neglect. Regional autonomy, therefore, has to flow further to the sub- regional and the panchayat levels.

The sense of discrimination and grievances felt in the Jammu region has not a new one.

Acknowledging the regional irritations and tensions, the Gajendragadkar Commission of Enquiry appointed by the government in the mid-60s to comprehend the causes of inter-regional tensions and irritations had observed that Jammu nurses a strong feeling of discrimination. According to the commission, this was due to the absence of a feeling of equal participation in the integrated development of the state.

There is a persist feeling that decision-making in the state is regulated by 'pro-Kashmir' preferences which, in turn, arouses strong public emotions. In the last five decades there were many occasions when such emotional public response took the form of major or minor agitations. Underlying these was the perception that Kashmir got a larger share of the cake in the distribution of resources or development funds; that the genuine demands of Jammu were unjustly dealt with. Some long-pending demands, like carving out more districts in the region (or legislative constituencies), were deliberately undermined in order to maintain the dominance of the Kashmir region.

Such feelings of deprivation and discontent had their roots in the existing asymmetrical power relations between Jammu and Kashmir. The politics in the state was so structured that Kashmir occupied a large political space, keeping Jammu virtually deprived of political power. Giving primacy to the political deprivation of Jammu over economic and developmental deprivation, the Gajendragadkar Commission had suggested remedial measures to reduce tensions arising out of a disproportionate distribution of power between the two regions. It had recommended that 'a convention should be established that if the chief minister belongs to one region, there should be a deputy chief minister belonging to the other region. By another convention, the number of cabinet ministers belonging to the two regions should be equal.'

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 handling such plurality. Yet, instead of sensitivity to the complexity and plurality, the present political scenario of the state reflects a tendency to seek simplistic solutions through the means of divisive politics.

#### **4.1.6 LET US SUM UP**

When the State of Jammu and Kashmir was joined with the Indian Union, the relationship of special status was institutionalised in terms of Article 370, which provided more autonomy to the State compared to other states of Indian Union. Owing to the special circumstances in which the former princely State was able to negotiate its accession to India, severe limitations were placed by the Constitution itself on the Centre's powers vis-a-vis Jammu & Kashmir. However, over the years, a series of measures and practices beginning with the 1954 Constitution Order undermined the rights and vital powers devolved by Article 370 on the State. The SAC Report and the resolution adopted by the Jammu & Kashmir Assembly represent a flamboyant attempt to reverse this situation, by pressing the exaggerated demand that the State be returned to its pre-1953 constitutional status. The demand Autonomy can justly be criticised for its opportunism, but there is absolutely nothing secessionist or

extremist about it. No reasonable person can go along with the SAC's recommendation that all areas of constitutional authority other than Defence, External Affairs and Communications should be restored to Jammu & Kashmir. Nor can it be held that autonomy as demanded by the National Conference is the natural antidote to extremist, secessionist and terrorist activities in the State. Realistically speaking, the demand has been advanced by National Conference more of as a political strategy to satisfy its political constituency rather than actually expecting positive response from the Union government.

Very few outside Kashmir subscribe to the scope of autonomy as defined in the resolution adopted by the Jammu & Kashmir Assembly which is going back to the pre-1953 status. Over the decades, the developments in the political system and the political-administrative structure in the country have warranted certain changes which are justified. It is not possible to accept the definition of autonomy which assigns the Centre only external affairs, defence and communications.

#### **4.1.7 EXERCISES**

1. Explain the reason for the emergence of demands for autonomy ?
2. Write a note on State Autonomy Committee and its recommendations ?
3. Why many criticised the Regional Autonomy Committee Report ?
4. Autonomy for Kashmir always must accompany regional autonomy for Jammu and Ladakh. Elaborate ?

## 4.2 SEPARATISM AND TERRORISM

- V. V. Nagendra Rao

### STRUCTURE

#### 4.2.0 Objectives

#### 4.2.1 Introduction

#### 4.2.2 Reasons for Emergence of Separatism

- 4.2.2.1 Partition of Indian Subcontinent
- 4.2.2.2 India's Fears about Centrifugal Tendencies
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#### 4.2.3 Separatist Organizations and Strategies

- 4.2.3.1 The Plebiscite Front
- 4.2.3.2 Jamaat-i-Islami Jammu and Kashmir
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#### 4.2.6 Exercises

#### 4.2.0 OBJECTIVES

This lesson focuses on explaining the separatism in Kashmir Valley, reasons for its emergence, changing contours of separatist politics, organizations involved in it. After going through this lesson, you will be able to:

- understand the reasons for emergence of separatism;
- comprehend the politics of separatism before 1990;
- familiar with changing contours of separatism in post-1990 with rise of militancy; and
- the role of Hurriyat in the separatism movement of Kashmir valley.

### 4.2.1 INTRODUCTION

Separatism in Kashmir is the most contentious issue not only in India but also in international politics. It is contentious because the understanding and opinion varies drastically in matters like separatism. The Faultline divided between ideological and political orientation, the religious and ethnic identities, universal and parochial, centripetal and centrifugal etc. operate in politics of separatism. Hence, acceptability to one particular standpoint is a difficult scenario. The play of deep divisions and contentions can be witnessed from the fact that none of the separatist movements achieved its goals without bloodshed and violence. This is not only a situation in Jammu and Kashmir but across the countries and continents.

Many a times, separatism and secessionism are easily confused because, according to dictionary definitions both refer to a severance of ties or termination of contractual relations between territories and populations. However, there is a significant difference between these two. Separatism is the more general, encompassing term, covering all instances of political difference or alienation that features a demand for reduction of control by a central authority and delegation of more power to the region concerned. Separatism may be expressed in demands for states' rights or increased local autonomy in certain spheres of decision-making. Secessionism is a narrower, more specific term referring to a demand for formal withdrawal from a central political authority by a member unit on the basis of a claim to independent, sovereign status. Secessionism leads to dismemberment and disintegration of the state while separatist demands not necessarily involve disintegration.

India is hardly a stranger to separatist movements—no country in the world has experienced as many separatist movements as India has. These separatist movements had emerged in all parts of India – South (Dravidian movement), East (Northeast) and North (Punjab and Kashmir). Separatist conflicts in India, hence, are a function of the country's extreme size and ethnic diversity, on the one hand, and the state's long-running stand that it would not compromise on national security and would not tolerate any movements that weaken its national cohesion.

In this lesson, we would briefly study the separatism in Jammu and Kashmir, the reasons for the emergence of separatist movement, various organisations involved in the movement and the strategies they deployed as part of their separatist agenda.

### 4.2.2 REASONS FOR EMERGENCE OF SEPARATISM

Many scholars and academicians trace separatism in Kashmir to the post- 1989 political movement and violence that completely halted the democratic politics in the state. However, the roots of separatism can be traced much before to the politics of 'Plebiscite Front' immediately after the arrest of the Sheikh Abdullah in early 1950s. A comparative analysis of separatist movement thus requires, first, an understanding of the preconditions which give rise to separatist politics. Hence the discussion on separatism must start with the colonial division of subcontinent on religious lines, the post-independence Indian government's desperation to not allow further division of the country, politicization of Kashmir issue in western-power dominated United Nations, extremism in India's domestic politics, short-sighted policies pursued by Union government in Jammu and Kashmir, etc.

#### **4.2.2.1 Partition of Indian Subcontinent**

Contestation over Kashmir and its future began during the drive for, and in the immediate aftermath of, independence from the British. Under the terms of the British withdrawal, the Indian subcontinent was divided on religious lines separating its Muslim-majority provinces into a separate state, Pakistan. The grey area in between was occupied by the so-called princely states, which were governed by monarchs nominally independent of the British crown but who still paid allegiance to it. The leaders of these princely states were given three choices: join India, join Pakistan, or become independent. Though Maharaja Hari Singh opted for India, after entertaining the inclination of independence to his princely state for some time, the newly emerged Pakistan was never able to accept the reality and still continuous to demand and make efforts to wrest Kashmir from India. This has created considerable friction not only between the two neighbours but also among the people of Jammu and Kashmir, as some section of the people, how small the segment may be, who were wooed by the Pakistan propaganda. The intractability of Indian and Pakistani positions stemmed not so much from the strategic location of Kashmir as from the significance of the dispute for nation-building. Indian decision-makers tend to see Kashmir through the prism of secular nationalism as the basis for nation-building. If Kashmir were allowed to secede because of its Muslim-majority population, Indian leaders doubted that the idea and practice of secularism could survive, indeed, that India could survive. Conversely, Pakistan tended to see Kashmiri accession as integral to its Islamic identity. If a Muslim-majority area contiguous to Pakistan remained in India, the original justification for a Muslim state would be difficult to sustain. Thus, while multiple wars have added layers of political and emotional commitment to the Kashmir dispute, at base what is involved is a difference over the constitutive principles of nation- building and, by extension, of regional order.

#### **4.2.2.2 India's Fears about Centrifugal Tendencies**

As above paragraph would tell you, the Government of India was always sensitive to the separatist movements and more often than not over-reacted to separatist politics because of the chequered history of partition and violence it caused to the people. Moreover, the plurality in India and cohabitation of multiple religious, linguistic, ethnic and regional groups in all the regions made it more sensitive to any kind of divisive politics. India fights separatists because it fears that concessions would only encourage other groups to stake similar claims. The thinking goes that, in a state as heterogeneous as India, such a policy would lead to a domino-effect, and the internal destruction of the state. Its urgency to keep territory within the Indian Union is also a function of external factors: the interplay of its rough neighbourhood, its ambitious regional and global agenda, and its collective view of the causes of its colonial subjugation. However, this overriding consideration of political elite for India's internal and external security also has its own pitfalls leading some times to insensitivity towards the political sentiments of the regional or subnational elites, which may lead to separatist movements as it happened in Kashmir or Punjab.

#### **4.2.2.3 Weak Democratic Institutions**

One of the greatest achievements of India is the institutionalization of democratic practices with the first stroke of independence. This was the first and unprecedented process in the history of

democracy. The Western democracy has travelled almost 500 years to evolve the way it is now. However, India's Constitution makers have gifted to young independent India a living Constitution, democratic institutions, independent Election Commission, universal adult franchise, separation of powers between legislature, executive and judiciary, division of subjects between Union and States, etc. However, none of these democratic structures and processes and practices were institutionalized in case of Jammu and Kashmir due to the prevalent special circumstances. From Jawaharlal Nehru's and Indira Gandhi's perspective, the sensitive border state simply was not ready for democracy. Building Indian nationalism and expanding democracy simultaneously were sometimes considered incompatible goals, and it appears as if this reasoning was applied to Jammu and Kashmir in particular. An autonomous political opposition was regarded as a hindrance to national integration.

Hence, initially, immediately after the accession of the State with the Indian Union, the Centre allowed the political power to be concentrated with the leading political figure of the time, Sheikh Abdallah. It set a wrong precedent in the institutionalization of democratic process with uncontested electoral outcomes and concentration of power in a single party, the National Conference and a single hand. After the arrest of Sheikh Abdullah, the pendulum of democracy swung to other extreme by means of exporting unrepresentative and non-responsive governments from the Centre to the State. The poor record of Democracy in Jammu and Kashmir is characterized by constant election rigging and central government intervention, which prevented the development of fair and autonomous competition among political parties. The over intrusion of the Centre and imposition of illegitimate governments on people of Jammu and Kashmir led to many political distortions, one of which was growth of sectarian, extremist and separatist politics.

#### **4.2.2.4 Islamization of Society**

Till the beginning of the twentieth century, the Muslims of Kashmir had not developed an Islamic identity in modern religious terms. The bases of self-identification were multiple, and for most of the people, the village or tribe – the notion of *zatorkram*, evoking the concept of birth into a common clan group – still remained as an important identity marker. However, Kashmir witnessed a deliberate process of redefining religion and re-conception of Muslim identity in late nineteenth and early twentieth centuries. This redefinition was based on the notion of a 'pure Islam' as against what was projected as a 'degenerated version' of saint or sufi-worshipping. This process was reinforced by the institutionalization of the position of Mirwaiz, which led to the deepening of Muslim consciousness and defining community in religious terms. The increasing Islamization of Kashmiri society gradually impinged upon the liberal and secular ethos of Kashmiri politics.

From the middle of 1970s Islamization got accelerated due to three developments: a more Islamized Pakistan under General Zia-ul-Haq intervening in the affairs of Jammu and Kashmir; the Iranian revolution spawning religious fervour in Kashmir; and the Afghan civil war generating an infrastructure of Islamic terror in neighbouring regions. Internal discontent in the Valley, especially among the youth, provided a favourable atmosphere for the external forces to operate there. Such discontent, arising in the economic and social developments of the time, was aggravated due to the disillusionment with the political process in the State.

The emergence of Jamaat-i-Islami significantly contributed to the Islamization of Kashmiri society. Over the years since 1972, the Islamic fundamentalists carried on ceaseless and vociferous campaign for the Islamization of Kashmir. Their ideological influence had been greater than their actual support among the people. Though fundamentalism and separatism complement each other, however, it is through secessionism that Jamaat not only forges links with broad masses but helps them in their mass mobilization. The political spread of Jamaat further increased after the Iranian revolution 1979.

#### **4.2.2.5 Destabilization of Elected Governments: Collapse of Democratic Politics**

The democratic vacuum that has been discussed above rectified, to a greater extent, by the two important political developments in the 1970s: a) the Indira-Sheikh Accord b) the Centre's efforts to strengthen the democratic process in the State during the Janata Party regime. The first one, that is the Indira-Sheikh Accord brought the popular leader in Kashmir, Sheikh Abdullah into power, while the second one enabled the conduct of fair and transparent elections to state legislature during the 1977 Assembly elections.

However, despite Sheikh Abdullah's return to politics in 1975 and the first uncontested election in Jammu and Kashmir in 1977, the early 1980s saw a growing turbulence in the politics of the state. After Sheikh's death in 1983, leadership passed to his son, Farooq Abdullah. The central government, determined to increase its influence, particularly after the death of Indira Gandhi in 1984, steadily undermined Farooq's leadership. His government was dismissed in 1984 and central rule imposed. An earlier generation of Kashmiris might grudgingly have accepted this dismissal of elected government. The new generation, better educated and more conscious of its political rights, proved more aggressive, demanding and low tolerant.

Besides this, an unholy alliance was formed between the Congress and National Conference during 1987 Assembly elections to the State. Realizing the consequences of standing against the over-demanding Centre, Farooq Abdullah agreed for an electoral alliance with the Congress. Many people in Jammu and Kashmir, especially in the Kashmir Valley, could not accept this alliance as they perceived it as a sell-out to the centre.

It was an unpopular alliance, imposed not only on NC but also on people of Kashmir. In the vacuum arising out of the loss of NC's autonomous political space, the Islamic forces coalesced around a loose alliance, the Muslim United Front (MUF). The Jamaat was a key component of this alliance, though around twelve smaller Islamic parties also joined it. With these Islamic parties assuming some legitimacy in politics, the stage was set for centrality of issues based on religion. The MUF described politics as an inseparable part of religion, saw shrines as effective power centres and declared the 1987 Assembly election as a contest between 'Islam and Secularism'.

Notwithstanding this limitation of MUF, the coalition of religion-based political groups was able to make a mark in the electoral politics of the Valley, capturing as many as one third of the total votes polled during the 1987 Assembly elections. However, it could not win many seats, leading not only to allegations of wide-spread rigging but also to the eventual collapse of democratic politics. As the leaders of the MUF and other oppositional parties refused to accept the electoral verdict, the newly

elected NC government faced a severe crisis of legitimacy which was intensified due to popular response against the State as well as the Central government. Pakistan, meanwhile, used this situation to involve itself directly in the affairs of Jammu and Kashmir. All this led to a phase of 'militancy' in the State when many who had earlier been part of the electoral process, as candidates or as supporters of MUF, crossed the border – to be trained for armed conflict against the Indian State. Since then the space for separatist politics increased in the State of Jammu and Kashmir, particularly in the Kashmir Valley. These separatist politics have not exhibited one uniform pattern but multiple complex patterns, hence multiple organizations emerged representing these complex patterns – the indigenous organizations, Pakistan-sponsored groups, transnational groups, underground or over ground organizations, etc.

### **4.2.3 SEPARATIST ORGANIZATIONS & STRATEGIES**

Separatism in the Kashmir Valley reflected through and represented by many organizations. As the objectives and goals of these organizations differ considerably, the politics and strategies designed to pursue these politics also differ substantially. In this section, we try to understand some of the separatist organizations in the Kashmir Valley and the strategies they pursued to attain their goals, starting with the Plebiscite Front.

#### **4.2.3.1 The Plebiscite Front**

Following the overthrow of Sheikh Abdullah, his lieutenant Mirza Afzal Beg formed the Plebiscite Front on 9 August 1955 to fight for the plebiscite demand and the unconditional release of Sheikh Abdullah who had been arrested after his removal. It reflected the continuity of the Kashmiri politics that had evolved in 1930s and 1940s. Very soon the 'plebiscite' demand was taken to the level of rural masses and a political psyche of contestation and resistance was generated.

The whole idea behind the demand for plebiscite was to contest the finality of Accession of the state with India and to demand that the matter be placed before people of the state both as per the commitment of Government of India as well as per the UN resolutions. Disengagement of Kashmiris from the governing dispensation and their emotional involvement with Sheikh Abdullah had the effect of attributing 'legitimacy' to the Plebiscite Front's politics, characterised by contestation of India's position vis-à-vis Kashmir and interrogation of intrusive politics of the Central government.

By 1972, the Front had emphasized that any plebiscite was not intended to contest Kashmir's accession to India. Plebiscite Front leader Afzal Beg stated that while a plebiscite would put Kashmir's accession into India on “a lasting foundation”, his party was no longer insisting on holding a plebiscite. The Indian Prime Minister Indira Gandhi welcomed the Front's willingness to confirm Indian sovereignty and held talks with Sheikh Abdullah. The 1974 Indira-Sheikh accord confirmed the support of Sheikh Abdullah and the Plebiscite Front for Indian sovereignty over Kashmir and ended the demand for a plebiscite in return for extensive autonomy and self-government under Article 370 of the Constitution of India. Following the agreement with the Union government, Sheikh Abdullah merged the Plebiscite Front into a renewed National Conference in 1975, which won the democratic elections and affirmed Abdullah as the new Chief Minister of Jammu and Kashmir.

#### **4.2.3.2 Jamaat-e-Islami Jammu and Kashmir**

Jamaat-e-Islami Jammu and Kashmir is a socio-political and religious organisation that was founded in 1945 as a chapter of the Jamaat-e-Islami Hind during the Independence movement. Jamaat-e-Islami was separated from its parent organisation in 1953 over differences in political ideology. The party, with pro-Pakistan leaning during the Plebiscite Front days and also during the eruption of militancy, pitches itself as socio-religious organisation working mainly in the field of education and awareness about Islam.

Having an essentially lower middle-class base of traders, students and lower level government employees, the Jamaat was successful in mobilising people who were frustrated with the politics of secular groups such as NC and Congress. With Sheikh Abdullah in detention, the NC led by Bakshi Ghulam Mohammad had lost its popular character, and the habits of power had shredded whatever democratic content it had earlier. To quell the consequent discontent, the ruling elite promoted all kinds of political and religious forces, generating a political space congenial for Jamaat-i-Islami to extend its political constituency, and to start building its cadres in villages and towns through Madrasas. Later, in the seventies, it could also gather some political clout due to its collaboration with the Congress in the State. With a view of distracting Kashmiris from the influence of Sheikh Abdullah and the Plebiscite Front, Syed Mir Qasim, the then Chief Minister, had facilitated the entry of the Jamaat into the electoral politics of the State in early seventies. Although its electoral role was of not much consequence, it could use the electoral space for mobilizing the disgruntled people of Kashmir. By summer 1980, it had been successful in giving rise to a youth movement. Young people, especially students, were attracted to the Jamaat-i-Tulba, its student organization, which advocated an Islamic order in the State. These youth wings and the organizations associated with it (like Jamaat-i-Tulba during the seventies and eighties, and Hizbul Mujahideen more recently) specifically believe in militancy and many a time instigate violence.

Amid the brutal militancy and counter-insurgency operations, in 1990, the Jagmohan administration imposed ban on the Jamaat, which continued till 1995. The Jamaat has become founding member of the All Party Hurriyat Conference when it was established in 1993. However, it severed its ties with the same in 2003 when Syed Ali Shah Geelani, the most influential leader of the Jamaat walked out of Hurriyat over alleged proxy participation in 2002 Assembly polls by some leaders of the People's Conference led by Sajad Gani Lone.

The Jamaat is the main Pro-Pakistan organization among the all the parties functioning in Kashmir. It has supported the mass agitations in Kashmir ever since they have erupted in 2008. It has supported the post-Burhan Wani agitations in Kashmir that erupted in 2016. Knowing the dangers of the Jamaat, the Union government banned the Jamaat-e-Islami Jammu and Kashmir on March 2, 2019 for a period of five years citing reasons that the outfit was in “close touch” with militant outfits. The Jamaat-e-Islami was banned under anti-terror laws of the Centre, aiming at preventing any “escalation of secessionist movement” in the state.

#### **4.2.3.3 The JKLF**

The JKLF was the brainchild of the Kashmiri militant leaders, Amanullah Khan and

Maqbool Bhat, who formed the group in the early 1960s—then known as the Jammu and Kashmir National Liberation Front—in Muzaffarabad, Pakistan. Immediately after the formation of JKLF, Bhat returned to the Valley to train Kashmiri youth. He was subsequently arrested on charges of sabotage and murder in crimes that allegedly took place in 1966. He was sentenced to death in 1980, and executed four years later.

In the Seventies and early Eighties, the JKLF operated mostly from London and PoK, with Amanullah Khan and Hashim Qureshi directing from London unit and Farooq Haider and Mohammed Muzzafar holding forth in POK. Their activities were, in large measure, confined to propagating the cause of a plebiscite in J&K and mobilising international support for this objective. In the middle of 1980s, Amanullah Khan reached Pakistan and assumed leadership of the JKLF. Reportedly, he had established contacts with Pakistan's Inter Services Intelligence (ISI) for building a network of training camps in Pakistan, encouraging youth from J&K to cross the Line of Control (LoC) and receive training.

All through its history the JKLF has demanded for conducting a plebiscite in J&K, but has made no effort to conceal its preference for an independent, sovereign State. This latter position is in direct conflict with Pakistan's contention, that Kashmir in its entirety belongs to it, made apparent by a consistent refusal for a third option in the plebiscite that has been demanded (the other options are: accession to either India or Pakistan). Another cause of friction between the JKLF and its mentors is the status of Gilghit-Baltistan. While JKLF maintains that this region is a part of J&K, Pakistan holds that this region is separate from the State and its accession to Pakistan is final and irrevocable. These differences never faded but came to the fore at various points of time. As a result, Pakistan was, on occasion, hostile towards the JKLF. For instance, when Maqbool Butt escaped from an Indian jail in 1968 and crossed over to Pakistan, he was jailed for a few months.

After the 1987 elections, the JKLF spearheaded the militant movement for the complete independence of Jammu and Kashmir from both Pakistan and India. It relied mostly on the diaspora activists in Muzaffarabad and London, and the Kashmiris crossing over for training. Yasin Malik, who acted as a booth agent for MUF candidate, too, crossed over to Pakistan, and in 1989, he returned to the valley as a militant commander of the JKLF.

Analysts hold that, despite the differences over the opinions and strategies about the future course of Jammu and Kashmir, the ISI had to depend upon the JKLF in the initial stages of the insurgency as it lacked its own network in J&K. Once the JKLF began bringing in people for training, the ISI

gradually weaned away a considerable section of them from the JKLF. Using money and weapon supplies as baits, the ISI bought the loyalty of several militants. By 1991, with ISI's help the pro- Pakistan Hizb-ul-Mujahideen gained greater terror potential as compared to the JKLF. Moreover, the formation of Harkat-ul-Ansar, Lashkar-e-Toiba and numerous other smaller outfits contributed to the marginalisation of JKLF. Besides this, JKLF has been directly targeted by the ISI and the outfits that were controlled by it with armed attacks.

Due to these activities of ISI and Pakistan sponsored militant groups, Yasin Malik severed his ties with JKLF led by POK based Amanullah Khan, and started his own JKLF in the Valley. In May 1994, Yasin Malik who was released from jail (after his arrest in August 1990) declared that his

faction would renounce violence as a tool to achieve the goal of 'independence' and carry out the struggle for self-determination of Jammu and Kashmir following the Gandhian principles of non-violence and Satyagraha. The JKLF has become a constituent of the All Party Hurriyat Conference when it was formed by various groups, carrying its protests against Indian state.

#### **4.2.3.4 Militant, Terrorist and Jihadi Organizations**

There are many Pakistan-sponsored terrorist organizations that are actively working in Jammu and Kashmir carrying out violent armed attacks against Indian security forces and civilians. Many of these organizations are functioning under a pan-Islamic ideology. Many assert that these groups represent a far-right political version of the Sunni Islamic faith that has been nurtured widely in South Asia only since the Zia ul-Haq regime (1977-1988) in Pakistan. Although there is little agreement from one faction to another, many of these groups reject the central tenets of democracy and seek to set up a theocracy which would stretch throughout South Asia. Many have argued that these militants see the “jihad” (struggle) for Kashmir as a first step to liberating the entire South Asian Islamic population from the secular dominance of India. Barring that, however, they would prefer that the entirety of Kashmir become part of Pakistan and are violently opposed to Kashmir becoming independent. Some of the active groups in the present times are explained below.

##### ***Hizb-ul Mujahideen***

The largest group operating in Kashmir, Hizb-ul Mujahideen, was founded as the militant wing of the Kashmiri political separatist group Jamaat-e-Islami (Kashmir). The group's current leader, Syed Salaudin (formerly Mohamed Yusef Shah), began the militant struggle after losing the election of 1987. The functioning of the Hizb considerably differs from that of JKLF though larger number of both cadres are from Kashmir. The Hizb, like the Jama'at, sought to create an independent Islamic state. In fact, most of the Jama'at members have publicly associated themselves with the Hizb, strengthening the organisation and structure of the militant group. The JKLF, on the other hand, was inclined towards establishing a state on the principles of a secular democracy. As a result, Kashmir witnessed clashes between the JKLF and the Hizb, leading to the killings of scores of supporters on both sides. But given the social and organisational acceptance that the Hizb enjoyed in Kashmir—owed, in large part, to the ostensible support of the Jama'at—the JKLF could not keep up the fight.

### ***Lashkar-e-Taiba***

Lashkar-e-Taiba was founded in 1993 in Pakistan as the militant wing of the Markaz Dawa Al Irshad (the Centre for Preaching). Lashkar's leader, Hafiz Mohammed Saeed founded the group in 1987. The Markaz sprawls across 190 acres in Muridke (approximately 28 miles from Lahore) in Pakistani Punjab. Pakistan's ISI began to support Ahle Hadith, Deobandi and Wahabi Islamic groups including Lashkar-e-Taiba as intermediaries in Kashmir after 1993. Many security experts in India and abroad have argued that Lashkar's actions after September 11 show that the group has moved beyond Pakistani control. After it was alleged that the group was responsible for the attacks on the Indian Parliament in December 2001, Lashkar-e-Taiba was banned by Pakistan and placed on the U.S. Department of State's list of organizations that sponsor terror. While some Pakistani press reports have stated that the group has been dissolved, others say the ban has not been kept in good faith because Lashkar has simply changed its name, to Jamaat al-Dawa, and continued its activity.

Lashkar-e-Taiba has been accused by India of attacking military and civilian targets in India, most notably the 2001 Indian Parliament attack, the 2008 Mumbai attacks and the 2019 Pulwama attack on Armed Forces. Its stated objective is to introduce an extremist Islamic state in South Asia and to terrorize the people residing in Kashmir. The organization is banned as a terrorist organization by India, the United States, the United Kingdom, the European Union, Russia, Australia, and the United Nations. Though formally banned by Pakistan, its ISI, continues to give LeT help and protection.

### ***Jaish-e-Mohammad***

Since its inception in January 2000, Jaish-e-Mohammad has rapidly emerged into prominence in the Kashmir Valley. The group was founded by the militant Islamic cleric Maulana Masood Azhar after his release by the Indian government in exchange for 155 hostages taken in the hijacking of an Indian Airlines passenger plane in 1999. Jaish-e-Mohammad was placed on the U.S. State Department's list of organizations that sponsor terrorism after the group was charged with the December 2001 attack on the Parliament building in Delhi. According to B. Raman, Jaish-e-Mohammed is viewed as the “deadliest” and “the principal Islamic Jihadis organisation in Jammu and Kashmir”. The group was responsible for several terror attacks: 2001 attack on Jammu and Kashmir legislative assembly building in Srinagar, which killed 38 people, 2001 Indian Parliament attack, 2016 Pathankot airbase attack, 2016 attack on the Indian Mission in Mazar-i-Sharif, 2016 Uri attack and 2019 Pulwama attack in which 40 Indian security persons dead. The group has been designated as a terrorist organisation by Russia, Australia, Canada, India, the United Arab Emirates, the United Kingdom, the United States, and the United Nations.

#### **4.2.3.5 The All Party Hurriyat Conference**

The All Parties Hurriyat Conference (APHC) was formed on July 31, 1993, as a political platform of the separatist movement. It was an extension of the conglomerate of parties that had come together to contest Assembly polls against a National Conference-Congress alliance in 1987 — an election that was widely alleged to have been rigged. The conglomerate of disparate ideologies was held together by their common position that Jammu & Kashmir was “under occupation of India”, and

the collective demand that “the wishes and aspirations of the people of the state should be ascertained for a final resolution of the dispute”.

At a time when militancy was at its peak, this conglomerate represented the political face of the militant movement, and claimed to “represent the wishes and aspirations of the people”. It had brought together two separate, but strong ideologies: those who sought J&K's independence from both India and Pakistan, and those who wanted J&K to become part of Pakistan. Most of the groups that were part of the Hurriyat had their militant wings, or were linked to a militant outfit.

The APHC executive council had seven members from seven executive parties: Syed Ali Shah Geelani of Jamat-e-Islami, Mirwaiz Umar Farooq of Awami Action Committee, Sheikh Abdul Aziz of People's League, Moulvi Abbas Ansari of Ittehad- ul-Muslimeen, Prof Abdul Gani Bhat of Muslim Conference, Yasin Malik of JKLF, and Abdul Gani Lone of People's Conference. Of these leaders, Sheikh Aziz was killed in police firing near Sheri in Baramulla in August 2008. Abdul Gani Lone was killed by militants in May 2002.

The Hurriyat also had a 21-member working committee. This included the seven members of the executive council, plus two members from each of the seven parties. There was also a general council, with more than 23 members, including traders' bodies, employee unions, and social organisations. The membership of the executive council couldn't be increased as per the APHC constitution, but the general council could accommodate more members. The Hurriyat had observer status at the Organisation of Islamic Cooperation (OIC).

### ***The Hurriyat Constitution***

The APHC constitution, describes it as a union of political, social and religious parties of the state of Jammu and Kashmir, set up to:

- Wage a peaceful struggle to secure for the people of Jammu and Kashmir in accordance with the UN charter and the resolutions adopted by the UN Security Council, the exercise of the right to self- determination, which shall include the right to independence.
- Make endeavours for an alternative negotiated settlement of the Kashmir dispute amongst all the three parties to the dispute — India, Pakistan and people of the Jammu and Kashmir — under the auspices of the UN or any other friendly country, provided that such settlement reflects the will of the people.
- Project the ongoing struggle in the state before nations and governments of the world in its proper perspective, as being a “struggle directed against the forcible and fraudulent occupation of the state by India”.

### ***Split in the Hurriyat***

Because the Hurriyat was such a mixed bag of ideologies and personalities, infighting was a near permanent feature. Disagreements often came out in the open. In September 2003, the Hurriyat split on the questions of its future strategies, the role of militancy in the separatist movement, and dialogue. The Syed Ali Shah Geelani-led group was firm that talks with New Delhi could take place

only after the central government accepted that J&K was in dispute, while the group led by Mirwaiz wanted talks. Geelani hasn't departed from his stance that “the struggle will continue till complete freedom” or a “referendum in accordance with UN resolutions”. The Mirwaiz group backed former Pakistan President Pervez Musharraf's four-point formula that envisaged suzerainty and a joint mechanism between the two parts of J&K, without changing any existing boundaries. The Mirwaiz group also entered into a dialogue directly with New Delhi during Prime Minister Atal Bihari Vajpayee's tenure, and held talks with the then Deputy PM, L K Advani, in 2004.

The leaders of the Mirwaiz faction, along with Yasin Malik (who was no longer a part of Hurriyat by then), visited Pakistan through the Srinagar-Muzaffarabad road in June 2005 to hold talks with various Muzaffarabad-based Kashmiri separatist leaders and the Pakistani establishment. This visit was facilitated by the Vajpayee government, which had come up with Srinagar-Delhi, Delhi-Islamabad and Srinagar- Islamabad tracks as part of its Kashmir peace process.

Though there were stark ideological differences within the two factions of the Hurriyat, the trigger for the split came on the question of fielding proxy candidates by a Hurriyat constituent, People's Conference, in the 2002 Assembly polls. Geelani vehemently criticised the decision, and sought the eviction of the party led by Abdul Gani Lone's sons, Bilal Lone and Sajjad Lone. Geelani also left the *amaat-e-Islami*, and formed his own party, the *Tehreek-e-Hurriyat Jammu and Kashmir*, in August 2004. The Mirwaiz's faction split in 2014, when four of its leaders — Democratic Freedom Party president Shabir Ahmad Shah, National Front chairman Nayeem Ahmad Khan, *Mahaz-e-Azadi* chief Mohammad Azam Inqlabi and Islamic Political Party chief Mohammad Yousuf Naqash — left.

#### **4.2.4 THE CENTRE'S COUNTER-SEPARATISM STRATEGY**

In recent times, the Government of India increased its counter terrorism activities to eliminate terrorism cut all sources of support to terrorist and separatist activities. India has made abundantly clear to its neighbours that it will no longer remain a silent witness to terror attacks on it and would take resolute steps. India has tried to escalate the dangers of terrorism at international level and also included it as part of the agenda of “neighbourhood first policy” engagement. Centre has adopted a four-pronged strategy to tackle militancy, separatists and usher in development and good governance in J&K. The multi-pronged strategy includes going tough against militants, discrediting separatists and ushering in a new era of development. The newspaper reports mention that as many as 31 properties worth over crore belonging to separatist leaders of Jammu and Kashmir have been “identified” for attachment as proceeds of crime by enforcement agencies. The National Investigative Agency (NIA) that started probing terror financing in 2017 charged as many as 12 people under the Unlawful Activities (Prevention) Act, 1967. The Government of India has been trying to choke funds reaching terror groups. Earlier, it cracked down the under-invoicing of goods passing through the border trading points between Pakistan occupied Kashmir (PoK) and Jammu and Kashmir. The

Centre also banned organisations like the Jamaat-e-Islamai (J&K) and Jammu Kashmir Liberation Front (JKLF).

#### **4.2.5 TERRORISM**

Terrorism refers to those acts which involve use of wanton violence by individuals or groups to accomplish their political goals. Terrorism, which is a global phenomenon, has been defined by the United Nations General Assembly (UNGA) as the “criminal acts intended or calculated to provoke a state of terror in the public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.” Walter Laqueur says, terrorism “is the use or the threat of the use of violence, a method of combat, or a strategy to achieve certain targets.” Main objective of terrorism is to induce a state of fear in the victim. According to Bruce Hoffman, it is designed to have far-reaching psychological repercussions beyond the immediate victim or target, conducted by an organization with an identifiable chain of command or conspiratorial cell structure whose members wear no uniform or identifying insignia and perpetrated by a sub-national group or non-state entity. In brief, terrorism can be termed as a tool, strategy or method to achieve specific goals. But separatism is an objective or goal of a specific group or community and terrorism is adopted as a method to achieve this goal.

Although there were organisations like Al-Fatah which indulged in subversive activities in the late 1960s and 1970s, terrorism as a movement characterised by sustained and intensified use of violence for sundering J&K from Indian control began in 1988. The most important organization in the initial phase of terrorism was Jammu and Kashmir Liberation Front (JKLF). The cadre of JKLF was largely made up of Kashmiri men who during the charged-up atmosphere of the 1987 state legislative assembly elections had canvassed for the Muslim United Front (MUF). The MUF was a conglomerate of anti-India outfits and posed a threat to the territorial integrity of the state. The MUF and its supporters alleged that the elections were rigged so as to prevent them from gaining a substantial share of seats in the state legislature. Many of the men who were disenchanted with the rigging of elections in 1987, soon after began crossing the Line of Control (LoC) for training in using arms in camps which were run by the Inter-Services Intelligence (ISI) of Pakistan. The training camps were mainly located in the Poonch and Muzaffarabad area of the Pakistan-administered Jammu and Kashmir. The first wave of explosions were carried by the JKLF in 1988 in Srinagar city in which they target public buildings. They also carried out an attack on the then DIG of Jammu and Kashmir Police, Ali Mohammad Watali's house in Rajbagh in 1988, and this is seen by many commentators as the first major act of a long continuing cycle of violence. The JKLF retrospectively claims itself to be a secular outfit, but as analyst Praveen Swami points out in its “mobilization and discourse” it relied on Islamist motifs and was involved in the targeted killings of the minority Hindus. The JKLF remained at the vanguard of the movement for secession of Kashmir from India till about 1993. It was entire made up of ethnic Kashmiris who supported independence of Jammu and Kashmir and not integration with Pakistan due to which it fell out with the ISI's agenda in Kashmir, and the ISI used organisations such as Hizbul Mujahideen (HM) and Lashkar-e- Taiba (LeT) to exterminate the JKLF cadre.

There have been a whole host of other organisations which have sustained anti-India terrorism in Kashmir since the eclipse of JKLF from prominence. For reasons of brevity, only the two major organisations – the LeT and HM - will be discussed.

The LeT was founded in 1990 in Afghanistan. It is the military wing of the fundamentalist Ahl-i-Hadith sect of Pakistan. It became active in J&K in 1993 when it collaborated with an outfit then active in Poonch. It gained worldwide notoriety after the 2008 attacks on Mumbai. Before those attacks, it had been responsible for some of the most deadly attacks carried out within J&K. Its leadership and personnel are drawn from Pakistan, most of them are ethnic Panjabis and Pakhtoons.

The other important organisation is HM which draws inspiration from the ideology of Jamaat-i-Islami and seeks to establish an Islamic state in J&K and therefore like LeT works towards the integration of the State with the Islamic Republic of Pakistan. It is different from the LeT in the important sense that its personnel are ethnic Kashmir and its leadership is also under the control of an ethnic Kashmiri, Syed Salahuddin.

Although, terrorism first broke out in the State in the valley of Kashmir, it soon spread to the mountainous terrain of Chandrabhaga region (the present day Kishtwar, Ramban and Doda districts and upper parts of Reasi district) where many gruesome episodes of mass slaughter and targeted killing of religious minorities took place. Other than the obvious rage which religious indoctrination had fueled, these acts of violence were probably also motivated by the desire to polarise the society on communal lines and to arouse the masses in the sleepy mountainous towns to join the movement and thereby open up another front in the insurgency against the state so that its resources could be spread thin and its administrative authority crumbles. The muscular approach adopted by the Indian state to counter these groups, meant their agenda did not come to pass and terrorism has been completely wiped off from this region, and active ideological and material support of local populace has dwindled precipitously, making it difficult for terrorist groups to operate for long in this region.

Besides, the heavy toll of lives that terrorism has taken, it has also had several baleful social and economic consequences. Even though the State has not had witnessed any major communal clash, there have been some episodes where acts of terrorism have led to palpable religious polarization and weakened trust between different communities. The selective killings of minorities in Kashmir valley and Chandrabhaga region resulted in the minorities losing their sense of safety and forced them to flee their ancestral lands. In the case of Kashmiri Pandits, they had to flee *en masse*. Other than the social costs, the economic costs have been immense as well. The 1990s were the decade of economic boom in India, in which the Indian economy grew at unprecedented rates as a consequence of the economic reforms. But, due to the frequent terrorist attacks and the counterinsurgency operations led by the security forces, the conditions for stable business investment did not obtain in the State, and the private sector did not develop to its full potential. The public sector remains the largest provider of employment, and this has resulted in the technically skilled individuals being unemployed as mostly jobs in private enterprises are available outside J&K.

#### **4.2.6 LET US SUM UP**

In this lesson, we have studied separatism and terrorism in Jammu and Kashmir. It has

emerged in a particular context that has both internal and external dimensions. Many organizations are involved in carrying forward separatist politics in the Kashmir Valley, starting with Plebiscite Front, Jamaat-i-Islami MUF, JKLF, and various militant organizations and finally the Hurriyat Conference. The very presence of this many organizations inform us that separatist movement is not a cohesive unit. The relative strength of these organizations is also changing over the period depending on the context. Hurriyat which was a solid organization at one time is now reduced to multiple splinter groups. Similarly, there is no similarity between the strategies adopted by one organization to the other. The counter terrorism strategies pursued by the Government of India, and the emergence new age militant groups with more focus on religion in Jammu and Kashmir also undermined the relevance of Hurriyat in present day political landscape of Jammu and Kashmir.

#### **4.2.7 EXERCISES**

1. Define the concept of Separatism and Terrorism ?
2. Briefly state the reasons for emergence of separatism in Kashmir Valley ?
3. Explain separatism in pre-1990 period and what are the major organization that championed the separatist movement during that period ?
4. Write a note on Hurriyat Conference ?
5. Critically analyse the relevance of Separatists in contemporary scenario ?

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## 4.3 CONFLICT AND DISPLACEMENT : ISSUES AND IMPACT

- V. V. Nagendra Rao

### STRUCTURE

- 4.3.0 Objectives
- 4.3.1 Introduction
- 4.3.2 Historical Background
- 4.3.3 Conflict and Displacement
- 4.3.4 Internal Displacement in Jammu and Kashmir
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  - 4.3.5.2 Kargil War and Displacement
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  - 4.3.5.4 Development and Displacement
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- 4.3.7 Role of Government
  - 4.3.7.1 Allotment of Land to the Displace People
  - 4.3.7.2 Cash Loans
- 4.3.8 Socio-economic Profile of POK Refugees
- 4.3.9 Let Us Sum UP
- 4.3.10 Exercises

### 4.3.0 OBJECTIVES

This lesson explains the issues related to displacement in the state of Jammu and Kashmir. After going through this lesson, you will be able to:

- understand the historical context for the displacement;
- various categories of internal displacement;
- Role of Government in addressing problems of displacement.

### 4.3.1 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, sometimes it is the natural disaster or the quest for development which forces people to move out.

Displacement is one of the severe realities of the continuing J&K conflict. It remained to be a continuous feature of the state right from the time of partition. 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. Over 700,000 people in Jammu & Kashmir, mostly the inhabitants of the Kashmir valley and border areas of Pakistan, are directly affected by the instability in the region. In the present chapter we will discuss various issues associated with displacement, and its effects on the life of people in the state of Jammu and Kashmir. The chapter will broaden the debate on the present issue from the period of partition to the contemporary time, with different displacement issues in the state. Internal and external displacement is discussed in this chapter like refugees of partition, development displacement of Ranjit Sagar Dam and the night displacement of border issues. The present chapter will discuss the political social and economic and psychological effect on the life of state's people, and how the displacement hampers the normal life of the people.

#### **4.3.2 HISTORICAL BACKGROUND**

The partition of India in 1947 is remembered for many reasons and one such is the largest internal flow of people that followed. An estimated six to seven million Muslims moved from India to Pakistan and nearly eight million Hindus and Sikhs moved from Pakistan to India. The areas on the border that were ravaged by Pakistan's aggression in 1947 included Mirpur, Poonch, Muzaffrabad and frontier districts of Ladakh and Gilgit. Those refugees who were displaced from Mirpur, Poonch, and Muzaffrabad are now called as Pakistan occupied Kashmir (PoK) refugees. The number of people directly affected and uprooted during partition were 12, 00,000. Out of total 12, 00,000 PoK migrants population in India, at least 40 percent of them have been leading a miserable life for the past three generations in Jammu, Kathua, Rajouri, Poonch and Udhampur districts of Jammu and Kashmir. This displacement not only involves the human rights abuses, maltreatment and denial of livelihood of those who are being displaced but raise questions of identity, power and other related concerns. An estimated two lakh PoK migrants are residing under sub-human conditions in 34 camps in Jammu province, especially in R.S Pura and Jammu areas. They require immediate protection as well as permanent solution in India. The partition destroyed not only the life and property of lakhs of people but also the very fabric of human society and relationships.

The turmoil of 1947 resulted in large scale migration of people of all communities on either sides of the border. The people were forced to migrate with bitter memories of betrayal and sufferings in PoK and had to start lives in new surroundings. They had few choices and were prepared to do or accept anything to make a living. 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.

### **4.3.3 CONFLICT AND DISPLACEMENT**

The conflict-induced displacement in Jammu and Kashmir (J&K) is as old as the partition of the Indian subcontinent in 1947. In fact, India's largest situation of conflict induced internal displacement stems from the conflict involving J&K. The Jammu region alone, at present, is having an amalgamation of over seven types of dislocated people. Though the displacement is the result of conflict in Kashmir (due to ongoing militancy in the state) as well as conflict over Kashmir (between India and Pakistan), the report emphasizes on the latter one. India and Pakistan share a three thousand km long border, of which one third is going through J&K. Since independence, clashes between the two countries led to several waves of displacement from villages along the border. The 198 km International Border (IB), extending from Kathua to Akhnoor, is recognised as an international border but the 778 km Line of Control (LoC), starting from Akhnoor is a de facto border. The LoC is longest unsettled line in history. The tribal invasion in J&K and later a war between India and Pakistan in 1947 were followed by agreement on Cease Fire Line (CFL) on the border. It was renamed LoC in the Shimla agreement after the 1971 war. Thus, a considerable part of the border remains undecided while some of it is well defined. Due to dispute over J&K between the two neighbouring countries, the border remains largely disturbed not only during the times of actual hostilities but even after the ceasefire because of the continued presence of the army and infiltration of insurgent groups across the LoC.

### **4.3.4 INTERNAL DISPLACEMENT IN JAMMU AND KASHMIR**

India's largest site of internal displacement stems from the conflict in the Northwestern state of Jammu and Kashmir between militants seeking either independence or accession to Pakistan, and Indian security forces and police. The status of Kashmir has been in challenge since the creation of independent India and Pakistan in 1947, and the two countries have twice gone to war over the issue. Although security has improved with the ceasefire concluded in November 2003, Islamic militant groups have continued to launch attacks against local authorities and civilians to sabotage the peace process. Since 1989, the insurgency in Indian-administered Kashmir has claimed at least 67,000 lives.

More than 90 per cent of the Hindu population in the Kashmir Valley, the Kashmiri Pandits remain internally displaced as a result of this armed conflict. The government estimates that 250,000 fled from the Valley during the 1990s, while Pandit groups believe at least 350,000 people were displaced. Today, around 100,000 live in the capital New Delhi and some 240,000 in the city of Jammu. The government provision for 'migrant relief' consists of housing in one or two-room tenements, monthly food rations and cash assistance. By 1997, most had moved into their own homes in Jammu or elsewhere in India. Those that remain are predominantly rural folk uprooted from their farms and orchards in the valley, lacking the resources of more fortunate brethren. They live in overcrowded and squalid conditions, which they term shame accommodation. Surveys indicate that they

suffer a host of physical and mental health problems, economic hardship, and are dogged by fears of cultural extinction. The return to the Kashmir valley of some Pandits has become a possibility after the announcement in 2008 of a government package for their return and rehabilitation. The package provides for housing, employment and business opportunities, student scholarships and financial assistance.

Thousands of people were uprooted from their homes along the Akhnoor frontier in Jammu and Kashmir during the conflict and they continue to suffer. According to estimates, over 50,000 people along with their livestock migrated from the forward tehsils of this border area. The migrants are still holed up in tents along the Jammu- Poonch National Highway and left to care for them. Several times they tried to return to their villages but could not, due to the frequent outbreak of tensions. In 2001, many of them came home but had to leave again after India-Pakistan tensions increased after the December 13, 2001, attack on the Parliament of India.

People living in villages in other places along the border returned after the war, but the Akhnoor migrants could not. For, most of their homes had been destroyed in the shelling and their fields rendered infertile due to the increased toxicity in the soil. Elections in Jammu and Kashmir in November 2002 led to the creation of a new coalition government and raised expectations for an end to the displacement of the Kashmiri Pandits.

However, an ambitious return plan including cash assistance, interest-free loans and the building of 500 apartments in the Anantnag district where some of the displaced Pandits would be able to stay until they repair their own houses, has still not been implemented. Protection of the remaining Pandit population has been far from adequate, leading to further displacement during 2004 when 160 of the estimated 700 Pandit families remaining in the Kashmir Valley fled when an upsurge of violence and killings was noticed.

Minister for Housing and Urban Development said that as per the reports filed by the screening committee constituted by Deputy Commissioner Doda, Udhampur, Rajouri and Poonch, 4017 families comprising 20,931 souls were displaced from the militancy affected areas during the past ten years and the cases of 1717 families of these districts are under investigation.

During the Kargil conflict nearly 1.57 lakh people were displaced from the border belt. Now, all of them have returned to their respective places except 1302 families of Niabat Khour in Akhnoor. Of the total, 1.07 lakh were migrated from Jammu, 17,692 from Kathua, 10,327 from Rajouri and 21,952 from Poonch. Besides this, in Kupwara district 16 families consisting of 97 souls were displaced.

Despite threats from some groups against any attempt to return the Kashmiri Pandits, the state government of Jammu and Kashmir for its part maintains that it is moving forward with return plans and that 1,600 families have signaled in writing that they want to return to the valley. 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.

#### **4.3.5 CATEGORIES OF THE DISPLACEMENT**

Apart from the above discussed causes, various other reasons of internal displacement were present in the state of Jammu and Kashmir. The process of development has also displaced people from one region to another. But the serious fallout of the development process is its impact on the socio-economic life of people in view of displacement. The government as well as the non-governmental agencies including the academics reflects the views of the people. In the partition-related displacement in the state nearly 15,000 people fled from the ad-joining areas of Pakistan. This can be termed as first kind of displacement. The second type of displacement was from Pakistan controlled Kashmir. There was huge influx of Hindus and Sikhs from the areas of Muzaffarabad, Mirpur, Bagh, Rawalakot, Bhimber, Kotli and Jhanger. In an interview to the authors, Hardit Singh Panchi, President of the Jammu Kashmir Sharnarhi (refugee) Action Committee (JKSAC) informed that around 50,000 families have been displaced at that time. The 1965 war also led to a large-scale displacement of the people from Chhamb-Jurian area in Jammu. The 1971 war led to another type of displacement from Chhamb area. Around 4,900 families were displaced from ten villages. The Kargil war in 1999 also resulted in the displacement of a considerable number of people from border areas all over the state. Many of them returned as soon as the crisis was over. But more than 60,000 people from Akhnoor continued to live in the camps till recent times.

India and Pakistan came to the brink of war on many occasions. This led to large-scale displacement in the state, especially from the border areas. For instance, the war scare of December 2001 after the attack on Indian Parliament led to massive displacement from the border. Another war scare due to May 14, 2002 fidayeen attack in J&K also led to displacement. According to an estimate, since 1999 Kargil war to 2002 war scare, around two lakh people in the state were forced to leave their native places from borders – 22,000 from Poonch, 9,000 from Rajouri, about 1.25 lakh from Jammu and 25,000 from Kathua district.

##### **4.3.5.1 Border and Displacement**

The nature of displacement from border may be classified as temporary, semi-permanent and permanent. The Chhamb-displaced, for instance, have permanently moved out of their native place since 1971. Temporary displacement takes place whenever there is disturbance on the border. Such temporary displacement is a recurring phenomenon in the state and people living on the border undergo dislocation multiple times, sometimes for few days and sometimes for months. Displacement, thus, becomes a part of their life wherein they keep shuttling between their native places and the camps frequently. Many of the border people have decamped nearly six times since

independence i.e. in 1947, 65, 71, 87, 99 and 2001. This kind of displacement becomes semi-permanent when those who leave their native places in the wake of disturbed condition are not able to return even after years.

#### **4.3.5.2 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.

#### **4.3.5.3 Ceasefire and the displacement**

In the wake of the ceasefire between India and Pakistan in November 2004, the semi-permanently displaced felt the atmosphere conducive for return. The idea was, however, not devoid of problems and hurdles. After living as displaced for six years the life has changed so much that the return did not come as an immediate decision. The camp life was never a good option for them but the return too was not easy. Amidst this confusion many returned but many continued to live in the camps.

As per the information gathered during the survey, approximately 48,000 people have returned to their respective places but around 12,000 are still living in the three camps. These people are residing in the Devipur, Naiwala and Rampur colony camps. While the once largest camp, Devipur, at the time of survey in April was accommodating around 100 families, in Naiwala camp at least 400 families are still languishing. From among the 950 families living in the Rampur colony camp not even a single family had returned. In this camp people from three villages namely Chapriyal, Kachriyal and Samoo are living since June 1999.

#### **4.3.5.4 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. No doubt, the infrastructure projects have helped in increasing the productivity and production to a great extent, this march towards development is not unmixed blessings. They have given rise to involuntary displacement thereby creating untold miseries for the displaced. The state of Jammu and Kashmir has been experiencing this type of displacement because of the completed and many ongoing projects.

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 of power include Indus and its tributaries, Jhelum and its tributaries, Chenab and its tributaries. Hydroelectric Power Projects, though they involve long gestation period are still considered to be the reliable and cheap option as the potential energy of water is tapped for generation of power. Hydroelectric power projects are Eco-friendly and except for maintenance they do not required any

fuel for generation of energy.

Despite about 15,000 MW of the Hydro Electric Power potential of the State, 181 MW in the State Sector and 690 MW in Central Sector have been harnessed so far. 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 hearth and home and probably 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.

#### **4.3.6 IMPACT OF INTERNAL DISPLACEMENT**

Internal Displacement of PoK refugees has multi-faceted impacts. Partition and displacement not only affected the geography and history of these displaced persons but also the citizens of PoK who were living together in their earlier settings. Refugees from PoK have still not forgotten the trauma of displacement. Most of them lost their near and dears on their way to migrant camps. People saw their close ones dying of hunger, thirst and diseases. Unfavorable weather conditions also posed problems taking toll of lives. While interviewing some old aged respondents, they started shedding tears when they regretted upon their failure to leave their family members or relatives due to fear of losing their own lives. PoK 'refugees' after going through the trauma of displacement and subsequent hurdles in rehabilitation have established themselves in the camps. The impact of displacement on PoK refugees is analyzed as:-

- 1. Ever increasing forced migration in J&K:** The turmoil of 1947 resulted in large scale migration of POK refugees. The number of people who migrated during the holocaust was 12,00,000. Officially 15,800 refugees were accounted for as refugees, while many others living close to the affected areas shifted to safe regions among their friends and relatives. Approximately 2, 000, 00 refugees from the total population are settled in 34 camps in Jammu province, especially in RS Pura and Jammu areas. Most of them were compelled to quit their native soil in Muzaffarabad, Mirpur and Poonch first in 1947 and then again in two phases in 1965 and 1971 after India-Pakistan wars.

2. **Migration to New Settings:** PoK refugees belong to two types of categories, urban and rural. The former were mostly engaged in petty trades and professions joined or started it again in new settings after a gap of few months. But rural population had no option and had to seek admissions to relief camps set up by the govt. They mostly lived in Nagrota and Yol camp in distress on govt. grants until they were allotted lands in different areas.
3. **Change in Socio-Economic status:** The shifted also changed their occupation from the earlier ones to variety of other occupations. The PoK 'refugees' who migrated from urban areas joined or started their earlier trades and professions. But those from rural areas firstly dependent on govt. grants but later on started agricultural activities on allotted lands. In some cases the land allotted was either far away or uncultivable.
4. **Impact on in their Culture and Tradition:** Displacement of POK refugees not only shifted their residence and occupation but also degenerated their cultural values and traditions. For instance marriages, festivals and other occasions which used to be a village affair also become a short term and formal affair.
5. **Impact on Education level:** Displacement affected the education of displaced people. The refugees from urban settings being educated members of upper castes are often better than their native homes. Many of them are in govt. jobs. But those from rural villages had to leave their schools in between. In the new settings they opted for lower jobs or daily wage jobs for economic reasons.
6. **Decline in Self-Esteem:** Due to displacement those who were well off in their native places left their immovable and moveable property and fled with very few resources.
7. **Change in family structure:** Family structure in these camps too is shifting from joint families in native places to nuclear in new settings.

#### **Demands of PoK Refugees:**

Main demands projected by the PoK refugees include:

1. Implementation of Wadhwa Committee report, no restriction on state subject for PoK refugees settled outside the State.
2. Ownership of right over evacuated land.
3. Claim over property left behind.
4. Relief at par with Kashmiri Pandits.
5. Reservation in professional colleges and scholarships for their students.
6. One time settlement package of Rs 16 lakh per family for the refugees of 1947.
7. Eight Assembly seats for PoK refugees here out of 24 reserved for PoK in Legislative Assembly, reservation for refugees in the Upper House,
8. PoK 'Refugee's' Development Board should be constituted with all financial powers and

liberal aid for their upliftment and betterment.

9. Job reservation for refugee youth in State/Central Administrative services.
10. Improvement in civic amenities in the basties where PoK refugees are putting up,
11. Bringing back the money of refugees which was left in Mirpur branch of J&K Bank in 1947 at the time of migration.
12. Inclusion of refugees in the dialogue on J&K at every level.
13. The Central Act of 1954 (Displaced Persons Compensation and Rehabilitation Act), should also be applied in the case of PoK 'refugees'.

#### **4.3.7 ROLE OF GOVERNMENT**

The partition of the subcontinent at the very dawn of independence of India was a defining moment for the future direction and psyche of the new nation. The vicious communal violence and refugee crisis, which ensued, resulted in wide scale destruction of life, property and traumatized millions of people. The refugee had to start a new life as part of the newly independent state of India, and the government had to respond to an extraordinary situation at a time when it hardly had any resources and experience in dealing with humanitarian emergencies involving such large number of people (Mahiga,2003:11). The government responsingly constituted the Central Refugee Committee vides Council Order No. J/13/47 on November 19, 1947 (Report of Wazir Committee, 1953). The refugee relief camps were opened at Palanwala and Jourian to accommodate them in government and private buildings. Thereafter, the Relief and Rehabilitation Department was established on April 14, 1948, under the Ministry of Health and Rehabilitation.

This department took charge of refugee camps in Jammu province and immediately reorganized the refugee camps officers. For the displaced persons from Tehsil of Haveli, Mendhar, Bagh, Sandhuti, who were collected in Poonch town ration valuing Rs 318,741 was arranged and dropped from air at Poonch town through Army Dakotas for free distribution among displaced persons. The Government of India set their Relif Organisation in Jammu at June 1, 1948. It established refugee relief camps at Nagrota, Chathe and Company Bagh. In addition to that a Home for the unattached women and children at Frashkhana at Jammu city was of state were admitted into the refugee camps at Jalandhar and Hoshiarpur. About 3000 displaced persons originally admitted in Jalandar camp was transferred to Hoshiarpur relief camp and then to Nagrota camp in June 1950(Report of Wazir Committee 1953:63). At one time the strength of the Nagrota camp rose to 35,000 constituting 8,870 families. The camp was managed entirely by the government of India and by the end of 1949, an approximate amount of Rs 2 crore and 60 lakhs had been spent on it. During their stay at Nagrota camp, displaced persons were provided with tents for shelter. Free ration and cash dole. The scale of cash dole for those above six was Rs 4. Besides their free ration comprised atta, rice, sugar and pulses. These relief camps were closed were closed in 1951 when the refugee relief camps were opened at Yol near Dharamshala in Himachal Pradesh.

There was another category of refugees who stayed outside the camps either by staying in rented accommodation or by staying with their relatives. For such persons the government had sanctioned Rs 6 as daily cash dole for those up to six months of age and Rs 12 for those above it, without any cereal ration. In Jammu city and other town's widows, orphans and invalid refugees were exempted from payment of rent for evacuee houses occupied by them. The total amount spent by both the state and the central government on the rehabilitation of refugees came to Rs 7 crores. It included Rs 2 crores and 60 lakhs on displaced persons at Nagrota camp, Rs 2 crores on Yol camp refugee and Rs 1 crore through the Joint Rehabilitation Board.

#### **4.3.7.1 Allotment of Land to the Displaced People**

Immediately on the dispersal of the displaced persons from the relief camps, a unit of land measuring acres of irrigated or 12 acres of non-irrigated was allotted to some of the displaced families by the Joint Rehabilitation Board. But soon after it was felt by the government that it might not be possible for them to provide land to each family at such a higher scale. Accordingly, vide Cabinet Order no. 578-C of 1954, which contains rules for allotment of agricultural land, fresh scale of land for allotment was prescribed which ranged from 2 acres irrigated or 3 acres non-irrigated or 6 acres non-irrigated depending upon the strength of displaced family. Besides land, cash loans were granted by the government to the displaced persons for the construction of houses and purchase of other necessary equipments.

#### **4.3.7.2 Cash loans**

These loans were recoverable after two years with simple interest at 4.5% in ten equal installments, commencing from the date of their grant. However, the recovery of these loans could not be made within the period stipulated in the agreements owing to weak economic condition of these refugees. Out of 40 respondents only 35 respondents availed loan given by the government whereas 5 respondents did not avail cash loan. Moreover, those who availed cash loan were of the view that this loan was not sufficient for the purpose it was given.

On analyzing the data collected from the field as well as secondary sources, it can be said that PoK 'refugees' have been victim of forced displacement which was ensued soon after partition. As revealed from the data these refugee had to go through lot of miseries and sufferings on their way to relief camps. The role of govt. both at State and Centre level was rated satisfactory by only 10% of the respondents and 90% expressed dissatisfaction over government's role.

### **4.3.8 SOCIO-ECONOMIC PROFILE OF POK REFUGEES**

After going through trauma of displacement and subsequent hurdles in rehabilitation, most of PoK refugees have been fully established in the camps. The present socio-economic conditions of these PoK refugees can be analyzed as :

1. Age-wise distribution of respondents: Out of total 40 respondents 30 i.e. 75% falls in the age group of 66-70 and above.

2. Present occupation of the heads of the household: Out of 40 respondents 20 i.e. 50% falls in the age group of 71-80 and above do not take any occupation. Two are engaged in agriculture while 12 of them are engaged as self employed in occupations like transporter ship, shop keeping, driving, etc. out of rest only 6 have taken some private job.
3. Educational level of family members on the basis of sex above 14 years: The data reveals that females are more literate than males in terms of their concentration in higher educational institutions.
4. Size of the household: It has been analyzed that maximum respondents i.e. 30 have medium size of the household 5-8 members, 6 have large family size having 9 members and above and only 4 respondents have small size family up to 4 members.
5. Main source of income: Source of income varied for different respondents. But the results revealed that 18 generate income through self employment. 10 households have income through private jobs and 10 have government services. Only 2 households depend upon agriculture.
6. Monthly income of the household: Monthly income level of majority of the households i.e. 30 is above 10000 rupees per month. The 6 have income between Rs 8000-1000 per month and only 4 have income below 8000 rupees a month.
7. Status of the house: After 64 years of displacement almost all have succeeded in rebuilding their houses. Out of 40 respondents 36 have their own houses where as only 4 are living in rented houses.
8. Type of family: After these people settled in these camps they have joint families. But now most of the respondents have nuclear type of family. Out of 40 respondents only 15 have joint family structure and 25 are living in nuclear families.

#### **4.3.9 LET US SUM UP**

The post-colonial Indian state has failed miserably in resolving the issues raised by displaced people. The state has virtually abdicated its responsibility towards the victims of these movements. The postcolonial Indian State, the colonial legacy of communalism and various exclusionist identity movements have been the major actors in the political threat of massive internal displacement of people in India. If the present situation continues without any effective intervention, India is likely to experience more conflict induced internal displacement of population, particularly the marginalized groups in near future.

In the end it can be said that two lakhs of people who had survived that holocaust of ethnic cleansing were discriminated by all successive governments and denied their share in sociopolitical processes. One can often see this forgotten on roads, watch in televisions read in striving hard for their rights but all in vain. Whenever any stranger people visit these camps the old aged eyes start seeing with hope that if somebody is going to heal their wounds and will make effort to make the future better

at least of their upcoming generations. It was for the first time Interlocutors on Kashmir today for the first time visited Bhour Camp to meet the PoK refugees dwelling there. Veteran journalist Dilip Padgaonkar, former Information Commissioner M M Ansari and academician Radha Kumar listened to the grievances of the displaced people camping there and assured them to raise their voice.

#### **4.3.10 EXERCISES**

- Q1. Write a note on the internally displaced people in J&K ?
- Q2. Briefly explain the various categories of the displaced people in the State of J&K ?
- Q3. Explain the social and political impact of internal displacement in J&K ?
- Q4. What steps have the Government taken to rehabilitate the displaced people in J&K ?

## **4.4 REORGANIZATION OF JAMMU & KASHMIR AND LADAKH, 2019**

**- Mamta Sharma**

### **STRUCTURE**

#### **4.4.0 Objectives**

#### **4.4.1 Introduction**

#### **4.4.2 Article 370 and 35A after Abrogation**

##### **4.4.2.1 Union Territories of Jammu and Kashmir and Ladakh**

#### **4.4.3 Jammu and Kashmir and Ladakh Reorganisation Act, 2019**

#### **4.4.4 Let Us Sum Up**

#### **4.4.5 Exercises**

#### **4.4.0 OBJECTIVES**

In this lesson you will study the major changes in the Jammu and Kashmir and Ladakh after the reorganization of the state. After going through this lesson, you will be able to know:

- The historical background and the provision of Article 370 and 35A;
- About the reorganization of Jammu & Kashmir and Ladakh in 2019;
- About the major changes after reorganization of Jammu and Kashmir State into two UTs i.e Jammu and Kashmir and Ladakh.

#### **4.4.1 INTRODUCTION**

Now Jammu and Kashmir is a union territory of India, previously which was the state of Jammu and Kashmir, are now two union territories of Jammu and Kashmir and Ladakh. Since October 31st, 2019, its now separate union territories, being administered through central government. Together with the UT of Ladakh, Jammu and Kashmir was having an area of 101387 square km (as it was prior to October 2019) and population of 12.54 million (combined with Ladakh) as per 2011 census data. Largely, three main cultural regions have existed as Muslim majority in Kashmir valley, Hindu majority in Jammu; and Buddhist majority in Ladakh. The state of Jammu and Kashmir (including UTs of J & K and Ladakh, and areas of POK and Aksai Chin), is surrounded by China in the North and East side, Afghanistan in the North West and Pakistan in West and South West sides. Indian states of Punjab and Himachal Pradesh lie in the Southern side. Jammu and Kashmir has been remained a major zone of conflict between India and Pakistan since its merger with Indian union, and thereafter, Pakistan over one pretext or the other, has been waging wars, proxy wars and

infiltrating insurgency in the state. New administrative changes made through the revocation of special provisions (articles 370 and 35A), made by central government, through its bifurcation, it is envisioned and has been emphasized that it will bring new investments to the state with direct central control.

#### **4.4.2 ARTICLE 370 AND 35A AFTER ABROGATION**

The Indian Parliament made an incredible move on 5th August, 2019 while passing the Jammu and Kashmir Reorganisation Act, 2019 with an overwhelming majority which ultimately received Presidential assent on August 9, 2019. This Act bifurcated the erstwhile state of Jammu and Kashmir into two union territories (UT) Jammu and Kashmir, and Ladakh. While the UT of Jammu and Kashmir will have a Legislative Assembly, Ladakh (including Leh and Kargil districts) will be governed by the President under the administration of a Lieutenant Governor (L- G) duly appointed by him with his official seal and signature as mandated by the constitution.

##### **4.4.2.1 Union Territories of Jammu and Kashmir and Ladakh**

The concept of 'Union Territory' is unique to India and was initially introduced in the States Reorganisation Act of 1956. This term refers to territories either too small for autonomous status or significantly distinct from neighboring states in terms of economy, culture, or geography. Such territories are directly administered by the Central government. The State Reorganisation Commission drew inspiration from the governance of “major and minor provinces” in the late 18th century. Originally, the Constitution classified territories into four types, former British India provinces (Part A), princely states (Part B), chief commissioner provinces (Part C), and the Andaman and Nicobar Islands (Part D). The foundation for Union Territories was laid under Part D during the state reorganization. The Union Territory of Jammu and Kashmir, like other state legislatures, now has a five-year term, reduced from six after the elimination of the Legislative Council. The number of seats filled through direct elections is 107, set to increase to 114 after a delimitation exercise. This restructuring occurred without a state assembly in J&K, facilitating constitutional reforms by New Delhi. The Constitution (Application to Jammu & Kashmir) Order, 2019, issued by the President, replaced the 1954 order linked to Article 370. A resolution proposing the abrogation of Article 370 and the introduction of the Jammu & Kashmir (Reorganisation) Bill, 2019, was presented. Article 370(3) empowers the President to modify or revoke any article through a notification, subject to a recommendation from the Constituent Assembly. The Constitution (Application to Jammu and Kashmir) Order 2019 extends all provisions outlined in Article 4 of the Indian Constitution to Jammu and Kashmir. Under the President's rule, the President declared on August 6th, 2019, that all clauses of Article 370 would cease to be effective. On the other hand, the Union Territory of Ladakh, historically significant and constituting approximately 60% of the former state of Jammu and Kashmir, emerged without a legislature. It comprises two districts—Kargil and Leh—with a Buddhist majority exceeding 70%. Ladakh stands as the first Indian Union Territory with a Buddhist majority, strategically linking Central Asia, South Asia, and China. The region faces challenges such

as limited livelihood opportunities, inadequate infrastructure, poor communication, underdeveloped market facilities, and high unemployment. As a Union Territory, Ladakh will now be governed by national oversight bodies such as the National Commission for Scheduled Tribes (NCST), ensuring the well-being of the tribal community.

#### **4.4.3 JAMMU AND KASHMIR AND LADAKH REORGANISATION ACT, 2019**

The Jammu and Kashmir Reorganisation Act was passed by the Indian Parliament on August 6, 2019 and came into effect on October 31, 2019. Immediately after the reading down of Article 370, the BJP-led Central Government introduced the Reorganisation Bill in the Parliament on 5<sup>th</sup> August. The primary purpose of the Reorganisation Act was to reorganise the erstwhile State of Jammu & Kashmir into two Union Territories.

The Act consists of 103 Sections and 5 Schedules. The Act came on the heels of reading down of Article 370 and is therefore seen as the culmination of a long process of the erosion of the autonomy of the State of Jammu and Kashmir. Scholars who have studied the constitutional relationship between the State of J&K and India have shown that the process of erosion of Article 370 had begun in 1954 when an omnibus Presidential Order made applicable many of the provisions of the Indian Constitution to the State of J&K and brought J&K under the Supreme Court of India's jurisdiction. And that this process continued apace with more than forty Constitutional Orders being passed from time to time to make various provisions of the Constitution of India applicable to the State and thereby bringing it into a closer union with India.

To better understand the changes that are brought about by the Reorganisation Act, references ought to be made to the nature of the Statehood that existed prior to the passage of the Act.

While most of the provisions of the Act are “procedural” and “functional” i.e., they deal mainly with such issues as the procedure for filling up of the seats to the legislative assembly, privileges of the members, qualification for eligibility, public offices such as that of the Advocate General, etc., which are analogous to the provisions of Part VI of the Constitution of India and therefore do not require any explanation. This write-up for reasons of brevity will only discuss the main provisions of the Act which have altered the political structure of the erstwhile State vis-à-vis the Union of India.

Under Article 3 of the Indian Constitution, to create a new State or Union Territory, the Parliament of India has to introduce a Bill and refer it to the Legislature of the concerned State. The recommendation of the State Legislature is not binding on the Parliament which in its discretion can either accept or reject it. Since, the Legislative Assembly in the State was dissolved in 2018 the Bill could not be referred to it for eliciting its opinion on it.

The erstwhile State of Jammu and Kashmir consisted of 22 districts. Section 3 of the Reorganization Act created the Union Territory of Ladakh out of Leh and Kargil districts of the State of Jammu & Kashmir. Section 4 of the Act created the Union Territory of Jammu and Kashmir from

the remaining districts of the State.

Section 13 of the Act enforces Article 239A of the Constitution of India which was previously only applicable for the Union Territory of Puducherry to the UT of Jammu and Kashmir. Since Article 239A provides for a Legislature and a Council of Ministers for the UT of Puducherry, it thereby provides for a Legislature and a Council of Ministers for the UT of Jammu and Kashmir as well, but this provision of the Constitution has not been made applicable to the UT of Ladakh. The Act does not spell the reasons for this. But this provision was dispensed with probably because in the view of the legislators the small population of Ladakh did not mandate the existence of a legislature.

Previously for the State Legislative Assembly seats were reserved for Scheduled Castes only, but under Section 14(6) of the Act seats are now reserved for both the Scheduled Castes and Scheduled Tribes in the legislative assembly of UT of J&K. Also, Section 15 empowers the Lieutenant Governor to nominate two women members if in his opinion women are not adequately represented in the legislature.

Section 17 of the Act limits the duration of the Legislative Assembly to 5 years, earlier in the State the tenure of the Legislative Assembly was for 6 years.

Section 32 specifies the extent of legislative competence of the unicameral legislature of the UT. The subjects on which the Legislative Assembly of the UT can legislate are essentially those of the State List and the Concurrent List, but Entries 1 (Public Order) and 2 (Police) of the State List of the Constitution of India are excluded. At first glance, this may suggest that the downgrading of the State into a UT is not a big climbdown. But, when we consider these changes in the light of the fact that the State under Article 370 had possessed residuary sovereignty because Entry 97 of the Union List was not made applicable to the State of Jammu and Kashmir, we get a sense of the massive abridgement of the erstwhile State's jurisdictional authority.

Another significant change is one pertaining to the size of the cabinet. Section 53 of the Act provides for a Council of Ministers to aid and advise the Lt Governor. But now, the size of the Council of Ministers cannot exceed more than ten percent of that of the legislative assembly. After the Delimitation of the constituencies in 2022, the capacity of elected members has been set to 90, this therefore means that the Council of Ministers for the UT cannot have more than 9 members, a significant curtailment from the prior arrangement where there existed no constitution cap on the size of the ministry.

The Constitution of Jammu and Kashmir in 1957 established a bicameral legislature for the State. But, Section 57 of the Reorganization Act abolished the Legislative Council of the State and thereby leaves the UT of J&K with a unicameral legislature.

In the State of J&K, there existed one common High Court with two wings – one at Jammu and the other at Srinagar. This arrangement continues under Section 75 of the Act and the High Court of J&K continues to exercise jurisdiction over the territory of UT of Ladakh as well.

Under Section 93(1), the Jammu and Kashmir Public Service Commission continues to have authority over recruitment in the UT of J&K but for the UT of Ladakh, the appointments are to be made by the Union Public Service Commission.

Section 95 of the Act made applicable 106 Acts of the Central Government enumerated in the Fifth Schedule of the Reorganisation Act to the UT of J&K and Ladakh. 153 Acts of the State Legislature and 11 Acts of the Governor were repealed.

Under Section 96 of the Act, provision was made for the President to apply or repeal any further laws of the Central Government to the State Government within the period of one year of the Act coming into force. Consequently, five Presidential Orders were issued by invoking Section 96 which have further adapted several Central Acts to the UT of J&K and repealed several laws enacted by the State Legislature.

All the Central Laws have been extended to J&K including the Reservation law which has benefited many disadvantageous sections of the society. Earlier reservation was provided only to the persons residing along the Actual Line of control (ALC). The benefits of reservation have been extended to the persons residing along the International Border thereby fulfilling their long pending demand. After applying all the Central Laws in the Union territory of Jammu and Kashmir and Union territory of Ladakh, 890 Central Laws applied, 205 State laws repealed and 130 State laws modified in UT of Jammu-Kashmir in line with the Constitution of India.

J&K Panchayati Raj Act was amended by the Central Government in October, 2020. Provisions for creating the third and final tier of Panchayati Raj i.e. District Development Councils were inserted. Consequently, elections to the District Development Councils along with bye-elections for vacant seats of Panches and Sarpanches held in the UT. The picture for the entire election is impressive with overall polling at 51.7% for J&K, with Jammu at 68.4% and Kashmir at 34.8%. Earlier, Panchayat elections were held in 2018 with 74.1% turnout. Elections to Block Development Councils held for the first time in the history of J&K in Oct 2019- 98.3% turnout- Block Panchayats - Constituted, and made functional.

Many laws, like Child Marriage Act, Right to Education and Land Reforms are also effective here. Valmiki, Dalit and Gorkha communities, living in the state for decades, are also now enjoying rights at par with the other residents of the state. The people of Valmiki community, Gorkhas and refugees from Western Pakistan now have the right. Domicile law has been applied. According to the new definition of domicile, persons residing in Jammu & Kashmir for 15 or more years will be treated as domiciles.

Displaced refugees from Western Pakistan too, have human and civil rights now. The way has to cast their vote for the State elections for the first time been paved for the resettlement of Kashmiri Pandits ousted from the Kashmir valley in 1990. 6000 jobs and 6000 transit accommodations, in progress. The protection of rights of the women marrying outside Jammu & Kashmir, as well as their children, has been ensured.

Some key central legislation including Prevention of Corruption Act, National Commission for Minorities Act and Land Acquisition Act. The Aadhar Act, 2016. The Commission of Inquiry Act, 1952, The Delimitation Act, 2002, The Dowry Prohibition Act, 1961, The Drugs and Magic Remedies Act, 1954, The Easements Act, 1891, The Family Courts Act, 1984, The General Clauses Act, 1897, The Judicial Officers (Protection) Act, 1850, The Medical Termination of Pregnancy Act, 1971, The National Commission for Minorities Act, 1992, The National Commission for Women Act, 1990, National Security Act, 1980, The Prohibition of Child Marriage Act, 2007, The Protection of Children From Sexual Offences Act, 2012, The Protection of Human Rights Act, 1994, The Protection of Women from Domestic Violence Act, 2005, The Right of Children to Free and Compulsory Education Act, 2009, The Right to Information Act, 2005, The Whistle Blowers Protection Act, 2014, The Wild Life (Protection) Act, 1972.

#### **4.4.4 Let Us Sum Up**

After considering the above-mentioned provisions, one can reasonably conclude that although the provisions for the UT of J&K do suggest further erosion of the autonomy for the Government of J&K, but not to the extent of that in the UT of Ladakh, which *de jure* has no representative law-making assembly and is being administered by the President of India through the Lieutenant Governor. While, a similar situation is *de facto* in effect in the UT of J&K. But, there exist, if only on paper at the moment, the legislative provisions which can be operationalised to form, in the future, a government elected by the people.

#### **4.4.5 EXERCISES**

- Q1. Explain the process of Jammu and Kashmir Reorganisation Act of 2019 ?
- Q2. Discuss the main provision of Jammu and Kashmir and Ladakh Reorganisation Act of 2019 ?